



# Constitution



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## **Constitution**

### **PART 1**

# **Summary and Explanation**



# Part 1 – Summary and Explanation

## The Council's Constitution

Malvern Hills District Council has adopted a constitution which sets out how the Council operates, how decisions are made and the procedures followed to ensure that these decisions are efficient, transparent, and accountable to local people. Some of these processes are required by law while others are a matter for the Council to choose.

The Constitution is divided into 16 articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of the document.

## What's in the Constitution?

**Article 1** of the Constitution commits the Council to provide accountable, transparent, effective, and efficient decision making and community leadership which involves local people, businesses, organisations, and its partners.

**Articles 2-16** explain the rights of residents and how the key parts of the Council operate.

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**Articles 1-16 may not be suspended**

# Part 1 – Summary and Explanation

## How the Council operates

The Council comprises 38 councillors elected every four years. The next ordinary election of councillors will be in May 2023 and every four years thereafter. Councillors are democratically accountable to residents of their wards of which there are 22. Some wards have more than one councillor. The overriding duty of councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors have to agree to follow a **Code of Conduct** to ensure high standards in the way they undertake their duties.

All councillors meet together as the Council. Meetings of the Council are normally open to the public except when matters containing “exempt information” or “confidential information” are being discussed. This type of information is defined in law and is usually personal, financial, contractual information or legally privileged. At the Council meeting councillors decide the Council’s overall policies (the policy framework) and set the budget and council tax each year. The Council appoints committees, sub-committees, panels, and groups to undertake functions on its behalf and provides the means by which these bodies can subsequently be held to account for the decisions they make.

Council meetings also provide an opportunity for the public to raise issues and ask questions in accordance with the public participation scheme on matters relating to the Council or the District.

## How decisions are made

Whilst Council approves the overall policy framework, most policy decisions are made by the following committee, which exercises executive powers on behalf of the Council:

- **Executive Committee** - implements policy and takes executive decisions (collectively) in respect of all Council matters and services which are not specifically reserved for Council or delegated to another Committee of the Council or to officers.

Other Committees carry out a number of regulatory functions as follows:

- Licensing Committee - licensing applications and appeals.
- Area Planning Committees – determination of planning applications.

## Part 1 – Summary and Explanation

Meetings of all the above committees by law are publicised well in advance and are open to the public except where matters containing “exempt information” or “confidential information” as defined in Part 4 of the Constitution are being discussed. The Council is committed to being open and transparent and will endeavour to deal with all matters in public wherever possible.

### Overview and Scrutiny

The Overview and Scrutiny Committee monitors the decisions of the Executive Committee and supports the policy development process by conducting in depth reviews.

The Overview and Scrutiny Committee allows residents to have a greater say in Council matters by holding public inquiries into matters of local concern. These can lead to reports and recommendations which advise the policy committees and the council, as a whole, on its policies, budget and service delivery.

Any five councillors can “call in” a decision that has been made by Executive Committee within five days of the decision being taken. This enables the Overview and Scrutiny Committee to consider whether the decision is appropriate. The Overview and Scrutiny Committee may also be consulted by the Executive Committee on forthcoming decisions and the development of policy.

Meetings of the Overview and Scrutiny Committee are normally open to the public.

The Overview and Scrutiny Committee is supported in its work by **Task and Finish Groups**, which are formed to consider and review specific policy issues and make recommendations.

### The Council’s staff

The Council has staff (called “officers”) to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. There is an extensive scheme of delegation whereby officers are permitted to make decisions in accordance with previously determined policies. A protocol governs the relationships between officers and members of the Council and this is rooted in mutual respect.

### Residents’ rights and responsibilities

Residents have a number of rights and responsibilities in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council’s own processes. The local Citizen’s Advice Bureau can advise on an individual’s legal rights.

## Part 1 – Summary and Explanation

Residents have the right to:

- vote at local elections if they are registered;
- contact their local councillor about any matters of concern to them;
- inspect or obtain a copy of the Constitution;
- attend meetings of the Council and its committees except where, for example, personal or confidential matters are being discussed;
- petition to request a referendum on a mayoral form of executive;
- participate at Council and other meetings where the council's various Public Participation/Speaking Schemes apply;
- see reports and background papers, and any record of decisions made by the Council or any of the committees that were open to the public (subject to statutory deadlines);
- complain to the Council if dissatisfied with any of the services it provides under its complaints process;
- make a complaint to the Local Government and Social Care Ombudsman if they think the Council has not followed its procedures properly. However, they are recommended to do this only after using the Council's own complaints process;
- complain to the Council's Monitoring Officer if they can show that a councillor has not followed the Members Code of Conduct (in line with the **Arrangements for Investigating Allegations of Breach of the Councillor Code of Conduct** at Part 5 of this Constitution); and
- inspect the Council's accounts and make their views known to the external auditor.

The Council welcomes participation by its residents in its work. For further information on your rights as a resident, please contact Democratic Services, The Council House, Avenue Road, Malvern (tel. 01684 862416/2273) or [committee@malvernhills.gov.uk](mailto:committee@malvernhills.gov.uk)



## **Constitution**

### **PART 2**

# **Articles of the Constitution**

## **Part 2 – Articles of the Constitution**

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# **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

## **Article 1 – The Constitution**

### **1.1 Powers of the Council**

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

### **1.2 The Constitution**

This Constitution, in all its parts and appendices, is the Constitution of the Malvern Hills District Council.

### **1.3 Purpose of the Constitution**

The purpose of the Constitution is to:

- enable the Council to provide clear leadership to the community in partnership with the public, business, and other organisations;
- support active public involvement in our decision-making process;
- help councillors represent their constituents more effectively;
- enable decisions to be taken efficiently and effectively;
- create a powerful and effective means of holding decision-makers to public account;
- ensure that no one will review or scrutinise a decision in which they were directly involved;
- ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- provide a means of improving the delivery of services to the community.

### **1.4 Interpretation and review of the Constitution**

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above in 1.3.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **1.5 Changes to the Constitution**

The Council is responsible for approving any amendments to the Constitution. Such changes can reflect decisions of the Council for example to alter arrangements or Standing Orders.

In order to keep the Constitution up to date as a central reference point for the rules by which the Council operates, the Council has delegated power to the Monitoring Officer to make minor changes where it is necessary arising from changes to legislation and after consultation with the Leader of the Council where there is an urgent need.

# PART 2 – Articles of the Constitution

(These Articles may not be suspended)

## Article 2 – Members of the Council

### 2.1 Composition and eligibility

- a) **Composition** - The Council currently comprises 38 Members, otherwise called councillors. One or more councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission for England and approved by the Electoral Commission.
- b) **Eligibility** - Only registered voters of the District or those living or working there will be eligible to hold the office of councillor.

### 2.2 Election and terms of councillors

The regular election of councillors will be held on the first Thursday in May every four years on a cycle of 2023, 2027 etc. If a councillor resigns, dies or otherwise becomes ineligible to serve as a councillor between regular elections, an election will be held to fill the casual vacancy, unless the vacancy arises within six months before the next election. The terms of office of councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

### 2.3 Roles and functions of all councillors

#### a) Key roles

All councillors will:

- (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- (ii) represent their communities and bring their views into the Council's decision-making process, i.e. become the advocates of and for their communities;
- (iii) respond to constituents' enquiries and representations, fairly and impartially;
- (iv) balance different interests identified within the ward and represent the ward as a whole;
- (v) be involved in decision-making;
- (vi) be available to represent the Council on other bodies; and
- (vii) maintain the highest standards of conduct and ethics.

## PART 2 – Articles of the Constitution

(These Articles may not be suspended)

### b) Rights and duties

- (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (ii) Councillors will not make public any “confidential information” or “exempt information” without the consent of the Council, or divulge information given in confidence to anyone other than a councillor or officer entitled to know it.
- (iii) For these purposes, “confidential information” and “exempt information” is defined in the **Access to Information Rights** in Part 4 of this Constitution.
- (iv) No councillor shall issue any order for works to be carried out by or on behalf of the Council and nor can he/she claim any right to inspect or enter land unless by prior arrangement and specifically asked to do so by the Council.

**2.4** Councillors will at all times observe the **Councillor Code of Conduct**, the **Protocol for Member/Employee Relations**, the **Protocol on Dealing with Planning Matters (including site inspections)** set out in Part 5 of this Constitution.

### **2.5 Allowances**

Councillors will be entitled to receive allowances in accordance with the **Members’ Allowance Scheme** set out in Part 6 of this Constitution.

## PART 2 – Articles of the Constitution

(These Articles may not be suspended)

### Article 3 – Residents and the Council

#### 3.1 Residents' rights

Residents have the following rights. (Their rights to information and to attend, record and participate at meetings are explained in more detail in the **Access to Information Rights** in Part 4 of this Constitution and the public participation schemes).

- a) **Voting and petitions** - Residents on the electoral roll for the area have the right to:
  - (i) sign a petition to request a referendum for a change to the current model of governance;
  - (ii) sign a petition on any matter within the council's function, power, or competence and for any such petition to be considered by the Council as set out in the Council's **Petition Scheme** at Part 5 of this Constitution;
  - (iii) vote in any such referendum; and
  - (iv) vote in any local elections.
  
- b) **Information** - Residents have the right to:
  - (i) attend meetings of the Council, and its committees, except where "confidential information" or "exempt information" is likely to be disclosed and the meeting is therefore held in private;
  - (ii) record and report upon meetings of the Council and its committees except where "confidential information" or "exempt information" are being disclosed and the meeting is therefore held in private (and in accordance with **Rights to Record Meetings** section in Part 4 of this Constitution);
  - (iii) request information in accordance with the Freedom of Information Act and the Local Government Transparency Code;
  - (iv) inspect and obtain a copy of the Councillor Code of Conduct and inspect the Register of Members Interests;
  - (v) inspect the Council's accounts and make their views known to the external auditor.
  
- c) **Participation** - Residents have the right to participate at meetings of Council and its committees and in accordance with agreed arrangements as set out in the constitution. Residents may also be asked to contribute to investigations by the Overview and Scrutiny Committee or any of its Task and Finish Groups.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

- d) **Complaints** - Residents have the right to complain to:
- (i) the Council itself under its complaints scheme;
  - (ii) the Local Government and Social Care Ombudsman, after first using the Council's own complaints procedure;
  - (iii) the Police about any potential criminal offence; and
  - (iv) the Council's Monitoring Officer in the first instance about a possible breach of the Councillor Code of Conduct.
  - (v) Any other Regulatory body relevant and appropriate to the nature of the complaint, e.g. Information Commissioner for Freedom of Information matters, the Health and Safety Executive for Health and Safety issues, etc.

### **3.2 Residents' responsibilities**

Residents must not be vexatious, violent, abusive, or threatening to councillors or officers and must not wilfully harm things owned by the Council, councillors, or officers.

## PART 2 – Articles of the Constitution

(These Articles may not be suspended)

### Article 4 – The Full Council

#### 4.1 Meanings

- a) **Policy Framework** - The policy framework means the following plans and strategies:
- The Council's Five Year Plan;
  - Community Safety Partnership;
  - Plans and strategies which together form the Local Development Scheme;
  - And any other plan which is required by statute to be approved by the Council.
- b) **Budget** - The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

#### 4.2 Functions of the Full Council

Only the Council will exercise the following functions:

- a) adopting and changing the Constitution except where otherwise provided for in the Constitution or by resolution of the Council;
- b) approving, adopting or amending the policy framework and the budget and setting the Council Tax;
- c) the provision of guidance and direction to the Overview & Scrutiny Committee on the policy development programme;
- d) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them unless the appointment has been delegated by the Council;
- e) appointing representatives to outside bodies unless the appointment has been delegated by the Council;
- f) adopting a Members' Allowance Scheme;
- g) changing the name of the area or conferring the title of Honorary Alderman;
- h) confirming the appointment of the Head of the Paid Service and the dismissal of statutory officers;
- i) approving any joint arrangements, delegations to or from another local authority or contracting out in accordance with Article 11 of this Constitution;

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

- j) making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal Bills; and
- k) all other matters which by law must be reserved to Council.

### **4.3 Council meetings**

There are three types of Council meeting:

- a) Annual;
- b) Ordinary; and
- c) Extra-ordinary.

and they will be conducted in accordance with the **Council & Committee Procedure Rules** in Part 4 of this Constitution.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **Article 5 – Chairing the Council**

#### **5.1 Election of Chairman and Vice-Chairman**

The Chairman and Vice-Chairman of the Council will be elected by the Council annually.

#### **5.2 Role and function of the Chairman**

The Chairman of Council, or person chairing the council meeting, has the following responsibilities:

- a) To uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- b) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
- c) to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which members are able to hold the Leader, members of the Executive Committee and other committee chairmen to account;
- d) to promote public involvement in the Council's activities;
- e) to be the conscience of the Council; and
- f) to attend such civic and ceremonial functions as the Council and the Chairman determine appropriate.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **Article 6 – Overview and Scrutiny Committee**

#### **6.1 Appointment**

The Council will appoint one Overview and Scrutiny Committee.

#### **6.2 Terms of reference**

The membership of the Overview and Scrutiny Committee together with the Terms of Reference can be found in Part 3 of this Constitution.

#### **6.3 Annual reports**

The Overview and Scrutiny Committee must report annually to full Council on its findings and make recommendations for future work programmes and amended working methods if appropriate.

#### **6.4 Proceedings of Overview and Scrutiny Committee**

Overview and Scrutiny Committee will conduct its proceedings in accordance with the **Council and Committee Procedure Rules** set out in Part 4 of this Constitution.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **Article 7 – Executive Committee**

#### **Executive Committee**

##### **7.1 Role**

There shall be an Executive Committee; the terms of reference and functions of which shall be as set out in Part 3 to this Constitution.

##### **7.2 Form and composition**

- a) The Executive Committee will consist of the Leader of Council (who will be the Chairman of the Committee) together with such number of other councillors appointed to the Executive Committee by the Council as the Council may from time to time decide.
- b) The membership of the Executive Committee (including the Leader) will be appointed in accordance with the requirements of the Local Government and Housing Act 1989 with regard to political proportionality.

##### **7.3 Leader**

The Leader of Council will be a councillor elected to the position of Leader by the Council annually. The Leader will hold office until:

- a) they resign from the office; or
- b) they are suspended from being a councillor (although they may be re-appointed as Leader at the end of the period of suspension); or
- c) they are no longer a councillor; or
- d) they are removed from office by resolution of the Council; or
- e) their successor takes office.

##### **7.4 Other Executive Committee members**

Other Executive Committee members will be appointed by Council annually and shall hold office until:

- a) they resign from office; or
- b) they are suspended from being councillors (although they may be re-appointed to the Executive Committee at the end of the period of suspension); or
- c) they are no longer councillors; or
- d) they are removed from office, either individually or collectively, by resolution of the Council; or
- e) their successors take office.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **7.5 Deputy Leader**

The Deputy Leader of the Council will be appointed by Council, at the Annual Council meeting each year, and will become Vice-Chairman of the Executive Committee.

### **7.6 Portfolio responsibilities**

- a) The Leader of Council may allocate particular policy and/or service area portfolios to each member of the Committee and may appoint Assistant Portfolio Holders (who may or may not be a member of the committee)
- b) Members of Executive Committee may each have particular interest and regard to the policy and service areas included in their respective portfolios but shall not have any executive authority in respect thereof.

### **7.7 Proceedings of the Executive Committee**

Proceedings of the Executive Committee shall take place in accordance with the **Terms of Reference** for Executive Committee set out in Part 3 and the **Council and Committee Procedure Rules** set out in Part 4 of this Constitution.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **Article 8 – Other Committees and Groups**

#### **8.1 Other Committees and groups**

The Council will appoint the Committees and groups described in Part 3 of this Constitution which shall each have the respective terms of reference and functions described therein.

#### **8.2 Changes to Committees and groups**

The Council may appoint such additional committees and groups or change any of the details described in Part 3 of this Constitution as it may from time to time decide.

#### **8.3 Council Policy Groups**

The Leader of the Council may appoint Council Policy Groups as he/she may from time to time decide in accordance with the Terms of Reference in Part 3 of this Constitution. The Planning Policy Group (“PPG”) will be a separate standing group with its own terms of reference, rules and procedures.

## PART 2 – Articles of the Constitution

(These Articles may not be suspended)

### Article 9 – Audit and Standards Committee

#### 9.1 Audit and Standards Committee

The Council will establish an Audit and Standards Committee.

#### 9.2 Composition

- a) **Membership.** The Audit and Standards Committee will be composed of:
- Seven district councillors to be politically balanced in accordance with the requirements of the Local Government and Housing Act 1989; and
  - For the purposes of Standards matters there will also be two co-opted non-voting parish / town councillor members representing the town and parish councils wholly or partly in the Council's area; and
  - At least one co-opted non-voting independent non-councillor member who are not councillors or officers of the Council or any other body having a Standards Committee as detailed in its Terms of Reference.
- b) **Attendance** - at least one parish / town councillor member **must be present** when matters relating to any standards issue arising from a parish or town council is due to be considered.
- c) Members of the Executive Committee shall not be members of the Audit and Standards Committee.
- d) The Chairman and Vice-Chairman of the Committee will be elected at Annual Council from amongst the District Council members of the Committee.
- e) No substitutes shall be allowed as per Rule 28 of the Council and Committee Procedure Rules, Part 4 of this Constitution.

#### 9.3 Role and function

The Audit and Standards Committee's role and function shall be as set out in its Terms of Reference.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **Article 10 – Appointments, Disciplinary and Investigations Committee**

#### **10.1 Appointments, Disciplinary and Investigations Committee**

The Council will establish an Appointments, Disciplinary and Investigations Committee.

#### **10.2 Terms of Reference**

The Appointments, Disciplinary and Investigations Committee's role and function shall be as set out in its Terms of Reference in Part 3 of this Constitution.

#### **10.3 Composition**

- a) The Appointments, Disciplinary and Investigations Committee will be composed of 5 district councillors as detailed in its Terms of Reference and shall be politically balanced.
- b) At least 1 member of the committee shall be a member of the Executive Committee holding a portfolio.
- c) The quorum of the committee shall be 3 members.
- d) No substitutes shall be allowed as per Rule 28 of the Council and Committee Procedure Rules, Part 4 of this Constitution.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **Article 11 – Joint Arrangements**

#### **11.1 Arrangements to promote well being**

The Council, in order to promote the economic, social, or environmental well-being of its area, may:

- a) enter into arrangements or agreements with any person or body;
- b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and/or
- c) exercise on behalf of that person or body any functions of that person or body.

#### **11.2 Joint arrangements**

- a) The Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- b) Details of any joint arrangements including any delegations to joint committees will be found in the Council's **Scheme of Delegation** in Part 3 of this Constitution.

#### **11.3 Access to information**

The **Access to Information Rules** in Part 4 of this Constitution shall apply.

#### **11.4 Delegation to and from other local authorities**

- a) The Council may delegate functions to another local authority or, in certain circumstances, the Executive of another local authority and also accept such a delegation from another local authority or its Executive.
- b) The decision whether or not to delegate functions to another local authority or to accept such delegations from another local authority shall be reserved to full Council.

#### **11.5 Contracting out**

The Council may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an Order under Section 70 of the [Deregulation and Contracting Out Act 1994](#), or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

## PART 2 – Articles of the Constitution

(These Articles may not be suspended)

### Article 12 – Officers

#### 12.1 Management structure

- a) **General.** The Council may engage such staff (officers) as it considers necessary to carry out its functions.
- b) **Chief Officers.** The Council will engage persons for the following posts, who will be designated Chief Officers, with the responsibilities set out below alongside their wider strategic responsibilities.

POST	FUNCTIONS
Shared Chief Executive (Head of Paid Service)*	Providing leadership and management of a high standard to ensure the Council’s vision, objectives, and priorities are effectively and efficiently delivered and that the residents of the district receive high quality, value for money services.
Deputy Chief Executive (s151 Officer)*	Deputising role. Financial strategy. Accountancy Internal audit. External audit relationship management. ICT. HR and Organisational Development. Performance and Risk management. Revenues and Benefits. Business change and transformation. Legal. Property and facilities management. Malvern Theatres Trust. Car Parking Strategy and policy. Research and consultation. Communications. Democratic services. Electoral services Customer Services. Member support.

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Joint Head of Planning and Infrastructure	Development Control Planning Policy Conservation Heritage Matters – natural and built environment Building Control Planning enforcement Land charges and GIS services. Land drainage (Engineering Services)
Joint Head of Economy and Environment	Economic Development Regeneration. Waste management. Street scene. Parks and grounds maintenance Tourism Worcestershire Regulatory Services (WRS)
Joint Head of Housing and Communities	Housing Services. Sport and Leisure Community Transport Community development. Health Improvement Community Safety. Community engagement.

\*Such posts will have the functions described in Article 12.2 and 12.4 below.

### 12.2 Functions of the Head of the Paid Service

- a) **Discharge of functions by the Council.** The Head of the Paid Service will report to Council on the manner in which the discharge of the Council’s functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers;
- b) **Restrictions on functions.** The Head of the Paid Service may not be the Monitoring Officer but may hold the post of Chief Financial (Section 151) Officer, if a qualified accountant.

### 12.3 Functions of the Monitoring Officer

- a) **Maintaining and reviewing the Constitution** - The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, officers and the public. He/she will keep the Constitution under review in accordance with Article 15 below.

## PART 2 – Articles of the Constitution

(These Articles may not be suspended)

- b) **Ensuring lawfulness and fairness of decision making** - After consulting with the Head of the Paid Service and Chief Financial Officer (Section 151 Officer), the Monitoring Officer will report to the Council if he/she considers that any proposal, decision, or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- c) **Supporting the Audit and Standards Committee** - The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Audit and Standards Committee.
- d) **Receiving reports** - The Monitoring Officer will receive and act on reports made by the Local Government and Social Care Ombudsman.
- e) **Conducting investigations** - The Monitoring Officer will conduct investigations into complaints that the Councillor code of conduct has been breached where he/she considers it necessary to do so and in accordance with the approved arrangements for investigating allegations of a breach of the code of conduct.
- f) **Proper Officer for Access to Information** - The Monitoring Officer will ensure that decisions of the Council and its Committees and relevant officer reports and background papers are made publicly available as soon as possible.
- g) **Providing advice** - The Monitoring Officer will provide advice on the scope of Council powers, maladministration, financial propriety, the Codes of Conduct, and the protocols to all Councillors and will advise and support Councillors and officers in their respective roles.
- h) **Restrictions on posts** - The Monitoring Officer cannot be the Chief Financial Officer (Section 151 Officer) or the Head of the Paid Service.

### 12.4 Functions of the Chief Financial Officer

- a) **Ensuring lawfulness and financial prudence of decision making** - After consulting with the Head of the Paid Service and the Monitoring Officer, the Chief Financial Officer will report to the full Council and the Council's external auditor if he/she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency, or if the Council is about to enter an item of account unlawfully.
- b) **Administration of financial affairs** - The Chief Financial Officer will have responsibility for the administration of the financial affairs of the Council.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

- c) **Contributing to corporate management** - The Chief Financial Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- d) **Providing advice** - The Chief Financial Officer will provide advice on financial impropriety, probity, budget, and policy framework and will support and advise councillors and officers in their respective roles.
- e) **Provide financial information** - The Chief Financial Officer will provide financial information to the media, members of the public and the community.

### **12.5 Provision of sufficient resources to the Monitoring Officer and Chief Financial Officer**

The Council will provide the Monitoring Officer and Chief Financial Officer with such officers, accommodation, and other resources as are, in their opinion, sufficient to allow their duties to be performed.

### **12.6 Conduct**

- a) Officers will comply with the Code of Conduct for Employees and the Protocol for Member/Employee Relations set out in Part 5 of this Constitution.
- b) The Monitoring Officer shall record any notice given by an Officer of the Council of a pecuniary interest in a contract, or proposed contract in accordance with the law and the Code of Conduct for Employees at Part 5 of this Constitution and this shall be available during office hours for inspection by any Member of the Council.

### **12.7 Employment**

The recruitment, selection, and dismissal of officers will comply with the Officer Employment Procedure Rules set out in Part 4 of this Constitution.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **Article 13 – Decision Making**

#### **13.1 Responsibility for decision making**

The Council will issue and keep up to date a record of which part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

#### **13.2 Principles of decision making**

All decisions of the Council will be made in accordance with the following principles:

- a) proportionality (i.e. the action must be proportionate to the desired outcome);
- b) due consultation and the taking of professional advice from officers and/or appropriately qualified consultants;
- c) respect for human rights;
- d) a presumption in favour of openness;
- e) clarity of aims and desired outcomes; and
- f) the Rule of Law.

#### **13.3 Decision making by the full Council**

Subject to Article 13.5, the Council meeting will follow the Council & Committee Procedure Rules set out in Part 4 of this Constitution when considering any matter.

#### **13.4 Decision making by Committees and Sub-Committees**

Subject to Article 13.5, Committees, Sub-Committees, Working Parties, Groups and Panels will follow:

- a) those parts of the Council & Committee Procedure Rules set out in Part 4 of this Constitution as apply to them; and
- b) such other procedures set out in Part 3 of this Constitution (Responsibility for Functions) as are specified in respect of that Committee, Sub-Committee, Group or Panel.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **13.5 Decision making by Council bodies acting as tribunals**

The Council, a councillor or an officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person, will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

### **13.6 Urgent decisions**

- a) Where urgent matters need to be dealt with and time does not allow for convening a meeting of Council or a Committee, executive power is and shall be vested in the Chief Executive/Head of Paid Service (or in his/her absence the Deputy Chief Executive/Head of Resources) in consultation with the Leader of the Council and the Executive Committee Member(s) with the relevant service portfolio (or where that is the Leader of the Council, the Deputy Leader).
- b) No decision shall be made or instructions issued under this Article which is contrary to an expressed resolution of the Council or an established practice.
- c) A report of all decisions taken under this Article shall be made to the next meeting of the Executive Committee, as appropriate.

### **13.7 Decision making by officers**

Where a committee or sub-committee has delegated a decision to an officer, or an officer in consultation with a portfolio holder and other member, a recording of the decision under delegation will be made by Democratic Services in line with the Openness of Local Government Bodies Regulations 2014.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **Article 14 – Finance, Contracts and Legal Matters**

#### **14.1 Financial management**

The management of the Council's financial affairs will be conducted in accordance with the Financial Rules set out in Part 4 of this Constitution.

#### **14.2 Contracts**

Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 4 of this Constitution.

#### **14.3 Legal proceedings**

The Monitoring Officer is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Monitoring Officer considers that such action is necessary to protect the Council's interests.

#### **14.4 Authentication of documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Monitoring Officer or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

#### **14.5 Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by the Monitoring Officer or in his/her absence, the Deputy Chief Executive or the Shared Chief Executive.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **14.6 Inspection of lands, premises etc.**

Unless specifically authorised to do so by the Council, no member of the Council or of the Executive Committee shall issue any order in respect of any works which are being carried out by or on behalf of the Council or claim by virtue of membership of the Council any right to inspect or to enter upon any lands or premises which the Council has the power or duty to inspect or enter, but provided that prior arrangement is made with the appropriate Head of Service, a Member shall, so far as possible within the law, have the right to inspect lands and premises owned by the Council.

## **PART 2 – Articles of the Constitution**

(These Articles may not be suspended)

### **Article 15 – Review and Revision of the Constitution**

#### **15.1 Duty to monitor and review the Constitution**

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

#### **15.2 Protocol for monitoring and review of Constitution by Monitoring Officer**

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for any amendments in order to better achieve the purposes set out in Article 1. In undertaking this task, the Monitoring Officer may:

- a) observe meetings of different parts of the member and officer structure;
- b) undertake an audit trail of a sample of decisions;
- c) record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders; and
- d) compare practices in this authority with those in other comparable authorities, or national examples of best practice.

#### **15.3 Changes to the Constitution**

- a) **Approval** - Changes to the Constitution will be approved by the full Council after consideration of a written report by the Monitoring Officer or a Committee of the Council with the exception of minor changes where the Monitoring Officer has been given delegated authority where it is necessary arising from changes to legislation and after consultation with the Leader of the Council where there is an urgent need.
- b) **Change to Executive Arrangements** - The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals for any change from an Alternative Arrangement to any form of Executive Arrangement within the meaning of the Local Government Act 2000.

## PART 2 – Articles of the Constitution

(These Articles may not be suspended)

### Article 16 – Suspension, Interpretation and Publication of the Constitution

#### 16.1 Suspension

- a) **Limit to suspension** - Articles 1-16 of this Constitution **may not be suspended**. The Rules specified below may be suspended by the full Council to the extent permitted within those Rules and the law;
- b) **Procedure to suspend** - A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors is present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- c) **Rules capable of suspension** - Council and Committee Procedure Rules found in Part 4 of this Constitution except for Rules 15 and 22 may be suspended in accordance with Article 16.1.

#### 16.2 Interpretation

The ruling of the Chairman as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

#### 16.3 Publication

The Monitoring Officer will:

- a) ensure that each member of the Council has access to a copy of the Constitution, upon delivery to him/her of that individual's declaration of acceptance of office. On the member first being elected to the Council, each member will familiarise themselves with the Constitution; particularly with the Code of Conduct and abide by it at all times;
- b) ensure that an electronic copy of the Constitution is freely available on the Council's website.



## **Constitution**

### **PART 3**

# **Responsibility for functions**

## **Part 3 – Responsibility for Functions**

Summary of Council, Committees & Panels

Terms of Reference, Constitution, Rules and Procedures

- Area Planning Committees
- Audit & Standards Committee
- Executive Committee
- Licensing & Appeals Committee
- Overview & Scrutiny Committee
- Scrutiny Task & Finish Groups
- Appointments, Disciplinary and Investigations Committee
- Chief Officer Disciplinary and Grievance Appeals Committee
- Council Policy Groups (CPG)
- Planning Policy Group (PPG)
- Policy Development Panels

Scheme of Delegation

## Part 3 – Responsibility for Functions

### Summary of Council, Committees and Panels

NAME	MEMBERSHIP	FUNCTIONS
Council	All Members	<ul style="list-style-type: none"> <li>(a) adopting and changing the Constitution;</li> <li>(b) approving or adopting the policy framework and the budget and setting the council tax;</li> <li>(c) the provision of guidance and direction to the Overview and Scrutiny Committee on the policy development programme;</li> <li>(d) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them unless the appointment has been delegated by the Council;</li> <li>(e) appointing representatives to outside bodies unless the appointment has been delegated by the Council;</li> <li>(f) adopting a Members' Allowance Scheme;</li> <li>(g) changing the name of the area or conferring the title of Honorary Alderman;</li> <li>(h) confirming the appointment of the Shared Head of Paid Service and the dismissal of statutory officers;</li> <li>(i) approving any joint arrangements, delegations to or from another local authority or contracting out in accordance with Article 11 of this Constitution;</li> <li>(j) making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal Bills; and</li> <li>(k) all other matters which by law must be reserved to Council.</li> </ul>
Executive Committee	Leader of Council and up to 10 other Members	<ul style="list-style-type: none"> <li>▪ Determination of all matters not reserved to Council or delegated to another Committee</li> <li>▪ Make recommendations to Council regarding policy formulation and the budget.</li> </ul>
Area Planning Committees: - Southern area - Northern area	All members for that area	<ul style="list-style-type: none"> <li>▪ To determine all development control applications (inc. planning, Listed Building, advertisement control, Conservation Area Consent) unless delegated to officers in accordance with the Scheme of Delegation</li> <li>▪ Tree Preservation Order objections</li> </ul>

## Part 3 – Responsibility for Functions

### Summary of Council, Committees and Panels

<p>Audit &amp; Standards Committee</p>	<p>Up to 7 Members (must not be members of the Executive Committee) 2 co-opted non voting parish/town councillor representatives 1 co-opted non voting independent non-councillor members</p>	<ul style="list-style-type: none"> <li>▪ To oversee the work of the Council’s external and internal auditors, and take such decisions as are necessary to ensure that the auditors’ work is in accordance with statutory requirements and best practice, and that their recommendations are acted upon appropriately</li> <li>▪ All matters relating to the Councillor Code of Conduct</li> <li>▪ Consideration of regular management information on the nature and number of Member complaints received by the Council.</li> <li>▪ Consideration of reports by the Ombudsman</li> </ul>
<p>Licensing and Appeals Committee</p>	<p>Up to 12 Members</p>	<ul style="list-style-type: none"> <li>▪ To advise Executive Committee on licensing policy and deal with all Licensing applications and appeals</li> </ul>
<p>Overview &amp; Scrutiny Committee</p>	<p>Up to 11 Members (must not be members of the Executive Committee)</p>	<ul style="list-style-type: none"> <li>▪ Oversee and co-ordinate scrutiny and review process including decisions taken by Executive Committee</li> <li>▪ Review of Council policies and make recommendations thereon to Council</li> <li>▪ Consideration of any matter affecting the District or its residents.</li> </ul>
<p>Appointments, Disciplinary and Investigations Committee</p>	<p>Up to 5 Members</p>	<ul style="list-style-type: none"> <li>▪ To exercise those powers that can be delegated by Council in respect of the appointment, dismissal and disciplining of those senior officers employed by the Council as are covered by the Local Authorities (Standing Orders)(England) Amendment Regulations or any successor regulations or Act</li> </ul>
<p>Chief Officer Disciplinary and Grievance Appeals Committee</p>	<p>Up to 5 Members</p>	<ul style="list-style-type: none"> <li>▪ To exercise those powers that can be delegated by Council in respect of the appeals against disciplining of those senior officers employed by the Council as are covered by the Local Authorities (Standing Orders)(England) Amendment Regulations or any successor regulations or Act which falls short of dismissal.</li> </ul>

## Part 3 – Responsibility for Functions

### Summary of Council, Committees and Panels

Other Committees to which the Council appoints		
Joint Shared Appointments Committee	10 Members; 5 each from Wychavon and Malvern Hills District Councils	<ul style="list-style-type: none"> <li>▪ To undertake non-executive functions relating to employment matters at senior management team level where matters are in relation to shared posts.</li> </ul>
Worcestershire Shared Services Joint Committee	2 members of each Member Authority; in the case of authorities operating Executive Arrangements at least one of those members from each authority shall be a member of that Authority's Executive	<ul style="list-style-type: none"> <li>▪ Oversee the implementation, development and on-going operation of the shared services</li> <li>▪ Ensure the effective delivery of the shared service functions in accordance with the terms of the agreement</li> <li>▪ Monitor the effectiveness of those arrangements and make recommendations to the Participating Authorities e.g. in the event of any changes to legislation, developments in best practice or the requirements imposed on Member Authorities</li> <li>▪ On an annual basis, agree a three year business plan for each shared service including:               <ul style="list-style-type: none"> <li>▪ Service delivery, service development &amp; financial objectives</li> <li>▪ Performance improvement &amp; efficiency targets</li> <li>▪ Staffing</li> <li>▪ Business continuity planning</li> <li>▪ Risk management</li> </ul> </li> <li>▪ Set annual capital, revenue and staffing budgets for each shared service and no later than 1st December in each year submit these to the Member Authorities for approval as part of the business plan</li> <li>▪ Monitor the operational performance of the shared services on [a quarterly basis]</li> <li>▪ Ensure service delivery is in accordance with the key performance indicators and agreed national, regional and local priorities</li> <li>▪ Ensure effective action is taken to remedy any under-performance in the delivery of services</li> </ul>

## Part 3 – Responsibility for Functions

### Summary of Council, Committees and Panels

		<ul style="list-style-type: none"> <li>▪ Monitor the financial performance of each shared service – quarterly report and monthly updates</li> <li>▪ Determine the terms of employment of all staff within the shared service functions</li> <li>▪ Determine the arrangements for support services in agreement with the Host Authority and participating Authorities, in consultation with the Head of Shared Service</li> <li>▪ Produce an annual report to the member Authorities by no later than 30th June in each year covering the performance of the shared services in the 12 month period ending on the preceding 31st March</li> <li>▪ Co-operate with and participate in Overview and Scrutiny exercises of the Member Authorities</li> <li>▪ Review the operation and effectiveness of the shared service arrangements at least every two years, consider ways in which the Shared Services partnership can be expanded and make recommendations to the Member Authorities as appropriate.</li> </ul>
South Worcestershire Development Plan Joint Advisory Panel	5 elected members from each planning authority	<ul style="list-style-type: none"> <li>▪ Scrutinise the SWDP on issues such as evidence, studies, and its findings, infrastructure provision and emerging development strategies.</li> <li>▪ The County Council acts as an observer representing its own interests as County Transportation Authority.</li> <li>▪ No delegated planning or development control powers.</li> </ul>
Malvern Hills AONB – Joint Advisory Committee	26 Members	<ul style="list-style-type: none"> <li>▪ Oversees the work of the Malvern Hills Area of Outstanding Natural Beauty</li> </ul>
Worcestershire Health Overview and Scrutiny Committee	15 Members	<ul style="list-style-type: none"> <li>▪ Review and scrutinise Worcestershire's public health and local health services;</li> <li>▪ Hold to account NHS bodies for the quality of their services, ask questions in public and make recommendations for improvements.</li> </ul>

## Part 3 – Responsibility for Functions

### Summary of Council, Committees and Panels

<p>Herefordshire and Worcestershire Strategic Waste Management Board</p>	<p>The cabinet member or portfolio holder with responsibility for waste management of Herefordshire Council and the County and District Councils of Worcestershire</p>	<p>On behalf of partner Councils:</p> <ul style="list-style-type: none"> <li>▪ Develop and keep up to date through periodic review a Joint Waste Management Strategy for Herefordshire and Worcestershire (including a strategic action plan);</li> <li>▪ Make recommendations to partner Councils on matters of policy and strategy relating to waste management;</li> <li>▪ Provide strategic oversight and direct implementation of the Joint Waste Management Strategy (including strategic action plan);</li> <li>▪ Identify opportunities and develop proposals for joint working that will improve customer focus, performance and efficiency;</li> <li>▪ Direct implementation of agreed joint working initiatives, subject to any necessary partner approvals;</li> <li>▪ Lobby Government, business and other interested organisations on waste management matters;</li> <li>▪ Report to partner Councils on the Board’s progress, performance and significant developments affecting waste management duties and responsibilities.</li> </ul>
<p>Joint Working Advisory Board</p>	<p>10 Members; 5 each from Wychavon and Malvern Hills District Councils</p>	<ul style="list-style-type: none"> <li>▪ Carry out desktop assessments of any proposals that are referred to it for consideration. The desktop assessment shall comprise the budget and costs, service delivery outcomes, current staffing arrangements and any other relevant information;</li> <li>▪ Ask for desktop assessments to be presented where the Board wishes to explore opportunities;</li> <li>▪ Assess the merits of joint working*** in relation to either service resilience and /or potential for cost savings to each Council</li> <li>▪ Make , as appropriate, recommendations to the Executive Committee and Executive Board respectively</li> <li>▪ Recommend the commissioning of business cases where it is considered necessary to do so</li> </ul> <p>*** - Joint working can involve a range of measures for closer collaboration to a joint service or other procurement opportunities for service delivery</p>

## Part 3 – Responsibility for Functions

### Summary of Council, Committees and Panels

West Mercia Police and Crime Panel	Approx 15 Members from 12 Local Authorities	The WMPCP is part of the governance arrangements for policing in the West Mercia area (which covers the geographical areas of Herefordshire, Shropshire, Telford and Wrekin and Worcestershire). Its role is to maintain a regular check and balance on the performance of the directly elected Police and Crime Commissioner.
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## Part 3 – Responsibility for Functions

### Terms of Reference: Area Planning Committees

#### Role

1. The Area Planning Committees will consider and determine planning applications and development control matters, including Tree Preservation Order objections, in accordance with the approved Scheme of Delegation.

#### Constitution

2. All members will serve on the Area Planning Committee covering their ward **except that** Members shall not serve as Members of Area Planning Committees unless they have undergone the prescribed induction and annual training on planning matters (including the Councillor Code of Conduct and Protocol on Dealing with Planning Matters at Part 5 of this Constitution).

#### Rules and procedures

#### Membership

3. Northern Area Planning Committee will comprise 16 members and Southern Area Planning Committee will comprise 22 members. Where an application straddles committee areas the relevant ward members will be invited by the chair of the committee hearing the application to attend as a voting member.
4. Political balance will not apply.
5. Declaration of the party whip does not apply.
6. Substitutions will not be permitted.
7. The quorum of the Southern Area Planning Committee will be 6 members and the quorum of the Northern Area Planning Committee will be 4 members.
8. No Member shall hold the office of Chairman of an Area Planning Committee for more than 6 consecutive years and he/she shall not be re-elected as Chairman for a period of 12 months thereafter.
9. The call in procedure in Rule 24 does not apply to meetings.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Area Planning Committees**

#### **Public**

10. Meetings will be held in public, with the full right of attendance for all Councillors, public and press. A specific public speaking scheme will be operated, Public Participation at Area Planning Committees in Part 4 of this Constitution.
11. Any member not on the relevant Area Planning Committee may attend meetings of the Committee and, with the consent of the Chairman, may speak but not vote on any item listed on the agenda for that meeting.
12. Parish Council representatives will have to be approved by their own Council for the purposes of making representations on their behalf.

#### **Meeting arrangements**

13. The Area Planning Committees will normally meet monthly.
14. The Area Planning Committees will be serviced by Democratic Services.
15. An agenda, together with reports will be circulated to all Members of the relevant Area Committee at least five clear working days before the meeting.
16. Minutes will normally be published within 5 working days of the meeting.

#### **Schedule of Wards**

<b>Northern Area Planning Committee</b>	<b>Southern Area Planning Committee</b>
Tenbury	Ripple
Lindridge	Upton and Hanley
Teme Valley	Longdon
Woodbury	Morton
Baldwin	Wells
Martley	Priory
Hallow	Chase
Broadheath	Pickersleigh
Alfrick and Leigh	Link
Powick	Dyson Perrins
Kempsey	West

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Audit & Standards Committee**

#### **A. For Audit Matters**

##### **1. Role and Purpose**

- 1.1. To assess the adequacy of the risk management framework and the associated control environment based on the information provided by the External and Internal Auditors.
- 1.2. To provide independent review of the Council's financial and non-financial performance to the extent that it affects the Council's exposure to risk and weakens the control environment.
- 1.3. To provide assurance that any issues arising from the process of drawing up, auditing and certifying the Council's annual accounts are properly dealt with and that appropriate accounting policies have been applied

##### **2. Core functions**

###### **2.1 Audit Activity**

- To consider and approve the Internal Audit strategic audit plan.
- To consider the Head of Internal Audit's annual report and opinion and the level of assurance it can give over the Council's corporate governance arrangements.
- To consider reports dealing with the management and performance of Internal Audit.
- To consider reports from internal audit summarising activity and implementation of agreed audit recommendations and seek assurance that action has been or will be taken where necessary.
- To consider summaries of other reports from internal audit as considered necessary
- To consider the external auditor's annual audit and inspection letter, relevant reports, and the report to those charged with governance (ISA 260 Report) and to meet with the External Auditor to review findings.
- To consider and comment on the appointment, scope and depth of external audit work and to ensure it gives value for money, including meeting with the External Auditor at the planning stage.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Audit & Standards Committee**

#### **2.2 Regulatory Framework**

- To maintain an overview of the Council's constitution in respect of contract procedure rules and financial regulations
- To monitor the effective development and operation of risk management and corporate governance in the Council and make recommendations to Council on necessary actions to ensure compliance with best practice.
- To monitor Council policies and arrangements for anti-fraud and corruption and to seek assurance that appropriate Whistleblowing policies are in place.
- To oversee production of the Council's Statement of Corporate Governance, and to review and recommend/approve its adoption as necessary.
- To consider the Council's compliance with its own and other published standards and controls and consider any relevant issue referred to the Committee by the Chief Executive, Heads of Service or Council body.

#### **2.3 Accounts**

- To review the annual statement of accounts. Specifically to consider whether accounting policies are appropriate and have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council.
- To consider the External Auditor's report to those charged with governance, i.e. Executive Committee, on issues arising from the audit of the accounts

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Audit & Standards Committee**

#### **B. For Standards Matters**

##### **1. Role and Purpose**

- 1.1 Promotion of the highest standards of conduct and behaviour amongst Members and Officers.
- 1.2 Drawing up and review of codes of conduct, guidelines and protocols on all aspects of conduct and behaviour within the Council, for approval by Council.
- 1.3 Assisting the councillors and co-opted members of the Council to observe the Councillor Code of Conduct.
- 1.4 Monitoring the operation of the Code of Conduct and any guidelines or protocols.
- 1.5 Advising, training or arranging to train members on matters relating to the Code of Conduct and any guidelines or protocols.
- 1.6 To consider complaints and allegations of Code of Conduct breaches involving District and Parish/Town Councillors when referred by the Monitoring Officer under the Council's Arrangements for Investigating Breaches of the Code of Conduct and determining if the complaint should be investigated.
- 1.7 Consideration of reports from the Monitoring Officer relating to investigations under the Council's Arrangements for Investigating Breaches of the Code of Conduct.
- 1.8 In relation to allegations which cannot be informally resolved by the Monitoring Officer under the Council's Arrangements for Investigating Breaches of the Code of Conduct, the Standards Committee may hear the matter itself or set up a Hearings Panel to make findings on the Monitoring Officer's formal investigations as necessary, the powers and procedures for such panels to be worked up by and delegated from the Committee on the advice of the Monitoring Officer.
- 1.9 Consideration of reports and findings of the Local Government and Social Care Ombudsman.
- 1.10 Consideration of complaints and allegations arising under the Council's Whistleblowing Policy.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Audit & Standards Committee**

#### **C. Constitution**

##### **Membership**

1. The Committee will comprise up to 7 members.  
Together with:
  - At least one co-opted non-voting member who is not a councillor or officer of the Council or any other body having a Standards Committee (co-opted Independent member);
  - Two co-opted non-voting town/parish council members representing town/parish councils wholly or mainly in the Council's area (the Town/Parish members)
2. The quorum of the Committee will be 3 Malvern Hills District Council members (\*NB where any Parish/Town Council standards complaints area being reviewed at least 1 Town/Parish member should also be present).
3. Political balance will apply.
4. Chairman and Vice Chairman of Committee will be agreed by Annual Council.
5. No member of the Executive Committee will be eligible for membership of the Audit and Standards Committee.

##### **Meeting Arrangements**

6. The Committee will:
  - Be independent of the executive and scrutiny functions
  - Report to the Council
  - Have clear reporting lines and access to other committees and functions.
7. The Committee will meet at least quarterly and shall have the ability to convene special hearing meetings as and when required.
8. The Committee will agree an annual work programme but will not become involved in any details that should be dealt with more properly by the s151 Officer, Monitoring Officer, accountable officers, or other relevant committee.
9. The minutes and reports of the Committee will be submitted to the council, and will be public documents available for inspection, examination and public consideration, except those documents that are classed as exempt.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Audit & Standards Committee**

10. The Committee will produce an annual report for submission to Council detailing the work undertaken by the Committee.
11. The Committee will be advised by the Chief Executive, the Chief Financial Officer, the Monitoring Officer, and other officers and advisors as necessary.
12. The Committee may, on occasions, meet privately and separately with the external auditor and the chief internal auditor, outside of the normal committee meeting rules and procedures, any outcomes requiring formal adoption must be considered at a subsequent open meeting.
13. Subject to 12, meetings will be held in public, with the full right of attendance for all members, public and press, except during consideration of exempt business. Public participation will apply.
14. Other members and/or officers of the Council may be requested to attend meetings of the Committee when the matters to be discussed make it necessary.
15. An agenda, together with reports, will be made available to all members of the Council at least 5 clear working days before each formal meeting.
16. The Committee will be serviced by Democratic Services.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Executive Committee**

#### **Role**

1. Through delegated authority, to implement policy and take executive decisions (collectively) in respect of all Council matters and services which are not specifically reserved for Council or delegated to another Committee of the Council or to officers.
2. To consider reports and recommendations from the Overview and Scrutiny Committee, take appropriate action or make recommendations to Council.
3. To prepare the budget for revenue and capital expenditure and to recommend the level of Council Tax for approval by Council, to regularly monitor and review progress in respect of all budget matters.
4. To approve the designation of Exclusion Zones under the Anti-Social Behaviour Act 2003, in consultation with the appropriate Portfolio Holder, West Mercia Constabulary, other stakeholders and local ward Members.
5. To monitor and review the Scheme of Delegation and make recommendations to Council in respect of any changes to existing delegations.
6. With the Chief Executive, to act in the event of civil and natural emergencies, in conjunction with and in accordance with the Emergency Plan and the Emergency Planning Team's advice and guidance.
7. To monitor and review service performance and the progress of service reviews and to receive reports and take appropriate action from the relevant Portfolio Holder where evidence of under-performance or lack of progress has been identified, with a view to commissioning a detailed investigation or review to identify areas for improvement.
8. To receive regular update reports from champions in respect of activities in their respective areas.

#### **Constitution**

9. Although neither the Leader nor any Executive Committee Member will be given individual executive/delegated powers, the Leader may allocate portfolios relevant to a service area or function of the Council, according to their strengths, skills and particular interests.
10. The Executive Committee may appoint Sub-Committees, the membership of which may include any Member of the Council, and which will report with recommendations to the Committee.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Executive Committee**

11. The Executive Committee may appoint Working Parties jointly with non-Executive Committee Members, particularly to consider the development or review of policies and plans.
12. Minutes of the Executive Committee will be published and circulated to all Members and press and public within 2 working days. Decisions may be called in for scrutiny, in accordance with the procedure outlined below, and recommendations then made to the Executive for reconsideration or direct to Council.

To call in such decisions a request must be made to the Monitoring Officer, or in his absence the Deputy Monitoring Officer, within 5 working days of the meeting of the Executive Committee by any 5 Members. Where a call-in request is in accordance with the requirements as set out in the relevant Procedure Rule (see note below\*), implementation of such decisions will be suspended until such time as the concurrence of the Overview and Scrutiny Committee or the approval of Council is given.

#### **Rules and procedures**

##### **Membership**

13. The Executive Committee will comprise up to 11 Members, including the Leader of the Council, all to be appointed by Council (or under delegated authority) annually, or such lesser interval as may be necessary.
14. Political balance will apply.
15. Declaration of the party whip does not apply.
16. The Leader of the Council will be the Chairman of the Executive Committee. The Chairman of the Executive Committee will, in the event of equality of voting, have a second or casting vote.
17. The Deputy Leader of the Council will be the Vice-Chairman of the Executive Committee.
18. Chairman and Vice Chairman of the Council may not be members of the Executive Committee
19. Substitution arrangements will not apply
20. The quorum of the Executive Committee will be 3 members.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Executive Committee**

21. Local members may attend and speak at Executive Committee meetings with the prior consent of the chairman.
22. Any member of Council may ask for an item of business to be included on the agenda of the committee provided the matter falls within the terms of reference of that Committee and where they are not a member they may speak to the item but not vote. The item must be submitted to Democratic Services at least 3 days before the agenda despatch.
23. The Executive Committee may not co-opt any person, whether an elected member or otherwise, as members, though for advisory purposes only, it may invite any members or persons to attend its meetings as deemed suitable

#### **Public**

24. Meetings of the Executive Committee will be held in public, with full right of attendance for all councillors, public and press
25. Press and public may be excluded from the meetings where the Committee considers “Confidential information” or “exempt information”
26. Public Participation will apply.

#### **Meeting arrangements**

27. The Executive Committee will be serviced by Democratic Services.
28. The Executive Committee will ordinarily meet monthly apart from during August and December.
29. An agenda, together with reports on all the items to be determined, will be circulated to all Members of the Council at least 5 clear working days before the date of the meeting.

[\*Refer to **Protocol for Use of Call-in Procedure** in Part 4 (24.5) of this Constitution. Determination of the applicability of a call-in request against the criteria set out in the protocol to be made by the monitoring Officer, in consultation with the Chairman of Council and the Chairman of Overview and Scrutiny Committee – with any disagreement being reported to Council.]

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Licensing & Appeals Committee**

#### **Role and Constitution**

1. To periodically review and make recommendations to Executive Committee on Licensing Policy.
2. Through designated sub-committees, to consider appeals and objections in respect of:
  - Taxi Drivers and Vehicle Licensing
  - Personal licences
  - Premises licences
  - Temporary event notices

#### **Rules and procedures**

#### **Membership**

3. The Committee will comprise up to 12 members.
4. The Chairman and two other members will be designated as Sub-Committee Chairmen in order to take account of the special training needs for this role. Ad-hoc sub-committees will be established as and when required and comprise a designated Chairman and two other members drawn from the committee by the Deputy Chief Executive.
5. Political balance will apply to the committee but not to the Sub-Committees.
6. Declaration of the party whip does not apply.
7. Chairman and Vice Chairman of Council may not be elected as Chairman.
8. Substitution arrangements will not apply.
9. The quorum of the Licensing and Appeals Committee and its sub-committees will be 3 members.
10. The local member may attend meetings and with the prior consent of the Chairman may speak but not vote, on any item listed on the agenda. However in terms of sub committee hearings in respect of personal licences; premises licences or temporary event notices, councillors right to speak does not apply.
11. The call in procedure in Rule 24 does not apply to meetings.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Licensing & Appeals Committee**

#### **Public**

12. Meetings will be held in public, with the full right of attendance for all Councillors, public and press, except during consideration of “exempt information”.
13. Public participation rights do not apply.

#### **Meeting arrangements**

14. The Committee will meet as and when required and meetings may be timed to follow consecutively with meetings of the Licensing Act Committee.
15. The Licensing and Appeals Committee and its sub-committees will be serviced by Democratic and Legal Services.
16. An agenda, together with reports will be made available to all members of the Council at least five clear working days before the meeting, with the exception of any confidential information relating to an applicant that will be circulated only to Members of the Committee.  
[Note: that some reports and related documents in respect of appeals may only be circulated to members of the Committee hearing the appeal, together with appropriate officers.]
17. Minutes of the meetings will normally be issued within five working days

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Overview and Scrutiny Committee**

#### **Role**

1. Overview and Scrutiny Committee is responsible for:

The scrutiny of the work of Executive Committee.

- a) The scrutiny and review of any of the Council's functions.
  - b) Holding the Executive Committee and senior management to account, especially where performance is a cause for concern.
  - c) Considering any matter affecting the area or its residents, including reviewing the activities and performance of other public bodies in the area.
  - d) Making recommendations to Council, (where appropriate via the Executive Committee) following the scrutiny and review of the Council's budget and policy framework.
  - e) Monitoring the outcome of overview and scrutiny work.
  - f) Designated as the Council's 'Crime & Disorder Committee' for the purposes of s.19 Police and Justice Act 2006 as amended.
  - g) Considering petitions referred to the Committee in accordance with the Council's Petitions Scheme.
2. The Overview and Scrutiny Committee will oversee and co-ordinate the scrutiny and review process through:
    - a) Development of a work programme for overview and scrutiny in accordance with the overall framework set by Council.
    - b) Scoping each review, agreeing the outline terms of reference of each review and monitoring the progress of reviews against the programme.
    - c) Considering requests for reviews or investigations from Executive Committee or Council.
    - d) Reviewing past performance and future challenges of each portfolio of services.
    - e) Consideration of matters called-in under the provisions of Part 4 of the Constitution, where they have not been dealt with by Council.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Overview and Scrutiny Committee**

#### **Constitution**

3. The Committee may establish non-politically balanced, time-limited Task & Finish Groups chaired by the Chairman of O&S or their nominated representative, drawn from the O&S membership, to investigate issues within the terms of reference set by the Committee.

#### **Rules and procedures**

#### **Membership**

4. The Committee will comprise up to 11 Members.
5. Political Balance will apply.
6. The Chairman and Vice-Chairman of the Council may not be elected chairman.
7. In accordance with Council policy, members are required to declare any party whip that may be in place.
8. No member of the Executive Committee will be eligible for membership of the Overview & Scrutiny Committee.
9. The Committee may co-opt non-councillors in a non-voting capacity to be involved in specific reviews.
10. Substitution arrangements will apply as determined in Rule 28 of the Council and Committee Procedure Rules set out in Part 4 of this Constitution. (Executive Committee Members may not substitute for Overview & Scrutiny Committee Members).
11. The quorum of the Committee will be three members
12. Other Members of Council may attend and speak at Committee meetings at the invitation of the Chairman.
13. The Chairman will be appointed by Annual Council.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Overview and Scrutiny Committee**

#### **Public**

14. Formal Committee meetings will be open to the press and public, except during consideration of Exempt business,
15. Public Participation will apply as determined in Rule 29 of the Council and Committee Procedure Rules set out in Part 4 of this Constitution.

#### **Meeting arrangements**

16. The Committee will meet at least 4 times per annum
17. The Committee's meetings will adapt according to the business in hand, so they could be held in one of several modes, e.g.:
  - Workshops with officers and/or representatives from other agencies
  - Select Committee – i.e. Inquiries
  - Presentations
  - Fact-finding visits
  - Focus groups
18. Agenda papers and reports will be made available to all Members of the Council and appropriate officers.
19. Agenda papers and reports will be made available to the press and the public, except where this would include the disclosure of Exempt information.
20. Any member may attend meetings of the Committee and with the consent of the Chairman may speak but not vote on any item listed on the agenda for that meeting
21. Any member of Council may ask for an item of business to be included on the agenda of the committee, with the agreement of the Chairman, provided the matter falls within the terms of reference of that Committee and, where they are not a member, they may speak to the items but not vote. The item must be submitted to Democratic Services at least three days before the agenda publication.
22. Where a decision has been called-in under the provisions of Rule 24 of the Council and Committee Procedure Rules set out in Part 4 of this Constitution, the matter will usually be considered at a separate Select Committee-style meeting of the Committee and those Members who exercised the call-in will be entitled to appear as witnesses at the meeting.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Overview and Scrutiny Committee**

23. Reports and papers to the Committee do not have to come solely from Council officers. In consultation with the Chairman, Members may themselves produce papers, or officers from other agencies may be commissioned to produce papers or reports.
24. Democratic Services will:
  - work closely with the Chairman and lead officers in setting up meetings and determining the business for meetings in conjunction with the project plan or work programme
  - work closely with the Chairman to draft the final report following a review
  - work with the Chairman to produce the Annual Overview & Scrutiny report.
25. The Committee may require the attendance of Portfolio Holders and senior officers to assist with any reviews, investigations or the development of any policy proposals.
26. When scrutinising decisions Portfolio Holders may be questioned by the Committee, but shall not otherwise be involved in the scrutiny process.
27. The Council's representative on the County Council's Health Overview & Scrutiny Committee will provide regular updates to the Committee on Health Scrutiny work
28. Minutes of the meeting will normally be published within 5 working days

#### **Reporting Line**

29. The Committee –
  - Will consider reports from Task and Finish Groups and may make comments and observations before such reports are submitted to Executive Committee or Council, as appropriate
  - May require a Task and Finish Group to re-consider its recommendations, or provide further clarification on recommendations
  - Will present to Executive Committee or where appropriate, directly to Council, the findings and proposals arising out of overview and scrutiny work
  - Will report annually to Council on its work and make recommendations for future work programmes and amended working methods if appropriate

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Overview and Scrutiny Committee**

#### **Chairman's Role**

30. Responsibility for the progress of the work of the Committee rests with the Chairman.

31. The Chairman will:

- a) strive to maintain the independence of the Committee, in accordance with Government guidelines which stress that political whips should not be applied to the Overview and Scrutiny function;
- b) take a lead role in the work of the Overview and Scrutiny Committee and have responsibility for the progress of overview and scrutiny work;
- c) contribute effectively to the Council's scrutiny process by ensuring the questioning of relevant Portfolio Holders, Member Champions and officers on policy decisions and the performance of their relevant service areas whether at the Overview & Scrutiny committee, full council or by other means;
- d) contribute to the external scrutiny process by ensuring the effective questioning of the relevant service providers and stakeholders;
- e) develop a positive working relationship with the Leader of Council, Portfolio Holders and Member Champions (where they exist) and encourage them to involve overview and scrutiny on major issues before final decisions are made;
- f) agree the business for each meeting with Democratic Services and other appropriate officers;
- g) Lead overview and scrutiny committee meetings and report the findings of the Committee to Council, via other Committees as appropriate;
- h) Represent the Overview and Scrutiny Committee through regular contact with the Executive Committee, community representatives, local stakeholders and the public to inform effective scrutiny;
- i) Monitor and review the progress of the overview and scrutiny work programme and the performance of the overview and scrutiny function, including monitoring the work of other overview and scrutiny bodies through close working with their Chairmen, and following up implementation of recommendations from reviews.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Scrutiny Task and Finish Groups**

#### **Role**

1. The Overview & Scrutiny Committee will establish time limited Task & Finish Groups to conduct investigations or reviews.
2. The Overview & Scrutiny Committee will set the terms of reference for each Task & Finish Group according to the purpose for which it is established.
3. Usually no more than one Task & Finish Group will take place at any one time.

#### **Constitution**

#### **Rules and procedures**

#### **Membership**

4. The size of each Task & Finish Group will vary between 3 and 7 Members according to the purpose for which it is established.
5. Task & Finish Group membership shall be agreed by the Monitoring Officer, in consultation with the Overview & Scrutiny Committee Chairman.
6. Political balance will not apply.
7. Members are required to declare the party whip.
8. The membership of Task & Finish Groups may include any Member of the Council, except it will not usually include Executive Committee Members.
9. Any Scrutiny Task & Finish Group may co-opt non-councillors in a non-voting capacity, as directed by the Overview & Scrutiny Committee.
10. Substitution arrangements will not apply.
11. The quorum will be three members.
12. Task & Finish Groups may require the attendance of Portfolio Holder(s) and senior officers to assist with any reviews, investigations, or the development of any policy proposals.
13. The relevant Portfolio Holder(s) may attend meetings and with the consent of the Chairman, participate in discussions, provided that the independence of the Task & Finish Group is respected.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Scrutiny Task and Finish Groups**

14. Other Members of Council may attend and speak at meetings at the invitation of the Chairman.
15. The call-in procedure in Rule 24 does not apply to meetings.

#### **Public**

16. Scrutiny Task & Finish Groups will conduct their business in such ways that are effective, efficient and appropriate to the task that is being carried out and will, wherever possible, conduct their business in an open and transparent manner and engage the public as fully as may be appropriate.
17. Members of the public, representatives of outside organisations and other stakeholders may be specifically invited to attend meetings for the purpose of providing information and/or for consultation purposes.
18. Public participation rights do not apply.

#### **Meeting arrangements**

19. The Overview and Scrutiny process will be Member-led but guidance, information and support will be available from Democratic Services.
20. Papers for meetings will be compiled as necessary according to the task that is being undertaken.

#### **Reporting Line**

Final reports with findings and proposals will be submitted to the Overview and Scrutiny Committee by the Task & Finish Group Chairman for comment, dismissal or recommendation to Executive Committee and or Council.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference:**

## **Appointments, Disciplinary and Investigations Committee**

### **Role**

1. The Appointments, Disciplinary and Investigations Committee will exercise such of the Council's functions as can be delegated from the Council itself in respect of the appointment, discipline and dismissal of those of the Council's senior officers employed by the Council as are covered by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 or any successor regulations or Act.
2. The final decision as to the appointment, discipline or dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance/ Section 151 Officer will be reserved to Council, but the Appointments, Disciplinary and Investigations Committee may make such recommendations as the law allows about these matters to the Council and Wychavon District Council in respect of shared appointments where Wychavon District Council is the employer.
3. No disciplinary action in relation to the Head of Paid Service, Monitoring Officer or Chief Finance/ Section 151 Officer may be taken by the Appointments, Disciplinary and Investigations Committee or the Council, other than suspension on full pay for no more than two months, or other than in accordance with the recommendations of this committee as constituted in accordance with the requirements of the Local Authorities (Standing Orders) (Amendment) Regulations 2015.
4. In discharging its duties, the Appointments, Disciplinary and Investigations will follow the procedures set out in the relevant laws then in force, including the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and any appropriate government guidance.
5. All other matters pertaining to the appointment, discipline or dismissal of Council officers or staff will remain the responsibility of the Council's Head of Paid Service.

### **Constitution**

#### **Rules and procedures**

#### **Membership**

6. Membership of the committee will be up to 5 members, at least one of whom will be a member of the Executive Committee holding a portfolio, and two independent persons as required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
7. Political balance will apply.

**Part 3 - Responsibility for Functions**  
**Terms of Reference:**  
**Appointments, Disciplinary and Investigations Committee**

8. Substitutes will be allowed in accordance with Procedure rule 28.
9. The quorum of the Committee will be 3 members.

**Public**

10. Meetings will normally be held in private in accordance with the Local Government Act 1972 on the advice of the Monitoring Officer or Legal Services Manager.
11. There is right to exclude the press and public.
12. Public participation does not apply.

**Meeting arrangements**

13. The Appointments, Disciplinary and Investigations will meet on an ad hoc basis as and when required and will be serviced by Democratic Services.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference:**

#### **Chief Officer Disciplinary and Grievance Appeals Committee**

##### **Role and Constitution**

1. To consider appeals and objections in respect of Chief Officer disciplinary and grievance matters, where the outcome falls short of a recommendation for dismissal.

##### **Rules and procedures**

##### **Membership**

2. The Committee will comprise up to 5 members.
3. Political balance will apply.
4. Chairman and Vice Chairman of Council may not be elected as Chairman.
5. Substitution arrangements will not apply.
6. The quorum of the Committee will be 3 members.

##### **Public**

7. The press and public will be excluded from meetings given that exempt business is to be considered.

##### **Meeting arrangements**

8. The Committee will meet as and when required.
9. The Committee will be serviced by Democratic and Legal Services.
10. An agenda and relevant reports will be circulated only to Members of the Committee and appropriate officers.
11. Minutes of the meetings will normally be issued to members of the committee within five working days.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Council Policy Groups (CPG)**

#### **Role and Constitution**

1. Council Policy Groups may be set up at the initiative of the Leader of the Council, in consultation with the Leader of the Opposition.
2. To discuss and advise on a specific aspect of policy formation and he/she is responsible for formulating the project brief and timescale.
3. A Policy Group has no executive or decision making capacity and does not represent a formally constituted Committee but it may call on the full resources of the Council.
4. The Policy Group will normally report directly to the Leader but may be asked to report to the relevant Portfolio Holder, as specified in the project brief.
5. The Policy Group will be discontinued once it has completed a project.

#### **Rules and procedure**

##### **Membership**

6. The membership of a Policy Group will be nominated by the Leader, in consultation with the Leader of the Opposition, on the basis of expressions of interest in membership of the Group and availability.
7. Representation from all political groups will be sought but rules relating to political balance will not apply.
8. The Leader, in consultation with the Leader of the Opposition, will nominate the Chairman and Vice-chairman of the Policy Group.
9. To be quorate, meetings of the Policy Group will require a minimum of 50% or three members whichever is the greater, including either the Chairman or Vice-chairman.
10. Substitution rules will not apply due to the nature of the work to be undertaken by the Policy Group.
11. In consultation with the Leader and Leader of the Opposition, the Chairman will have the discretion to remove or replace members of the Group.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Council Policy Groups (CPG)**

#### **Public**

12. To facilitate open discussion, proceedings will usually be regarded as being confidential, meetings will not be open to the press or public and, other than by prior agreement with the Leader, the Group will not issue any statements to the media.

#### **Meeting Arrangements**

13. At the Chairman's discretion, it will be open to any Member of Council to observe the meetings of the Policy Group, which may also call on any Member to give evidence to the Policy Group on specific issues or concerns.
14. Consideration can also be given to inviting other stakeholders to meetings of the Group to give evidence and discuss their interests.
15. Democratic Services will work closely with the Chairman on setting up and determining the business for meetings. The Officer present may take relevant notes at meetings.
16. Officer support and attendance at Policy Group meetings will be appropriate to the needs and purpose of the meeting.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Planning Policy Group (PPG)**

#### **Role**

1. Review and, if appropriate, make recommendations relating to:
  - Development Management procedures and guidance.
  - The operation of the Northern and Southern Area Planning Committees (NAPC and SAPC).
  - Appeals, Performance and Trends.
  - Resource and performance issues relating to Planning Services.
2. Consideration and development of planning, transportation and natural and built heritage policy including:
  - The implementation and review of the South Worcestershire Development Plan (SWDP) and other Development Plan documents, and any issues arising including the appropriate evidence base.
  - Supplemental planning guidance.
  - Schemes for the repair of Listed Buildings, including administration of grants in respect thereof.
  - Designation (and amendment) of Conservation Areas and enhancement schemes.
3. Recommendations to Council re possible changes to the Development Plan and/or to the role of South Worcestershire Development Plan Joint Advisory Panel (SWDP JAP).
4. Recommendations to Executive Committee in respect of:
  - Planning policy issues and documentation (other than the Development Plan).
  - Matters relating to policy matters related to Listed Buildings, Conservation areas and trees.
5. Recommendations to SWDP JAP in respect of any planning policy issues.
6. Monitor and review the Scheme of Delegation in respect of planning matters and make recommendations to Council in respect of any changes to existing delegations.
7. Receive regular update reports from any appointed champions in respect of activities in their respective areas.

NB. The PPG has no executive powers and no development management functions, including the consideration of live planning applications.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Planning Policy Group (PPG)**

#### **Membership**

8. The Planning Policy Group (PPG) shall comprise 9 Members and will include in its membership the Portfolio Holder for Development and Infrastructure (who will act as Chairman), the Chairman and Vice-Chairman of NAPC and SAPC, 2 other Members appointed by each of NAPC and SAPC.
9. Whilst there is no legal requirement for political balance, Group Leaders will nevertheless strive to ensure that as far as possible there is political balance when considering the membership of the PPG.
10. Declaration of the party whip does not apply.
11. Substitution arrangements will apply as determined in Rule 28 of the Council and Committee Procedure Rules.
12. The quorum of the PPG will be 4 members.
13. Any Member may attend meetings of the PPG and with the consent of the Chairman may speak but not vote on any item listed on the agenda for that meeting.
14. Any Member may ask for an item of business to be included on the agenda of the PPG provided the matter falls within the terms of reference of the PPG.

#### **Public**

15. Meetings of the PPG will not be public meetings. However, representatives of other organisations or individuals may be invited to attend meetings at the Chairman's discretion to discuss issues relevant to the work of the PPG.

#### **Meeting arrangements**

16. The PPG will meet as and when necessary.
17. The Committee will be serviced by Democratic Services. Notes of each PPG meeting will be circulated to all members of PPG.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Policy Development Panels**

#### **Role and Constitution**

1. To be aligned to and have the scope of their work plan linked to the Council's priorities, currently:
  - Environment
  - Economic Prosperity and Growth
  - Stronger and Healthier Communities.
2. To provide the Executive Committee with advice and support in relation to policy development on matters relating to the Council's priorities (as expressed in the Council Corporate Strategy – 'The Five Year Plan')
3. To be advisory, not decision-making on behalf of the Executive or Council.
4. To make recommendations as appropriate to the Executive Committee in relation to matters of council policy and council priorities and actions.
5. To be subject to scrutiny on any aspect of their work programme by the Council's Overview and Scrutiny Committee.
6. To consider the composition and evolution of the priorities within the Council's Corporate Strategy (The Five year Plan)
7. To address the actions in the Five Year Plan as appropriate for the scope of each respective Panel and to suggest and make cases for future council priorities with the Five Year Plan.
8. To consider best practice from within the local government sector and beyond in terms of relevant policy matters.
9. To undertake any policy research or policy development matters as directed by Council or the Executive Committee
10. To develop relationships with appropriate public and voluntary sector partners in relation to Council policy and areas of shared or joint responsibilities.
11. To establish an annual work programme (subject to change at the discretion of the Panel)
12. To report annually to Council on the work of the Panel

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Policy Development Panels**

#### **Rules and procedures**

##### **Membership**

13. To be for a full four year Term.
14. Each Panel will comprise up to 8 members to be appointed on an annual basis
15. The Chairman and Vice Chairman will be appointed at the Annual Meeting of Council each year
16. In addition, up to two portfolio holders will attend meetings and can participate in the deliberations of the Panel.
17. Non members of each Panel can attend meetings as observers and speak at the discretion of the Chair.
18. Panels are not required to be politically balanced (but Council has agreed that they should strive for balance).
19. No substitutions will be allowed.
20. The quorum for any meeting will be 3 members.

##### **Public**

21. No provision will exist for public question time at meetings (provision exists at Executive Committee).

##### **Meeting Arrangements**

22. Panels will meet approximately every three months, with dates agreed in advance. Further meetings are at the discretion of each Panel having regard to the timeliness of any policy development matter and the requirements of the work programme.
23. Panels will operate in an informal style and set the format and venue of meetings as appropriate.
24. Recommendations are, where possible to be by consensus. However, if a vote is necessary the Chairman will conduct any voting as if the Council's procedure rules on voting applied.
25. Portfolio holders and non members of any Panel will not be eligible to vote.

## **Part 3 - Responsibility for Functions**

### **Terms of Reference: Policy Development Panels**

26. Action notes and a record of any meeting will be taken by Democratic Services.
27. Panels will be supported by nominated Senior Management Team, Service Managers and Democratic Services.





## **Constitution**

# **PART 3 Scheme of Delegation**

**Updated March 2019**

## Scheme of Delegation

### **Notes:**

1. Where any matter is delegated to a particular officer, this scheme of delegation shall be construed as referring to any officer to whom those duties may have been assigned from time to time, whether as a result of any management restructuring or otherwise and howsoever that post may be termed.
2. Every Officer to whom powers or functions are delegated in accordance with this Scheme shall have power to further delegate the exercise of those powers and functions to such other Officers of the Council as the named Officer may from time to time decide.
3. Where legal proceedings are to be authorised, the institution of proceedings will be subject to the Legal Services Manager being satisfied with the evidence.
4. Generally, in the exercise of delegated powers, managers shall consult fully on all professional matters, particularly where legal or financial considerations are involved, and where necessary, shall seek and have regard to the advice of the Monitoring Officer and the Section 151 Officer (Responsible Financial Officer) – Deputy Chief Executive.
5. The Chief Executive is authorised to exercise all the same powers or functions as other Council officers to whom powers or functions are delegated within this Scheme.

In the absence of the Chief Executive, the Deputy Chief Executive is authorised to exercise all the same powers or functions as other Council officers to whom powers or functions are delegated within this scheme.

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
<b>Abandoned Vehicles</b>	Refuse Disposal Amenity Act 1978	Removal and disposal of abandoned vehicles. Issue of fixed penalty notices	Head of Economy & Environment	
<b>Advertisement Control</b>	Town & Country Planning Act 1990 S.224	(a) Service of Discontinuance Notice (b) Institution of legal proceedings for contravention of Section 224 Town & Country Planning Act 1990 – advertisements.	Head of Planning & Infrastructure	
<b>Air Pollution</b>	Clean Air Act 1993 Control of Pollution Act 1974 Environmental Protection Act 1990	(a) Determine and issue licences, registrations, permits, authorisations certificates and other approvals and to refuse the same. Withdraw, rescind or revoke any licence, registration, permit, authorisation certificate or other approval, (b) Take enforcement proceedings and where necessary authorise legal proceedings, (c) Fix the licence fee in each case, in consultation with Deputy Chief Executive, for those licence fees not previously determined by the Council, (d) Sign and issue notices and authorise any works in default (and authorise others to do so in their own name), (e) Authorise employees to procure, acquire or purchase any samples, specimens, data or information in whatever format, (f) Authorise any person to accompany an appointed officer, (g) Appoint any other persons, not being employees within the establishment, to act as authorised officers and carry out such duties as are specified in the authorisations.	Head of Regulatory Services WRS	Legal proceedings in consultation with Legal Services Manager

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
<b>Animal Health and Control</b>	Animal Boarding Establishment Act 1963, Breeding of Dogs Act 1973 & 1991, Breeding & Sale of Dogs (Welfare) Act 1999 Control of Dogs Order 1992 (Enforcement of Collar & Tag Requirements), Dangerous Dogs Act 1991, Dogs (Fouling of Land) Act 1996, Local Government Act 1972 – Section 101(Service of Notices), 214 (Dogs prohibited from cemeteries) and Byelaws made thereunder, Pet Animals Act 1951, Road Traffic Act 1988 (Control of Dogs on roads – leash orders), Dangerous Wild Animals Act 1976 Riding Establishments Acts 1964 & 1970,	(a) Determine and issue licences, registrations, permits, authorisations certificates and other approvals and to refuse the same; Withdraw, rescind or revoke any licence, registration, permit, authorisation certificate or other approval; (b) Take enforcement proceedings including the issue of fixed penalty notices and where necessary authorise legal proceedings; (c) Fix the licence fee in each case, in consultation with Deputy Chief Executive, for those licence fees not previously determined by the Council; (d) Sign and issue orders notices and authorise any works in default (and authorise others to do so in their own name); (e) Authorise employees to procure, acquire or purchase any samples, specimens, data or information in whatever format; (f) Authorise any person to accompany an appointed officer; (g) Appoint any other persons, not being employees within the establishment, to act as authorised officers and carry out such duties as are specified in the authorisations; (h) Waive any charges or fees in cases of demonstrable financial hardship or where there is an overriding social reason to do so. (i) To enter relevant premises and carry out investigations and inspections	Head of Regulatory Services WRS	Legal proceedings in consultation with Legal Services Manager

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
	<p>Zoo Licensing Act 1981.  Clean Neighbourhoods &amp; Environment Act 2005 (Dog Control Orders)  Animal Welfare Act 2006 and any orders or regulations made thereunder</p>			
<b>Anti-Social Behaviour</b>	Anti-Social Behaviour Act 2003	To give consent on behalf of the Council to requests from the police to issue an authorisation under Section 30 of the Anti-Social Behaviour Act 2003 by which a direction for the dispersal of groups of persons and the removal of persons under 16 years of age to their places of residence may be given	Head of Housing & Communities	In consultation with the relevant Portfolio Holder and Ward Member(s)
<b>Anti-Social Behaviour Orders</b>	Crime & Disorder Act 1998	(a) Authorisation of proceedings on behalf of the Council for the grant of Anti-Social Behaviour Orders. (b) To respond to consultation regarding proposed applications for ASBO's by others.	Head of Housing & Communities	In consultation with the appropriate Ward Member(s) and Portfolio Holder for Housing and Communities.
<b>Anti-Social Behaviour</b>	Anti-Social Behaviour and Policing Act 2014	(a) To seek a Civil Injunction. (b) To serve Community Protection Notices and other Notices provided for in the Act. (c) To make a Public Spaces Protection Order. (d) To issue Closure Notices and apply for Closure Orders. (e) To issue fixed penalty notices.	Head of Housing & Communities	In consultation with the appropriate Ward Member(s) and Portfolio Holder for Housing and Communities.
<b>Banking Services – letting of contract</b>		Letting the contract for Banking Services	Deputy Chief Executive	In consultation with the Portfolio Holder for Finance

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
				and Resources
<b>Building Regulations Charges</b>	Building Regulations (Local Authority Charges) Regulations 1998	To continue to implement a local scheme of charges, in accordance with the regulations, having regard to the Local Government Association's Model Scheme current from time to time.	Head of Planning & Infrastructure	
<b>Buildings - Demolition</b>	Building Act 1984 SS. 80 - 82	(a) Receipt and issue of notices in connection with the demolition of buildings or any works in connection therewith; (b) Carrying out any works in default; (c) Prosecution for any breach of requirements.	Head of Planning & Infrastructure	
<b>Building Regulations</b>	Building Act 1984	(a) Determination of applications; (b) Dispensations and relaxations; (c) Contravention of Building Regulations Sections 35,36,37 – service of notices and prosecution; (d) To authorise the carrying out of works in default of compliance.	Head of Planning & Infrastructure	
<b>Burials – Grant of Probate</b>		To apply for grant of probate or Administration (as appropriate), where the Council statutorily buries or cremates a body and there is sufficient in the estate to warrant such action.	Legal Services Manager	
<b>Bus Services</b>		Determination of whether objections should be made to proposed bus services.	Head of Housing & Communities	In consultation with local Members. In event of objection being lodged with the Traffic Commissioners, refer to Executive Committee for instructions.
<b>Business Rates – Discretionary Relief</b>	Local Government Finance Act 1988	(a) To determine applications for Discretionary Rate relief in accordance with the Council's criteria (b) To determine a further 20% discretionary relief to organisations in receipt of 80% mandatory relief	Deputy Chief Executive	Should there be any dispute regarding the decision, the application to be referred to the Executive Committee.

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
<b>Business Rates Base Calculation</b>		To determine the Business Rates Income for the following financial year as laid out in NNDR1 submission or equivalent document	Deputy Chief Executive	Will be reported to Council as part of the budget assumptions within the Budget Report
<b>Byelaws</b>	Byelaws	Proceedings for enforcement or infringement	Legal Services Manager	
<b>Capital Funds – release of capital funds set aside for Capital programme</b>		Release of capital funds set aside for property maintenance and other capital requirements, subject to a robust business case being made	Deputy Chief Executive	In consultation with the Portfolio Holder for Finance and Resources
<b>Caravan Sites</b>	Caravan Sites and Control of Development Act 1960 Mobile Homes Act 2013	(a) To issue licences for new caravan sites and for the renewal and transfer of caravan sites. (b) To take enforcement action for failure to apply for a site licence (c) To commence enforcement proceedings where a caravan is used for human habitation on a site where a valid licence exists but where the site is being used in breach of licence conditions. (d) To take action to protect occupiers against eviction and harassment.	Head of Planning & Infrastructure	In consultation with the Portfolio Holder for Development & Infrastructure
<b>Car Parking</b>	Malvern Hills District Council (Off Street Parking Places) (Consolidation Order) (Amendment No. 3) Order 1993	Recovery of Fixed Penalty charges Car Parking Enforcement	Deputy Chief Executive	
<b>Car Parking – Concessions for Community Transport Volunteers</b>		To grant concessions to non-profit making organisations providing community transport, on application, to park free of charge on Council car parks, when operationally necessary.	Deputy Chief Executive	In consultation with relevant Portfolio Holder

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
<b>Christmas Car Parking</b>		Approval and advertising of free Christmas parking on consecutive weekends before Christmas.	Deputy Chief Executive	In consultation with relevant Portfolio Holder
<b>Commons – Broadheath Common</b>		Day to day management delegated to Broadheath Parish Council in accordance with the Management Agreement	Broadheath Parish Council	
<b>Commons Byelaws</b>	Commons Byelaws	To prosecute breaches of Commons Byelaws	Legal Services Manager	
<b>Commons - Kempsey, Normoor, Stonehall, Ashmoor and Kerswell Green Commons</b>		Day to day management delegated to Kempsey Parish Council in accordance with the Management Agreement	Kempsey Parish Council	
<b>Complaints Procedure (Local)- Compensation arising from service failure</b>		Authorisation of payment of compensation by way of local settlement arising from a complaint against the Council, up to a maximum of £1,000 (An Annual Report on any settlements agreed be submitted to the Standards Committee)	Heads of Service	In consultation with the relevant Portfolio Holder
<b>Contaminated Land</b>	Environmental Protection Act 1990, Environment Act 1995, Environment and Safety Information Act 1988 (Public Registers)	(a) Determine and issue licences, registrations, permits, authorisations certificates and other approvals and to refuse the same. Withdraw, rescind or revoke any licence, registration, permit, authorisation certificate or other approval; (b) Take enforcement proceedings and where necessary authorise legal proceedings; (c) Fix the licence fee in each case, in consultation with Head of Resources, for those licence fees not previously determined by the Council; (d) Sign and issue notices and authorise any works in default (and authorise others to do so in their own name); (e) Authorise employees to procure, acquire or purchase any samples, specimens, data or information in whatever format; (f) Authorise any person to accompany an appointed	Head of Regulatory Services WRS	Legal proceedings in consultation with Legal Services Manager

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
		<p>officer;</p> <p>(g) Appoint any other persons, not being employees within the establishment, to act as authorised officers and carry out such duties as are specified in the authorisations;</p> <p>(h) Waive any charges or fees in cases of demonstrable financial hardship or where there is an overriding social reason to do so.</p>		
<b>Corporate Property - Incentives</b>		<p>Approval of grant of incentives in specific instances, subject to the following criteria:</p> <p>(a) incentives only to be granted to new businesses. Existing companies moving from other premises or existing tenants at council investment properties would not be eligible;</p> <p>(b) the incentive to be by way of a rent free period, a discounted rental, deferred rental or a combination of these;</p> <p>(c) the maximum incentive to be equivalent of two thirds of the annual rent.</p>	Deputy Chief Executive	In consultation with the Head of Economy & Environment and the Portfolio Holder.
<b>Council Tax, and National Non-Domestic Rate</b>	Local Government Finance Act 1992 and Regulations, Orders and Rules made under that Act	<p>(a) All matters relating to billing and collection of Council Tax and NNDR under legislation in force at that time</p> <p>(b) To write off individual Council Tax and NNDR liabilities of £1,000 or less which are deemed to be irrecoverable, and liabilities of £1,001 to £20,000.</p> <p>(c) The write-off of individual Council Tax or Business Rate debts of over £20,000</p>	Deputy Chief Executive  Deputy Chief Executive  Executive Committee	Write-offs of £1,001 to £20,000, in consultation with the appropriate Portfolio Holder.
<b>Council Tax base</b>	Local Government Finance Act 1992 (as amended)	Calculation and approval of the Council Tax base	Deputy Chief Executive	To be reported to Council as part of the Budget Report

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
<b>Council Tax – Discretionary Discounts and Hardship Applications</b>		To consider and determine applications for Council Tax discretionary discounts on the basis of restricted use of accommodation e.g. flooding	Deputy Chief Executive	In consultation with Portfolio Holder for Finance and Resources
<b>Covenants – Former Council-owned Land</b>		Amendments and/or release of covenants (freehold or leasehold)	Deputy Chief Executive	
<b>Dangerous Buildings</b>	Building Act 1984 Sections 77 & 78	To take any action under these provisions in respect of buildings considered to be dangerous including carrying out any works and recovery of expenses	Head of Planning & Infrastructure	
<b>Data Protection Act</b>	Data Protection Act 1984 & 2000	Dealing with all matters relating to the Council's compliance with the Act.	Legal Services Manager	
<b>Defective Drainage</b>	Land Drainage Act 1991, Public Health Act 1961, Environmental Protection Act 1990, Building Act 1984	(a) Take enforcement proceedings and where necessary authorise legal proceedings; (b) Fix the licence fee in each case, in consultation with Head of Resources, for those licence fees not previously determined by the Council; (c) Sign and issue notices and authorise any works in default (and authorise others to do so in their own name); (d) Authorise employees to procure, acquire or purchase any samples, specimens, data or information in whatever format; (e) Authorise any person to accompany an appointed officer; (f) Appoint any other persons, not being employees within the establishment, to act as authorised officers and carry out such duties as are specified in the authorisations; (g) Waive any charges or fees in cases of demonstrable financial hardship or where there is an overriding social reason to do so.	Head of Planning & Infrastructure	
<b>Dilapidated Buildings</b>	Building Act 1984	To take any action under this provision in respect of	Head of Planning &	

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
	Section 79	ruinous and dilapidated buildings or neglected sites including carrying out works in default, recovery of expenses and prosecution for breaches.	Infrastructure	
<b>Disabled Persons Relief</b>		To deal with all matters relating to Disabled Persons Relief	Head of Housing & Communities	
<b>Early Retirement/ Redundancy Applications</b>		Acceptance or refusal of early retirement/voluntary redundancy applications, in accordance with redundancy policy or generally.	Senior Management Team	
<b>Easements</b>		Granting or refusal of easements over Council-owned land and acceptance of terms offered in respect of easements requested by the Council over land not in its ownership	Deputy Chief Executive	In consultation with the appropriate Portfolio Holder and the Ward Member(s)
<b>Electoral Matters</b>		To take all necessary action to ensure that proper arrangements are in place for the conduct of Local, Parliamentary and other Elections.  To take all necessary action to ensure that proper arrangements are in place for the conduct of local government referenda, parish polls and neighbourhood plan referenda.	Chief Executive and Deputy Chief Executive	
<b>Enhancement of the Locality</b>		Authority to handle approaches and suggestions by local residents for the purchase of items to enhance the locality (e.g. Sculptures).	Deputy Chief Executive	In consultation with the relevant Portfolio Holder.
<b>Fees and Charges</b>		To approve any increases (or decreases) in Council Fees and Charges	Deputy Chief Executive	In consultation with the Portfolio Holder for Finance and Resources and other Portfolio Holders as appropriate to the circumstances

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
<b>Fixed Penalty Notices</b>	Various	To authorise officers to issue fixed penalty notices in accordance with any statutory provisions relevant to Council services and to request information as a preliminary step to the issue of a fixed penalty notice.	All Heads of Service	
<b>Freedom of Information</b>	Freedom of Information Act 2000	(a) Approval of Publication Scheme (b) Determination of applications for release of information	Legal Services Manager	
<b>Fly Posting</b>	Town & Country Planning Act 1990 s.225 Anti-Social Behaviour Crime & Policing Act 2014	Authorisation of action to remove or obliterate placards and posters displayed in contravention of Advertisement Controls. Issue of fixed penalty notices	Head of Housing & Communities	
<b>Food Safety</b>	Food and Environmental Protection Act 1985, Food Act 1984, Food Safety Act 1990 (as amended) a) any orders or regulations made there under or relating to any of the foregoing or having effect by virtue of the European Communities Act 1972 and b) any modification or re-enactment to the foregoing, Local Government (Miscellaneous Provisions) Act 1982 –	(a) Determine and issue licences, registrations, permits, authorisations certificates and other approvals and to refuse the same. Withdraw, rescind or revoke any licence, registration, permit, authorisation certificate or other approval; (b) Take enforcement proceedings and where necessary authorise legal proceedings; (c) Fix the licence fee in each case, in consultation with Director of Resources, for those licence fees not previously determined by the Council; (d) Sign and issue notices and authorise any works in default (and authorise others to do so in their own name); (e) Authorise employees to procure, acquire or purchase any samples, specimens, data or information in whatever format; (f) Authorise any person to accompany an appointed officer; (g) Appoint any other persons, not being employees within the establishment, to act as authorised	Head of Regulatory Services WRS	Legal proceedings in consultation with Legal Services Manager

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
	Section 4 to 7 ( <i>Closing orders for take-away food shops</i> ), Natural Mineral Water Regulations 1985, Game Act 1831, Local Government Act 1984, Game Licences Act 1860	officers and carry out such duties as are specified in the authorisations; (h) Waive any charges or fees in cases of demonstrable financial hardship or where there is an overriding social reason to do so.		
<b>Footpaths</b>	Highways Act 1980 Town & Country Planning Act 1990 Gambling Act 2005	(a) To make public path and railway crossing orders; (b) Confirmation of unopposed Orders, under planning legislation, for the extinguishment and diversion of public footpaths and bridleways. To grant, renew and vary Gambling Act licenses	Head of Planning & Infrastructure	Refusal or objections to the licence to be heard by the Licensing & Appeals Committee.
<b>Gambling</b>			Head of Regulatory Services WRS	Where the Head of Service has any doubt as to whether a licence should be granted, for instance, because of an applicant's criminal convictions, the matter be referred to the Licensing and Appeals Committee for determination.
<b>Hackney Carriage and Private Hire – Licensing Administration</b>	Town Police Clauses Act 1847, Local Government (Miscellaneous Provisions) Act 1976	(a) Granting and Renewal of Licences; (b) Authority to temporarily suspend licences pending consideration by the Licensing and Appeals Committee; (c) To refuse any application where an applicant refuses to give his/her permission for the Council to undertake DVLA or other checks in relation to his/her application;	Head of Regulatory Services WRS	
<b>Hackney Carriage – Table of Fares</b>	Town Police Clauses Act 1847, Local Government (Miscellaneous Provisions) Act 1976	To consider and determine requests for minor amendments to the Table of Fares for Hackney Carriages, subject to those amendments not increasing the overall level of fares.	Head of Regulatory Services WRS	In consultation with the Portfolio Holder.

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
<b>Hackney Carriage and Private Hire - Enforcement</b>		Taxi Enforcement – To act in all matters relating to taxi enforcement including: The identification of vehicles for ad-hoc inspection. The service of notices suspending licences where vehicles are found to be unfit or where the vehicle owner/proprietor fails to deliver a vehicle for inspection Referral, revocation or suspension of licences	Head of Regulatory Services WRS	
<b>Hackney Carriage and Private Hire – Refusal of Licences</b>			Licensing & Appeals Committee	
<b>Hackney Carriage and Private Hire – Horse Drawn Vehicles</b>		Authority to: a) approve or renew applications for horse-drawn Hackney Carriage vehicle and/or driver licences, subject to appropriate conditions; and b) suspend or revoke any such licences, upon such terms (if any) as may be appropriate.	Head of Regulatory Services WRS	
<b>Hackney Carriage and Private Hire – granting and renewing licences</b>		Authorisation to grant or renew Taxi Drivers or Private Hire Operators Licences in cases where the applicant has no more than six penalty points on their DVLA driving licence (and the applicant satisfactorily meets all the other criteria).	Head of Regulatory Services WRS	
<b>Hazardous Substances</b>	The Planning (Hazardous Substances) Act 1990 and Regulations 1992	(a) To determine applications for hazardous substances consent; (b) To appoint officers from within the existing establishment to enforce the provisions of the Act and Regulations; (c) To authorise legal proceedings for offences.	Head of Regulatory Services WRS	Legal proceedings in consultation with Legal Services Manager
<b>Health &amp; Safety At Work</b>	Activity Centre (Young Persons Safety) Act 1995, Factories Act 1961, Health & Safety at Work etc. Act 1974,	(a) Determine and issue licences, registrations, permits, authorisations certificates and other approvals and to refuse the same. Withdraw, rescind or revoke and licence, registration, permit, authorisation certificate or other approval; (b) Take enforcement proceedings and where	Head of Regulatory Services WRS	Legal proceedings in consultation with Legal Services Manager

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
	Offices, Shops and Railway Premises Act 1963, Sunday Trading Act 1994, Scrap Metal Dealers Act 1964, Radioactive Substances Act 1993	<p>necessary authorise legal proceedings;</p> <p>(c) Fix the licence fee in each case, in consultation with Director of Resources, for those licence fees not previously determined by the Council;</p> <p>(d) Sign and issue notices and authorise any works in default (and authorise others to do so in their own name);</p> <p>(e) Authorise employees to procure, acquire or purchase any samples, specimens, data or information in whatever format,</p> <p>(f) Authorise any person to accompany an appointed officer;</p> <p>(g) Appoint any other persons, not being employees within the establishment, to act as authorised officers and carry out such duties as are specified in the authorisations;</p> <p>(h) Make applications to the Health &amp; Safety Commission where in cases where assignment or transfer of enforcement allocation is necessary;</p> <p>(i) Give notice under the Health and Safety (Enforcing Authority) Regulations 1989 on such persons who may be affected by a transfer or assignment of enforcement allocation.</p>		
<b>High hedges</b>	Anti-social behaviour Act 2003 Part 8	Enforcement powers to deal with high hedge disputes	Head of Planning & Infrastructure	
<b>Highways – Abatement of Certain Nuisances to Users</b>	Highways Act 1980 – Sections 164 and 165	To take action under Sections 164 and 165 of the Highways Act 1980, including taking action in default and the recovery of any costs of doing so.	Head of Housing & Communities	
<b>Hire of Meetings Accommodation</b>		Letting meetings accommodation to outside users in accordance with the conditions of use and the charging scheme relating to the premises, including the application of approved concessionary charges,	Deputy Chief Executive	

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
		authority to make a nil charge where the user is renting or leasing other accommodation within the same building and authority to agree an appropriate charge where, in exceptional circumstances, Council-owned audio-visual and other equipment is hired out.		
<b>Homelessness</b>	Housing Act 1996 - Section 202	To review decisions made in connection with homelessness applications	Head of Housing & Communities	
<b>Homelessness</b>	Housing Act 1996 – Part VII	To institute legal proceedings in the case of offences under Part III of the Act.	Head of Housing & Communities	
<b>Homelessness</b>	Housing Act 1996– Part VII	<p>(a) With regard to the provision of emergency accommodation for the homeless, to waive the repayment of part or all debts incurred by homeless applicants where they are either:</p> <ul style="list-style-type: none"> <li>(i) in receipt of state benefit which does not cover the full bed and breakfast charges;</li> <li>(ii) in employment but with insufficient wages for payment of the full bed and breakfast charge together with any other necessary living expenses.</li> </ul> <p>(b) To deal with cases of statutory homelessness where there is an inescapable duty to house (permanently or temporarily);</p> <p>(c) To deal with cases arising under the Act to house (permanently or temporarily, or from property and fitness action) where there is a duty or obligation to house under legislation.</p>	Head of Housing & Communities	
<b>Home Loss Payments</b>	Land Compensation Act 1973	Home loss payments where persons are displaced from their home by compulsory acquisition or by any other act of the Council	Head of Housing & Communities	
<b>Housing – Repair Notices</b>	Housing Act 1985	To carry out default works on expiry of time limit of Repair Notice.	Head of Housing & Communities	In consultation with the appropriate Portfolio Holder. Recovery of expenses in

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
<b>Housing Repair Grants</b>	Housing Grants, Construction and Regeneration Act 1996	<p>Service of Repairs Notice</p> <p>Authority to administer grants as follows:  a) Determination of applications for:  (i) mandatory disabled facilities grants;  (ii) disabled facilities grants (discretionary element);  (iii) renovation grants which result in the provision of additional accommodation for renting;  (iv) Home Repair Assistance for the elderly and vulnerable,  in accordance with the Council's agreed policies;  b) Authorise all payments in respect of approved grants;  c) To initiate action to recover the appropriate proportion of the grant in the event that a breach of grant conditions arises;  d) Discretion in implementation of the agreed policies.</p>	Head of Housing & Communities	accordance with Section 10 of the Housing Act.
<b>Housing - Unfit Properties - Demolition and Closing Orders</b>	Housing Act 1985 – Section 264	<p>To receive reports or other information concerning unfit houses and to issue Notices of Time and Place;  To hear those entitled to be heard at the 'Time';  To allow additional time (over 21 days) for the submission of a list of works offered to be carried out;  To cancel undertakings, Demolition and Closing Orders and to make substitutions of Closing Orders for Demolition Orders, as the statute permits.  To administer and enforce the Council's responsibilities.</p>	Head of Planning & Infrastructure	
<b>Imported Food Control</b>	The Products of Animal Origin (Import & Export) Regulations 996 The Products of Animal Origin (Third Country		Head of Regulatory Services WRS	

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
	Imports)(England) Regulations 2002 (as amended) made under The European Communities Act 1972.			
<b>Indemnification of Employees – Prosecution for Assault</b>		In appropriate cases, against reasonable legal costs incurred in bringing a prosecution arising from an assault upon employees.	Deputy Chief Executive	In consultation with the appropriate Portfolio Holder.
<b>Infectious Diseases</b>	Public Health (Control of Disease) Act 1984 Local Government (Miscellaneous Provisions) Act 1982 Section 1-17 (skin piercing)	<p>(a) Take enforcement proceedings and where necessary authorise legal proceedings;</p> <p>(b) Sign and issue notices and authorise or require any steps to be taken (and authorise others to do so in their own name);</p> <p>(c) Authorise any person to accompany an appointed officer;</p> <p>(d) Appoint any other persons, not being employees within the establishment, to act as authorised officers and carry out such duties as are specified in the authorisations;</p> <p>(e) Waive any charges or fees in cases of demonstrable financial hardship or where there is an overriding social reason to do so;</p> <p>(f) To appoint the Director of Public Health and the Consultant in Communicable Disease Control, South Worcestershire Primary Care Trust as Proper Officers for the purposes of this legislation;</p> <p>(g) To appoint, in consultation with the Consultant in Communicable Disease Control, any other qualified medical practitioner on the Herefordshire and Worcestershire Health Doctor rota to act as Proper Officer.</p>	Head of Regulatory Services WRS	Legal proceedings in consultation with Legal Services Manager

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
<b>Institution of Proceedings</b>		Authorisation of proceedings for recovery of claims arising from damage	Appropriate Head of Service	
<b>Instruction of Counsel</b>		Instruction of Counsel where satisfied that it is in the best interest of the Council	Legal Services Manager	
<b>Land Bank</b>		Short Term Lettings of land held for future requirements.	Deputy Chief Executive	
<b>Land Purchases</b>		Authority to decide in each instance whether or not to finance the purchase of land from capital receipts.	Deputy Chief Executive	
<b>Legal Proceedings</b>		Issue, prosecution or defence of any legal proceedings on the Council's behalf.	Legal Services Manager	
<b>Licences</b>		Grant and renewal of: House to House Collection Licences Small Lotteries Licences	Head of Regulatory Services WRS	

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
<p><u>Licensing</u> Licensing Applications</p>	<p>Licensing Act 2003</p>	<p>Determination of the following applications within the scope of the Licensing Act 2003:</p> <ul style="list-style-type: none"> <li>a) Applications for personal license PROVIDED that <ul style="list-style-type: none"> <li>➤ no police objections made; and</li> <li>➤ there are no unspent convictions;</li> </ul> </li> <li>b) Applications for premises license/club premises certificate PROVIDED that no relevant representations received, subject to consultation with local ward members;</li> <li>c) Application for provisional statement PROVIDED that no relevant representations received, subject to consultation with local ward members;</li> <li>d) Application to vary premises license/club premises certificate PROVIDED that no relevant representations received, subject to consultation with local ward members;</li> <li>e) Application to vary designated premises supervisor PROVIDED that no police objections made;</li> <li>f) Request to be removed as designated premises supervisor;</li> <li>g) Application for transfer of premises licence PROVIDED that no police objections made;</li> </ul>	<p>Head of Regulatory Services WRS</p>	<p>Refusal or objections to the licence to be heard by the Licensing Sub Committee.</p>

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
<p><b>Sex Shops</b></p>	<p>Hypnotism Act 1952, Local Government (Miscellaneous Provisions) Act 1982 Section 2 (Sex Shops),</p>	<p>h) Application for Interim Authorities PROVIDED that no police objections made;</p> <p>i) Decision on whether a complaint is irrelevant, frivolous or vexatious;</p> <p>j) Decision when a local authority is a consultee and not the lead authority PROVIDED that the decision is not to object, subject to consultation with local ward members;</p> <p>Determination of temporary event notice PROVIDED that no police objections made;</p>		

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
<b>Litter &amp; Graffiti</b>	Environmental Protection Act 1990 Anti-Social Behaviour Act 2003 Anti-Social Behaviour Crime & Policing Act 2014	(a) Prosecution of offences of dropping litter (b) Issue of street litter control notices and litter clearing notices (c) Issue of fixed penalty notices	Head of Economy & Environment	
<b>Localism Act 2011 – Assets of Community Value</b>	Localism Act 2011 sections 87 & 108	To implement the requirements in relation to Assets of Community Value and to deal with any issues that may arise.	Deputy Chief Executive	Reviews to be undertaken by another Head of Service nominated by the Chief Executive.
<b>Localism Act 2011 – Neighbourhood Planning</b>	Localism Act 2011 sections 116 – 121	To implement the requirements in relation to Neighbourhood Planning and to deal with any issues that may arise	Head of Planning & Infrastructure	After consultation with the Portfolio Holder for Development & Infrastructure
<b>Lost Property</b>	Local Government (Miscellaneous Provisions) Act 1982 Section 41	Disposal of property remaining uncollected (at discretion of the Head of Service, proportion of any sum realised on the disposal to be paid to person who found the property).	All Heads of Service	
<b>Membership of Functional Organisations</b>		To determine membership of functional organisations	Chief Executive and all Heads of Service	
<b>Motor Salvage Operators</b>	Vehicle Crimes Act 2001 Motor Salvage Operators Regulations 2002	To determine and issue registrations under The Motor Salvage Operators Regulations.  To refuse or revoke the same.	Head of Regulatory Services WRS  Licensing and Appeals Committee	
<b>Noise and Nuisance Control</b>	Environment Act 1995, Mines & Quarries Act 1954 Public Health Act 1961, Noise and Statutory Nuisance Act 1993,	(a) Determine and issue licences, registrations, permits, authorisations certificates and other approvals and to refuse the same. Withdraw, rescind or revoke any licence, registration, permit, authorisation certificate or other approval; (b) Take enforcement proceedings and where necessary authorise legal proceedings;	Head of Regulatory Services WRS	Legal proceedings in consultation with Legal Services Manager

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
	<p>Crime &amp; Disorder Act 1998, Criminal Justice &amp; Public Order Act 1994, Environmental Protection Act 1990, Rag Flock and Other Filling Materials Act 1951 and 1981 Clean Neighbourhoods &amp; Environment Act 2005</p>	<p>(c) Sign and issue notices and authorise any works in default (and authorise others to do so in their own name); (d) Authorise employees to procure, acquire or purchase any samples, specimens, data or information in whatever format; (e) Authorise any person to accompany an appointed officer; (f) Appoint any other persons, not being employees within the establishment, to act as authorised officers and carry out such duties as are specified in the authorisations.</p>		
<p><b>Ombudsman Complaints – payment of compensation arising from local settlement</b></p>	<p>Local Government Act 2000</p>	<p>To authorise payment of compensation by way of local settlement arising from an Ombudsman complaint</p>	<p>Monitoring Officer</p>	<p>(a) In consultation with appropriate Head of Service (where the complaint was originally made) and the relevant Portfolio Holder (b) Up to a maximum of £1000</p>
<p><b>Parish Councils – Inquire – Appointments by District Council</b></p>	<p>Local Government Act 1972</p>	<p>Make any necessary order for the appointment of persons to fill all or any of the vacancies in the office of parish councillor temporarily where a Parish Council is unable to act.</p>	<p>Monitoring Officer</p>	<p>In consultation with the appropriate ward members.</p>
<p><b>Parks - Football Pitches</b></p>		<p>Administration, maintenance and matters relating to the provision.</p>	<p>Head of Housing &amp; Communities</p>	
<p><b>Party Walls</b></p>	<p>Party Wall Etc. Act 1996</p>	<p>Appointing Officer in accordance with Section 10 (8) of the Party Wall Etc. Act 1996</p>	<p>Building Control Manager</p>	

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
<b>Pest Control</b>	Prevention of Damage by Pests Act 1949, Wildlife and Countryside Act 1981, Pesticides (Fees and Enforcement ) Act 1989, Food and Environmental Protection Act 1985.	<ul style="list-style-type: none"> <li>(a) Take enforcement proceedings and where necessary authorise legal proceedings;</li> <li>(b) Fix the licence fee in each case, in consultation with the Head of Financial Services, for those licence fees not previously determined by the Council;</li> <li>(c) Sign and issue notices and authorise any works in default (and authorise others to do so in their own name);</li> <li>(d) Authorise employees to procure, acquire or purchase any samples, specimens, data or information in whatever format;</li> <li>(e) Authorise any person to accompany an appointed officer;</li> <li>(f) Appoint any other persons, not being employees within the establishment, to act as authorised officers and carry out such duties as are specified in the authorisations;</li> <li>(g) Waive any charges or fees in cases of demonstrable financial hardship or where there is an overriding social reason to do so.</li> <li>(h) Make application for licences under s.16 of the Wildlife and Countryside Act 1981 (protected species).</li> </ul>	Head of Regulatory Services WRS	Legal proceedings in consultation with Legal Services Manager
<b>Planning Appeals</b>		Agreement to written representation procedure, Informal Hearing or Public Inquiry	Head of Planning & Infrastructure	Agreement to a Public Inquiry to be in consultation with the Legal Services Manager
<b>Planning and Similar Applications</b>	Town & Country Planning Act 1990 (as amended)	Determination of all applications within the scope of the Town & Country Planning Act 1990 (as amended).	Head of Planning & Infrastructure	The delegation shall not apply to the following applications: – Applications (or

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
				<p>Regulation 3 or 4 applications) submitted by the Council.</p> <ul style="list-style-type: none"> <li>- Applications submitted by any Elected Member of the Council.</li> <li>- Applications submitted by a senior member of MHDC staff – i.e. the Chief Executive, Director, Head of Service, or Service Manager, or a member of staff of Planning Services.</li> <li>- An application which is a material departure from the Development Plan, and the officer recommendation is for approval,, save that applications falling within the DCLG minor and other application categories may be approved where other material considerations indicate that planning permission should not be refused and the relevant Local Ward Member and</li> </ul>

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
				<p>Chairman of the relevant Planning Committee are in agreement.</p> <ul style="list-style-type: none"> <li>- The following applications will also be reported to the appropriate Planning Committee and not determined as delegated decisions:</li> <li>- Applications to be reported to committee at the request of the local member where:-</li> <li>- Where there is a conflict between the officer recommendation and/or local views and/or technical advice, the Local Ward Member(s) in response to the summary report may require within the stated period that the application is reported to the Area Planning Committee giving reasons for the request, taking into account relevant policy and other material planning</li> </ul>

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
				<p>considerations.;</p> <ul style="list-style-type: none"> <li>- Any 5 Members have notified the Development Control Manager or case officer (in writing or by e-mail), within 21 days of the application being validated, that it must be reported to an Area Planning Committee for decision.</li> </ul>
<b>Section 106 Agreements - Approving schemes as part of developer contributions</b>	Town & Country Planning Act 1990 – Section 106	Approval of any details required to be submitted to the Council for approval under the terms of any Planning Obligation, s.106 agreement or unilateral undertaking or approval of expenditure of any monies paid to the Council under the terms of any such delegation	Deputy Chief Executive	Subject to the terms of the Planning Obligation
<b>Planning Applications - Declining to determine applications</b>	Town & Country Planning Act 1990 – Section 70A	Declining to determine applications under the provisions of Section 70A of the Act.	Head of Planning & Infrastructure	In consultation with the Portfolio Holder for Development & Infrastructure.
<b>Planning – Approval of Materials</b>		Approval and rejection of materials, or variations or changes in them, submitted as a result of conditional planning permission	Head of Planning & Infrastructure	
<b>Planning - Environmental Assessment</b>	Town & Country Planning (Environmental Impact Assessment) Regulations 1999	To make decisions on screening, scoping and related matters as provided for in the Town & Country Planning (Environmental Impact Assessment) Regulations 1999	Head of Planning & Infrastructure	
<b>Planning - Environmental</b>	Town & Country Planning (Assessment	(a) Deal with requests made to the Council for a preliminary opinion as to whether or not an	Head of Planning & Infrastructure	

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
<b>Assessment</b>	of Environmental Effects) Regulations 1985	<p>Environmental Assessment is required in accordance with Regulation 5 of the Regulations;</p> <p>(b) Require the submission of an Environmental Statement where considered appropriate in accordance with Regulation 9 of the Regulations.</p> <p>(c) Follow any other procedures laid down by the Secretary of State in the Regulations.</p>		
<b>Planning - Injunction</b>		<p>To apply for an injunction to prevent a breach of planning control or secure compliance with planning control or where prosecution in the Magistrates' Court has failed to secure compliance with an enforcement notice.</p> <p>To serve Building Preservation Notices.</p>	Legal Services Manager	In consultation with the Head of Planning & Infrastructure
<b>Planning and Listed Buildings - Building Preservation Notices</b>	Planning (Listed Building and Conservation Areas) Act 1990		Head of Planning & Infrastructure	In consultation with the Portfolio Holders with responsibilities for planning services and finance, with appropriate notification to the local Ward Members.
<b>Planning &amp; Listed Buildings - Enforcement</b>		<p>To carry out works in default of compliance with planning and/or Listed Buildings enforcement action up to a maximum estimated cost of £5,000 in each case and recovery of default expense be pursued wherever reasonably practical.</p>	Head of Planning & Infrastructure	
<b>Planning &amp; Listed Buildings - Enforcement</b>	Town & Country Planning Act 1990 Planning (Listed Buildings and Conservation Areas) Act 1990 Planning & Compulsory Purchase Act 2004 Hedgerow Regulations	<p>The serving of the following Notices and Orders under the Town &amp; Country Planning Act 1990 and Planning, (Listed Buildings &amp; Conservation Areas) Act 1990</p> <p>a) Enforcement Notices;</p> <p>b) "Stop" Notices;( including temporary "Stop" notices)</p> <p>c) Breach of Condition Notices;</p> <p>d) Requisition for Information.</p> <p>e) Planning Contravention Notice</p> <p>Together with all forms of enforcement action under</p>	Head of Planning & Infrastructure and Legal Services Manager	

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
	1997 Planning Act 2008 Local Government (Miscellaneous Provisions) Act 1976 Anti-Social Behaviour Act 2003	the Town & Country Planning Act 1990, as amended, Planning (Listed Buildings & Conservation Areas) Act 1990, Planning & Compulsory Purchase Act 2004, Hedgerow Regulations 1997, Planning Act 2008, Local Government (Miscellaneous Provisions) Act 1976 and Anti-Social Behaviour Act 2003  Institution of legal proceedings in event of non- compliance	Head of Planning & Infrastructure and Legal Services Manager	
<b>Planning - Listed Buildings</b>		To deal with all matters relating to Listed Building Notices	Head of Planning & Infrastructure	
<b>Planning - Listed Buildings</b>		To deal with all matters relating to Listed Building Grants (except the allocation of budgets to individual schemes and approval of any discretionary grants).	Head of Planning & Infrastructure	
<b>Planning - Listed Buildings</b>	Planning (Listed Buildings and Conservation Areas) Act 1990 – Section 54 & 55	To arrange the carrying out of any works considered urgently necessary for the preservation of any unoccupied listed building (or part listed building) and to serve notice of the proposed works on the owner of the building, in accordance with Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and recovery of expenses under Section 55 of the Act be pursued wherever reasonably practicable	Head of Planning & Infrastructure	
<b>Planning - Pastoral Measure Notices of Enquiry</b>	Pastoral Measure 1983	Respond to notices of enquiries from the Church Commissioners or Diocesan Pastoral Committees	Head of Planning & Infrastructure	In consultation with the local Ward member(s). In cases of disagreement, the matter be referred to the relevant Area Planning Committee.
<b>Planning - Powers of Entry</b>	Town & Country Planning Act 1990 – Sections 324 & 325	Written authorisation and the necessary notice for Officers of the Department to exercise any of the statutory powers of entry.	Head of Planning & Infrastructure	

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
<b>Planning – Public Speaking at Area Planning Committee Meetings</b>		To implement any minor changes to the scheme, adopted by Council on 24/06/03, arising from feedback from the public or as a result of experience.	Head of Planning & Infrastructure	In consultation with the Monitoring Officer and the Planning Chairmen’s Group.
<b>Priory Park</b>		<ul style="list-style-type: none"> <li>a) Use by outside organisations – authority to grant permission for such use;</li> <li>b) Matters relating to Swan Pool</li> <li>c) Requests for floral displays</li> </ul>	Deputy Chief Executive	a) in consultation with the appropriate Portfolio Holder.
<b>Property - General</b>		<ul style="list-style-type: none"> <li>a) Renewal of Leases</li> <li>b) Approval or refusal of consent for assignment or under letting</li> <li>c) Grant of short term leases not exceeding 7 years</li> <li>d) Grant of wayleaves and easements</li> <li>e) Sale of freehold reversion to long leases (where unexpired term of lease exceeds 21 years)</li> <li>f) Amendment and/or release of covenants (freehold or leasehold)</li> <li>g) Notice to quit for renewal of lease or where possession required</li> <li>h) Enforcement of lease terms and action for breach</li> <li>i) Approval or refusal of consent to Tenants Improvement applications</li> <li>j) Submission of Planning Applications (to enhance value and marketability prior to disposal or lease).</li> </ul>	Deputy Chief Executive	e) In consultation with the appropriate Portfolio Holder.
<b>Property – Minor Disposals</b>		Minor property disposals where the value is less than £5,000 and the land or buildings have no strategic importance.	Deputy Chief Executive	In consultation with the Portfolio Holder.
<b>Protection from Eviction</b>	Protection from Eviction Act 1977	To institute proceedings in the case of offences under this Act.	Head of Planning & Infrastructure	

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
<b>Public Health</b>	National Assistance Act 1948 – s.47 National Assistance (Amendment) Act 1951 Public Health Act 1961	(a) To make application for an order for the removal of any person to a suitable place; (b) To appoint the Director of Public Health and the Consultant in Communicable Disease Control, South Worcestershire Primary Care Trust as Proper Officers for the purposes of this legislation; (c) To appoint, in consultation with the Consultant in Communicable Disease Control, any other qualified medical practitioner on the Herefordshire and Worcestershire Health Doctor rota to act as Proper Officer;	Deputy Chief Executive	
<b>Purchase Notices</b>		To give notice to reject (but not accept) any Purchase Notices served against the Council.	Legal Services Manager	
<b>Regulation Of Investigatory Powers</b>	Regulation Of Investigatory Powers Act 2000	(a) Minor amendments to the Council's RIPA Policy and Procedures document; (b) Authorised Officers under the Act	Chief Executive & Legal Services Manager	
<b>Rent (Agriculture) Act 1976</b>	Rent (Agriculture) Act 1976	(a) To decide whether alternative accommodation offered by the applicant is 'suitable' as defined in the Act; (b) To decide whether to request the services of an Agricultural Dwelling House Advisory Committee; (c) Homelessness – to deal with cases under the Act (or from property and fitness action) where there is a statutory duty or obligation under legislation; (d) To institute legal proceedings brought under the Act.	Head of Housing & Communities	
<b>Rent Deposit Scheme</b>		To establish and administer a Rent Deposit Scheme. Discretion to offer an increased guarantee of up to £350 in exceptional circumstances	Head of Housing & Communities	

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
<b>Requisitions for Information</b>	Town & Country Planning Act 1990 – Sections 329 & 330 Local Government (Miscellaneous Provisions) Act 1976 s. 16 Environment Act 1995 s.108 Environmental Protection Act 1990 Clean Neighbourhoods & Environment Act 2005 and all other powers so enabling	Service of Requisitions for Information in accordance with any statutory provisions  Institution of proceedings for failure to comply therewith	All Heads of Service	
<b>Revocation of Planning Permission</b>		Revocation of Planning Permission on waiving of compensation	Head of Planning & Infrastructure	
<b>Rights of Entry for Council Officers</b>	Various	To authorise existing employees to exercise rights of entry under all legislation relevant to the work of the Department.	All Heads of Service	
<b>Sale of Surplus or Obsolete Equipment to Employees</b>		Sale of surplus or obsolete equipment to employees	Appropriate Head of Service	Subject to tendering procedure.
<b>Employees - Establishment Budget and Personnel Matters</b>		Responsibility for managing the establishment budget and personnel matters.	Senior Management Team	To have regard to the current approach to filling vacancies
<b>Smoke free premises, places and vehicles</b>	Health Act 2006 Part I Chapter 1 and any orders or regulations made there under	To carry out inspections and investigations and take enforcement action	Head of Housing & Communities	

<b>SUBJECT</b>	<b>ACT/LEGISLATION</b>	<b>POWERS DELEGATED</b>	<b>DELEGATED TO</b>	<b>RESTRICTIONS</b>
<b>Street Collections</b>		To issue Street Collection Licences to applicants in accordance with policy; To issue additional permits in special circumstances, for example, where the collection is in respect of an event travelling through the District such as a 'bed-push', John O'Groats to Lands End walks etc.	Deputy Chief Executive	In consultation with Ward Members and appropriate Portfolio Holders
<b>Street Naming and Numbering</b>	Public Health Act 1925 – Section 17	Lodging objections to street name	Head of Planning & Infrastructure	In consultation with the Portfolio Holder, appropriate Ward Member and Parish Council
<b>Street Naming and Numbering</b>	Town Improvement Clauses Act 1847 – Section 64	Making street numbering (but not re-numbering) orders	Head of Planning & Infrastructure	
<b>Sundry Debtors</b>	Local Government Finance Act 1992	To write off sundry debts of £1,000 or less which are deemed to be irrecoverable.	Deputy Chief Executive	In consultation with the appropriate Portfolio holder.
<b>Telephone Kiosks</b>		Responding to consultation on re-siting	Head of Planning & Infrastructure	Subject to prior consultation with Parish Councils.
<b>Temporary Road Closure Orders</b>		(a) To determine applications for temporary road closures for special events; (b) Discretion to reduce or waive the standard fee for charitable events (for instance, where the applicant is a small charity or where the event is unlikely to generate income); (c) Discretion to waive or reduce the standard fee in all other cases if there are special circumstances.	Deputy Chief Executive	In consultation with the appropriate Portfolio Holder and local Ward Member(s).
<b>Traffic Management</b>		Responses to County Council proposals	Deputy Chief Executive	Refer to Committee if conflict with Ward Councillor(s).
<b>Transport Operators' Licences</b>		Lodging of objections to the granting of an Operator's Licence.	Head of Housing & Communities	Appropriate Ward Members to be consulted regarding any new applications or

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
<b>Transport Policies and Programme</b>		Response to consultations on content of County Council's TPP submissions.	Head of Housing & Communities	extensions of licences. In consultation with the appropriate Portfolio Holder.
<b>Travellers - Removal of Travellers from Council Land and Commons</b>		Employment of firms specialising in the removal of itinerants.  Commencement of Proceedings for Possession.	Head of Housing & Communities  Legal Services Manager	In consultation with the appropriate Portfolio Holder.  In consultation with the appropriate Portfolio Holder
<b>Tree Preservation</b>	Town & Country Planning Act 1990	(a) Making of Tree Preservation Orders; (b) Confirmation of Tree Preservation Orders; (c) Institution of legal proceedings for offences relating to trees in Conservation Areas and/or subject to Tree Preservation Orders; (d) Approval or refusal of felling of trees: - within the scope of a Tree Preservation Order; - in Conservation Areas provided the matter is not significant public interest or controversial; (e) Felling Licence applications, comments to the Forestry Commission; (f) Woodland Grants Scheme, comments to Forestry Commission.	Head of Planning & Infrastructure	Confirmation of TPOs to be reported to committee, where:- <ul style="list-style-type: none"> <li>• The local ward member(s) has been sent a copy of the summary report on the TPO, where objections have been made to the making of that TPO, and has required, within the stated time period, that the matter is to be reported to an Area Planning Committee;</li> <li>• The local ward member has notified the Landscape Officer (in writing or by e-mail), within 21 days of the TPO first being made,</li> </ul>

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
<b>Trees - Dangerous Trees</b>	Local Government (Miscellaneous Provisions) Act 1976	(a) Service of notices under Section 23 in respect of dangerous trees; (b) To authorise entry onto land and works in default if notice not complied with.	Head of Planning & Infrastructure	that it must be reported to an Area Planning Committee for consideration.
<b>Utility Bills - payment</b>	Local Government (Miscellaneous Provisions) Act 1976 S.33	Failure of property owner to pay water, gas or electricity account – at request of occupier make arrangements for supply to be restored – make payment and take steps for recovery.	Head of Housing & Communities	
<b>Water Sampling</b>	Water Act 1989 Water Industry Act 1991	<p>(a) Determine and issue licences, registrations, permits, authorisations certificates and other approvals and to refuse the same. Withdraw, rescind or revoke any licence, registration, permit, authorisation certificate or other approval;</p> <p>(b) Take enforcement proceedings and where necessary authorise legal proceedings;</p> <p>(c) Fix the licence fee in each case, in consultation with Deputy Chief Executive, for those licence fees not previously determined by the Council;</p> <p>(d) Sign and issue notices and authorise any works in default (and authorise others to do so in their own name);</p> <p>(e) Authorise employees to procure, acquire or purchase any samples, specimens, data or information in whatever format;</p> <p>(f) Authorise any person to accompany an appointed officer;</p> <p>(g) Appoint any other persons, not being employees within the establishment, to act as authorised officers and carry out such duties as are specified</p>	Head of Regulatory Services WRS	Legal proceedings in consultation with Legal Services Manager

SUBJECT	ACT/LEGISLATION	POWERS DELEGATED	DELEGATED TO	RESTRICTIONS
		<p>in the authorisations;</p> <p>(h) Waive any charges or fees in cases of demonstrable financial hardship or where there is an overriding social reason to do so.</p>		

## Proper Officer Designations

Act and Section	Proper Officer Functions	Proper Officer
Local Government Act 1972		
13(3)	Parish Trustee	Monitoring Officer
83(1) to (4)	Witnesses and receipt of declarations of acceptance of office	Chief Executive
84	Receipt of declaration of resignation from office	Chief Executive
88(2)	Convening of meeting of Council to fill casual vacancy in the office of Chairman	Monitoring Officer
89(1)(b)	Receipt of notice from 2 local government electors requesting an election be held in the case of a casual vacancy	Chief Executive
115(2)	Receipt of money due from officers	Deputy Chief Executive
146(1)(a) & (b)	Declarations and certificates with regard to securities	Deputy Chief Executive
151	Responsible Financial Officer	Deputy Chief Executive
191	Functions with respect to	Head of Planning & Infrastructure

<b>Act and Section</b>	<b>Proper Officer Functions</b>	<b>Proper Officer</b>
	Ordnance Survey	
210(6) & (7)	Charity functions of holders of Offices with existing authorities transferred to holders of equivalent office with new authorities or, if there is no such office, to proper officers	Monitoring Officer
212(1) & (2)	Proper Officer to act as local registrar for Land Charges Act 1975 ("Proper Officer" for this section is defined by Section 19 of that Act)	Head of Planning & Infrastructure
225(1)	Deposit of Documents	Legal Services Manager
229(5)	Certification of photographic copies of documents	Legal Services Manager
234(1) & (2)	Authentication of documents	Legal Services Manager
236(9)	To send copies of byelaws for Parish Records	Legal Services Manager
236(10)	To send copies of byelaws to the County Council	Legal Services Manager
238	Certification of byelaws	Legal Services Manager
Schedule 12		
Para. 4(2)(b)	Signature of summonses to Council meetings	Monitoring Officer

<b>Act and Section</b>	<b>Proper Officer Functions</b>	<b>Proper Officer</b>
Para. 4(3)	Receipt of notices regarding address to which summons to meetings is to be sent	Monitoring Officer
Para. 25(7)	Certification of resolutions	Monitoring Officer
Schedule 16 Para. 28	Receipt of deposit of lists of protected buildings	Head of Planning & Infrastructure
<u>Local Government Act 1972</u> <u>Part VA Ss. 100A - 100K</u>	Access to meetings and Documents. For the purposes of the Act, with the exception of the compilation and making available background papers	Monitoring Officer
	Compilation and making available of background papers	Senior Officers to whose report those papers relate
<u>National Assistance Act 1948</u> 47	Removal to suitable premises of persons in need of care and attention	Head of Housing & Communities Director of Public Health and Consultant in Communicable Disease Control
<u>National Assistance Amendment Act 1951</u> 1	Removal to suitable premises of persons in need of care and attention	Head of Housing & Communities Director of Public Health and Consultant in Communicable

<b>Act and Section</b>	<b>Proper Officer Functions</b>	<b>Proper Officer</b>
<u>Byelaws</u>	Safety at Fairgrounds	Disease Control Head of Economy & Communities
<u>Public Health (Control of Diseases) Act 1984</u>		
Sections: 20, 21, 28, 29, 30, 32, 36, 37, 38, 40, 41, 42, 43, 46, 48	Control of the spreading of disease	Director of Public Health and Consultant in Communicable Disease Control, South Worcestershire Primary Care Trust (or persons appointed in accordance with scheme of delegation)
Sections: 11, 25, 34, 35, 39, 50, 61	Cases of Notifiable Disease and food poisoning to be reported	Director of Public Health and Consultant in Communicable Disease Control, South Worcestershire Primary Care Trust (or persons appointed in accordance with scheme of delegation) Head of Regulatory Services WRS
<u>Public Health (Control of Diseases) Act 1984 cont'd</u>		

<b>Act and Section</b>	<b>Proper Officer Functions</b>	<b>Proper Officer</b>
<b>Sections:</b> 16, 18, 22, 23, 24, 25, 26, 31, 51, 59	Control of the spreading of disease/food poisoning	Director of Public Health and Consultant in Communicable Disease Control, South Worcestershire Primary Care Trust (or persons appointed in accordance with scheme of delegation) Head of Regulatory Services WRS
<b><u>Representation Of the People Act 1983</u></b>		
S.8	Electoral Registration Officer	Chief Executive
S.35	Returning Officer	Chief Executive
<b><u>Local Government &amp; Housing Act 1989</u></b>		
Section 4	Head of Paid Service	Chief Executive
Section 5	Monitoring Officer	Legal Services Manager
<b><u>Localism Act 2011</u></b>		
Section 28	Member Code of Conduct	Monitoring Officer
Section 29	Establish and maintain a register of Members' interests	Monitoring Officer
<b><u>The Local Authorities (Model Code of Conduct) Order 2007</u></b>	Receipt of notifications of Members' financial and other interests and Gifts and Hospitality	Monitoring Officer





## **Constitution**

### **PART 4**

# **Rules of Procedure (Council & Committee)**

## **Part 4 – Rules of Procedure (Council & Committee)**

Council and Committee Procedure Rules:

- General
- Council Meetings
- Executive Committee
- Committees
- General Procedure including Public Participation
- Public Participation at Area Planning Committees

Access to Information Rights and rights to record meetings

Officer Employment Procedure Rules

MHDC Financial Rules (updated 2019)

MHDC Contract Procedure Rules (updated 2015)

## **PART 4 – Council and Committee Procedure Rules**

### **General**

#### **1. Introduction**

The purpose of these Procedure Rules is to set out the procedures which the Council will use in its decision-making.

#### **2. Interpretation of Rules**

2.1 The ruling of the Chairman (or the Chairman of any Committee or Subcommittee insofar as applicable) as to the construction or application of any of these Rules, or as to any proceedings of the Council, Committee or Subcommittee shall not be challenged at the meeting.

2.2 In these Rules unless the context requires otherwise:

- a) any reference to an officer of the Council shall include the officer having the duties and responsibilities of that post from time to time, howsoever that officer may be termed;
- b) any reference to a Head of Service or Head of Paid Service followed by a description of any of the Council's services or functions shall be construed as a reference to the Head of Service or Head of Paid Service (as the case may be) for the time being having responsibility for that service or function;
- c) reference to any statutory provision or regulation shall include any statutory provision or regulation replacing the same;
- d) "Overview and Scrutiny Committee" means any committee (howsoever termed) whose terms of reference include the scrutiny of decisions, recommendations, or proposals of the Executive Committee.

2.3 Unless the Council has resolved otherwise, any action or thing required or authorised by these Rules to be done by any officer shall be proper if done by any other officer of the Council to whom he may have delegated that matter.

## **PART 4 – Council and Committee Procedure Rules General**

### **3. Amendments**

- 3.1 These Rules shall not be amended, except by Council upon the report of an appropriate Committee.
- 3.2 No amendments shall be made to Rules prescribed by Regulations which for the time being are:
  - a) Rule 15 - Signing of the Minutes;
  - b) Rule 22 - Recording of votes.

### **4. Suspension of Procedure Rules**

- 4.1 Any Rules other than those mentioned in Rule 3.2 above may be suspended by Council so far as they relate to any business at the meeting where the suspension is moved and PROVIDED that:
  - a) Where notice has been given in accordance with Rule 11, the motion is approved by at least half of the members present at the meeting and voting; and
  - (b) where notice has NOT been given in accordance with Rule 11, the motion is approved by at least half of the members present at the meeting and voting, AND at least one half of all members of Council are present at the meeting.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

#### **5. Annual Meeting of Council**

There shall be an Annual Meeting of Council in May each year at a date to be fixed in advance. During a year of ordinary elections of councillors to the Council, the annual meeting shall be held on the eighth day after the retirement of councillors or such other day within the 21 days immediately following the day of retirement as the council may fix, at which the Council shall:

- a) elect the Chairman and Vice-Chairman of Council;
- b) appoint the Leader of the Council;
- c) appoint the Deputy Leader of the Council;
- d) appoint the Chairman (and Vice Chairman where applicable) and membership of Committees, sub-committees and Panels listed in Part 3 of the Council's Constitution – Responsibility for Functions.
- e) appoint such other committees as the Council may from time to time decide;
- f) consider and make appointments or nominations to serve on outside bodies, except that during an election year the making of such appointments may be deferred to the following ordinary meeting of Council.

#### **6. Meetings of the Council**

In addition to the Annual Meeting of the Council:

- a) meetings for the transaction of general business shall be held on such dates as the Council may decide;
- b) extraordinary meetings of Council may be held for the sole purpose for which it has been convened as soon as practicable at the request of:
  - (i) the Chairman of Council;
  - (ii) the Leader of the Council;
  - (iii) the Monitoring Officer; or
  - (iv) no fewer than 5 Members of Council who have signed and submitted to the Monitoring Officer a requisition giving details of the business to be transacted.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

#### **7. Chairman of Council Meetings**

- 7.1 Subject to 7.3 (below), the Chairman of Council, if present, shall preside at the meeting or, in his/her absence, the Vice-Chairman shall preside or, if both are absent then another member of the Council, chosen by the members present shall preside.
- 7.2 Any power or duty of the Chairman in relation to the conduct of a meeting may be exercised by the person presiding at the meeting.
- 7.3 If the Chairman is so personally involved in the business under consideration, whether or not it requires the declaration of a personal interest under the Members' Code of Conduct (but without the need to leave the meeting), that the effectiveness of his/her role as Chairman may be impaired, he/she may at his/her discretion leave the Chair but remain and participate in the meeting as an ordinary member whereupon the Vice-Chairman shall preside, or in his/her absence another member chosen by the members present shall preside.

#### **8. Quorum of Council**

- 8.1 The quorum for Council shall, unless provided otherwise in any statutory enactment, regulation or other similar provision, be one quarter (10 councillors) of the total number of councillors.
- 8.2 If during any meeting of the Council the Chairman, after counting the number of members present, declares that there is not a quorum present, the meeting shall stand adjourned.
- 8.3 The consideration of any business not transacted shall be adjourned to a date and time fixed by the Chairman when the meeting is adjourned, or if he/she does not do so, to the next ordinary meeting of the Council.

#### **9. Notice and Summons to meeting**

The Monitoring Officer will send a signed summons to every Councillor, at least 5 clear working days before a meeting. The summons will give the date, time and the place of each meeting and specify the business to take place, and will be accompanied by such reports as are available. A notice to inform the public of the date, time, place, and business of each meeting will also be made available on the Council's website.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

#### **10. Order of Business**

10.1 Except as otherwise provided by 10.2 (below), the order of business at every ordinary meeting of the Council shall be to:-

- a) choose a person to preside if the Chairman and Vice-Chairman are absent;
- b) receive any apologies for absence;
- c) invite and receive any declarations of interests by Members;
- d) deal with any business required by statute to be done before any other business of the Council;
- e) approve as a correct record and sign the minutes of the last meeting;
- f) receive any announcements from the Chairman;
- g) allow public participation including formal receipt of petitions;
- h) invite Questions to the Leader under Rule 13;
- i) deal with any outstanding business (if any) from the last meeting of the Council;
- j) deal with any business expressly required by statute to be done;
- k) consider any matter referred to Council from or by the Executive Committee;
- l) receive and consider reports and recommendations from other committees (including Overview and Scrutiny Committee);
- m) consider motions in the order in which notices have been received;
- n) consider any other business specified in the summons of the meeting.

10.2 Business falling under items 10.1 a, b, c, d, or e (above) shall not be displaced, but otherwise the foregoing order of business may be varied:

- by the Chairman at his /her sole discretion; or
- by a resolution passed on a motion (which need not be in writing) duly moved and seconded , which shall be put without discussion.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

#### **11. Notices of Motion**

- 11.1 Except as provided by Rule 12, no motion shall be moved at any meeting of Council unless notice thereof shall have been given:
- in writing;
  - signed by at least two members of the Council giving the notice (an email by the member or members giving notice would be regarded as sufficient for this purpose); and
  - delivered (or emailed) to the office of the Monitoring Officer by 10am on at least the sixth clear working day before the next ordinary meeting of the Council, not counting the day of the meeting/despatch.
- 11.2 No Member of the Council shall give notice of more than one motion for any one Council meeting.
- 11.3 Every motion shall be relevant to some matter in relation to which the Council has powers and duties.
- 11.4 The Monitoring Officer shall set out in the summons for every ordinary meeting of the Council, all motions of which notice has been duly given in the order in which they have been received, unless the member giving such notice intimated in writing, when giving it, that he/she proposed to move it at some later meeting or has since withdrawn it in writing.
- 11.5 If a motion thus set out in the summons is not moved, either by:
- a member who gave notice thereof; or
  - some other member at the member's request and on his/her behalf;
- or
- with the concurrence of the Chairman of the Council,
- it shall be treated as withdrawn and shall not be moved without fresh notice.
- 11.6 Every motion of which notice has been duly given shall, upon being moved and seconded, stand referred without discussion to the relevant committee or sub-committee (if any) as determined by the Chairman of Council having regard to the subject matter of the motion and the recommendations of the said committee shall be reported to Council for determination.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

- 11.7 A member of the Council who has proposed a motion which has been referred to any committee shall be entitled to attend that Committee and to speak to the item.

#### **12. Motions and Amendments**

- 12.1 In relation to developing the budget framework and in order to meet the requirements of Section 25 of Local Government Act 2003, alternative budget or Council tax proposals must be lodged with the Head of Paid Service by 10am on the third working day prior to the meeting of the Executive Committee meeting scheduled to consider the budget (or any changes to it) and setting the Council tax.

- 12.2 In relation to any other matter; if a member knows in advance that they intend to move an amendment (whether to a notice of motion or any other recommendation to Council) or is thinking of doing so, they should make all reasonable efforts to inform the Monitoring Officer in advance of the meeting so that the implications of the amendment can be assessed. The Monitoring Officer will:

- a) treat such notification 'in confidence' if so requested;
- b) (unless it is 'in confidence') liaise with relevant officers and councillors as appropriate;
- c) suggest any revisions of the wording as may seem desirable; and
- d) ensure that a written copy of the amendment is available at the meeting.

- 12.3 The following motions and amendments may be moved without notice:-

- a) Appointment of a Chairman of the meeting at which the motion is made.
- b) Motions relating to the accuracy of the minutes.
- c) That an item of business specified in the summons is dealt with earlier in the meeting given.
- d) That any item of business be referred to a committee.
- e) That a committee be appointed in connection with any item mentioned in the summons to the meeting.
- f) Adoption of reports and recommendations of any committee or officer and any consequent resolutions.
- g) That leave be given to withdraw a motion.
- h) Extending the time limit for speeches.
- i) Amendments to motions.
- j) That the Council proceeds to the next business.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

- k) That the question be now put.
- l) That the debate be now adjourned.
- m) That the Council do now adjourn.
- n) Suspending any Procedural Rules, in accordance with Rule 4.
- o) Motions to exclude the public, under Section 100A (4) Local Government Act, 1972.
- p) That a member named under Rule 18 be not further heard or leave the meeting.
- q) That a recorded vote be taken in accordance with Rule 21.2

#### **13. Questions**

13.1 A member of the Council may ask the Leader of Council:-

- a) A single question on any matter in relation to which the Council has powers or duties or which affects the District, provided that written questions are submitted to the Monitoring Officer by 12 noon on the working day immediately preceding the day of the meeting. Exceptionally, questions may be submitted in writing before commencement of the meeting; or
- b) any question relating to **urgent business**, of which such notice has not been given; but a copy of the question shall, if possible, be delivered to the Monitoring Officer by 12 noon on the working day immediately preceding the day of the meeting. The Leader may decline to answer any question put under this sub-paragraph (b).

13.2 Every question shall be put and answered without discussion.

13.3 An answer may take the form of:

- a) a direct oral answer; or
- b) a reference to that publication where the desired information is contained in a publication of the Council; or
- c) a written answer circulated to members of the Council with the minutes of the meeting at which the question has been asked where the reply to the question cannot conveniently be given orally.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

- 13.4 A Member of the Council who has asked a question, in accordance with sub-paragraph 13.1(a) of this Rule, and who has received a direct oral answer, shall within 5 working days after the meeting, be supplied with a written copy of the answer.
- 13.5 Where a member of the public poses a question at a Council meeting then the Council must make a formal response to this question within 5 working days following the meeting having taken place.
- 13.6 Arising from the answers given to questions under paragraph 13.1 of this Rule, the questioner shall have the right to address a supplementary question.

#### **14. Minutes**

- 14.1 The Chairman shall put the question that the minutes of the meeting of the Council held on the ..... day of ..... be signed as a correct record.
- 14.2 No discussion shall take place upon the minutes, except upon their accuracy, and any question of their accuracy shall be raised by motion. If no such question is raised, or if it is raised then as soon as it has been disposed of, the Chairman shall sign the minutes.

#### **15. Signing of Minutes (This rule may not be suspended by virtue of Article 16.1)**

Minutes of a meeting of the Council shall be signed at the same or next suitable meeting of the Council by the person presiding, except that such minutes should not be signed at extraordinary meetings of the Council but must instead be signed at the next ordinary meeting of the Council.

#### **16. Rules of Debate for Council Meetings**

##### **16.1 Proposing and seconding**

- a) A motion or amendment shall not be discussed unless it has been proposed and seconded and, unless notice has already been given in accordance with Rule 11, it shall, if required by the Chairman, be put into writing and handed to the Chairman before it is further discussed or put to the meeting.
- b) A member when seconding a motion or amendment may, if they then declare their intention to do so, reserve their speech until a later period of the debate.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

#### **16.2 Speaking**

- a) A member when speaking shall stand and address the Chairman<sup>1</sup>. If two or more members rise, the Chairman shall call on one to speak; the other or others shall then resume their seats. While a member is speaking the other members shall remain seated, unless rising to a point of order or in personal explanation.
- b) A member shall direct his/her speech to the question under discussion or to a personal explanation or to a point of order.
- c) No speech shall exceed five minutes except by consent of the Chairman.
- d) Whenever the Chairman rises during a debate a member then standing shall resume his/her seat and the Council shall be silent.
- e) A member who has spoken on any motion shall not speak again whilst it is the subject of debate, except:
  - (i) In exercise of a right of reply given by Rule 16.6;
  - (ii) On a point of order;
  - (iii) By way of personal explanation;
  - (iv) to speak once on an amendment (and any subsequent amendments) moved by another Member(s);
  - (v) if the motion has been amended since he/she last spoke, to move a further amendment;
  - (vi) if his/her first speech was on an amendment moved by another Member, to speak on the main issue, whether or not the amendment on which he/she spoke was carried.

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<sup>1</sup> Health permitting/ at Chairman's discretion

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

#### **16.3 Restriction on further motions**

When a motion is under debate no other motion shall be moved except the following:

- a) to amend the motion;
- b) to adjourn the debate;
- c) to adjourn the meeting;
- d) to proceed to the next business;
- e) that the question be now put;
- f) that a Member be not further heard;
- g) by the Chairman under Rule 18.2 that a Member do leave the meeting;
- h) a motion to exclude the public (which term includes the press);
- i) a request for a recorded vote pursuant to Rule 21.2

#### **16.4 Amendments**

- a) An amendment shall be relevant to the motion and shall be either:
  - to refer a subject of debate to a committee for consideration or reconsideration; or
  - to leave out words; or
  - to leave out words and insert or add others; or
  - to insert or add words;

but such omission, insertion or addition of words shall not have the effect of introducing a new motion or of negating the motion before the Council.

- b) Only one amendment may be moved and discussed at a time and no further amendment shall be moved until the amendment under discussion has been dealt with.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

- c) If an amendment is rejected, other amendments may be moved on the original motion. If an amendment is carried, the motion as amended shall take the place of the original motion and shall become the motion upon which any further amendment may be moved.

#### **16.5 Withdrawal of motion**

- a) A member may with the consent of the Council signified without discussion:-
  - alter a motion of which notice has been given; or
  - with the further consent of the seconder alter a motion which has been moved:
  - if (in either case) the alteration is one which could be made as an amendment thereto.
- b) A motion or amendment may be withdrawn by the mover with the consent of the seconder and the Council, which shall be signified without discussion. No member may speak upon any motion or amendment after it has been withdrawn.

#### **16.6 Right of reply**

- a) The mover of a motion has a right to reply at the close of the debate on the motion, immediately before it is put to the vote;
- b) If an amendment is moved, the mover of the original motion shall also have a right of reply at the close of the debate on the amendment, and shall not otherwise speak on the amendment;
- c) The mover of the amendment shall have no right of reply to the debate on the amendment;
- d) A Member exercising a right of reply shall not introduce a new matter;
- e) After every reply to which this paragraph 16.6 refers, a decision shall be taken without further discussion.

## PART 4 – Council and Committee Procedure Rules

### Council Meetings

#### 16.7 Procedure on certain motions

Upon any of the following motions being moved and seconded, the Chairman shall, if satisfied as indicated below, proceed as follows:

- a) ***“that the Council proceed to the next business”*** - If the Chairman is satisfied the matter has already been sufficiently discussed:
  - (i) the mover of the original motion shall have a right of reply;
  - (ii) the motion to proceed to next business shall then be put to the vote without further discussion.
  
- b) ***“that the question be now put”*** - If the Chairman is satisfied the matter has already been sufficiently discussed and that the member proposing has not already spoken:
  - (i) the motion that the question now be put shall be put to the vote without further discussion; and if that motion is passed
  - (ii) the mover of the original motion shall have a right of reply in accordance with Rule 16.6;
  - (iii) the original motion (or amendment as the case may be) shall then be put to the vote without further discussion;
  - (iv) where the motion voted on in accordance with (iii) above was an amendment, the original motion (as amended) shall be put to the vote without further discussion or amendment.
  
- c) ***“that the meeting be adjourned”*** or ***“that the debate be adjourned”*** - If the Chairman is satisfied the matter has **not** been sufficiently discussed and cannot reasonably be discussed sufficiently on that occasion the motion for adjournment shall be put to the vote without further discussion or any right of reply by the mover of the original motion.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

#### **16.8 Point of Order / Personal explanation**

- a) A Member may rise on a point of order or in personal explanation, and shall be entitled to be heard forthwith.
- b) A point of order shall relate only to an alleged breach of a Rule or statutory provision and the way in which the Member considers it has been broken.
- c) A personal explanation shall be confined to some material part of a former speech by that Member which may appear to have been misunderstood in the present debate.
- d) The ruling of the Chairman on a point of order or on the admissibility of a personal explanation shall not be open to discussion.

#### **17. Motions Affecting Persons Employed by the Council**

If any question arises at a meeting as to the appointment, promotion, dismissal, salary, superannuation or conditions of service, or as to the conduct of any person employed by the Council, such a question shall not be the subject of discussion until the Council (or committee) has decided whether or not to exclude the press and public under the provisions of Section 100A(4) Local Government Act 1972.

#### **18. Disorderly Conduct**

18.1 If at a meeting any Member of the Council, in the opinion of the Chairman who has the absolute authority to control that meeting, misconducts himself/herself by:

- persistently disregarding the ruling of the Chairman;
- behaving irregularly, improperly, or offensively; or
- wilfully obstructing the business of the Council

the Chairman or any other member may move "That the Member named be not further heard" and the motion, if seconded, shall be put and determined without discussion.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

18.2 If the Member named continues his/her misconduct after the motion under the foregoing paragraph has been carried, the Chairman may:-

EITHER move "That the Member named do leave the meeting" (in which case the motion shall be put and determined without seconding or discussion):

OR adjourn the meeting of the Council for such period as the Chairman exercising discretion shall consider expedient.

18.3 In the event of general disturbance, which in the opinion of the Chairman renders the due and orderly despatch of business impossible, the Chairman in addition to any other power vested in him/her may, without putting the question to the meeting, adjourn the meeting of the Council for such period, as he/she shall consider expedient.

#### **19. Disturbance by Members of the Public**

If a member of the public interrupts the proceedings at any meeting the Chairman shall warn him/her. If they continue the interruption, the Chairman may order their removal from the Council Chamber. In case of general disturbance in any part of the chamber open to the public, the Chairman may order that part to be cleared. The Chairman has the absolute authority to control the meetings and members of the public.

#### **20. Rescission of Previous Resolution**

20.1 Subject to Rule 20.3 hereof,

- no motion to rescind (or which would have the effect, however worded, of negating) any resolution passed within the preceding six months; and
- no motion or amendment to the same effect as one which has been rejected within the preceding six months,

shall be proposed unless notice thereof has been given in pursuance of Rule 11 signed by at least one third of the members of the Council.

20.2 When any such motion or amendment referred to in Rule 20.1 (above) has been dealt with by the Council, it shall not be open to any Member to propose a similar motion within a further period of six months.

20.3 This Rule 20 shall not apply to motions moved in pursuance of a recommendation of a committee.

## **PART 4 – Council and Committee Procedure Rules**

### **Council Meetings**

#### **21. Voting**

- 21.1 The Chairman shall ascertain the numbers voting for, against or abstaining from the vote and his/her declaration as to the result shall be conclusive.
- 21.2 Where any Member proposes that a recorded vote be taken on any motion, a recorded vote shall be taken if at least one fifth of the Members present and entitled to vote shall be in favour.

#### **22. Recording of Votes (This rule may not be suspended by virtue of Article 16)**

- 22.1 Where immediately after a vote is taken (other than a recorded vote) and any Member so requires, the minutes of the proceedings of that meeting shall record whether that Member voted for or against the question, or abstained from voting.
- 22.2 Immediately after any vote on the budget calculation or precept is taken at a budget decision meeting of the council there must be recorded in the minutes of the proceedings of that meeting the names of persons who cast a vote for the decision or against the decision or who abstained from voting.

## **PART 4 – Council and Committee Procedure Rules Executive Committee**

### **23. Proceedings of the Executive Committee**

#### **23.1 Procedure Rules apply**

Except as otherwise provided in these rules, all Procedure Rules applicable to Committees shall apply to the Executive Committee.

#### **23.2 Attendance of Members at Executive Committee**

- a) No substitute members shall be permitted at the Executive Committee.
- b) Members may attend and speak at Executive Committee meetings, with the prior consent of the Chairman.

#### **23.3 Decision making at Executive Committee**

- a) Any matter delegated to the Executive Committee shall be determined by that Committee collectively or by a Sub-Committee of the Executive Committee or any officer to whom the matter is further delegated, but no decision shall be taken by the Leader, Portfolio Holder, or any other Member acting alone.
- b) The quorum of the Executive Committee shall be 3 Members.

#### **23.4 Working Parties and panels**

- a) The Executive Committee may not co-opt any other person to be a Member of that Committee although they may invite other Members or persons to attend its meetings, as it considers appropriate.

## **PART 4 – Council and Committee Procedure Rules**

### **Executive Committee**

#### **24. Call-in procedure**

- 24.1 Democratic Services shall make available to all Members of Council:
- a) a copy of the agenda for each meeting of the Executive Committee and any supporting reports in respect of all matters for determination (including monitoring reports) at least 5 clear working days before the date of that meeting; and
  - b) the minutes of the Executive Committee or Planning Committee meetings as soon as possible (usually within 2 working days) after each meeting.
- 24.2 Decisions of the Executive Committee shall not have effect or be implemented for a period of 5 working days after the date of the meeting (not counting the day of the meeting and excluding weekends and Bank Holidays).
- 24.3 If, during the said period of 5 working days, any 5 Members of Council (collectively or individually) notify the Monitoring Officer in writing (including by email) that they wish a decision (other than in respect of referred planning applications) to be called in for scrutiny, the Monitoring Officer, in consultation with the Chairman of Council and the Chairman of the Overview & Scrutiny Committee, will check the applicability of the call-in request against the criteria set out in Rule 24.5 Protocol for Use of Call-in Procedure. Any disagreement on the appropriateness of a call-in request is to be reported to Council.
- 24.4 If a call-in is applicable then:
- a) unless the matter is first determined by Council, it shall stand referred to the Overview and Scrutiny Committee for consideration and recommendation;
  - b) the recommendations of the Overview and Scrutiny Committee shall be reported to the Executive Committee as appropriate; and
  - c) no action shall be taken to give effect to a decision of the Executive Committee which has been the subject of “call-in” until either:
    - (i) the Overview and Scrutiny Committee has signified its concurrence with the decision; or
    - (ii) the matter has been determined by Council.

## **PART 4 – Council and Committee Procedure Rules**

### **Executive Committee**

#### 24.5 Protocol for Use of Call-In Procedure

Rule 24 of the Council’s rules of procedure provides for decisions of the Executive Committee to be called in for scrutiny. This protocol sets out the criteria against which the Council expects any request for call-in to be judged. The call-in procedure applies to all decisions made by the Executive Committee.

The Council does **NOT** expect Members to call in an Executive Committee decision **UNLESS** there is demonstrable evidence to support the view that one or more of the following circumstances applies:

- a) the decision appears, having regard to advice from the Monitoring Officer, to be contrary to the Budget or one of the policy framework plans or strategies;
- b) the decision appears to be inconsistent with any other form of policy approved by Council or the Executive Committee;
- c) the decision appears to be inconsistent with recommendations previously made by the Overview & Scrutiny Committee (and accepted by Council or the Executive);
- d) the Executive Committee appears to have overlooked some relevant consideration in arriving at its decision;
- e) the Executive Committee appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision;
- f) the decision in question has already generated particular controversy amongst those likely to be affected by it or there is evidence that it is likely so to do;
- g) the decision appears to be particularly “novel” and therefore likely to set an important precedent; or
- h) the decision appears to give rise to significant legal, financial or propriety issues.

In addition, the Council expects Members to satisfy themselves, before deciding to call in a particular Executive Committee decision that –

- the decision in question is more than **“a day to day management or operational decision of the type normally taken by officers”** – such decisions should **not** be called in; and
- the delay which will ensue, as a consequence of calling in the decision in question, is unlikely to cause prejudice to the interests of the Council or third parties.

## **PART 4 – Council and Committee Procedure Rules Committees**

### **25. Appointment of Committees**

No person shall be appointed to a committee so as to hold office later than the next annual meeting of the Council EXCEPT those Members elected as Chairman or Vice-Chairman of committees (or sub-committees) who shall, provided they retain Council membership, hold office until their successors are appointed.

### **26. Chairmen of Committees**

At the meeting of Annual Council, the Chairman of each Committee (and sub-committee) will be appointed for the year. A Vice-Chairman may be appointed if appropriate.

### **27. Special Meetings of Committees**

A special meeting of any committee shall be summoned:

- at the request of the Chairman of that committee;
- at the request of the Chairman of Council;
- upon receipt by the Monitoring Officer of a written request signed by not less than a quarter (minimum four) of the members of the committee; or
- by the Monitoring Officer at any time in the event of an emergency or special circumstances.

## **PART 4 – Council and Committee Procedure Rules**

### **General Procedure including Public Participation**

#### **28. Substitute Members**

- 28.1 Except as provided in Rule 28.7 (below), where any Member of a Committee, Sub-committee, Working Party, Group or Panel is unable to attend a meeting thereof, he/she may nominate any other member of Council to attend as a substitute member at that meeting PROVIDED that:
- a) the substitute Member is a Member of the same political group (or no group, as the case may be) as the Member unable to attend the meeting;
  - b) no Member of the Executive Committee shall act as a substitute Member at any meeting of the Overview and Scrutiny Committee; and
  - c) Notice of Substitution is given prior to the start of the meeting to the Democratic Services Officer attending the meeting.
- 28.2 The Agenda for each Committee, Sub-Committee, Working Party, Group and Panel shall contain as its first item "Apologies for Absence and Notification of Substitutes" and the Democratic Services Officer shall then report notifications given.
- 28.3 If a Member appointed to act as a substitute joins a meeting after consideration of the first (above) item, he/she shall advise the Democratic Services Officer attending the meeting upon arrival and the Chairman will interrupt proceedings, if necessary, in order that notice of the substitution can be given to the meeting.
- 28.4 A substitute Member may attend, speak, and vote as a Member of the Committee, Sub-Committee, Group or Working Party at the meeting for which he/she is a substitute Member.
- 28.5 A Member of a Committee, Sub-Committee, Group or Working Party who attends the meeting after his/her appointed substitute has been declared, may only observe proceedings and may not vote on any matter.
- 28.6 An adjournment of a meeting to a different day shall be considered a different meeting for the purpose of this Procedure Rule in cases where the appointed Member is able then to attend.

## **PART 4 – Council and Committee Procedure Rules**

### **General Procedure including Public Participation**

28.7 This Rule shall not apply to meetings of:

- Licensing and Appeals Committee and Licensing and Appeals Sub Committee;
- Audit and Standards Committee;
- Area Planning Committees;
- Executive Committee;
- Such other committees as Council may from time to time decide.

#### **29. Public Participation at meetings**

Provision shall be made on the agenda of the following meetings for members of the public to participate at the meeting;

- a) each Annual and ordinary meeting of the Council and, at the Chairman's absolute discretion, Extraordinary meeting of Council.
- b) Executive Committee
- c) Audit and Standards Committee
- d) Overview and Scrutiny Committee

A maximum of thirty minutes will normally be made available for such participation. Individual contributions will be limited to a maximum of five minutes and an individual member of the public will be limited to one contribution per meeting. The actual time spent may in the light of circumstances prevailing at the meeting be made shorter or longer at the Chairman's absolute discretion.

A member of the public for the purposes of this procedure rule shall not include:

- a) Any member of the Council in relation to his/her employment.
- b) Any representative of an employee or group of such employees
- c) Any person in a contractual relationship with the council in relation to any matter connected with that contract
- d) Any person who is an applicant for (or objector to) a consent, approval, permission, licence or similar decision given by Council under statute
- e) Any councillor or representative of a councillor who is subject to investigation under the provisions of the councillor code of conduct

A member of the public speaking for no more than five minutes may: present a relevant petition and explain its content or purpose; ask a question; or make a statement.

## **PART 4 – Council and Committee Procedure Rules**

### **General Procedure including Public Participation**

Any topic related to an agenda item can be raised at meetings of the Executive Committee, Audit and Standards Committee, whilst any issue that affects the general economic, social or environmental well being or health of the community can be raised at each Annual and ordinary meeting of the Council and meetings of Overview and Scrutiny Committee.

A councillor may, on behalf of the public or in his/her own right present a relevant petition.

Any member of the public wishing to participate in accordance with this procedure rule shall notify the Monitoring Officer in writing or by electronic mail by no later than 9.00 am on the working day before the meeting at which he/she intends to participate, of his/her intention to participate and his/her name and address and indicate the nature of the proposed participation (including an outline of the main points to be made or asked). In exceptional circumstances, and at the absolute discretion of the chairman he/she may permit a contribution at the meeting without notice.

The Monitoring Officer may reject a request for public participation, and the Chairman may intervene in any contribution if in his/her opinion it:

- a) Is not about a matter for which the Council has responsibility or which affects the District
- b) Is defamatory, frivolous or offensive
- c) Is substantially the same as a question that has been put to the Council or Committee in the past six months
- d) Requires or involves the disclosure of “exempt information” or “confidential information”

This procedure rule does not apply to meetings of Area Planning Committees for which a separate public speaking scheme applies, see **Public Participation at Area Planning Committees** at Part 4 of this Constitution.

## **PART 4 – Council and Committee Procedure Rules**

### **General Procedure including Public Participation**

#### **30. Right of Members to Attend Meetings and Request Items for Inclusion on Agenda**

Subject to legal requirements and the Council's code of conduct with regard to interests:

- a) Any Member may attend any meetings of Committees, Sub-committees, Panels or Working Parties of which they are not a Member and, with the consent of the Chairman, may speak but not vote on any item listed on the agenda for that meeting.
- b) Portfolio Holders may be invited to attend the Overview and Scrutiny Committee to assist in its deliberations, provided that the independent nature of the Committee is not compromised, and similarly with Scrutiny Task & Finish Groups.
- c) Any member of Council may ask for an item of business (including Councillor Calls for Action) to be included on the agenda for any committee provided the matter falls within the terms of reference of that committee and:
  - The item shall be discussed at the next ordinary meeting of the relevant committee
  - The member, if not already a member of that committee, shall be entitled to speak to the item but not vote and the committee shall have regard to the member's representations in determining what action (if any) to take
  - The member shall be informed of the committee's decision
  - Councillor Calls for Action in respect of any crime and disorder matters shall be referred to Overview & Scrutiny Committee as the designated Crime & Disorder Committee.
- d) Exclusion of the public and press from a meeting for the consideration of confidential or exempt information shall not apply to any member.

## PART 4 – Council and Committee Procedure Rules General Procedure including Public Participation

### 31. Procedure Rules to Apply to Committees and Sub-committees

The Rules referred to in column 1 below shall apply to committees (and sub-committees) as they apply to meetings of the Council, subject to:

- a) the exclusions and modifications mentioned in column 2 below; and
- b) such other modifications as the context may require.

<b>Column 1</b> <b>Procedure Rules applying to committees</b>	<b>Column 2</b> <b>Exclusions and modifications</b>
Rule 7 (Chairman of Council Meeting)	
Rule 8 (Quorum of Council)	Minimum 3 members or one quarter of the total (whichever is the greater) The quorum of the Southern Area Planning Committee will be 6 members and the quorum of the Northern Area Planning Committee will be 4 members
Rule 10 (Order of Business)	Exclude paragraph 10.1(h) – Leader’s questions
Rule 11 (Notices of Motion)	Every motion shall be relevant to a matter included on the agenda
Rule 14 (Minutes)	
Rule 15 (Signing of Minutes)	
Rule 16 (Rules of debate)	Exclude paragraphs: 16.2 (a) - members to stand 16.2 (c) - time limit on speeches 16.2 (e) - members to only speak once
Rule 17 (Motions Affecting Persons Employed by the Council)	
Rule 18 (Disorderly Conduct)	
Rule 19 (Disturbance by Members of the Public)	
Rule 21 (Voting)	
Rule 22 (Recording of Votes)	

## **PART 4 – Council and Committee Procedure Rules**

### **Public Participation at Area Planning Committees**

The Council has established a separate scheme of public participation to allow interested parties to comment at meetings which consider and determine those planning applications and development control matters, including Tree Preservation Order objections which are not delegated to officers. This includes consideration at Planning Committee and Full Council where necessary.

This scheme, which is separate to the public participation scheme in place for Council meetings and some other committees makes specific provision for applicants/ supporters, objectors and the relevant Parish Council or Town Council to make their views known to councillors before they determine the applications before them at that meeting.

Members of the public are also entitled to attend meetings of the Committees to observe the decision making process without registering to speak.

This scheme does not allow members of the public to participate in the debate by the committee and they are reminded not to interrupt the proceedings of the committee and to observe the rules of good behaviour at all times. Whilst councillors are elected to represent the views of their local communities they are also required by law to take into account the law and planning guidance. They are also required by law not to predetermine their views on a planning application. This means that they are not allowed to commit themselves to a decision before hearing all of the evidence or debate at the meeting and it would be inappropriate for them to be asked to express a voting intention in advance of the meeting.

Most applications which come before councillors are determined at one of two Area Planning Committees which are split on a geographical basis, one covering the North of the District and one covering the South of the District. However under the Council's Constitution certain area development management committee decisions on applications can also be referred for determination very occasionally to Council.

For the avoidance of doubt, this public participation scheme covers planning applications and development control matters, including Tree Preservation Order objections only which are determined at an Area Planning Committee, or Full Council.

The alternative public participation scheme does not apply to meetings of the Area Planning Committee, or Full Council in relation to the consideration of planning and planning related applications.

Area Planning Committee meetings take place monthly mainly on a Wednesday evening. Full details of dates, times and venues of the meetings are published on the Council's website. Details of items on the agenda of each meeting (including all written comments submitted in advance of publication of the agenda) are published on the Tuesday of the week before the meeting and are available on the website.

If you wish to speak as a registered objector or as the applicant/agent in support of an application at a meeting you may register to do so **as soon as the agenda has been published**. You can only do so by telephoning Democratic Services on 01684 862416/862273 or e-mail [public.speaking@malvern hills.gov.uk](mailto:public.speaking@malvern hills.gov.uk). Registration as an objector is on a first come, first served basis. It is possible for more than one objector to share the time available but this must be agreed between the objectors in advance of registration. Registration to speak will close at 12 noon on the day before the meeting.

Registered speakers are reminded that a statement of fact or opinion will have the greatest impact if they are brief and to the point and focus on relevant planning issues or material considerations. They will not be allowed to use additional slides or overhead transparencies but may refer to the application plans on display at the meeting. Photographs or annotated plans can only be taken into account if provided to the planning case officer at least 48 hours before the start of the meeting.

All representatives of Town and Parish Councils must be authorised to represent the Council's views in advance of the meeting and an authorised representative of the affected Town or Parish Council may attend and speak if registered to do so beforehand.

Proceedings of the meeting or part of the meeting may be recorded and anyone wishing to do so should also notify the Democratic Services Officer in advance of the meeting. S(he) will be able to advise on the arrangements that will be necessary.

All members of the public present must be seated in an allocated area of the meeting room. When the meeting reaches the point at which the relevant application is to be considered the following procedure will apply:

- The Chairman of the Committee will ask a planning officer to introduce the agenda item.
- The Chairman of the Committee will invite the authorised representative (if there is one present) of the affected Town or Parish Council to move to a designated seat and to speak for a maximum of three minutes.
- The Chairman of the Committee will invite a registered objector (or objectors) to move to a designated seat and to speak for a maximum of three minutes in total.
- The Chairman of the Committee will invite the applicant or agent to move to a designated seat and to speak for a maximum of three minutes.
- The Chairman of the Committee will invite any member who has declared an interest and the intention to leave the room during the debate to move to a designated seat and to speak for a maximum of three minutes, if they wish to do so.
- The Chairman of the Committee will invite Planning Officer(s) to add any extra comments
- The Chairman of the Committee will invite the local councillor(s) to speak for a maximum of five minutes.
- The Chairman of the Committee will invite the committee members to debate the application and invite the Planning Officers and/or consultees to answer questions or provide advice/ clarification as necessary, before bringing the debate to a close with a call for a proposer and seconder of a motion and then a vote on the matter.
- If recommended by the Head of Planning and Infrastructure, it will be at the Chairman's discretion, prior to the meeting of either Area Planning Committee to adopt bespoke

arrangements for public speaking on a specific agenda item to increase the number of public speaking slots

If the application is deferred the same public speaking arrangements and procedures will apply at the next meeting at which the application is discussed.

## **PART 4 – Access to Information Rights and Rights to Record Meetings**

### **1. Scope**

These rules apply to all meetings of the Council, and all committees and sub-committees (together called ‘relevant meetings’). They do not apply to meetings of panels or working parties.

### **2. Additional Rights to Information**

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

### **3. Rights to Attend Meetings**

Members of the public may attend all relevant meetings subject only to the exceptions in these rules.

In addition the Openness of Local Government Bodies Regulations 2014 permits members of the public to record and report on public meetings of the Council. Any person attending such a meeting is entitled to report on that meeting using any communication method that they choose e.g. the internet to publish or post or share their report.

The report can be published or disseminated during the meeting or afterwards. Reporting means; filming, photographing, or audio recording or using any other means to allow a person to hear the meeting (whether in real time or later). It also includes providing commentary of the meeting (orally or in writing).

### **4. Notices of Meeting**

The council will give at least five clear days notice of any relevant meeting on the Council’s website.

### **5. Access to Agenda and Reports before the Meeting**

Copies of the agenda and reports open to the public will be made available to view on the Council website at least five clear days before the meeting.

If an item is added to the agenda after the summons has been sent out, it will be made available to the public as soon as the report is completed and sent to councillors

Any item which needs to be tabled at a meeting for reasons of urgency (with the permission of the Chairman of the meeting), will also be made available for public inspection, and will be circulated to the press and public present at that meeting.

## **PART 4 – Access to Information Rights and Rights to Record Meetings**

### **6. Supply of Copies**

The Council will supply copies of:

- a) any agenda and reports which are open to public inspection;
- b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- c) any other documents supplied in connection with an item, if the Proper Officer thinks fit

to any person on payment of a charge for postage and any other costs.

These documents will be available for downloading over the internet free of charge

### **7. Access to Minutes after the Meeting**

The Council will make available copies of the following for six years after a relevant meeting:

- a) the minutes of the meeting excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- c) the agenda for the meeting; and
- d) reports relating to items when the meeting was open to the public.

### **8. Background Papers**

#### **8.1 List of background papers**

The Proper Officer will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- a) disclose any facts or matters on which the report or an important part of the report is based; and
- b) which have been relied on to a material extent in preparing the report

but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10 below).

#### **8.2 Public inspection of background papers**

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

## **PART 4 – Access to Information Rights and Rights to Record Meetings**

### **9. Summary of the Rights of Members of the Public**

A written summary of the rights of members of the public to attend meetings and to inspect and copy documents will be kept and be available to the public at the Council's main offices.

### **10. Exclusion of Access by the Public to Meetings**

#### **10.1 Confidential information – requirement to exclude public**

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

#### **10.2 Meaning of confidential information**

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

#### **10.3 Exempt information – discretion to exclude public**

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

#### **10.4 Meaning of exempt information**

Exempt information means information falling within the following 7 categories (subject to any condition):

All of these categories are subject to a 'public interest test' – information is only exempt if it comes within one of these categories and the public interest in favour of maintaining that exemption outweighs the public interest in disclosing the information. The decision on whether the public interest test is satisfied rests with:

- a) in relation to reports and whether they should be treated as exempt in advance of the meeting, the 'proper officer'; and
- b) the Committee itself when deciding whether to exclude the press and public from the meeting.

## PART 4 – Access to Information Rights and Rights to Record Meetings

Category	Condition
1. Information relating to any individual.	Information is not exempt information unless it relates to and is recognisable as referring to a particular individual.
2. Information which is likely to reveal the identity of an individual.	Information is not exempt information unless it relates to and is recognisable as referring to a particular individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	Information is not exempt if it must be registered under various statutes, such as the Companies Act or Charities Act. To be exempt the information must relate to a particular third person who must be identifiable.
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.	Information is only exempt if and for so long as its disclosure to the public would prejudice the authority in those or any other consultations or negotiations in connection with a labour relations matter “Labour relations matters” are as specified in paragraphs (a) to (g) of section 29(1) of the Trade Unions and Labour Relations Act 1974, i.e. matters which may be the subject of a trade dispute.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	
6. Information which reveals that the authority proposes – (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.	Information is exempt only if and so long as disclosure to the public might afford an opportunity to a person affected by the notice, order, or direction to defeat the purpose or one of the purposes for which the notice, order or direction is to be given or made.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation, or prosecution of crime.	

## **PART 4 – Access to Information Rights and Rights to Record Meetings**

Information falling within any of categories 1-7 is not exempt by virtue of that category if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

### **11. Exclusion of Access by the Public to Reports**

If the Proper Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 10 of these Rules, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

### **12. Right to Record Meetings**

The Openness of Local Government Bodies Regulations 2014 permits members of the public to record and report on public meetings of the Council. Any person attending such a meeting is entitled to report on that meeting using any communication method that they choose e.g. the internet to publish or post or share their report.

The report can be published or disseminated during the meeting or afterwards. Reporting means: filming; photography; audio equipment or using any other means to allow a person to hear the meeting (whether real time or later). It also includes providing commentary of the meeting (orally or in writing).

## **PART 4 – Officer Employment Procedure Rules**

### **1. Recruitment and appointment (Declarations)**

- 1.1 The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons.
- 1.2 No candidate so related to a councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

### **2. Seeking support for appointment**

- 2.1 The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- 2.2 No councillor will seek support for any person for any appointment with the Council.

### **3. Recruitment of Head of the Paid Service and Heads of Service**

- 3.1 Where the Council proposes to appoint a Head of Service and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:
  - (a) draw up a statement specifying:
    - (i) the duties of the officer concerned; and
    - (ii) any qualifications or qualities to be sought in the person to be appointed;
  - (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
  - (c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.

### **4. Appointment of Head of the Paid Service**

- 4.1 Council must approve the appointment of the Head of Paid Service, following the recommendation of such an appointment by a Committee or Sub-Committee, before an offer of appointment is made to him/her.

## **PART 4 – Officer Employment Procedure Rules**

### **5. Appointment of Heads of Service**

5.1 A Committee of the Council will appoint Heads of Service.

5.2 Heads of Service are those posts designated as such in Article 12.1 of the Council's Constitution

### **6. Other Appointments**

#### **6.1 Officers Below Head of Service**

Appointment of officers below Head of Service (other than assistants to political groups) is the responsibility of the Head of the Paid Service or his/her nominee, and may not be made by councillors.

#### **6.2 Assistants to Political Groups**

Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

### **7. Disciplinary Action**

#### **7.1 Head of the Paid Service, Monitoring Officer and Chief Finance Officer**

The Head of the Paid Service, Monitoring Officer and Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.

#### **7.2 Independent persons.**

No decision to dismiss may be taken in respect of any of those officers except in accordance with a recommendation of a Council committee fully constituted in accordance with the Local Authorities (Standing Orders) England (Amendment) Regulations 2015

#### **7.3 Other staff**

Councillors will not be involved in the disciplinary action against any officer below Head of Service except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to members in respect of disciplinary action.

## **PART 4 – Officer Employment Procedure Rules**

### **8. Dismissal**

- 8.1 Councillors will not be involved in the dismissal of any officer below Head of Service except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of dismissals.
- 8.2 No notice of dismissal shall be given to the Head of the Paid Service unless the dismissal is first approved by a meeting of full Council.

# **MALVERN HILLS DISTRICT COUNCIL**

## **Financial Rules**

1. Status of Financial Rules
2. Financial Regulation: Financial Management & Control
3. Financial Regulation: Financial Planning
4. Financial Regulation: Audit & Control of Resources
5. Financial Regulation: System & Procedures
6. Financial Regulation: External Arrangements

### **Appendices**

- Appendix A Financial Management and Control
- Appendix B Financial Planning
- Appendix C Risk Management and Control of Resources
- Appendix D System and Procedures
- Appendix E External Arrangements

Reviewed: April 2019

## **1. STATUS OF FINANCIAL RULES**

- 1.1 Malvern Hills District Councils (MHDC) Financial Rules provide the framework for managing the Council's financial affairs. They apply to every member and officer of MHDC and anyone acting on its behalf.
- 1.2 The regulations identify the financial responsibilities of Council, Executive Committee, overview and scrutiny members, the head of paid service, the Monitoring Officer, the Section 151 Officer and other Heads of Service. Special responsibilities are allocated to the Monitoring Officer and the Section 151 Officer. Executive Committee and Senior Management Team (SMT) should maintain a written record where decision making has been delegated to members of staff, including seconded staff.
- 1.3 All members and staff have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, is properly authorised, provides value for money and achieves best value.
- 1.4 The Deputy Chief Executive as the Section 151 Officer is responsible for maintaining a continuous review of the financial regulations and submitting any additions or changes necessary to Council for approval. The Section 151 Officer is also responsible for reporting, where appropriate, breaches of the Financial Regulations to Council and/or to Executive Committee, and to the Scrutiny Committee or its equivalent.
- 1.5 To underpin the Financial Rules, the Section 151 Officer has responsibility for issuing in a timely manner, detailed financial management standards, advice and guidance that members, officers and others acting on behalf of MHDC are required to follow. The Section 151 Officer is also responsible for ensuring compliance with financial rules.
- 1.6 Such financial management standards, advice and guidance will be reviewed, and amended as necessary, by the Section 151 Officer.
- 1.7 Heads of Service are responsible for ensuring that all staff in their departments are aware of the existence and content of the Financial Rules and other internal regulatory documents and that they comply with them.

## **2. FINANCIAL REGULATION: FINANCIAL MANAGEMENT & CONTROL**

### **Introduction**

- 2.1 Financial management covers all financial accountabilities in relation to the running of MHDC. The Section 151 Officer is responsible for the compilation of policy statements on financial matters as they may determine which shall supplement these Financial Rules. These policies provide officers and Members with greater detail of the financial controls to be followed concerning revenue and capital expenditure and general financial matters. Policy Statements approved by Executive Committee and Council shall have the same effect and standing as Financial Rules and shall be observed by all officers of MHDC.

### **Council**

- 2.2 Council is responsible for adopting the Constitution and Members' Code of Conduct and for approving the Policy Framework and Budget within which Executive Committee operates. Council is also responsible for approving and monitoring compliance with MHDC's overall framework of accountability and control as set out in the Constitution. Council is also responsible for monitoring compliance with the agreed policy and related Executive decisions.
- 2.3 Council is responsible for approving procedures for recording and reporting decisions taken. This includes decisions taken by Executive Committee and decisions taken by Council and its committees. Details of who has delegated responsibility for decisions are set out in the Constitution.

### **Executive Committee**

- 2.4 Executive Committee is responsible for proposing the Budget to Council, and for discharging executive functions in accordance with the Budget.
- 2.5 Executive decisions can be delegated to a sub committee, a portfolio holder, an officer or a joint committee.
- 2.6 Executive Committee is responsible for establishing procedures to ensure that individual Executive members consult with relevant officers before taking a decision within their delegated authority. In doing so, the individual member must take account of legal and financial liabilities and risk management issues that may arise from the decision.

### **Committees of the Council**

#### Overview and Scrutiny Committees

- 2.7 The overview and scrutiny process is responsible for scrutinising Executive decisions before or after they have been implemented and for holding Executive Committee to account. Overview and Scrutiny is also responsible for making recommendations on future policy options and for reviewing the general policy and service delivery of MHDC.

#### Audit and Standards Committee

- 2.8 The Audit and Standards Committee is established by Council and is responsible for promoting and maintaining high standards of conduct amongst Councillors. In particular, it is responsible for advising Council on the adoption and revision of the Members' Code of Conduct, and for monitoring the operation of the code.

#### Other Regulatory Committees

- 2.9 Various non executive functions are exercised through politically balanced regulatory committees under powers delegated by Council. The regulatory committees report to Council.

### **The Statutory Officers**

#### Head of Paid Service (and Chief Executive)

- 2.10 The Head of Paid Service is responsible for the corporate and overall strategic management of MHDC. They must report to and provide information for Executive Committee, Council, overview and scrutiny and other committees. They are responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation. The Head of Paid Service is also responsible, together with the Monitoring Officer, for the system of record keeping in relation to executive and council decisions. The Head of Paid Service is responsible for the manner in which the discharge by MHDC of their functions is coordinated and for the organisation, appointment and proper management of MHDC staff.

#### Monitoring Officer

- 2.11 The Monitoring Officer is responsible for promoting and maintaining high standards of conduct and therefore provides support to the standards committee. The Monitoring Officer is also responsible for reporting any actual or potential breaches of the law or maladministration to Council and/or to Executive Committee, and for ensuring that procedures for recording and reporting Executive Decisions are operating effectively.
- 2.12 The Monitoring Officer must ensure that Executive decisions and the reasons for them are made public. They must also ensure that Council members are aware of decisions made by Executive Committee and of those made by officers who have delegated Executive responsibility.
- 2.13 The Monitoring Officer is responsible for advising all Councillors and officers about who has authority to take a particular decision.
- 2.14 The Monitoring Officer is responsible for advising Executive Committee or Council about whether a decision is likely to be considered contrary to or not wholly in accordance with the Policy Framework.
- 2.15 The Monitoring Officer (together with the Section 151 Officer) is responsible for advising Executive Committee or Council about whether a decision is likely to be considered contrary to or not wholly in accordance with the Budget. Actions that may be contrary to or not wholly in accordance with the Budget include:

- initiating a new scheme or policy for which no budgetary provision has been made in the Budget
  - committing expenditure in future years above the Budget level
  - incurring Budget transfers above virement limits
  - causing the total expenditure financed from Council tax, grants and corporately held reserves to increase,
- 2.16 The Monitoring Officer is responsible for maintaining an up-to-date copy of the Constitution.

#### Section 151 Officer

- 2.17 The Deputy Chief Executive as Section 151 Officer has statutory duties in relation to the financial administration and stewardship of MHDC. This statutory responsibility cannot be overridden. These arise from:
- Section 151 of the Local Government Act 1972
  - The Local Government Finance Act 1988
  - The Local Government and Housing Act 1989
  - The Accounts and Audit Regulations 2003
  - The Local Authority (Capital Finance & Accounting) (England) Regulations 2003
- 2.18 The Section 151 Officer is responsible for:
- the proper administration of MHDC's financial affairs
  - setting and monitoring compliance with financial management standards
  - advising on the corporate financial position and on the key financial controls necessary to secure sound financial management
  - providing timely financial information
  - preparing the revenue Budget and capital programme
  - treasury management
  - all arrangements with MHDC's bankers
- 2.19 Section 114 of the Local Government Finance Act 1988 requires the Section 151 Officer to report to Council, Executive Committee and the external auditor if the Council or one of its officers:
- has made, or is about to make, a decision which involves incurring unlawful expenditure
  - has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to MHDC
  - is about to make an unlawful entry in MHDC's accounts.
- 2.20 Section 114 of the 1988 Act also requires:
- the Section 151 Officer to nominate a properly qualified member of staff to deputise should they be unable to perform the duties under section 114 personally
  - the authority to provide the Section 151 Officer with sufficient staff, accommodation and other resources, including legal advice where this is necessary to carry out the duties under section 114.

#### Heads of Service

- 2.21 Heads of Service are responsible for:

- ensuring that Executive members are advised of the financial implications of all proposals and that the financial implications have been agreed by the Section 151 Officer
  - signing contracts (subject to the Contracts Rules) on behalf of MHDC.
- 2.22 It is the responsibility of Heads of Service to consult with the Section 151 Officer and seek approval on any matter liable to affect MHDC's finances materially, before any commitments are incurred.

**Other financial accountabilities in relation to:**

Virement

- 2.23 Council is responsible for agreeing procedures for virement of expenditure between Budget headings. Executive Committee is responsible for MHDC's virement policy statement and strategy for approval by Council and for reviewing compliance with the virement policy.
- 2.24 Heads of Service are responsible for agreeing in-year virements within delegated limits, with the agreement of the Section 151 Officer. All requests for virement are subject to the validation of the Section 151 Officer in accordance with the virement policy.

Accounting policies

- 2.25 The Section 151 Officer is responsible for setting accounting policies and ensuring that they are applied consistently, in accordance with relevant guidance and regulations.

Accounting records and returns

- 2.26 The Section 151 Officer is responsible for determining the accounting procedures and records for MHDC, in accordance with relevant guidance and regulations.

The annual statement of accounts

- 2.27 The Section 151 Officer is responsible for ensuring that the annual statement of accounts is prepared in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice (SORP) (CIPFA/LASAAC). Council is responsible for approving the annual statement of accounts.

### **3. FINANCIAL REGULATION: FINANCIAL PLANNING**

#### **Introduction**

- 3.1 The key elements of financial planning are:
- Medium Term Financial Plan (MTFP) – Revenue and Capital
  - Revenue Budget
  - Capital Programme
  - Cashflow planning and balances management
  - Prudential Indicators for forward capital planning

#### **Policy Framework**

- 3.2 Council is responsible for approving the Council Plan and Budget, which will be proposed by Executive Committee
- 3.3 Council is also responsible for approving procedures for agreeing variations to approved Budgets, plans and strategies.
- 3.4 Council is responsible for setting the level at which Executive Committee may reallocate Budget funds from one service to another. Executive Committee is responsible for taking in year decisions on resources and priorities in order to deliver the Budget and Council Plan within the financial limits set by Council.
- 3.5 Council is responsible for setting prudential indicators when it approves the revenue budget for Council Tax setting purposes.

#### **Preparation of the MTFP**

- 3.6 The Section 151 officer is responsible for proposing the annual MTFP prepared on a three year basis to Executive Committee for consideration before its submission to Council for approval.
- 3.7 Executive Committee is responsible for issuing guidance on the content of the annual Budget, taking account of the Community Strategy, Corporate Plan, Key Decisions and Statutory Duties and Requirements and the approved medium term capital programme.
- 3.8 The Section 151 Officer is responsible for developing and maintaining a resource allocation process that ensures due consideration of the Council's Priorities.

#### **Budgeting**

- 3.9 The draft budget should integrate capital and revenue planning and should include allocation to different services and projects, proposed taxation levels, calculated mandatory prudential indicators; contingencies, and use of reserves.
- 3.10 It is the responsibility of Heads of Service to prepare annual service estimates and submit these to the Section 151 Officer for subsequent validation, consolidation and presentation to Executive Committee.
- 3.11 The Section 151 Officer is responsible for ensuring that an annual revenue budget is prepared for consideration by Executive Committee, before submission to Council as part of the process leading to the setting of the Council Tax. Council may amend the Budget or ask Executive Committee to reconsider it before approving it.

- 3.12 The Section 151 Officer issues guidelines on budget preparation to members and Heads of Service. The guidelines will take account of:
- legal requirements (in conjunction, where appropriate, with the Monitoring Officer)
  - the MTFP
  - available resources (including the use of internal reserves and provisions)
  - spending pressures
  - best value and other relevant government guidelines
  - other internal policy documents

### **Revenue budget monitoring and control**

- 3.13 The Section 151 Officer is responsible for providing appropriate financial information to enable budgets to be monitored effectively. Expenditure will be monitored against budget and the overall position reported to Executive Committee on a regular basis. The Chief Executive, Heads of Service and the Section 151 Officer are responsible for ensuring that budgetary control is properly exercised and for taking appropriate action to ensure that budgets are not exceeded.
- 3.14 It is the responsibility of budget managers to control income and expenditure within their area and to monitor performance, through MHDC's budget monitoring process approved by the Section 151 Officer. They should also take any action necessary to avoid exceeding their budget allocation and alert the Section 151 Officer to any problems.

### **Preparation and monitoring of the capital programme and prudential indicators**

- 3.15 The Section 151 Officer is responsible for ensuring that the capital programme is prepared on an annual basis for consideration by Executive Committee before submission to Council. All schemes to be included in the Capital Programme must have been evaluated and approved by the Section 151 Officer. The Section 151 Officer is responsible for assessing potential capital programme resources for the ensuing three financial years and preparing a rolling programme of expenditure for approval by Executive Committee.
- 3.16 The Section 151 Officer will carry out monthly capital budget monitoring and consider the effect of any changes to the programme on the prudential indicators. Any such changes will be reported as soon as possible to Executive Committee and Council.

### **Maintenance of reserves and provisions**

- 3.17 It is the Section 151 Officer's responsibility to advise Executive Committee and/or Council on prudent levels of reserves and provisions for MHDC, in accordance with CIPFA guidelines.

## **4. FINANCIAL REGULATION: AUDIT & CONTROL OF RESOURCES**

### **Introduction**

- 4.1 It is essential that robust systems are developed and maintained for identifying and evaluating all significant operational risks to MHDC. This should include the proactive participation of all those associated with planning and delivering services.

### **Audit requirements**

- 4.2 The Accounts and Audit Regulations 2003 require every local authority to maintain an adequate and effective internal audit function. Section 151 Officer shall arrange for compliance with these regulations and CIPFA/SOLACE guidance on Corporate Governance and Risk Management.
- 4.3 Internal Audit shall have authority to:
- enter at all reasonable times any MHDC premises or land
  - have access to all records, documents, contracts and correspondence, including computerised hardware and software, relating to any financial and/or other transaction of MHDC
  - require and receive such explanations as are necessary concerning any matter under examination and
  - require any MHDC employee to produce cash, stores or any other Council property under his control.
- 4.4 The Audit Commission is responsible for appointing external auditors to each local authority. The basic duties of the external auditor are governed by section 15 of the Local Government Finance Act 1982, as amended by section 5 of the Audit Commission Act 1998.
- 4.5 MHDC may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Customs and Excise and the Inland Revenue, who have statutory rights of access.

### **Preventing fraud and corruption**

- 4.6 The Deputy Chief Executive is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.

### **Assets**

- 4.7 Heads of Service should ensure that records and assets are properly maintained and securely held. They should also ensure that contingency plans for the security of assets and continuity of service in the event of disaster or system failure are in place.

### **Treasury management**

- 4.8 MHDC has adopted CIPFA's Code of Practice for Treasury Management in Local Authorities.

- 4.9 Council is responsible for approving the treasury management policy statement setting out the matters detailed in paragraph 15 of CIPFA's Code of Practice for Treasury Management in Local Authorities. Executive Committee proposes the policy statement to Council. The Section 151 Officer has delegated responsibility for implementing and monitoring the statement.
- 4.10 All money under the control of MHDC is managed by the Section 151 Officer.
- 4.11 The Section 151 Officer is responsible for reporting to Executive Committee a proposed treasury management strategy for the coming financial year at or before the start of each financial year.
- 4.12 All Executive decisions on borrowing, investment or financing shall be delegated to the Section 151 Officer, who is required to act in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities.
- 4.13 The Section 151 Officer is responsible for reporting to Executive Committee not less than twice in each financial year on the activities of the treasury management operation and on the exercise of his or her delegated treasury management powers. One such report will comprise an annual report on treasury management for presentation by 30 September of the succeeding financial year.

### **Staffing**

- 4.14 Council is responsible for determining how officer support for Executive and non-Executive roles within MHDC will be organised and approving the staffing establishment.
- 4.15 The Head of Paid Service is responsible for providing overall management of staff and for ensuring that there is proper use of the evaluation or other agreed systems for determining the remuneration of a job.
- 4.16 Heads of Service are responsible for controlling total staff numbers by:
- advising Executive Committee on the budget necessary in any given year to cover estimated staffing levels
  - adjusting the staffing to a level that can be funded within approved budget provision, varying the provision as necessary within the approved establishment in order to meet changing operational needs
  - the proper use of appointment procedures.

## **5. FINANCIAL REGULATION: SYSTEMS & PROCEDURES**

### **Introduction**

- 5.1 Sound systems and procedures are essential to an effective framework of accountability and control.
- 5.2 The Section 151 Officer is responsible for the operation of MHDC's accounting systems, the form of accounts and the supporting financial records. Heads of Service may not make changes to the existing financial systems or establish new systems without the approval of the Section 151 Officer. However, Heads of Service are responsible for the proper operation of financial processes in their own departments.
- 5.3 Heads of Service should ensure that their staff receive relevant financial training.
- 5.4 Heads of Service must ensure that, where appropriate, computer and other systems are registered in accordance with data protection legislation. Heads of Service must ensure that staff are aware of their responsibilities under this and all legislation.

### **Income and expenditure**

- 5.5 It is the responsibility of Heads of Service to ensure that a proper scheme of delegation has been established within their area and is operating effectively. The scheme of delegation should identify staff authorised to act on their behalf, or on behalf of Executive Committee, in respect of payments, income collection and placing orders, together with the limits of their authority. The Section 151 Officer is responsible for approving procedures for writing off debts as part of the overall control framework of accountability and control. The Section 151 Officer will periodically report debt write off to Executive Committee.

### **Payments to employees and Members**

- 5.6 The Section 151 Officer is responsible for payments of salaries and wages to all staff, including payments for overtime, and for payment of allowances to Members.

### **Taxation**

- 5.7 The Section 151 Officer is responsible for advising Heads of Service, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect MHDC.
- 5.8 The Section 151 Officer is responsible for maintaining MHDC's tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate.
- 5.9 Responsibility for MHDC's tax returns connected with payments to employees and members rests with the Section 151 Officer.

### **Trading accounts/business units**

5.10 The Section 151 officer will advise on the establishment and operation of trading accounts and business units.

**Leasing**

5.11 All leases entered into by MHDC can only be on the authority of the Section 151 officer.

**Banking**

5.12 All cheques and payment forms shall be ordered only on the authority of the, Section 151 Officer and proper arrangements for their safe custody will be made.

5.13 Cheques on MHDC's banking accounts shall bear the facsimile signature of the Deputy Chief Executive.

## **6. FINANCIAL REGULATION: EXTERNAL ARRANGEMENTS**

### **Introduction**

- 6.1 MHDC provides a distinctive leadership role for the community and brings together the contributions of the various stakeholders. It must also act to achieve the promotion or improvement of the economic, social or environmental well-being of its area.

### **Partnerships**

- 6.2 Executive Committee is responsible for approving delegations, including frameworks for partnerships. Executive Committee is the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.
- 6.3 Executive Committee can delegate functions, including those relating to partnerships to officers. These are set out in the scheme of delegation that forms part of MHDC's Constitution. Where functions are delegated, Executive Committee remains accountable for them to Council.
- 6.4 The Monitoring Officer and Section 151 Officer are responsible for promoting and maintaining the same high standards of conduct with regard to financial administration in partnerships that apply throughout MHDC.
- 6.5 The Section 151 Officer must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory.
- 6.6 The Monitoring Officer and Section 151 Officer must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies and must ensure that the risks have been fully appraised before agreements are entered into with external bodies.
- 6.7 Heads of Service are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies.

### **External funding**

- 6.8 The Section 151 Officer is responsible for ensuring that all funding notified by external bodies is received and properly recorded in MHDC's accounts.

## **APPENDIX A: FINANCIAL MANAGEMENT and CONTROL**

### **A1 FINANCIAL MANAGEMENT STANDARDS**

#### **A1.1 Why is this important?**

All staff and members have a duty to abide by the highest standards of probity in dealing with financial issues. This is achieved in part by ensuring that every one is clear about the standards to which they are working, and the controls which are in place to ensure that these standards are met.

#### **A1.2 Key controls**

The key controls for financial management standards are:

- their promotion throughout MHDC.
- having in place a monitoring system to review compliance with financial standards, and that regular comparisons of performance indicators and benchmark standards are reported to Executive Committee and Council.

#### **A1.3 Responsibilities of Deputy Chief Executive**

- To ensure the proper administration of the financial affairs of MHDC.
- To set the financial management standards, and to monitor compliance with them.
- To ensure proper professional practices are adhered to, and to act as head of profession in relation to the standards, performance and development of finance staff throughout MHDC.
- To advise on the key strategic controls necessary to secure sound financial management.
- To ensure that financial information is available to enable accurate and timely reporting of comparisons of national and local financial performance indicators.

#### **A1.4 Responsibilities of Heads of Service**

- To promote the financial management standards set by the Deputy Chief Executive in their service areas and to monitor adherence to those standards and practices.
- To promote sound financial practices in relation to the standards performance and development of staff in their service areas.

## **A2 MANAGING and CONTROLLING SPENDING**

### **Revenue Budget**

#### **A2.1 Why is this important?**

Budget management ensures that resources allocated by Members are used for their intended purposes and that these resources are properly accounted for. Budgetary control is a continual process enabling MHDC to review and adjust its budget targets during the financial year. It also provides the mechanism to call to account managers responsible for defined elements of the budget.

By identifying and explaining variances against budgetary targets, the Council can identify changes in trends and resource requirements at the earliest opportunity. MHDC itself operates within an annual cash limit, approved in setting the overall budget. To ensure that MHDC in total does not overspend, each service is required to manage its own expenditure within the cash limited budget allocated to it.

For the purposes of budgetary control by managers, a budget head will normally be a cost centre. However, it may be at a more detailed level in the standard coding structure if required.

#### **A2.2 Key controls**

The key controls for managing and controlling the revenue budget are:

- budget holders should be responsible only for income and expenditure which they can influence
- each “£” of budgeted expenditure is allocated to a named budget holder
- budget holders accept accountability for their budgets and the level of service to be delivered
- all orders committing expenditure should be properly authorised and priced before issue
- budget holders follow an approved certification process for all expenditure
- income and expenditure is properly recorded and accounted for
- performance levels/levels of service are monitored in conjunction with the budget and necessary action taken to align service outputs and budget.

#### **A2.3 Responsibilities of Deputy Chief Executive**

These responsibilities are carried out through delegated finance officers reporting to the Deputy Chief Executive. To establish an appropriate framework of budgetary management and control which ensures that:

- Budget management is exercised within the annual cash limits agreed by Council.
- Each Head of Service has available timely information on income and expenditure on each budget heading, to enable budget holders to fulfill their budgetary responsibilities.
- Expenditure is committed only against an approved budget head.
- All officers responsible for committing expenditure comply with relevant guidance, including Financial Rules.

- Each budget head has a single named manager, determined by the Head of Service. As a general principle, budget responsibility should be aligned as closely as possible to the decision-making which commits expenditure.
- Significant variances from approved budgets are investigated and reported by managers regularly.
- Procedures are in place for corrective action to be taken to manage significant variances.

To administer MHDC's scheme of virement.

To submit reports to Executive Committee, in consultation with the Head of Service, where a Head of Service is unable to balance expenditure and resources within existing approved budgets under their control.

To prepare and submit regular budget monitoring reports on MHDC's projected expenditure compared with the budget.

#### **A2.4 Responsibilities of Heads of Service**

To maintain budgetary control and to ensure that all income and expenditure is properly recorded and accounted for.

To ensure that a single accountable budget holder is identified for each item of expenditure. As a general principle, budget responsibility should be aligned as closely as possible to the decision-making which commits expenditure.

To ensure that spending remains within the service overall cash limit, and that individual budget heads are not overspent, by monitoring the budget and, where it appears that areas of the budget are likely to be over or underspent, taking appropriate corrective action.

To ensure that a monitoring process is in place to review performance levels/levels of service in conjunction with the budget and that any necessary action is taken.

To advise the Deputy Chief Executive immediately where it is clear that they are unable to balance expenditure or income (when a loss of income arises) within existing approved budgets under their control.

To ensure prior approval by Council for new proposals (A report on new proposals should explain the full financial implications, after consultation with the Deputy Chief Executive. Unless Council has agreed otherwise, Heads of Service must plan to contain the financial implications of such proposals within their cash limit).

To ensure compliance with MHDC's scheme of virement.

To consult with the relevant Head of Service and Deputy Chief Executive where it appears that a budget proposal, including a virement proposal, may impact materially on another service.

## **A3 SCHEME OF VIREMENT**

### **A3.1 Why is this important?**

The scheme of virement enables Heads of Service to manage budgets with a degree of flexibility within the overall policy framework determined by Council.

### **A3.2 Key Controls**

The scheme is administered by the Deputy Chief Executive within guidelines set by Council. Any variation from this scheme requires the approval of Council. Virement will only be used where there is a confirmed change to the spending plans agreed by Executive, it will not be used purely to offset budget variances.

Heads of Service and budget holders are authorised to incur expenditure in accordance with the estimates agreed by Executive Committee and approved by Council. Virement is a switching of resources between budget heads or capital schemes. For the purposes of these Rules a budget head is considered to be at an equivalent level to the standard service sub-division as defined by CIPFA. The scheme applies equally to a reduction in income as to an increase in expenditure.

Heads of Service are expected to exercise their discretion in managing their budgets responsibly and prudently. They should aim to avoid supporting recurring expenditure from one-off sources of savings or additional income, or creating future commitments, including full-year effects of decisions made part way through a year, for which they have not identified future resources. Heads of Service must plan to fund such commitments from within their own budgets.

### **A3.3 Responsibilities of Deputy Chief Executive**

To prepare jointly with the appropriate Head of Service a report to Executive where virements in excess of £50,000 are proposed.

### **A3.4 Responsibilities of Heads of Service**

A Head of Service may exercise virement on budgets under their control for amounts up to and including £25,000 on any one budget head during the year.

Virements within a policy area of greater than £25,000 but less than £50,000 require the approval of the Deputy Chief Executive and relevant portfolio holder, amounts greater than £50,000 require the approval of Executive Committee.

The prior approval of Executive Committee is required to any virement where it is proposed to vire between budgets managed by different Heads of Service.

Virement which is likely to impact on the level of service activity of another Service should be implemented only after consultation with the relevant Head of Service.

No virement relating to a specific financial year will be made after 31 March in that year.

## **A4 TREATMENT OF YEAR END BALANCES**

### **A4.1 Why is this important?**

The rules below cover arrangements for the transfer of resources between accounting years i.e. a 'carry forward'. Carry forwards will only be approved in the appropriate circumstances.

### **A4.2 Key controls**

Appropriate accounting procedures are in operation to ensure that carried forward totals are agreed and correct.

Any under or overspend on revenue budgets will be written to General Fund revenue balances at the Financial Year end.

### **A4.3 Responsibilities of Deputy Chief Executive**

To report the extent of overspends and underspends on service estimates to Executive Committee and to Council.

To report to Executive Committee and to Council any proposed carry forwards for both revenue and capital and their effect upon the balances of MHDC.

### **A4.4 Responsibilities of Heads of Service**

Any request to carry forward underspends of either revenue or capital resources must have prior approval from the Deputy Chief Executive.

## **A5 ACCOUNTING POLICIES**

### **A5.1 Why is this important?**

The Deputy Chief Executive is responsible for the preparation of MHDC's statement of accounts in the format required by the CIPFA Code of Practice on Local Authority Accounting in Great Britain, for the financial year ending 31 March.

### **A5.2 Key controls**

The key controls for accounting policies are:

- Suitable accounting policies are selected and applied consistently.
- Judgments are made and estimates prepared which are reasonable and prudent.
- Statutory and other professional requirements are observed to maintain proper accounting records.
- All reasonable steps have been taken for the prevention and detection of fraud and other irregularities.

### **A5.3 Responsibilities of Deputy Chief Executive**

To adopt suitable accounting policies and to ensure that they are applied consistently. The accounting policies will be set out in the statement of accounts which is prepared at 31 March each year, and will cover such items as:

- separate accounts for capital and revenue transactions
- the basis on which year end debtors and creditors are included in the accounts
- details of provisions and reserves
- fixed assets
- depreciation
- work in progress
- stocks and stores
- deferred charges
- accounting for value added tax
- government grants
- leasing
- pensions.

### **A5.4 Responsibilities of Heads of Service**

To adhere to the accounting policies approved by the Deputy Chief Executive.

## **A6 ACCOUNTING RECORDS AND RETURNS**

### **A6.1 Why is this important?**

Proper accounting records are one of the ways in which MHDC discharges its responsibility for stewardship of public resources. MHDC has a statutory responsibility to prepare its annual accounts to present fairly its operations during the year. These are subject to external audit. This provides assurance that the accounts are properly prepared and proper accounting practices have been followed and that arrangements have been made for securing economy, efficiency and effectiveness in the use of MHDC's resources.

### **A6.2 Key controls**

The key controls for accounting records and returns are:

- All Executive Members, finance staff and budget managers operate within the required accounting standards of MHDC.
- All MHDC's transactions, material commitments and contracts and other essential accounting information have been recorded completely, accurately and on a timely basis.
- Procedures are in place to enable accounting records to be reconstituted in the event of failure.
- Balances and reconciliation procedures are carried out to ensure transactions are correctly recorded.

### **A6.3 Responsibilities of Deputy Chief Executive**

To determine the accounting procedures and records for MHDC. Where these are maintained in a Service other than resources, before making any determination, they will consult the Head of Service concerned.

To compile all accounts and accounting records or ensure they are compiled under his/her direction.

To comply with the following principles when allocating accounting duties:

- Separating the duties of providing information about sums due to or from MHDC and calculating, checking and recording these sums, from the duty of collecting or disbursing them.
- Employees with the duty of examining or checking the accounts of cash transactions shall not themselves be engaged in these transactions.

To make proper arrangements for the audit of MHDC's accounts in accordance with the Accounts and Audit Regulations.

To prepare and publish the audited accounts of MHDC for each financial year, in accordance with the statutory timetable.

To administer MHDC's arrangements for under and overspendings to be written to General Fund balances.

To ensure the proper retention of financial documents. The periods for which documents are to be retained will be specified separately to these financial procedures in the Finance Document Retention Schedule.

To complete all statutory financial returns to government departments.

#### **A6.4 Responsibilities of Heads of Service**

To consult and obtain the approval of the Deputy Chief Executive before making any changes to accounting records and procedures.

To comply with the principles of separation of duties when allocating accounting duties.

To maintain adequate records to provide an audit trail leading from the source of income / expenditure through to the accounting statements.

To supply information required to enable the Statement of Accounts to be completed, in accordance with guidelines issued by the Deputy Chief Executive.

To observe such accounting instructions as may be made from time to time.

To maintain detailed records to support claims submitted for expenditure funded from specific grants

To supply information required to enable all statutory financial returns to be submitted within timescales.

## **APPENDIX B: FINANCIAL PLANNING**

### **B1 RESOURCE ALLOCATION**

#### **B1.1 Why is this important?**

A mismatch often exists between available resources and required resources. A common scenario is that available resources are not adequate to fulfill need/desire. It is therefore imperative that resource allocation is carefully prioritised and that resources are fairly allocated, in order to fulfill all legal responsibilities. Resources may include staff, money, equipment, goods and materials.

#### **B1.2 Key controls**

The key controls for resource allocation are:

- Budget Managers obtain appropriate resources for the specified level of service delivery.
- Resources are acquired using an approved authorisation process.
- Resources are only used for the purpose intended by Council, to achieve the approved policies and objectives, and are properly accounted for.
- Resources are secured for use when required.
- Resources are used with the minimum level of waste, inefficiency or loss

#### **B1.3 Responsibilities of Deputy Chief Executive**

To advise on methods available for the funding of resources, such as grants from central government and borrowing requirements.

To assist in the allocation of resources to managers.

#### **B1.4 Responsibilities of Heads of Service**

To work within budget limits and to utilise resources allocated and further allocate resources in the most efficient, effective and economic way.

To identify opportunities to minimise or eliminate resource requirement or consumption without a detrimental effect on service delivery.

## **B2 CAPITAL PROGRAMME**

### **B2.1 Why is this important?**

Capital expenditure involves acquiring or enhancing fixed assets with a long term value to MHDC, such as land, buildings and major items of plant and equipment or vehicles. Capital assets shape the way services are delivered for the long-term and create future financial commitments in the form of revenue running costs, they may also generate income.

There are strict controls on the financing capacity of MHDC. This means that capital expenditure should form part of an investment strategy and should be carefully prioritised in order to maximize the benefit of scarce resources.

### **B2.2 Key controls**

The key controls for capital programmes are:

- Specific approval by Council for the programme of capital expenditure.
- Expenditure on capital schemes is subject to the approval of the Deputy Chief Executive.
- A scheme and estimate, including project plan, progress targets and associated revenue expenditure is prepared for each capital project, for approval by the Deputy Chief Executive and the Portfolio holder for Finance and Resources
- Proposals for improvements and alterations to buildings must be approved by the Deputy Chief Executive.
- The development and implementation of asset management plans.
- Accountability for each proposal is accepted by a named manager.
- Monitoring of progress in conjunction with expenditure and comparison with approved budget.
- Post project review to be undertaken on major capital schemes.

### **B2.3 Responsibilities of Deputy Chief Executive**

To prepare capital estimates jointly with Heads of Service and report them to Executive Committee for approval at the same time as the revenue budget. Executive Committee will make recommendations on the capital estimates and on any associated financing requirements to Council.

To issue guidance concerning capital schemes and controls for example on project appraisal techniques. The definition of 'capital' will be determined by the Deputy Chief Executive, having regard to Government rules and accounting requirements.

To obtain authorisation by Executive Committee for individual schemes where the estimated expenditure exceeds the capital programme provision by more than the specified amount.

To prepare and submit regular capital monitoring reports to Executive Committee comparing expenditure to estimates, clearly identifying variances, with explanations for the variances and recommendations for any actions to be taken.

To approve with the Portfolio holder for Finance and Resources capital projects in excess of £50,000 for commencement.

## **B2.4 Responsibilities of Heads of Service**

To comply with guidance concerning capital schemes and controls issued by the Deputy Chief Executive.

To ensure that all capital proposals have undergone a project appraisal in accordance with guidance issued by the Deputy Chief Executive.

To ensure that adequate records are maintained in respect of all capital contracts.

To proceed with projects only when there is adequate provision in the capital programme, and where projects exceed £50,000 with the agreement of the Deputy Chief Executive.

To prepare and submit monitoring reports, jointly with the Deputy Chief Executive, to Executive Committee of any variation in contract costs greater than the approved limits.

To prepare and submit reports, jointly with the Deputy Chief Executive, to Executive Committee, on completion of all contracts where the final expenditure exceeds the approved contract sum by more than the specified amount.

To ensure that they do not enter into credit arrangements, such as leasing agreements, without the prior approval of the Deputy Chief Executive and, if applicable, approval of the scheme through the capital programme.

To consult with the Deputy Chief Executive and seek Executive Committee approval where the Head of Service proposes to bid for additional grants to be issued by Government departments to support expenditure which has not been included in the current year's capital programme.

## **B3 PREPARING REVENUE BUDGETS & MEDIUM TERM FINANCIAL PLANNING**

### **B3.1 Why is this important?**

MHDC needs to plan effectively and to develop systems to enable scarce resources to be allocated in accordance with carefully weighed priorities. The budget is the financial expression of the Council's plans and policies.

The revenue budget must be constructed so as to ensure that resource allocation properly reflects the spending plans and priorities of MHDC. Budgets, are needed so that MHDC can plan, authorise, monitor and control the way money is allocated and spent.

Three year medium term planning involves a planning cycle in which each manager develops their own plans. As each year passes, another future year will be added to the medium term plan. Medium term planning ensures that MHDC is always preparing for events in advance.

### **B3.2 Key controls**

Specific budget approval for all expenditure.

Budget Managers accept accountability within delegations set by Executive Committee for their budgets and the level of service to be delivered.

A monitoring process is in place to review regularly the effectiveness and operation of budget preparation and that any corrective action is taken.

Proper accounting practices and policies are adhered to.

Service budgets are zero based annually by Accountancy Services to ensure that service commitments are contained within approved cash limits

### **B3.3 Responsibilities of Deputy Chief Executive**

To prepare and submit reports on budget prospects for Executive Committee, including resource constraints set by the Government. Reports should take account of medium term prospects, where appropriate.

To determine the detailed form of revenue estimates, consistent with the general directions of MHDC, after consultation with Executive Committee, and Heads of Service.

To prepare and submit reports to Executive Committee on the aggregate spending plans of departments and on the resources available to fund them, identifying, where appropriate, the implications for the level of Council Tax to be levied.

To advise on the medium term implications of Government statements on public spending and distribution of central government resources.

To encourage best use of resources and value for money by working with Heads of Service to identify opportunities to improve economy, efficiency and effectiveness,

and by encouraging good practice in conducting financial appraisals of development or savings options, and in developing financial aspects of service planning.

To advise Council on Executive proposals in accordance with their responsibilities under Section 151 of the Local Government Act 1972.

In consultation with the Heads of Service and in accordance with the laid down guidance and timetable to prepare detailed draft revenue and capital budgets for consideration by Executive Committee and Council.

To have regard to:

- spending patterns and pressures revealed through the budget monitoring process
- Legal requirements
- policy requirements as defined by Council
- initiatives already underway when drawing up draft budget requirements.

#### **B3.4 Responsibilities of Heads of Service**

To prepare estimates of potential revenue savings and growth requirements, in consultation with the Deputy Chief Executive, to be submitted to Executive Committee.

To prepare budgets which are consistent with any relevant cash limits, with MHDC's annual budget cycle and with guidelines issued by Executive Committee. The format should be prescribed by the Deputy Chief Executive in accordance with Council's general directions.

To integrate financial and budget plans into service planning, so that budget plans can be supported by financial and non-financial performance measures.

To consult with the relevant Head of Service, where it appears that a budget proposal is likely to impact on another service.

## **B4 USE OF RESERVES**

### **B4.1 Why is this important?**

Reserves are maintained as a matter of prudence.

### **B4.2 Key controls**

To maintain reserves in accordance with the Code of Practice on Local Authority Accounting and agreed accounting policies.

### **B4.3 Responsibilities of Deputy Chief Executive**

To advise on prudent levels of reserves for MHDC, and to act on the advice of external audit in this matter.

# **APPENDIX C: AUDIT & CONTROL OF RESOURCES**

## **C1 INTERNAL AUDIT REQUIREMENTS**

### **C1.1 Why is this important?**

The Deputy Chief Executive has a statutory responsibility for the overall financial administration of MHDC's affairs and is responsible for maintaining an adequate and effective internal audit.

Internal audit is an independent and objective appraisal function established by Council for reviewing MHDC's system of internal control. It examines, evaluates and reports on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources.

### **C1.2 Key controls**

The key controls for internal audit are:

- that it remains independent in its planning and operation
- the Head of Audit has direct access to the Head of Paid Service, Executive Committee and Audit Committee
- the internal auditor complies with Auditing Practices Board's auditing guideline 'Guidance for Internal Auditors', CIPFA's Code of Practice for Internal Audit, and other relevant guidance.

### **C1.3 Responsibilities of Deputy Chief Executive**

The Deputy Chief Executive has been delegated with maintaining an adequate and effective system of internal audit. They must ensure that internal auditors have the authority to:

- access at reasonable times, premises or land used by MHDC
- access all assets, records, documents, correspondence and control systems except for those from which they are statutorily prevented
- require and receive any information and explanation considered necessary concerning any matter under consideration
- require any employee of MHDC to account for cash, stores or any MHDC property under their control and produce for inspection if required
- access records belonging to third parties, such as contractors, when required
- report directly to the Head of Paid Service, Executive Committee and Audit Committee.

To maintain Strategic and Annual Audit Plans which take account of the characteristics and relative risks of the activities involved. They should liaise with Heads of Service on the Audit Strategy and cover required. In addition to the statutory requirement, this takes account of the need to seek added value, effective use of resources, improved performance and cost-effective controls.

Where an appropriate response to audit recommendations has not been made within a reasonable period, the Deputy Chief Executive may refer the matter to the Head of Paid Service and/or the Audit Committee.

To investigate promptly any fraud or irregularity of which they become aware and to report to the Head of Paid Service who will consider any legal proceedings and disciplinary action in consultation with the appropriate Head of Service.

To report annually to the Head of Paid Service and to the Audit Committee on the main issues raised by internal audit during the year. Furthermore strategic and annual audit plans will be submitted to and approved by the Audit Committee.

#### **C1.4 Responsibilities of Heads of Service**

To ensure that auditors are given access at all reasonable times to premises, personnel, documents and assets which the auditors consider necessary for the purposes of their work.

To ensure that auditors are provided promptly with any information and explanations which they seek in the course of their work.

To consider and respond promptly to recommendations in audit reports.

To ensure that any agreed actions arising from audit recommendations are carried out in a timely and efficient fashion.

To notify the Deputy Chief Executive immediately of any suspected fraud, theft, irregularity, improper use or misappropriation of MHDC's property or resources. Pending investigation and reporting, the Head of Service should take all necessary steps to prevent further loss and to secure records and documentation against removal, destruction or alteration.

To ensure that new systems for maintaining financial records, or records of assets, or changes to such systems, are discussed with and agreed by MHDC's Head of Audit Services, prior to implementation.

## **C2 EXTERNAL AUDIT REQUIREMENTS**

### **C2.1 Why is this important?**

The Local Government Finance Act 1982 set up the Audit Commission for local authorities and police authorities in England and Wales, which is responsible for appointing external auditors to each local authority. The Deputy Chief Executive is responsible for working with the external auditor and for advising Council, Executive Committee and Heads of Service on their responsibilities in relation to external audit. The external auditor has the same rights of access as the internal auditor to all documents which are necessary for audit purposes.

The basic duties of the external auditor are governed by Section 15 of the 1982 Act, under which auditors need to satisfy themselves that:

- the accounts are prepared in accordance with rules made under Section 23 of the 1982 Act and comply with the requirements of all statutory provisions applicable to the accounts
- proper practice has been observed in compilation of accounts
- MHDC has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

MHDC's accounts are scrutinised by external auditors, appointed by the Audit Commission, who must be satisfied that the statement of accounts 'presents fairly' the financial position of MHDC and its income and expenditure for the year in question and complies with the legal requirements.

### **C2.2 Key controls**

External auditors are appointed by the Audit Commission normally for a minimum period of five years. The Audit Commission prepares guidelines which the external auditors follow when auditing MHDC's statement of accounts.

### **C2.3 Responsibilities of Deputy Chief Executive**

To draw up the timetable and issue guidance for final accounts purposes and to advise staff and external auditors accordingly.

To ensure that external auditors are given access at all reasonable times to premises, personnel, documents and assets which the external auditors consider necessary for the purposes of their work.

### **C2.4 Responsibilities of Heads of Service**

To ensure that external auditors are given access at all reasonable times to premises, personnel, documents and assets which the external auditors consider necessary for the purpose of their work.

To ensure that all paperwork and systems are up-to-date and available for inspection.

## **C3 PREVENTING FINANCIAL IRREGULARITIES**

### **C3.1 Why is this important?**

MHDC will not tolerate fraud or corruption in the administration of its responsibilities whether from inside or outside the Council.

MHDC's expectation of propriety and accountability is that members and staff at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and practices.

MHDC also expects that individuals and organisations (e.g. suppliers, contractors, service providers) that it comes into contact with, will act towards MHDC with integrity and without thought or actions involving fraud and corruption.

### **C3.2 Key controls**

The key controls regarding the prevention of financial irregularities are that:

- Council maintains sound internal control procedures in line with best accounting practice, in particular there is a clear separation of duties in accounting routines evidenced by maintaining appropriate audit trail information.
- the culture of MHDC is one of honesty and opposition to fraud and corruption
- all members and staff act with integrity, and lead by example
- all individuals and organisations associated in with MHDC will act with integrity
- managers are required to deal swiftly and firmly with those who defraud MHDC or who are corrupt.

### **C3.3 Responsibilities of Deputy Chief Executive**

To maintain adequate and effective audit arrangements for MHDC.

To ensure that financial irregularities are reported to the Head of Paid Service, Executive Committee, Audit Committee and the Monitoring Officer.

To determine the scope of any internal enquiries or investigations, subject to consultation with the appropriate Head of Service and Monitoring Officer.

To decide, in consultation with the appropriate Head of Service and Monitoring Officer, whether any matter under investigation should be referred for police investigation and take recovery action as appropriate on such matters.

To keep the Head of Paid Service and Monitoring Officer informed if a suspected irregularity occurs involving staff who are the responsibility of the Deputy Chief Executive.

To ensure, in conjunction with the appropriate Head of Service, that MHDC's disciplinary procedures are followed where the outcome of an audit or other investigation indicates fraud or irregularity.

### **C3.4 Responsibilities of Heads of Service**

To ensure that all suspected irregularities are reported to the Deputy Chief Executive.

To instigate MHDC's disciplinary procedures where the outcome of an audit investigation indicates improper behaviour.

## **C4 RESOURCES: LAND, BUILDINGS, PLANT & MACHINERY**

### **Security**

#### **C4.1 Why is this important?**

MHDC holds assets in the form of property, vehicles, equipment, furniture and other items worth millions of pounds. It is important that assets should be safeguarded and used efficiently in the delivery of services, and that there should be arrangements for the security of both assets and service operations.

#### **C4.2 Key controls**

The key controls for the security of resources, such as land, buildings, fixed plant and machinery are:

- (a) budget managers obtain appropriate resources for the specified level of service delivery
- (b) resources are acquired using an approved procurement process
- (c) resources are used only for the purposes of MHDC and properly accounted for
- (d) resources are secured to be available for use when required
- (e) resources no longer required are disposed of in accordance with the law and MHDC rules so as to maximise benefits.
- (f) regular audits of assets are undertaken to ensure their continued existence and that they remain fit for purpose.

#### **C4.3 Responsibilities of Deputy Chief Executive**

To ensure that an asset register is maintained in accordance with good practice.

To receive information from Heads of Service required for accounting, costing and financial records.

To assist and advise, in consultation with the appropriate Head of Service, the records to be maintained to ensure proper security and control of premises, stocks, stores, furniture equipment, cash and other items of value.

#### **C4.4 Responsibilities of Heads of Service**

To ensure that lessees and other prospective occupiers of Council land are not allowed to take possession or enter the land until a lease or agreement, in a form approved by the Deputy Chief Executive and the Monitoring Officer, has been established as appropriate.

To ensure the proper security of all buildings and other assets under their control.

To periodically review land and buildings in order to identify any that are surplus to requirements.

Where land or buildings are identified as surplus to requirements, a recommendation for the sale of land should be the subject of a report by the Deputy Chief Executive.

Where the use of buildings or land is subject to appropriation between services, to refer the appropriation for approval by Executive Committee, taking into account the alternative possible uses of the land.

To pass title deeds to the Deputy Chief Executive, who is responsible for custody of all title deeds.

To ensure that no Council asset is subject to third party or personal use by an employee without proper authority.

To ensure the safe custody of vehicles, equipment, furniture, stock, stores and other property belonging to MHDC.

To ensure that the Service maintains a register of moveable assets.

To ensure assets are identified, their location recorded and that they are appropriately security marked and insured.

To consult the Deputy Chief Executive in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.

To ensure cash holdings on premises are kept to a minimum and to advise the Deputy Chief Executive where there may be an exception to this case.

The disposal of all surplus equipment, stocks or stores expected to realise in excess of £5,000 should normally be by competitive tender or public auction unless, following consultation with the Deputy Chief Executive, Executive Committee agrees otherwise. A record of all such disposals should be maintained.

To arrange for the valuation of assets for accounting purposes to meet requirements specified by the Deputy Chief Executive.

To ensure that all their employees are aware that they have a personal responsibility with regard to the protection and confidentiality of information, whether held in manual or computerised records. Information may be sensitive or privileged, or may possess some intrinsic value, and its disclosure or loss could result in a cost to MHDC in some way.

## **Inventories**

### **C4.5 Responsibilities of Deputy Chief Executive**

To advise on the layout and content of inventory records to be maintained by MHDC.

### **C4.6 Responsibilities of Heads of Service**

To maintain inventories in a form approved by the Deputy Chief Executive to adequately record and describe furniture, fittings and equipment, plant and machinery under their control.

To carry out an annual check of all items on the inventory in order to take action in relation to surpluses or deficiencies, annotating the inventory accordingly and reporting any material discrepancies to the Deputy Chief Executive.

Attractive and portable items, such as computers and cameras should be identified with security markings as belonging to MHDC and appropriately controlled and secured.

To make sure that property is only used in the course of MHDC business unless the Head of Service concerned has given permission otherwise.

To seek Executive approval to the write-off of redundant equipment where individual items are valued in excess of £5,000.

Surplus ICT equipment is to be returned to the Deputy Chief Executive, who shall reallocate it or dispose of it in accordance with IT disposal policy.

## **Stocks and Stores**

### **C4.7 Responsibilities of Deputy Chief Executive**

To advise on the arrangements for the care and custody of stocks and stores and the method of stock valuation to be used where appropriate.

### **C4.8 Responsibilities of Heads of Service**

To make arrangements for the care and custody of stocks and stores in Services.

To ensure stocks are maintained at reasonable levels and subject to a regular independent physical check. All discrepancies should be investigated and pursued to a satisfactory conclusion.

To write-off discrepancies of up to £500 and seek advice from Internal Audit on discrepancies above this limit.

To authorise or write-off disposal of redundant stocks and equipment. Procedures for disposal of such stocks and stores should be by competitive quotations or auction unless, following consultation with the Deputy Chief Executive, Executive Committee decides otherwise in a particular case.

To seek approval from the Deputy Chief Executive to the write-off of redundant stocks and stores valued in excess of £500 and report any such write offs to Executive Committee.

## **C5 ASSET DISPOSAL**

### **C5.1 Why is this important?**

It would be unsatisfactory and inefficient for the cost of assets to outweigh their benefits. Obsolete, non-repairable or unnecessary resources should be disposed of in accordance with the law and rules of MHDC.

### **C5.2 Key controls**

Assets are disposed of at the most appropriate time, and only when it is in the best interests of MHDC, and that the best price is obtained. For items of significant value, disposal should be by competitive tender or public auction.

### **C5.3 Responsibilities of Deputy Chief Executive**

To advise on best practice for disposal of assets.

To ensure appropriate accounting entries are made.

### **C5.4 Responsibilities of Heads of Service**

To seek advice from purchasing advisors on the disposal of surplus or obsolete materials, stores or equipment.

To ensure that income received for disposal of an asset is properly banked and coded.

## **C6 INSURANCE**

### **C6.1 Why is this important?**

Insurance has been the traditional means of protecting against loss, but this cannot be seen as the complete answer. By reducing or even preventing the incidence of losses (whether they result from crime or accident), MHDC will benefit from reduced costs of providing insurance cover and will also avoid the disruption and wasted time caused by losses and insurance claims.

### **C6.2 Key controls**

Acceptable levels of retained risk are identified and evaluated and arrangements are in place for their funding, either by internal provision or external insurance as appropriate

### **C6.3 Responsibilities of Deputy Chief Executive**

To determine and effect appropriate corporate insurance cover, through external insurance and/or internal funding,

To provide advice to Council and Executive Committee on insurance matters.

To include all appropriate MHDC employees in a suitable fidelity guarantee insurance.

### **C6.4 Responsibilities of Heads of Service**

To notify the Deputy Chief Executive promptly of all new or increased risks, properties or vehicles which require insurance and of any alterations affecting existing insurances.

To consult the Deputy Chief Executive and Legal Services in respect of the terms of any indemnity which MHDC is requested to give.

## **C7 TREASURY MANAGEMENT AND BANKING**

### **C7.1 Why is this important?**

Many millions of pounds pass through MHDC's books each year. A few Councils have suffered high profile losses through inappropriate treasury management procedures. This led to the establishment of Codes of Practice. These aim to provide assurances that MHDC's money is properly managed in a way which balances risk with return, but with the overriding consideration being given to the security of MHDC's capital sum.

MHDC has adopted a Treasury Policy Statement based on the CIPFA Code of Practice for Treasury Management. All treasury operations are carried out in accordance with this Statement and the Code.

### **C7.2 Responsibilities of Deputy Chief Executive**

To arrange the borrowing and investment activities of MHDC in such a manner as to comply with the CIPFA Code of Practice on Treasury Management and MHDC's Treasury Policy Statement.

To prepare an Annual Treasury Strategy, for the forthcoming financial year, for approval by Council prior to the start of that financial year, including the determination of statutory financing limits in accordance with Section 45 of the Local Government and Housing Act 1989. Subject to the foregoing, the Deputy Chief Executive is responsible for the management of MHDC's loan debt and for the investment of surplus funds.

To manage, control and monitor MHDC's banking arrangements, including the opening and closing of such bank accounts as are considered necessary within the terms of the overall banking arrangement. Opening or closing any bank account shall only be undertaken by, or with the approval of, the Deputy Chief Executive. The title of any such bank accounts shall include the words "Malvern Hills District Council".

Cheques, including National Giro payment forms, shall be ordered only on the authority of the Deputy Chief Executive, who shall make proper arrangements for their safe custody.

Cheques drawn on official bank accounts, including National Giro accounts, shall bear the facsimile signature of the Deputy Chief Executive.

### **C7.3 Responsibilities of Heads of Service**

To comply with financial rules relating to banking arrangements and to follow the guidance on banking issued from time to time by the Deputy Chief Executive.

To advise the Deputy Chief Executive of material amounts due to be credited or debited to MHDC's bank accounts in order to enable efficient cash flow management.

## **C8 INVESTMENTS AND BORROWING**

### **C8.1 Responsibilities of the Deputy Chief Executive**

Ensure that all borrowings and investments are made in the name of MHDC.

Ensure that all securities in support of investments which are the property of MHDC or its nominees and the title deeds of all property in MHDC's ownership are held in accordance with arrangements approved by the Deputy Chief Executive.

To act as MHDCs registrar of stocks, bonds and mortgages and to maintain records of all borrowing of money by MHDC. They may also authorise the premature repayment of individual bonds and mortgages.

All money temporarily uninvested, shall be aggregated for the purpose of treasury management and shall be under the control of the Deputy Chief Executive.

Unofficial or voluntary funds are, wherever possible, in the name of MHDC. All officers acting as trustees by virtue of their official position shall deposit securities or similar documents relating to the trust with the Deputy Chief Executive unless the deed otherwise provides.

To arrange, where funds are held on behalf of third parties, for their secure administration and maintain written records of all transactions.

To ensure that trust funds are operated within any relevant legislation and the specific requirements for each trust.

### **C8.2 Responsibilities of Heads of Service**

To ensure that no loans are made to third parties and no interests are acquired in companies, joint ventures, or other enterprises without the approval of Council, following consultation with the Deputy Chief Executive.

To ensure that all any unofficial or voluntary fund is declared to him/her by the controlling officer(s) and that annual accounts, audited by suitably qualified auditors, are submitted within a reasonable time after the end of each accounting period, to the body responsible for the management or control of each fund.

To ensure that all officers acting as trustees by virtue of their official position shall deposit securities or similar documents relating to the trust with the Head of Policy and Governance unless the deed otherwise provides.

To inform the Deputy Chief Executive of the names of all such funds and of their controlling officer(s) and managing body. Where the Head of Service so requests, the Deputy Chief Executive shall advise on the suitability of the form of accounts and of the audit arrangements.

## **C9 STAFFING**

### **C9.1 Why is this important?**

In order to provide the highest level of service, it is crucial that MHDC recruits and retains high calibre, knowledgeable staff, qualified to an appropriate level. An appropriate staffing strategy and policy should exist, in which staffing requirements and budget allocation should be matched.

### **C9.2 Key controls**

The key controls for staffing are:

- (a) that procedures are in place for forecasting staffing requirements and cost
- (b) that procedures are in place for monitoring staffing expenditure against budget
- (c) that controls are implemented that ensure that staff time is used efficiently and benefitsMHDC.

### **C9.3 Responsibilities of Deputy Chief Executive**

To ensure that budget provision exists for all existing and new employees and to sign off the recruitment of all new employees once the satisfactory finances are in place.

To act as an advisor to Heads of Service on areas such as National Insurance, pension contributions as appropriate.

To ensure that an annual staffing budget is produced that is based upon MHDC's agreed establishment.

### **C9.4 Responsibilities of Heads of Service**

To monitor staff activity to ensure adequate control over such costs as sickness, overtime, training and temporary staff.

To ensure that the staffing budget is not exceeded and that it is managed to enable the agreed level of service to be provided within the Services' cash limit.

Under no circumstances to appoint additional posts to the agreed Establishment without first agreeing the source of finance with the Deputy Chief Executive.

## **APPENDIX D: SYSTEMS AND PROCEDURES**

### **D1 SYSTEMS AND PROCEDURES: GENERAL**

#### **D1.1 Why is this important?**

MHDC has many systems and procedures relating to the control of assets, including purchasing, cash receipting and financial ledger systems. Services are increasingly reliant on computers for their financial management information. The information must therefore be accurate and the systems and procedures sound and well administered. They should contain controls to ensure that transactions are properly processed and errors detected promptly.

The Deputy Chief Executive has a professional responsibility to ensure that MHDC's financial systems are sound and should therefore be notified of any new developments or changes.

#### **D1.2 Key controls**

Basic data exists to enable MHDC objectives, targets, budgets and plans to be formulated

Performance is communicated to the appropriate managers on an accurate, complete and timely basis

Early warning is provided of deviations from target, plans and budgets that require management attention

Operating systems and procedures are secure.

#### **D1.3 Responsibilities of Deputy Chief Executive**

To make arrangements for the proper administration of MHDC's financial affairs, including to:

- issue advice, guidance and procedures for MHDC's officers and others acting on its behalf
- determine the accounting systems, form of accounts and supporting financial records
- establish arrangements for audit of MHDC's financial affairs
- approve any changes to be made to existing financial systems or new systems introduced.

#### **D1.4 Responsibilities of Heads of Service**

To ensure that accounting records are properly maintained and held securely.

To ensure that vouchers and documents with financial implications are not destroyed except in accordance with arrangements approved by the Deputy Chief Executive.

To ensure that a complete management trail, allowing financial transactions to be traced from the original document to the accounting records, and vice versa, is maintained.

To ensure that the organisational structure provides an appropriate segregation of duties to provide adequate internal controls and minimise the risk of fraud or other malpractice.

To ensure that systems are documented and staff trained in operations.

To consult with the Deputy Chief Executive before changing any existing system or introducing new systems.

To consult with the Deputy Chief Executive in situations where it is considered that the rigid application of Financial Rules will be likely to work against the best interests of MHDC.

To establish a scheme of delegation identifying officers authorised to act upon the Heads of Service behalf in respect of payments, income collection and placing orders, including variations, and showing the limits of their authority.

To supply lists of authorised officers, with specimen signatures and delegated limits to the Deputy Chief Executive, together with any subsequent variations.

To ensure that effective contingency arrangements, including back-up procedures, exist for computer systems. Wherever possible, back-up information should be securely retained in a fireproof location, preferably offsite, or in an alternative location within the building.

To ensure that, where appropriate, computer systems are registered in accordance with the Data Protection legislation and that staff are aware of their responsibilities under the legislation.

To ensure that relevant standards and guidelines for computer systems issued by the appropriate Head of Service are observed.

To ensure that computer equipment and software are protected from loss and damage through theft, vandalism etc.

To comply with the copyright, designs and patents legislation and, in particular, ensure that:

- only software legally acquired and installed by MHDC is used on its computers
- staff are aware of legislative provisions

## **D2 INCOME**

### **D2.1 Why is this important?**

Income can be a vulnerable asset and effective income collection systems are necessary to ensure that all of the income due is identified, collected, receipted and banked properly. It is preferable to obtain income in advance of supplying goods or services as this improves MHDC's cashflow and also avoids the time and cost of administering debts.

### **D2.2 Key controls**

The key controls for income are:

- all income due to MHDC is identified and charged correctly
- all income is collected from the correct person, at the right time using the correct procedures and the appropriate stationery
- all money received by an employee on behalf of MHDC is paid without delay to MHDC's bank account, and properly recorded
- effective action is taken to pursue non-payment within defined timescales
- formal approval for write-off is obtained
- appropriate write-off action is taken within defined timescales
- appropriate accounting adjustments are made following write-off action
- all appropriate income documents are retained and stored for the defined period in accordance with the "Guidelines on the Destruction of Financial Record"

### **D2.3 Responsibilities of Deputy Chief Executive**

To agree arrangements for the collection of all income due to MHDC and approve the procedures, systems and documentation for its collection.

To agree the write off of bad debts up to £10,000 in each case and to refer larger sums to Executive.

To ensure that appropriate accounting adjustments are made following write-off.

### **D2.4 Responsibilities of Heads of Service**

To establish a charging policy for the supply of goods or services, including the appropriate charging of VAT, and review it regularly, within corporate policies.

To separate the responsibility for identifying amounts due and the responsibility for collection, as far as is practicable.

To establish and initiate appropriate recovery procedures, including legal action where necessary, for debts which are not paid promptly.

To issue official receipts or maintain other documentation for income collection.

To ensure that at least two employees are present when post is opened so that money received by post is properly identified and recorded.

To hold securely receipts, tickets and other records of income, for the appropriate period.

To lock away all income to safeguard against loss or theft, and to ensure the security of cash handling.

To ensure that income is paid fully and promptly into the MHDC bank account in the form in which it is received. Appropriate details should be recorded on to the Cash Receipting system to provide an audit trail.

To ensure income is not used to cash personal cheques or other payments.

To supply the Deputy Chief Executive with details relating to work done, goods supplied or services rendered or other amounts due, to enable the Deputy Chief Executive to record correctly the sums due to MHDC and to ensure accounts are sent out promptly.

Heads of Service have a responsibility to assist the Deputy Chief Executive in collecting debts that they have originated, by providing any further information requested by the debtor, and in pursuing the matter on MHDC's behalf.

To keep a record of every transfer of official money between MHDC employees. The receiving officer must sign for the transfer and the transferor must retain a copy.

To recommend to the Deputy Chief Executive all debts to be written off and keep a record of all sums written off up to the approved limit. Once raised, no bona fide debt may be cancelled except by full payment or by its formal writing off. A credit note to replace a debt can only be issued to correct a factual inaccuracy or administrative error in the calculation and/or billing of the original debt.

To obtain the approval of the Deputy Chief Executive when writing off any individual amounts in excess of £500 and amounts for an individual debtor that in total exceed £500.

To notify the Deputy Chief Executive of outstanding income relating to the previous financial year as soon as possible after 31 March in line with the timetable determined by the Deputy Chief Executive.

## **D3 PAYMENTS TO EMPLOYEES AND MEMBERS**

### **D3.1 Why is this important?**

Employee costs are the largest item of expenditure for most MHDC services. It is, therefore important that there should be controls in place to ensure that payments are made only where they are due for services to MHDC and that payments accord with individual's contracts of employment and conditions of service.

### **D3.2 Key controls**

The key controls for payments to employees and Members are:

- Proper authorisation procedures and adherence to corporate timetables for: appointments, resignations, dismissals, suspensions and secondments. absences from duty for sickness and unpaid leave. changes in remuneration, other than pay awards information necessary to maintain records of service for superannuation, income tax, national insurance.
- Frequent reconciliation of payroll expenditure against approved budget.
- All appropriate payroll documents are retained and stored for the defined period in accordance with the "Guidelines on the Destruction of Financial Records".

### **D3.3 Responsibilities of Deputy Chief Executive**

To arrange and control secure and reliable payment of salaries, wages, compensation or other emoluments to employees in accordance with procedures prescribed on the due date.

To record and control tax and other statutory deductions.

To make arrangements for payment of all travel and subsistence claims or financial loss allowance

To make arrangements for paying Members travel or other allowances upon receiving the prescribed form duly completed and authorised.

Claim forms submitted more than three months after the expenditure has been incurred shall only be paid on the approval of the Deputy Chief Executive.

To secure payment of salaries and wages by most economical means.

### **D3.4 Responsibilities of Heads of Service**

To ensure appointments are made in accordance with the rules of MHDC and approved establishments, grades, scales of pay and that adequate budget provision is available for the current financial year and subsequent years.

To notify the Deputy Chief Executive of all appointments, terminations or variations which may affect the pay or pension of an employee or former employee, in the form and to the timescale required by the Deputy Chief Executive.

To ensure that adequate and effective systems and procedures are operated for personnel and payroll aspects, so that:

- payments are only authorised to bona fide employees
- payments are only made where there is a valid entitlement
- conditions, service and contracts of employment are correctly applied.
- employees' names listed on the payroll are checked at regular intervals to verify accuracy and completeness
- there is an effective system of checking and certifying payroll forms.

To send an up-to-date list of the names of officers authorised to sign records to the Deputy Chief Executive, together with specimen signatories.

To ensure that payroll transactions are processed only through the payroll system. Heads of Service should give careful consideration to the employment status of individuals employed on a "self employed consultant or sub-contract" basis. The Inland Revenue applies clear guidelines for employee status and in cases of doubt, advice should be sought from the Deputy Chief Executive.

To certify travel and subsistence claims and other allowances on a monthly basis. Certification is taken to mean that journeys were authorised and expenses properly and necessarily incurred, and that allowances are properly payable by MHDC, ensuring that cost-effective use of travel arrangements is achieved. Due consideration should be given to tax implications and the Deputy Chief Executive is informed where appropriate.

Claim forms submitted more than three months after the expenditure has been incurred shall only be paid on the approval of the Deputy Chief Executive.

To ensure that the details of any employee benefits in kind are notified to the Deputy Chief Executive to enable full and complete reporting within then Income Tax Self Assessment system.

To ensure that all appropriate payroll documents are retained and stored for the defined period in accordance with the "Guidelines on the Destruction of Financial Records".

### **D3.5 Responsibilities of Members**

To submit claims for Members' travel and subsistence allowances on a monthly basis and, in any event, within one month of the year-end.

## **D4 ORDERING AND PAYING FOR WORK, GOODS & SERVICES**

### **D4.1 Why is this important?**

Public money should be spent with demonstrable probity and in accordance with MHDC's policies. MHDC's procedures help to ensure that services can receive value for money in their purchasing arrangements. These procedures should be read in conjunction with MHDC's Procurement Strategy and Contract Standing Orders.

It is imperative that budget managers keep a tight control over their budgets. Control starts with commitments placed against individual budgets in the form of Orders.

### **D4.2 General**

Every officer and Member of MHDC has a responsibility to declare any links or personal interests which they may have with purchasers or suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of MHDC. The Monitoring Officer maintains a Register of Members' Interests for this purpose.

Official orders must be in a form approved by the Deputy Chief Executive.

Official orders must be issued for ALL work, goods or services to be supplied to MHDC with only the following exceptions:

- Bailiff and Recovery Agent Costs
- Utility bills (gas/electricity/water/oil/telephones and any other metered service)
- Approved petrol accounts
- Pre-paid postage
- Petty Cash
- Lease car rentals
- Housing renovations grants (capital)
- Inland Revenue payments
- Οφφιχερ & member expenses/allowances
- Ηουσιγγ Βενεφιτ /Council Tax/Business Rates refunds or payments
- Commissions
- All payments to MHDC
- Refunding overpaid fees to customers
- Rent Refunds
- Superannuation payments
- Treasury / banking charges

Officers shall not give verbal orders, unless by reason of urgency (e.g. out of hours service) any such orders must be confirmed by an official order on the next working day.

Each order must conform with the directions of MHDC on central purchasing and the standardisation of supplies and materials. Standard terms and conditions must not be varied without the prior written approval of the Deputy Chief Executive and Head of Policy and Governance.

The normal method of payment of money due from MHDC shall be by BACS or other instrument drawn on MHDC's bank account by the Deputy Chief Executive. The use of direct debit shall require the prior agreement of the Deputy Chief Executive.

Official orders must not be raised for any personal or private purchases, nor should personal or private use be made of Council contracts.

#### **D4.3 Key controls**

The key controls for ordering and paying for work, goods and services are:

- all goods and services are ordered only by appropriate persons
- all goods and services shall be ordered in accordance with MHDC's Procurement Strategy and Contract Standing Orders
- all goods and services to be ordered using MHDC's purchasing system, except those detailed in section 4.2
- goods and services received are checked to ensure they are in accordance with the order
- payments are authorised by officers who can certify that goods have been received to price, quantity and quality
- all payments are made to the correct person, for the correct amount and are properly recorded, regardless of the payment method
- all appropriate payment documents are retained and stored for the defined period in accordance with the Finance Document' Retention Schedule
- all expenditure including VAT, is accurately recorded against the right budget and any exceptions corrected
- in addition, electronic purchasing requires that processes are in place to maintain the security and integrity of data for transacting business electronically.

#### **D4.4 Responsibilities of Deputy Chief Executive**

To ensure that all of MHDC's financial systems and procedures are sound and well administered.

To approve any changes to existing financial systems and to approve any new systems before they are introduced.

To approve the form of official orders, and associated terms and conditions.

To make payments from MHDC's funds on the appropriate authorisation that the expenditure has been duly certified in accordance with Financial Rules.

To make payments, whether or not provision exists within the estimates, where the payment is specifically required by statute or is made under a court order.

To make payments to contractors on the certificate of the appropriate Head of Service which must include details of the value of work, retention money, amounts previously certified and amounts now certified.

To provide advice and encouragement on making payments by the most economic means.

To ensure that payment is not made unless a proper VAT invoice has been received, checked, coded and certified for payment confirming:

- receipt of goods or services
- that the invoice is addressed to Malvern Hills District Council
- that the invoice has not previously been paid
- that prices and arithmetic are correct
- correct accounting treatment of tax
- the invoice is correctly coded
- discounts have been taken where available

- that appropriate entries will be made in accounting records.

To ensure that all appropriate payment records are retained and stored for the defined period in accordance with the “Guidelines on the Destruction of Financial Records”.

#### **D4.5 Responsibilities of Heads of Service**

To ensure that only orders generated from the Financial System are used for all goods and services other than the exceptions specified earlier.

To ensure that orders are only used for goods and services provided to MHDC. Individuals must not use official orders to obtain goods or services for their private use.

To ensure that only agreed staff authorise orders and to maintain an up-to-date list of such authorised staff. The authoriser of the order should be satisfied that the goods and services ordered are appropriate and needed, that there is adequate budgetary provision and that quotations or tenders have been obtained in accordance with Contract Rules. Value for money should always be taken into consideration in accordance with MHDC’s Procurement Strategy.

To ensure that goods and services are checked on receipt to ensure they are in accordance with the order. This check should, where possible, be carried out by a different officer from the person who authorised the order.

To ensure that a different authorised member of staff, from the person who authorised the order, confirms the receipt of goods.

To ensure that they maintain and review periodically a list of staff approved to certify and authorise invoices. Names of authorising officers together with specimen signatures and shall be forwarded to the Deputy Chief Executive.

Payment should not be made on a statement or other document other than the formal invoice.

To encourage suppliers of goods and services to receive payment by the most economic means. Payments should, however, not be made by direct debit unless essential and with the prior approval of the Deputy Chief Executive.

To ensure that MHDC obtains best value for money from purchases by taking appropriate steps to obtain competitive prices for goods and services of the appropriate quality, with regard to the guidelines and best practices set out in MHDC’s Procurement Strategy and Contract Rules.

To ensure that employees are aware of the national code of conduct for local government employees and any locally adopted codes or rules relevant to employees’ conduct.

To ensure that no loan, leasing or rental arrangements are entered into without prior agreement from the Deputy Chief Executive. This is because of the potential impact on MHDC’s borrowing powers, to protect MHDC against entering into unapproved credit arrangements and to ensure value for money is being obtained.

To notify the Deputy Chief Executive of outstanding expenditure relating to the previous financial year as soon as possible after 31 March in line with the timetable determined by the Deputy Chief Executive.

To notify the Deputy Chief Executive immediately of any expenditure to be incurred as a result of statute/court order where there is no budgetary provision.

## **D5 TAXATION**

### **D5.1 Why is this important?**

Like all organisations, MHDC is responsible for ensuring its tax affairs are in order. Tax issues are often very complex and the penalties for incorrectly accounting for tax are severe. It is therefore very important for all officers to be aware of their role.

### **D5.2 Key controls**

The key controls on taxation are:

- budget holders are provided with relevant information and kept up-to-date on tax issues
- budget holders are instructed on required record keeping
- all taxable transactions are identified, properly carried out and accounted for within stipulated timescales
- records are maintained in accordance with instructions
- returns are made to the appropriate authorities within the stipulated timescale.

### **D5.3 Responsibilities of Deputy Chief Executive**

To complete all Inland Revenue returns regarding PAYE.

To complete a monthly return of VAT inputs and outputs to HM Customs and Excise.

To provide details to the Inland Revenue regarding the Construction Industry Tax Deduction Scheme:

To maintain up-to-date guidance for Council employees on taxation.

### **D5.4 Responsibilities of Heads of Service**

To ensure that the correct VAT liability is attached to all income and that all VAT recoverable on purchases complies with HM Customs and Excise Regulations.

To ensure that all persons employed by MHDC are added to the payroll and tax deducted from any payments, except where the individuals are bona fide self employed or are employed by a recognised staff agency.

To follow the guidance on taxation issued by the Deputy Chief Executive

## **APPENDIX E: EXTERNAL ARRANGEMENTS**

### **E1 PARTNERSHIPS**

#### **E1.1 Why is this important?**

The days of the all-purpose authority that plans and delivers everything are over. It is in partnership with others - public agencies, private companies, community groups and voluntary organisations - that the future of local government lies. Local authorities will deliver some services, but their distinctive leadership role will be to bring together the contributions of the various stakeholders. They will need to deliver a shared vision of services by bringing cohesion and co-ordination to the fragmentation of local interests.

Local authorities will mobilise investment, bid for funds, champion the needs of their areas and harness the energies of local people and community organisations. Local authorities will be measured by what, in partnership with others, they achieve.

#### **E1.2 General**

The main reasons for entering into a partnership are:

- the desire to find new ways to share risk
- the ability to access new resources
- to forge new relationships.

A partner is defined as either:

- an organisation (private or public) undertaking, part funding or participating as a beneficiary in a project or
- a body whose nature or status give it a right or obligation to support the project.

Partners participate in projects by:

- acting as a project deliverer or sponsor, solely or in concert with others
- acting as a project funder or part funder
- being the beneficiary group of the activity undertaken in a project.

Partners have common responsibilities:

- to be willing to take on a role in the broader programme appropriate to the skills and resources of the partner organisation
- to act in good faith at all times and in the best interests of the partnership's aims and objectives
- be open about any conflict of interests which might arise
- to encourage joint working between themselves, promote the sharing of information, resources and skills between public, private and community sectors
- to hold confidentially any information received, as a result of partnership activities or duties, that is of a confidential or commercially sensitive nature
- to act wherever possible as ambassadors for the project.

#### **E1.3 Key controls**

The key controls for Council Partners are:

- to be aware of their responsibilities under Financial Rules and Contract Rules

- to ensure risk management processes are in place to identify and assess all known risks
- to ensure project appraisal processes are in place to assess the viability of the project in terms of resources, staffing and expertise.
- to agree the roles and responsibilities of each of the partners involved in the project before the project commences
- to communicate regularly with other partners throughout the project so that problems can be identified and resolved.
- Regular reviews are made by Council to ensure that the partnership is delivering the aims agreed in the project appraisal and that all parties are delivering their commitments as agreed.

#### **E1.4 Responsibilities of Deputy Chief Executive**

To advise on effective controls which will ensure that resources are not wasted.

To advise on the key elements of funding a project:

- scheme appraisal for financial viability
- risk appraisal
- resourcing, including taxation issues
- audit requirements

#### **E1.5 Responsibilities of Heads of Service**

To ensure that the approval of Executive Committee is obtained before any negotiations are concluded on partnership arrangements.

To maintain a register of all partnership arrangements entered into in accordance with procedures specified by the Deputy Chief Executive.

To provide appropriate information to the Deputy Chief Executive to enable a note to be entered into the statement of accounts.

## **E2 EXTERNAL FUNDING**

### **E2.1 Why is this important?**

As local authorities are encouraged to provide 'seamless' service delivery through working closely with other agencies and private service providers, the scope for external funding has increased.

### **E2.2 Key controls**

To ensure that key conditions of funding and that any statutory requirements are complied with.

### **E2.3 Responsibilities of Deputy Chief Executive**

To ensure that all funding notified by external bodies is received and properly recorded in MHDC's accounts.

### **E2.4 Responsibilities of Heads of Service**

To ensure that all claims for funds are made by the due date.

## **E3 WORK FOR THIRD PARTIES**

### **E3.1 Why is this important**

Current legislation enables MHDC to provide a range of services to other bodies. Arrangements should be in place to ensure that any risk associated with this work is minimised.

### **E3.2 Key controls**

To ensure that proposals are properly costed in accordance with guidance provided by the Deputy Chief Executive.

To ensure that contracts are drawn up using guidance provided by the Deputy Chief Executive and that the formal approvals process is adhered to.

### **E3.3 Responsibilities of Heads of Service**

To ensure that the approval of Executive Committee is obtained before any negotiations are concluded to work for third parties.

To maintain a register of all contracts entered into with third parties in accordance with procedures specified by the Deputy Chief Executive.

To ensure that appropriate insurance arrangements are made.

To ensure that MHDC is not put at risk from any bad debts.

To ensure that no contract is subsidised by MHDC.

To ensure that, wherever possible, payment is received in advance of the delivery of the service.

To ensure that the Service has the appropriate expertise to undertake the contract.

To ensure that such contracts do not impact adversely upon the services provided for MHDC.

To ensure that all contracts are properly documented.

To provide appropriate information to the Deputy Chief Executive to enable a note to be entered into the statement of accounts.



**MALVERN HILLS DISTRICT COUNCIL**

**CONTRACT PROCEDURE RULES**

**APRIL 2019**



# MALVERN HILLS DISTRICT COUNCIL

## CONTRACT PROCEDURE RULES

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## INTRODUCTION AND BASIC PRINCIPLES

### 1 Introduction

Contract procedure rules ensure that the Council lets contracts in a fair, consistent, honest, legal and transparent manner. The rules have a statutory basis (section 135 of the Local Government Act 1972) which promotes good purchasing practice and public accountability. Adhering to contract procedure rules is the best defence against potential challenge or allegations that a purchase has been made incorrectly or fraudulently.

These rules must be read in conjunction with the Council's Constitution and in particular the Financial Regulations.

### 2 Legal Principles

All procurement activity must comply with all of the following principles of European Union (EU) Law and Public Contracts Regulations 2015.

- Free movement of goods and services;
- Non-discrimination/ equal treatment for all;
- Openness/ transparency;
- Proportionality

### 3 MHDC Principles

The Council's procurement principles are presented in detail in the Procurement Strategy. They guide how we conduct and continue to develop our procurement activities. As a council we will preserve the highest standards of honesty, integrity, impartiality and objectivity.

- Outcomes – we will be clear about our objectives and required outcomes through every procurement undertaken;
- Value for money – the Council expects to deliver value for money in all procurement activity;
- Performance monitoring and transparency – all contract procurement activities will include targets and performance measures which will be monitored throughout the contract life;
- Relationships with suppliers – the Council is keen to support local businesses and SMEs and work closely with all suppliers to ensure that we continue to deliver high quality services to our residents.

## COMPLIANCE AND ESSENTIAL REQUIREMENTS

### 4 Compliance

**All staff with financial and/ or purchasing responsibilities must comply with Contract Procedure Rules. This includes any purchasing activity on behalf of other organisations or using external grant funding. These rules present the minimum requirements and more rigorous procedures may be appropriate for some contracts. Exemptions to these rules can only be used in exceptional**

**circumstances as detailed in rule 8. Any failure to comply with Contract Procedure Rules could result in disciplinary action.**

Any references to 'the Council' include any committee or persons acting with delegated authority on behalf of the council, as set out in the Council's Constitution, Scheme of Delegation and/ or Financial Regulations.

## **5 Summary of essential requirements**

All staff with purchasing responsibilities must:

- Conduct an appraisal of the purchasing need and the requirement to obtain best value for money;
- Follow contract procedure rules when purchasing goods or services;
- Check with line manager and Procurement about responsibilities and take all necessary legal, financial and professional advice;
- Check whether there is an existing corporate or national framework or contract that can be used before undergoing a competitive process;
- Agree a timetable for the procurement of high value (>£50,000) contracts with Procurement;
- Ensure procurement is undertaken with appropriate delegated authority limits and approved budget in place;
- Plan early;
- Declare any personal interest in a contract and withdraw from taking part in it. Corruption and/ or bribery is a criminal offence;
- Keep bids confidential;
- Complete a written contract and/or order before the supply or works begin in conjunction with Legal Services using the council's standard supply contract;
- For high value contracts identify a contract manager with responsibility for ensuring the contract delivers as intended;
- Where any proposed procurement may have strategic implications, or impact upon a service area other than that of the Lead Officer, (for example the purchase of vehicles), the appropriate Head of Service must be consulted beforehand;
- Keep records of all dealings with suppliers;
- Ensure that where there is a requirement for communication to be in writing, this includes e-mail as well as hardcopy;
- Assess contract performance to ascertain whether it met the purchasing need and value for money requirements.

## **6 Officer responsibilities**

6.1 Heads of Service and service managers will ensure that:

- Lead officers comply with the contract procedure rules, the Council's Financial Regulations and codes of conduct and with all UK and European binding legal requirements.
- Details of new contracts are passed to Procurement for inclusion in the contracts register;
- An appropriate lead officer is nominated to undertake the procurement process, in conjunction with the Procurement team where appropriate

- The use of exemptions (see rule 8) are approved by the Deputy Chief Executive and reported to committee as appropriate.

## 6.2 Lead officers must:

- Consider Council guidance on best practice in purchasing;
- Check whether a suitable corporate or national contract or framework agreement exists before advertising a procurement opportunity. If a suitable contract or framework agreement exists, this should be used unless there is an auditable reason not to;
- Keep the required records (see rule 22);
- Take all necessary legal, financial, audit, procurement and other professional advice;
- Where the value of the contract exceeds £50,000, agree the procurement process, timetable and documentation with the Procurement team.

## **APPLICATION OF THE RULES**

### **7 Scope of the rules**

- 7.1 These rules apply to all contracts for the provision of goods, services and works to the Council unless indicated in rule 8 below. This includes single and recurrent purchases, as well as contracts awarded by the council, by any person, firm or body on the Council's behalf regardless of the source of funding for the contract.
- 7.2 The rules are part of the Council's Constitution and must be complied with, in conjunction with the Council's Financial Regulations. They take precedence over the delegated powers of Members and officers. Non-compliance may result in disciplinary action.
- 7.3 Where joint procurement arrangements exist, they must comply with relevant UK and EU regulations and the Council's Contract Procedure Rules where applicable.

### **8 Application of the rules and exemptions**

- 8.1 These rules do not apply to:
- a. contracts of employment, contracts for the purchase or sale of land or securities, or contracts for the taking or granting of any interest in land, unless such contracts also involve the procurement of works, services or supplies.
  - b. Low value purchases which can be made from petty cash or procurement cards as long as they are in accordance with any operational instructions and financial limits issued by the s151 Officer.
- 8.2 Competitive quotes or tenders are not required for Call-off Contracts where the relevant Framework Agreement has been identified in accordance with rule 11 below.
- 8.3 The following circumstances may be exempt from the requirement to undertake a procurement exercise:

a. There is no competitive market. Where there is no genuine competition, written quotes must be obtained from the contractor and where appropriate negotiations to ensure best value for the council must take place prior to contract award. For example:

- i. The goods or materials are proprietary articles, and any acceptable substitutes for which, are obtainable only from one supplier;
- ii. The goods or service are a specialised nature with no acceptable substitutes that can only be supplied or carried out by one supplier;
- iii. The goods or materials are sold at fixed prices or prices controlled by trade organisations or government order;
- iv. Purchases are to be made at auctions or public fairs, with the authorisation of the Deputy Chief Executive;
- v. It can be demonstrated that no genuine competition can be obtained in respect of the purchase of particular goods, services or executive of works.

b. An emergency situation arises. The Deputy Chief Executive can authorise expenditure where:

- i. The emergency has arisen due to events that were not reasonably foreseeable or attributable in any way to the Council;
- ii. There is immediate risk to individuals, property or serious disruption to services;
- iii. The value is below Public Contract Rules thresholds and the goods, services or works are required urgently (e.g. the repair/ replacement of essential equipment, damage to property).

c. The exemption is prescribed by legislation, i.e. certain other arrangements contained in European or domestic legislation may permit an exemption.

d. Advantage can be taken at short notice of special offers, which produce savings or benefits to the Council, and where the item is clearly required and such savings or benefits are clearly demonstrated, with the authorisation of the Deputy Chief Executive.

e. The purchase is part of a serial programme, where the price and terms were negotiated as a part of a contract awarded through a competitive procurement exercise.

f. The appropriate service manager and the Deputy Chief Executive agree that financial loss may be incurred if the letting of the contract is delayed.

g. External/ partner funding arrangements require other procedures to be followed.

h. The contract is awarded in accordance with another local authority's contract procedure rules, a local authority consortium or other joint procurement arrangement, provided the council has the legal power to participate in such a contract. Where there is any doubt the Legal Services Manager will make the final decision.

- i. A form of competitive dialogue or negotiation process is used in the award of complex contracts, where the council needs to discuss all aspects of a proposed contract with tenderers. In this case consideration must be given to relevant guidance from the Government Procurement Service and the Public Contract Regulations 2015.

## **PROCUREMENT PROCESSES AND PROCEDURES**

### **9. Assessing the requirement**

#### **9.1. Authority to carry out procurement**

- 9.1.1. Before any procurement starts, officers must ensure that any requirements for committee approval defined in the Constitution and Financial Regulations have been adhered to and that there is adequate financial provision within the relevant budget.

#### **9.2. Appraisal**

- 9.2.1. Before any procurement starts the lead officer must undertake an appraisal of the proposed purchase and route to market, considering the following:

- a. The need for the expenditure and its priority;
- b. Value for money;
- c. The objectives of the purchase;
- d. Identification of any associated risks and their mitigation;
- e. The market;
- f. TUPE and pension arrangements;
- g. Most appropriate procurement method;
- h. Existing and compliant framework agreements or other arrangements;
- i. Consultation with users about the proposed procurement, including performance and satisfaction monitoring;
- j. Any potential changes to standard terms and conditions (input will be required from Legal Services if that is the case);
- k. Establish the total value of the contract (all costs the Council is likely to incur over the life of the contract);
- m. Establish any third party contributions where relevant;
- n. The impact of Community Right to Challenge and Public Services (Social Value) Act 2012.

- 9.2.2. Where a contract award may result in the transfer of employees to a new employer under TUPE regulations, HR and Legal Services should be consulted before any procurement activity starts.

### **10. Estimating the total value of a contract or framework agreement**

- 10.1. The Council must not split contracts or framework agreements to avoid public procurement rules or calculate the value of contracts in such a way as to deliberately avoid exceeding the Regulation thresholds or any threshold identified in these rules.

- 10.2. For 'one-off' purchases, the estimated value is the order value;
- 10.3. For recurrent purchases of the same type, the estimated value will depend on the length of the agreement – if there is no fixed time period then it will be the annual cost;
- 10.4. Any procurement exceeding £50,000 must be led by the Procurement team, regardless of the type of exercise;
- 10.5. Any procurement expected to be near the EU threshold must be led by the Procurement team and will be done in an EU compliant manner.
- 10.6. The table below outlines the financial thresholds and procurement activity required for each.

<b>Total value*</b>	<b>Award Procedure</b>	<b>Procurement involvement</b>
Up to £2,999	Select supplier – 1 verbal quotation minimum	None required
£3,000 to £9,999	Must seek a minimum of 2 quotes (use framework if appropriate)	None required
£10,000 to £49,999	Must seek 3 written quotes or framework agreement	Make procurement aware
£50,000 to EU threshold**	Invitation to tender by advertisement or framework agreement	Procurement to lead
Above EU threshold**	EU procedure or if not applicable invitation to tender as above or framework agreement mini competition	Procurement to lead

\* All values are exclusive of VAT

\*\*EU threshold updated every 2 years on 1<sup>st</sup> January. From 1<sup>st</sup> January 2018 the threshold for supplies and services contracts is £181,302 , £615,278 for social and other specific services (light touch regime) and £4,551,413m for works contracts.

## **11. Framework agreements**

- 11.1. If an options appraisal identifies a suitable framework agreement, the lead officer must ensure that:
  - a. Any call-off contract is entered into in accordance with the terms of the relevant framework;
  - b. Where applicable, a mini-competition is held in accordance with the rules of the framework agreement.
- 11.2. A framework agreement is considered suitable where it has either been entered into by the Council in compliance with these rules or another local authority, local authority purchasing consortium or Central Government has tendered and

awarded in compliance with EU public procurement legislation and the Council is identified as a contracting authority.

- 11.3. Where a Framework Agreement has been set up following an EU tender, there must be full compliance with EU rules when awarding call-off contracts under it.

## **12. Select Lists**

### **Quotations and Tendering by reference to a Select List of Contractors**

- 12.1. Select lists cannot be used where the *EU procedure* applies.
- 12.2. Select lists of contractors now exist for general, non-specialist work. These are available on the Council's intranet.
- 12.3. Any works not covered by these lists should be referred to the procurement or legal teams for written confirmation that it is specialist work and that the following procedures do not apply, prior to quotations being obtained.
- 12.4. Specialist work is different from Emergency Works which are covered in 3.1.1 (v).
- 12.5. Contracting procedures outlined in this document continue to apply when an Authorised Officer has determined that the work to be carried out is covered by a select list, but invitations to quote or tender for a contract are to be limited to those contractors whose names are included in the relevant select list.
- 12.6. Invitations to quote or tender will be sent in line with the thresholds set out in the table at 10.6 to contractors on the relevant select list.
- 12.7. The basis of contractor selection when 3 or more quotations/ tenders are required will be as follows:-
  - One contractor based on previous competitiveness
  - One contractor based on past performance
  - One or more contractors based on rotation within the relevant select list
- 12.8. It is important that fair competition is achieved therefore rotation of contractors must be undertaken when obtaining quotations or all tenders, including those of low value. In addition, effort should be made to ensure that receipt and opening of competitive quotations is managed to demonstrate fairness in award of contracts and that names of contractors invited to quote or tender should not be divulged to other parties involved in the same process.
- 12.9. The Select list will be reviewed annually and re-advertised at least every five years. On re-advertisement, a copy of the advertisement will be sent to each person on the list, inviting them to reapply. Review means:

- contractors on the select list will be requested to provide evidence of both financial and insurance compliance on an annual basis ;
- the deletion of those persons no longer qualifying, with a written record kept justifying the deletion.

### **13. Pre-procurement market research and consultation**

- 13.1. The lead officer and Procurement team may consult potential bidders or tenderers in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, prior to any request for a quote or an invitation to tender (ITT), provided this does not prejudice any potential bidders or tenderers.
- 13.2. Lead officers must not seek or accept technical advice on the preparation of a request for a quote or an ITT from anyone who may have a commercial interest in the tender, as this may prejudice the equal treatment of all potential bidders and tenderers or distort competition.
- 13.3. Before any consultation takes place, lead officers should liaise with Procurement.

### **14. ICT Procurement**

- 14.1. All ICT related procurement should follow the rules outlined in this document. In addition the requirements outlined below also need to be adhered to:
  - The purchase must be approved by the South Worcestershire ICT Shared Service (SWICTSS);
  - Any purchase must then be made through or in conjunction with the Procurement team.
- 14.2. Any extension or additional modules to software can be procured without a tendering process if:
  - The original system was purchased following a full tendering exercise;
  - The contracts for the system and any support and maintenance are still within their contract term;
  - The cost of the additional modules is/ are less than 25% of the original purchase price;
  - The total cumulative price does not exceed to OJEU threshold;
  - The proposed purchase has had technical sign off from SWICTSS and the Procurement team.

### **15. Preparation of quotation/ tender documentation**

Lead officers must use the standard template quotation and tender documentation available from the Procurement team and on the procurement pages on the Intranet as the basis for all documentation.

- 15.1. Where the total contract value is below the OJEU threshold (see rule 10.6), the procurement process must not include a pre-qualification stage, or a stage in the process where the Council can assess the suitability of potential bidders in order to reduce the number bidders proceeding to a later stage of the process.

- 15.2. Suitability questions may be included within a procurement where they are:
- Relevant to the subject matter of the procurement;
  - Proportionate.

Responses must be considered as part of the wider overall quality evaluation.

- 15.4 It is the lead officer's responsibility to ensure that:
- Documents and information provided are clear and not contradictory;
  - Any locally prepared variations to standard documentation are clear and use generally accepted terms;
  - Contract conditions and specifications are in the best interests of the Council in respect of quality, cost and performance;
  - Independent scrutiny of tender documentation occurs at this stage, as errors may prove costly;
  - Contracts are sufficiently clear and robust to enable the Council to enforce to their fulfilment;
  - Potential bidders understand the implications of Freedom of Information legislation and, in particular, that commercial confidentiality cannot be guaranteed.

#### 15.5. **Requests for quotes**

- 15.5.1. All quotes above £2,499, including those in mini-competitions under framework agreements, must be confirmed in writing before a decision to award can be made and all quotes must be retained by the lead officer for audit purposes.
- 15.5.2. When requesting a quote, an appropriate description of the goods, services or execution of works setting out the Council's requirements in sufficient detail must be provided to prospective bidders to enable the submission of competitive quotes.
- 15.5.3. The request for a quote shall also make reference to or include the following as a minimum
- a. the terms and conditions of the contract that will apply (the Council's standard terms and conditions modified as necessary);
  - b. notification that quotes are submitted to the Council at the bidder's expense;
  - c. a description of the award criteria as appropriate;
  - d. the closing date and time for the submission of quotes;
  - e. notification that the Council is not bound to accept any quotes submitted.
- 15.5.4. The proposed form of contract must comply with rules **23 and 24** and where possible the Council's standard terms and conditions must be used. All contracts should be reviewed by the Legal Services team prior to completion and signature.
- 15.5.5. Where requests for quotes are sought from more than one bidder, the request should be sent to each bidder at the same time and

contain the same information. Any supplementary information or clarification responses should be given on the same basis.

- 15.5.6. The Council's E-Procurement Portal will be used to advertise and manage the procurement process. Please contact the Procurement Team for further information.

## **15.6. Invitation to Tender**

- 15.6.1. Tender documentation will normally consist of the following within the invitation to tender:
- Instructions to tender;
  - Mandatory requirements;
  - Form of tender;
  - Pricing schedule;
  - Specification (including technical drawings/ diagrams if appropriate);
  - Sample contract (discussed with Legal Services if there are any amendments to be made to the standard contract);
  - Evaluation criteria;
  - Certificate of non canvassing/ non collusion.

**Please see the procurement pages on the Intranet for further information on A Guide to Specification Writing.**

- 15.6.2. The above list is not necessarily exhaustive, any further requirements relevant to the procurement should be discussed with the Procurement team and other advisors before documentation is finalised and issued. For example, workforce information will be required if there is a TUPE requirement.
- 15.6.3. The Council's E-Procurement Portal will be used to advertise and manage the procurement process. Please contact the Procurement Team for further information.

## **16. Community Right to Challenge**

- 16.1. The Community Right to Challenge under Part 5 of the Localism Act allows certain relevant bodies to submit expressions of interest to deliver council services. The Act requires the council to consider expressions of interest in respect of relevant services from relevant bodies which include:
- Voluntary/ community bodies;
  - Charities;
  - Parish councils;
  - Two or more employees of the relevant authority.
- 16.2. Details of the Statutory Guidance on Community Right to Challenge along with other background information can be found at:

- 16.3. In order to meet the requirements of the Localism Act, the council will:
- accept informal approaches from all Relevant Bodies;
  - acknowledge all Expressions of Interest;
  - evaluate the EOI in accordance with the statutory guidance;
  - run a procurement exercise under normal procurement rules if the EOI is accepted.

### **17. Construction, Design and Management Regulations**

It is a requirement that all applicable contracts let by the council comply with Construction, Design and Management (CDM) Regulations.

### **18. Public Services (Social Value) Act 2012**

- 18.1. The Public Services (Social Value) Act 2012, requires contracting authorities to consider at the pre-procurement stage of any services contract and services framework agreement (including goods and works contracts procured in combination with services) to which the Public Contracts Regulation 2006 (SI 2006/5) apply:
- How the proposed procurement may improve the economic, social and environmental well-being of their areas;
  - How the authority may act with a view to securing that improvement in conducting the process of procurement;
  - In addition, the contracting authority is required to consider whether to undertake any community consultation on the above matters.
- 18.2. Lead officers should liaise with Procurement if undertaking a procurement which falls within the Act.

### **19. Procurement Process**

#### **19.1. Contracts valued up to £9,999**

- 19.1.1. As outlined in rule 10.6 above, there is no requirement to involve Procurement. However any procurement activity must comply with the Council's procurement principles and be open and non-discriminatory.
- 19.1.2. For all contracts below £9,999, the lead officer must retain on file a note outlining the process undertaken and justification for the decision to award work to a given contractor/ supplier. For orders of £2,500 or above written quotes should be obtained.
- 19.1.3. In order to comply with the Transparency Code, any contracts with total value of £5,000 or more must be reported to Procurement for inclusion in the Contracts Register.

- 19.1.4. The Council's E-Procurement Portal will be used to advertise and manage the procurement process. Please contact the Procurement Team for further information.

## **19.2. Contracts valued from £10,000 to £49,999**

- 19.2.1. As outlined in rule 10.6, Procurement should be made aware of the procurement. A competitive quotation process is required, with a minimum three written quotes being obtained or a framework agreement being used.
- 19.2.2. Lead officers must choose a minimum of three contractors/ supplier based on previous knowledge, experience or research, to invite to submit a quote through the E-Procurement portal.
- 19.2.3. All quotes must be received through the Council's E-Procurement portal.
- 19.2.4. Lead officers can also undertake an open process if it is felt this would achieve the procurement objectives. If this approach is considered the lead officer should liaise with Procurement and the contract opportunity advertised on the Council's website, finditinworcestershireshire and Contracts Finder. Again all quotes must be received through the Council's E-Procurement portal.

## **19.3. Contracts valued from £50,000 to £172,513**

- 19.3.1. Contracts valued between £50,000 and £172,513 are required to be let on a competitive basis with the Council undertaking a tender exercise advertised on the open market through the Council's website, portal, Contracts Finder and finditinworcestershireshire or via a mini-competition under a framework agreement.
- 19.3.2. There is no minimum time limit for which procurement processes within this threshold need to be advertised. However, sufficient time to allow bidders to fully respond should be allowed. The time limit needs to be set on a case by case basis, dependent upon prior market engagement, the complexities of the specification and the level of detail required in the response.

**Please see the procurement pages on the Intranet for further information on timescales guidance**

- 19.3.3. Procurement must lead the procurement of contracts falling within this threshold.

## **19.4. Light touch regime contracts**

- 19.4.1. For services in the Regulations as being subject to the light touch regime (as per Schedule 3 Public Contracts Regulations 2015), alternative procurement procedures may be undertaken.
- 19.4.2. Procurement of such contracts must be let on a competitive basis, advertised to the open market through the channels outlined in rule **18.3.**
- 19.4.3. In accordance with rule 10.6, Procurement must lead on all light touch regime contracts, with advice from Legal Services as appropriate.
- 19.4.4. The choice of procurement procedure selected must be recorded, along with the justification for that choice.

### **19.5. All contracts above EU thresholds**

- 19.5.1. Where the value of the proposed contract is above the EU thresholds it must be tendered in accordance with the Public Contracts Regulations 2015. The procurement must be led by Procurement.
- 19.5.2. The regulations allow a range of different procedures to be used:
- Open tender;
  - Restricted tender;
  - Competitive procedure with negotiation;
  - Competitive dialogue;
  - Innovation partnership.

#### **Please see the procurement pages on the Intranet for further information on a Guide to EU Tenders and thresholds and the EU Procedure Decision Tool**

- 19.5.3. The open and restricted procedures are the most widely used, however they are not always the most appropriate, particularly for large service procurements. The choice of procedure must be recorded, along with the justification for that choice.
- 19.5.4. In compliance with Financial Regulations and the Council's Constitution, where relevant, Committee or Council approval must be obtained before any procurement process can begin.
- 19.5.5. Where a restricted tender procedure is proposed, a minimum of 5 contractors should be short-listed to invite to tender (where at least 5 suitable contractors express an interest).
- 19.5.6. All tenders above the EU threshold must be advertised in the Official Journal of the European Union (OJEU) using the portal.
- 19.5.7. OJEU notices must be prepared by Procurement with advice from Legal Services, and all entries in the OJEU must be compliant with requirements.

- 19.5.8. Publication of the tender documents at a national level must not occur until 48 hours after the despatch of the OJEU notice.
- 19.5.9. For contracts above OJEU thresholds, there are minimum timescales to be adhered to, for which bidders are given the opportunity to express interest, complete and return the tender documentation. The timescales stipulated are dependent upon the type of notice issued to act as a call for competition and should be treated as minimum timescales.
- 19.5.10. When determining the time limits for the return of pre-qualification questionnaires and tenders, the Council must be fair proportionate and fair to the market and take into consideration the complexity of the specification and tender submission requirements, along with any previous market consultation undertaken. The justifications for the time limits set should be recorded.

## **20. Appointment of consultants**

- 20.1. Consultants will only be used if in the opinion of the appropriate Service Manager in consultation with the Deputy Chief Executive the work cannot be handled by Council employees for regular flows of work (e.g. surveyors, engineers)
- 20.1.1. If the consultant is to be appointed to support a project, a note should be placed on the project file stating:
- (i) why it was necessary to use an external consultant;
  - (ii) the brief for the project;
  - (iii) the brief for selecting the consultant and how this was met;
  - (iv) the names of the members and officers involved in the selection process.
- 20.1.2. Consultants shall be selected in accordance with the value and thresholds shown at C on page 4 of the CPR.
- 20.1.3. The engagement of a *consultant* shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment. The appropriate *Service Manager* will ensure that the requirements of 11.5.5 below are written into the contract and are verified.
- 20.1.4. Any *consultant* working on behalf of the Council will:
- (i) comply in all respects with the Council's Contract Procedure Rules and Financial Regulations;
  - (ii) hold, where appropriate, an adequate level of professional indemnity insurance to cover any loss that may arise;

- (iii) produce all records relating to the contract on request during the currency of the contract;
- (iv) pass all relevant records to the *Service Manager* on completion of the contract, to be maintained in accordance with Rule 6.

20.1.5. There may be instances when the use of these Contract Procedure Rules to appoint a consultant would be inappropriate, for example when engaging a barrister or other consultant where quality of performance is more important than the lowest tender. In such instances, consultants will be engaged subject to the following estimated values:

- (i) up to £10,000: at the discretion of a *Service Manager*;
- (ii) £10,001 - £50,000: at the discretion of the *Service Unit Manager* in consultation with the *Deputy Chief Executive*;
- (iii) over £50,000: subject to selection by a panel including the *Service Manager*, *Deputy Chief Executive* and one appropriate elected Member.

20.1.6. For all types of *consultants*, the appropriate *Service Manager* will:

- (i) ensure that consultancies can be properly funded, within an approved budget and expenditure code;
- (ii) consider the type of contract and how payments will be made;
- (iii) draw up a written contract with any *consultants* engaged;
- (iv) appoint a project manager to manage and monitor each consultancy project;
- (v) ensure that all documentation relating to a proposed consultancy is collated by an experienced officer in consultation with the Legal Services Manager if appropriate.

20.1.7. When grants are awarded to outside bodies to fund *consultants* (for example to carry out feasibility studies) the organisation concerned will be responsible for appointing and monitoring the *consultants*.

20.1.8. Before any consultant is engaged, the Service Manager must undertake an IR35 assessment to determine whether the council should deduct income tax from payments during the engagement. Service Managers should consult the Finance Manager with any concerns.

## 21. Receipt and opening of tenders

21.1. Where paper tenders are obtained, they should be returned to Democratic Services in the blue envelope provided or with the blue envelope attached to the front of the submission.

21.2. All tenders received, including those in mini-competitions under framework agreements, must remain unopened and are kept secured until the specified closing date and time for receipt of tenders has passed.

- 21.3. Electronic bids submitted through the Council's E-Procurement portal must be held until the specified closing date and time for receipt of tenders has passed.
- 21.4. Democratic Services must ensure that all tenders, however they are submitted, are opened at the same designated time when the submission deadline has passed.
- 21.5. Lead officers must not disclose the names of potential bidders to any staff involved in the receipt, custody or opening of tenders.
- 21.6. All tenders must be opened and recorded in the presence of 2 authorised officers. Each tender must be:
- Suitably recorded so as to subsequently verify the date and precise time it was received;
  - Adequately protected immediately on receipt to guard against amendment or tampering;
  - Recorded immediately on receipt in the tender register (name of bidder, price and any other relevant information);
  - Signed by the officers present as witness to the recording of the tender.
- 21.7. Late tenders will only be accepted where there is conclusive proof of posting in time for delivery by the submission deadline and the other tenders have not been opened. Where the tender is not accepted, it will be opened in the presence of Democratic Services to ascertain the name of the tenderer so that the tender can be promptly returned.
- 21.8. Tenderers must complete all tender documentation. Any omissions may render a tender null and void, with no further consideration given.

## **22. Clarification procedures and post-tender negotiation**

- 22.1. Providing clarification of an ITT to potential bidders, or seeking clarification of a tender submission either in a meeting or in writing is allowed. However, discussions with tenderers after tender submission but before contract award with a view to altering the price, delivery or content of the tender (i.e. post tender negotiations) must only be undertaken in exceptional circumstances. Such negotiations must not be conducted in an EU procedure where this might distort competition, especially with regard to price.
- 22.2. If post-tender negotiations are necessary, they can only be undertaken with the tenderer(s) who submitted the highest scoring tender(s). During the negotiations tendered rates and prices can only be adjusted to reflect adjustments in the scope or quality included within the tender documents. Lead officers involved in the negotiations should ensure that there are recorded minutes of all negotiation meetings and both parties agree the actions in writing.
- 22.3. Whenever post-tender negotiations are proposed, advice must be sought from the procurement team and Legal Services. At least two officers must be involved in negotiations.

- 22.4. If post-tender negotiations result in a fundamental change to the specification or contract terms, the contract cannot be awarded, it must be re-tendered.

### **23. Tender Evaluation, award of contract and de-briefing tenderers**

- 23.1. Apart from debriefing permitted or required by these contract procedure rules, the confidentiality of all quotations, tenders and identity of tenderers must be preserved at all times. In particular information regarding one tender(er) must not be given to another.
- 23.2. Compliant tenders must be checked for arithmetic accuracy, including the correct extension and summation of rates where applicable. If any errors are found the tenderer should be notified and asked to confirm or withdraw their tender. Alternatively, if the rates in the tender rather than the overall price were stated within the ITT as being dominant, an amended tender price which agrees with the rates given by the tenderer can be requested.
- 23.3. No amendments to tender rates after submission of tenders will be permitted. If a tenderer withdraws or the revised tender is no longer competitive, the next most competitive tender should be evaluated in the same way.
- 23.4. Tenders must be evaluated impartially in accordance with the award criteria. At least the most competitive tender received must be evaluated, giving particular attention to rates and prices, percentage adjustments, balancing items, ambiguities, qualifications and alternative offers as well as any quality criteria used. The following must also be included in the evaluation:
- Comparison of the tendered prices to the pre-tender estimates and resolution of any discrepancies;
  - Overall value for money assessment;
  - Quality of performance on any previous council contracts;
  - Previous experience;
  - Views of referees;
  - Financial standing;
  - Capability of EU compliance;
  - Proposals for health and safety, equality and diversity and complaints handling;
  - Any significant environmental features of goods and services such as life expectancy, energy efficiency, recyclability.
  - Contribution to delivering the Council's priorities.
- 23.5. When evaluating the tenders, officers should complete an evaluation matrix, adapted from the standard evaluation template, scoring each individual criterion and giving a weighted average score. Where there is more than one officer evaluating the tender, a moderated score should be agreed by the evaluators and only one evaluation matrix should be completed to simplify the feedback process.

- 23.6. Lead officers can accept and award tenders and quotations following evaluation, providing they are within the approved estimate and have been sought and evaluated fully in accordance with these contract procedure rules. In respect of high value and EU contracts, the approval of the relevant Portfolio Holder will be obtained and if applicable so will the approval of the Executive Committee.
- 23.7. For EU contracts, the lead officer must notify all tenderers simultaneously and as soon as possible of the intention to award the contract to the successful tenderer. The lead officer must provide unsuccessful tenderers with a period of at least ten calendar days (Standstill period) in which to challenge the decision before awarding the contract. If the decision is challenged by an unsuccessful tenderer, then the contract should not be awarded and the advice of Procurement and Legal Services should be sought immediately.
- 23.8. Once the contract has been let, all unsuccessful candidates will be notified of the results and may be informed of the successful price on request. The letter of acceptance will not seek to qualify the terms and amounts previously tendered by the contractor/ supplier.
- 23.9. If an unsuccessful tenderer requests, in writing, the reasons for a contracting decision, the lead officer must give the reasons in writing within a reasonable time frame of the request.
- 23.10. Standard templates for notifying unsuccessful candidates and providing feedback are available from Procurement.

## **24. Records**

- 24.1. If the total value is less than £50,000, the following records must be kept:
- Invitations to quote and quotations received;
  - A record of:
    - Any exemptions and the reasons for them;
    - The reason why if the lowest price is not accepted.
  - Written records of communication with the successful contractor or an electronic record if a written record of the transaction would not normally be produced.
- 24.2. Where the total value exceeds £50,000, the procurement team will record:
- The method for obtaining bids;
  - Any contracting decision and the reason for it;
  - Any exemptions under section 2 and the reasons for them;
  - The award criteria in descending order of importance;
  - Tender documents sent to and received from tenderers;
  - Signed tender opening documents;
  - Pre-tender market research;
  - Clarification and post-tender negotiation (to include minutes of meetings);
  - Post-contract evaluation and monitoring;
  - Formal communications with tenderers and with the successful contractor.

- 24.3. Original documentation relating to the tenders must be kept for six years or the contract period (whichever is longer). Other documentation can be stored electronically in accordance with document retention schedules.
- 24.4. Service managers and other budget holders are responsible for maintaining adequate records in order to produce a register or list of all current contracts, to include the name of the contractor, description of the contract, the annual and total values, start and end dates and timescales for renewal.

## **CONTRACT AND OTHER FORMALITIES**

### **25. Relevant Contracts**

- 25.1. All relevant contracts that exceed the high value threshold must be made in writing.
- 25.2. The council has a standard contract of supply which should be used as the basis for any procurement contract. Any departures from this contract must be reviewed by Legal Services prior to signing.
- 25.3. Where the standard contract is not being used, the following should be included:
- What is to be supplied (i.e. the work, goods, materials or services to be delivered);
  - The contract must specify that the Contractor will comply with the provisions of the EU Regulation 2016/679 (GDPR) or any re-enactment of that Regulation insofar as any personal data supplied by the Council or obtained on behalf of the Council is kept secure and is not disclosed to any other party except in accordance with the contract. The contract shall define the data controller and processor responsibilities sufficient to comply with the Regulation.
  - A defined quality of provision, requiring where appropriate that all works carried out or goods supplied will conform to current relevant standards and codes of practice;
  - The provisions for payment (i.e. the price to be paid and when, including details of deductions or discounts, and where appropriate a method of defining price adjustments for any subsequent amendment of requirements);
  - The time or times within which the contract is to be performed, and any other terms and conditions agreed between the parties, including performance criteria if appropriate;
  - The provisions for termination of the contract.
- 25.4. The Council's ordering and contract approval procedures as documented in the Financial Regulations must be followed. Exceptions must be approved by the Deputy Chief Executive.
- 25.5. The formal advice of Legal Services must be sought where:
- The total value of the contract exceeds £50,000;
  - The contract involves leasing arrangements;

- It is proposed to use a supplier's own terms and conditions;
- The arrangements/ contract are complex in any way.

25.6. Every relevant contract over the High Value threshold must, where applicable, also clearly state:

- Insurance requirements. This will include, where appropriate, Professional Indemnity insurance, which will protect the Council's interests and cover any potential losses. An adequate level of insurance will be determined in consultation with the Council's insurance;
- Health and safety requirements;
- Performance and complaints monitoring requirements;
- Data protection requirements, if relevant;
- Any professional, quality or EU standards that must be met;
- Any council expectations regarding environmentally sustainable working practices;
- Equality and diversity requirements;
- Freedom of information requirements;
- That when consultants or agents are used to let contracts, they must comply with the Council's Contract Procedure Rules;
- A right of access to relevant documentation and records of the contract for monitoring and audit purposes if applicable;
- That the contractor may not assign or sub-contract without prior written consent from the council's authorised officer.

## 26. Contract formalities

26.1. All contracts must comply with all of the following:

- EU law;
- English law (including the Council's statutory duties and powers including the Council's fiduciary duty to safeguard public funds);
- These rules and Financial Regulations and Standing Orders.

26.2. Agreements shall be completed by the following as a minimum

<b>Total value</b>	<b>Method of completion</b>	<b>By</b>
Low value (up to £9,999)	Signature	Service manager
Medium value (£10,000 to £49,999)	Signature	Head of service
High value (£50,000 upwards)	Signature/ sealing	See rule 25.1.1

26.3. The contract letting process must give enough time for the legal documentation to be completed prior to the start of the contract. All contracts should be concluded in writing before the supply, service or construction work begins, except in exceptional circumstances where it is essential that the contract starts before formal contract signing. In such cases reasons will be clearly noted on the contract file.

- 26.4. The officer responsible for securing signature of the contract must ensure that:
- Both parties sign all relevant parts of the agreement;
  - The person signing for the other contracting party has authority to bind it;
  - The signed contract has not been amended or altered without agreement by both parties.
  - A copy of the signed contract is sent to Procurement.

## **27. Sealing**

- 27.1. Where it is appropriate for contract documents to be sealed by the Council, this will be done in accordance with the Council's Constitution.
- 27.2. Copies of all contracts entered should be stored with Legal Services and Procurement.
- 27.3. Details of all contracts should be added to and maintained on the Contracts Register maintained by the procurement team.

## **28. BONDS, PARENT COMPANY GUARANTEES AND LIQUIDATED DAMAGES**

- 28.1. Lead officers must consult the Deputy Chief Executive about whether a parent company guarantee is necessary when it is proposed to appoint a contractor who is a subsidiary of a parent company and:
- The total value of the proposed contract exceeds £1million; or
  - Award is based on evaluation of the parent company; or
  - There is concern about the stability of the contractor.
- 28.2. Lead officers must consult the Deputy Chief Executive about whether a bond is needed:
- Where the total value of the proposed contract exceeds £1m; or
  - Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the contractor.
- 28.3. If a bond is deemed necessary, the amount will be at least 10% of the contract sum (or its annual value where the contract relates to continuing service). Any decision not to require a bond will be recorded on the appropriate file.
- 28.4. Provision should be made for liquidated damages to be paid by the contractor if the contract is not completed within the specified. This will normally be the case for contracts over £500,000 but may also be appropriate for lesser value contracts. The amount of liquidated damages will be determined by the appropriate service manager in consultation with the Deputy Chief Executive.
- 28.5. In certain circumstances, both a parent company guarantee and a bond may be required.

## **ANTI BRIBERY AND CORRUPTION**

### **29. Prevention of corruption**

29.1. Council officers and members must not invite or accept any gift or reward or performance of any contract. High standards of conduct are compulsory. Corrupt behaviour will lead to dismissal in the case of officers and referral to the Standards Committee in the case of members. Where appropriate the matter will be referred to the Police.

29.2. The following clause must be included in every written council contract:

‘The Council may terminate this contract and recover all its loss if the contractor, its employees or anyone acting on the contractor’s behalf do any of the following things:

i. Offers, gives or agrees to give anyone any inducement or reward in respect of this or any other council contract (even if the contractor does not know what has been done); or

ii. Commits an offence the Prevention of Corruption Acts 1889 to 1916 or section 117(2) of the Local Government Act 1972; or

iii. Commits any fraud in connection with this or any other council contract whether alone or in conjunction with council members, contractors or employees.

Any clause limiting the contractor’s liability shall not apply to this clause.’

### **30. Bribery Act 2010**

30.1. The Bribery Act 2010 sets out a number of prohibited activities which carry criminal sanctions. Specifically, the council is covered by the offences in the following sections of the Act:

- Section 1: the offence of bribing another person;
- Section 2: the offences relating to being bribed;
- Section 6: the offence of bribing a foreign public official.

30.2. Government guidance highlights as the main example of how an employee of a public authority may commit an offence under the Act as the employee accepting a payment in return for manipulating the process or outcome of a public procurement in favour of a particular bidder.

30.3. The council has an overriding duty to prevent and eliminate bribery not only in the way that it affects employees, but also ensuring that contractors have not been involved in any bribery offences. The Government has confirmed that a conviction for an offence under the Act will trigger discretionary not mandatory exclusion from competing public contracts under regulation 23 of the Public Contracts Regulation 2006 (SI 2006/05).

30.4. If you have any concerns in respect of bribery by another officer and/ or a contractor/ tenderer then please inform the Deputy Chief Executive or the Head of Policy and Governance immediately. Failure to do so could result in criminal proceedings against you personally.

### **31. Declarations of interest**

- 31.1. Officers and members must comply with their relevant codes of conduct.
- 31.2. Officers must notify their line manager of any interests which could bring about conflict with the council's interests.
- 31.3. Members must disclose all relevant interests on their register of interest forms, which must be kept up to date, and at any meetings they attend.

## **CONTRACT MANAGEMENT**

### **32. Managing contracts**

- 32.1. All contracts must have a named council contract manager for the full contract term. This will normally be the appropriate service manager or a named deputy.
- 32.2. All contract managers must comply with these Contract Procedure Rules and other relevant council policies and guidance.

### **33. Contract management, evaluation and review**

- 33.1. During the contract period, the contract manager must monitor the contract in respect of:
  - Performance;
  - Risk management;
  - Compliance with specification and contract;
  - Cost;
  - Any value for money requirements;
  - User satisfaction.
- 33.2. For high value contracts, finance will support the contract manager in monitoring the budget and the Finance Manager will report any areas for concern to SMT.

### **34. Risk assessment and contingency planning**

- 34.1. A business case must be prepared for all procurements with a potential value over £50,000, outlining the cost and benefits including pay back period. The business case should include identification of resources for management of the contract over its term.
- 34.2. For all high value contracts, contract managers must:
  - Maintain a risk register during the contract period;
  - Undertake appropriate risk assessments and review over the duration of the contract as appropriate;
  - For identified risks, ensure consistency measures are in place;

- Undertake and record such checks as are necessary to ensure that the contractor's insurance policies remain in force for the duration of the contract.

## **APPENDIX                      KEY DEFINITIONS**

### **Agent**

A person or organisation acting on behalf of the Council or on behalf of another organisation.

### **Award criteria**

The criteria used to decide which quotation or tender will be selected.

### **Award procedure**

The procedure for awarding a contract as specified in rules 14, 18 and 22.

### **Best value**

See value for money.

### **Bond**

An insurance policy to protect the council against costs arising from the contractor's failure. If a contractor does not fulfil their contractual obligations, the council can claim the sum of money specified in the bond (often 10% of the contract value).

### **Call-off contract**

A framework agreement setting out standard terms and conditions for goods and services which the Council can use to place orders.

### **Code of conduct**

The codes regulating conduct of officers and members.

### **Committee**

A committee which has power to make decisions for the Council, for example a Joint Committee with a local authority, Planning Committee or Executive Committee.

### **Competitive Dialogue procedure**

A procedure that can be used in the award of complex contracts where dialogue is allowed with selected suppliers to identify and define solutions to meet the council's needs and requirements.

### **Competitive procedure with negotiation**

Similar to the competitive dialogue procedure above except that tenders are submitted to begin with, then negotiation takes place and final tenders are then submitted.

### **Constitution**

The constitutional document approved by the council which:

- Allocates powers and responsibility within the council and between it and others;
- Delegates authority to the Executive Committee, Portfolio Holders and Officers;
- Regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

**Consultant**

Someone engaged for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the council has no ready access to employees with the skills, experience or capacity to undertake the work.

**Contract Manager**

The named council officer, usually a service manager or budget holder, who is responsible for sponsoring a contract from inception to completion.

**Contracting decision**

Any of the following decisions:

- Composition of list of potential bidders;
- Withdrawal of invitation to tender;
- Whom to invite to submit a quotation or tender;
- Shortlisting;
- Award of contract;
- Any decision to terminate a contract.

**Corporate contract**

A contract let to benefit all sections of the council, to support the council's aim of achieving value for money.

**EU Procedure**

The procedure required by the EU where the total value exceeds the EU threshold.

**EU Threshold**

The contract value at which the EU public procurement directives apply. The values are reviewed every two years.

**European Economic Area**

The 17 members of the European Union and Norway, Iceland and Liechtenstein.

**Executive Committee**

The council's Executive Committee as defined in the constitution.

**Financial Regulations**

The financial regulations outlining Officer responsibilities for financial matters issued by the Deputy Chief Executive (s151 officer) in accordance with the constitution.

**Framework Agreement**

An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

**Government Procurement Agreement**

The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.

**High profile**

A high-profile purchase is one that could have an impact on functions integral to the council service delivery should it fail or go wrong (e.g. IT servers).

**High risk**

A high-risk purchase is one which presents the potential for substantial exposure on the council's part should it fail or go wrong.

**High Value contract**

Where the value exceeds the threshold as stated in the summary of essential requirements in the introduction to these contract procedure rules. Formal written tenders are required. See also EU threshold.

**Innovation partnership**

Introduced by Public Contracts Regulations 2015, this is a new procedure, providing for situations where contracting authorities wish to work together with economic operators to produce an innovative product and then use the end result.

**Invitation to tender (ITT)**

Documents sent out to potential bidders to allow them to submit tenders in the form required by these contract procedure rules.

**IR35**

IR35 is tax legislation that is designed to combat tax avoidance by workers supplying their services to clients via an intermediary, such as a limited company, but who would be an employee if the intermediary was not used. Such workers are called 'disguised employees' by Her Majesty's Revenue and Customs (HMRC).

**Key decision**

Decisions that are defined as key decisions in the constitution.

**Light touch regime**

The new light-touch regime (LTR) is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes. The list of services to which the Light-Touch Regime applies is set out in Schedule 3 of the Public Contracts Regulations 2015 (Annex A).

**Line manager**

An officer's immediate superior or the officer designated by the Head of Service to exercise the role reserved to the line manager by these contract procedure rules.

**Low value contract**

As defined in the summary of essential requirements in the introduction to these contract procedure rules.

### **MEAT**

Most Economically Advantageous Tender. This is not necessarily the cheapest tender, but the one that gives the Council the most benefit.

### **Medium Value Contract**

As defined in the summary of essential requirements in the introduction to this document. Written quotations are required.

### **Nominated suppliers and sub-contractors**

Those persons specified in a main contract for the discharge of any part of that contract.

### **Non-commercial considerations**

1. The terms and conditions of employment used by contractors for their employees and other workforce policies and matters (e.g. training, promotion);
2. How contractors make contracts with their sub-contractors – do they treat as self employed or employed;
3. Any involvement of the business activities or interests of contractors with irrelevant fields of government policy;
4. The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other parties.
5. The country or territory of the business activities or interests of contractors;
6. Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;
7. Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;
8. Use or non-use by contractors of technical or professional services provided by the council under the Building Act 1984.

Workforce matters and industrial disputes as referred to in 1 & 4. above will be deemed commercial considerations where they affect best value/ value for money or where there is a transfer of staff under Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE).

### **Open tender procedure**

A bidding process that is open to all qualified bidders.

### **Parent company guarantee**

A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails in its contractual obligations, the council can require the parent company to rectify the situation.

### **Portfolio Holder**

A member of the Executive Committee to whom responsibility is allocated in respect of specified functions.

### **Potential Tenderer/ Bidder**

Any person who asks or is invited to submit a quotation or tender.

### **Priority Services**

Those services required to be tendered as defined in the EU public procurement directives.

### **Procurement strategy**

The document setting out the council's approach to procurement and key priorities for the next few years.

### **Public Contracts Regulations 2015**

The legislative rules governing public sector procurement in the UK, effective from 26<sup>th</sup> February 2015.

### **Quotation**

A quotation of price and any other relevant matter (without the formal issue of an invitation to tender).

### **Relevant contract**

Contracts to which these Contract procedure rules apply (rule 19).

### **Restricted tender procedure**

Restricted tendering is a procurement method that limits the request for tenders to a select number of suppliers, contractors or service providers. A basic characteristic of this method is that competition is confined to a certain number of firms either because only a few firms are qualified to fulfil the specific type of requirement, or certain conditions warrant the use of a limited number of firms in order to reduce the time and cost of the selection process.

### **Shortlisting**

The process of selecting potential suppliers or contractors who are to be invited to quote or bid or to proceed to final evaluation.

### **Statutory basis**

The Local Government Act 1972 (section 135) requires councils to introduce and implement standing orders (procedure rules) for contracts made 'by them or on their behalf for the supply of goods and materials or for the execution of works'. The Local Government Act 1988 (Part II) lays down general rules as to contracting practice. All contracts let by the council will comply with these rules. The Local Government Act 1999 NS associated guidance requires councils to make arrangements to secure best value and continuous improvement in exercising current functions and also when considering procurement options for future service delivery.

### **Tender**

A formal proposal submitted in response to an invitation to tender.

### **Tenderer**

Any person who submits a formal quotation or tender in response to an invitation to tender.

**Tender register**

The register kept by Democratic Services to record details of tenders.

**Total value**

The whole value or estimated value of a single purchase calculated as follows:

1. Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period (e.g. IT system purchase with 5 year maintenance agreement – purchase price plus 5 years annual maintenance charges is total cost);
2. Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;
3. Where the contract is for an uncertain duration, multiplying the monthly payment by 48 or the annual payment by 4;
4. For feasibility studies, the value of the scheme or contracts which may be awarded as a result;
5. For nominated suppliers and sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor.

**TUPE – Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No. 246)**

Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, council in-house team) to another (e.g. following a contracting-out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred to the new business.

**Value for Money**

Value for money is not just the lowest price – it combines goods or services that fully meet your needs, with the level of quality required, delivered at the required time and at an appropriate price.





## **Constitution**

### **PART 5**

# **Codes and Protocols**

## **Part 5 – Codes and Protocols**

Councillor Code of Conduct

- Appendix 1 - The Seven Principles of Public Life

Investigating allegations of breach of the Councillor Code of Conduct

Protocol for Member/Employee Relations

Members' Gifts and Hospitality

Protocol on Dealing with Planning Matters (including site inspections)

- Appendix 1 – Declaring Interests at Meetings

Protocol for the Role of the Monitoring Officer

Councillors – Leave of Absence from Council Meetings

Petitions Scheme and Summary

HR Services: Whistleblowing' Policy and Procedure (Sept 2018)

HR Services: Code of Conduct for Employees (April 2018)

MHDC: Anti-Fraud & Corruption Policy Statement and Strategy (June 2002)

# PART 5 – Councillor Code of Conduct

## Part 1 - General provisions

### Introduction and interpretation

1. (1) This Code applies to you as a member or co-opted member of Malvern Hills District Council.
- (2) You should read this Code together with the Seven Principles of Public Life which are set out in Appendix 1 to this Code.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code—  
"meeting" means any meeting of
  - (a) the authority;
  - (b) any of the authority's sub-committees, joint committees, joint sub-committees or area committees;"Monitoring Officer" means the Monitoring Officer for the principal Council which is Malvern Hills District Council.

### Scope

2. (1) This Code applies to you as a member of this authority when you act in your role as a Member or as a representative of the authority in the circumstances described in para 2 (b) below.
- (2) Where you act as a representative of the authority:
  - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### General obligations

3. (1) You must treat others with respect.
- (2) You must not:
  - (a) do anything which may cause your authority to breach any of the equality enactments;
  - (b) bully any person;
  - (c) intimidate or attempt to intimidate any person who is or is likely to be:
    - (i) a complainant,
    - (ii) a witness, or
    - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with the authority's Code of Conduct;
  - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

## PART 5 – Councillor Code of Conduct

4. You must not:
  - (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
    - (i) you have the consent of a person authorised to give it;
    - (ii) you are required by law to do so;
    - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
    - (iv) the disclosure is:
      - (aa) reasonable and in the public interest; and
      - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
  - (b) prevent another person from gaining access to information to which that person is entitled by law.
5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
6. You:
  - (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
  - (b) must, when using or authorising the use by others of the resources of, or under the control of, the authority:
    - (i) act in accordance with the authority's reasonable requirements;
    - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - (c) must have regard to any applicable Local Authority Code of Publicity.
7. You must:
  - (a) when reaching decisions on any matter have regard to any relevant advice provided to you by the authority's officers and in particular by the authority's Monitoring Officer and Section 151 Officer; and
  - (b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority
8. You must not place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

# PART 5 – Councillor Code of Conduct

## Part 2 - Interests

### Disclosable Pecuniary Interests (“DPI”)

9. (1) You will have a Disclosable Pecuniary Interest (“DPI”) under this Code if:-
- (a) such interest meets the definition prescribed by Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as amended from time to time; and
  - (b) it is either an interest of yourself; or it is an interest of :-
    - (i) your spouse or civil partner; or
    - (ii) a person with whom you are living as husband and wife: or
    - (iii) a person with whom you are living as if you were civil partners;
- And you are aware that the other person has the interest.

### Registration of DPIs

10. (1) You must within 28 days of becoming a member of the authority or being re-elected notify the Monitoring Officer in writing of any DPI which you hold at the time notification is given.
- (2) You must within 28 days of becoming aware of any new DPI, or changes to existing DPIs notify the Monitoring Officer in writing.

### Other Disclosable Interests

11. (1) You will have a Disclosable Interest in any matter if you are aware that you or a member of your family or person or organisation with whom you are associated have:-
- (a) a pecuniary interest in the matter under discussion which is not de minimis; or
  - (b) a close connection with the matter under discussion.
- (2) If you are a member of another local authority, or public body, or you have been appointed as the Council’s representative on an outside body, you do not have a Disclosable Interest unless a member of the public knowing the circumstances would reasonably regard membership of the body concerned as being likely to prejudice your judgment of what is in the public interest.

### Disclosure of Interests

#### DPIs: formal meetings

12. (1) If you are present at a meeting of the Council and you have a DPI then you must:
- (a) Disclose the nature and existence of the interest; and
  - (b) Leave the meeting (including the meeting room and public gallery) and take no part in the discussion ; and
  - (c) If the interest has not already been recorded notify the Monitoring Officer of the interest within 28 days beginning with the date of the meeting.

## PART 5 – Councillor Code of Conduct

### DPIs: informal meetings

- (2) If you have a DPI you must not participate in informal meetings or briefings and site visits and must disclose the DPI in any correspondence with the Council.

### Other Disclosable Interests

- (3) If you are present at a meeting of the Council and you have an Other Disclosable Interest then you must:
  - (a) Disclose the nature and existence of the interest; and
  - (b) If the interest;
    - (i) affects your pecuniary interests or relates to the determination of a planning or regulatory matter; and
    - (ii) is one which a member of the public knowing the circumstances would reasonably regard as being likely to prejudice your judgment of what is in the public interestthen you must leave the meeting (including the meeting room and public gallery) and take no part in the discussion.

### Dispensations

- (4) You may take part in the discussion of and vote on a matter in which you have been granted a dispensation.

### **Sensitive Information**

13. (1) An interest will be a sensitive interest if the two following conditions apply:
  - (a) That you have an interest (whether or not a DPI); and
  - (b) the nature of the interest is such that you and the Monitoring Officer consider that disclosure of the details of the interest could lead to you or a person connected to you being subject to violence or intimidation.
- (2) Where it is decided that an interest is a “sensitive interest” it will be excluded from published versions of the register. The Monitoring Officer may state on the register that the member has an interest the details of which are excluded under this section.
- (3) Where the sensitive interest is a DPI the usual rules relating to disclosure will apply save that the member will only be required to disclose that they hold a DPI in the matter concerned.

# **PART 5 – Councillor Code of Conduct**

## **Appendix 1 - The Seven Principles of Public Life**

- 1 Selflessness
- 2 Integrity
- 3 Objectivity
- 4 Accountability
- 5 Openness
- 6 Honesty
- 7 Leadership



## **PART 5 - Investigating Allegations of Breach of the Councillor Code of Conduct**

1. The Monitoring Officer shall be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
2. The Monitoring Officer shall have delegated power to determine whether a complaint merits formal investigation (after consultation with the Independent Person if he/she feels it necessary). If the Monitoring Officer determines that an investigation is necessary, he/she is to arrange such investigation; if he/she does not, he/she may decide to take no further action and report this to the Audit and Standards Committee;
3. The Monitoring Officer shall seek resolution of complaints without formal investigation wherever practicable, and shall have discretion to refer decisions on investigation to the Standards Committee where he/she feels that it is inappropriate for him/her to take the decision, and to report quarterly to Audit and Standards Committee on the discharge of this function;
4. Where a complaint relates to a breach of the Code which may also be a criminal offence, the Monitoring Officer shall pass this to the Police for investigation and no further action shall be taken until the Police investigation is closed or the Police otherwise agree that the Council can take action without prejudicing any criminal proceedings;
5. Where an investigation is carried out and the Monitoring Officer finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer shall close the matter and report the findings to the Audit and Standards Committee for information;
6. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Audit and Standards Committee. Where such local resolution is not appropriate or not possible, he/she is to report the investigation findings to the Audit and Standards Committee for local hearing;
7. That Council delegate to the Audit and Standards Committee such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct;
8. The Audit and Standards Committee may decide to set up ad hoc or standing Hearings Panels as sub-committees to decide upon matters referred to it or may decide such matters itself. Hearings Panels shall have such terms of reference as a sub-committee to the Audit and Standards Committee as the committee may decide;

## **PART 5 - Investigating Allegations of Breach of the Councillor Code of Conduct**

9. All decisions on complaints taken by the Audit and Standards Committee and/or Hearings Panels must take into account the views of the Independent Person, and members who are the subject of the complaint shall be entitled to consult the Independent Person in accordance with the Localism Act 2011;
10. The following actions are open to the Audit and Standards Committee or any Hearings Panel of it as regards members who are found to have been in breach of the code of conduct:
  - . Reporting its findings to Council *[or to the Parish Council]* for information;
  - . Recommending to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
  - . Recommending to the Leader of the Council that the member be removed from particular Portfolio responsibilities;
  - . Instructing the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the member;
  - . Removing *[or recommend to the Parish Council that the member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;
  - . Withdrawing *[or recommend to the Parish Council that it withdraws]* facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
  - . Excluding *[or recommend that the Parish Council exclude]* the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

## **PART 5 - Council Resolution passed on 2nd December 2014**

### **Member's Right of Access to Council Premises**

1. That should any member of the Council be alleged to have misbehaved towards any employee or in respect of any property of the Council it is acknowledged that the Chief Executive shall have the right to suspend that member's right of access to Council premises by restricting the use of that member's door entry pass.
2. That on exercising that right, the Chief Executive and the Monitoring Officer shall convene a meeting with the individual concerned with the support of the relevant Group Leader to consider the allegation as soon as practicable. If the Chief Executive considers that the restriction of access to Council premises should continue he will immediately report the matter to the Audit and Standards Committee and cause a meeting of that Committee to be convened at the earliest opportunity to conduct a hearing into the alleged misconduct and whether the member's access to Council premises should remain restricted.
3. All other Councillors shall have full access to Council premises restored immediately.



## PART 5 – Protocol for Member/Employee Relations

The Council recognises that its staff are its most important asset and councillors are fully committed to improving the working relationship with officers at all levels within the organisation in line with the Councillor Code of Conduct.

Every appointment of paid local authority employment must be on merit. The only exception to this is in respect of political assistants appointed under Section 9 of the Local Government and Housing Act 1989. The obligation to appoint officers on merit includes consideration of the terms of appointment, any promotion in employment, and should be applied to any disciplinary action.

Senior Officers cannot be local authority councillors or Members of Parliament, nor can they *“speak or publish written work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party.”* Such officers are nevertheless able to engage in such activity to *“such extent as is necessary for the proper performance of their duties”* – Section 1-3 Local Government and Housing Act 1989 and Local Government Officers (Political Restrictions) Regulations 1990.

The Head of Paid Service, Heads of Service and other staff (except political assistants) are the employees of the Council as a whole and their overriding responsibility is to the Council and not to any party political group. The Head of Paid Service is nevertheless expected to work closely with the administration for the time being, and to give them information, assistance and advice. Subject to maintaining his/her position as politically neutral, he/she may develop a special relationship with the administration leadership and will not, without consent, disclose to the minority parties any matters discussed with that leadership.

Officers must be politically neutral: they are employed by the Council, not by Committees or other individual councillors. The political neutrality of officers should be respected. They should not be asked to play any role or undertake any task that is likely to prejudice that neutrality.

Councillors may require an officer to provide advice or a briefing note on any issue to enable them to perform their Councillor duties, either as members of the authority and/or ward representatives. A key indicator as to whether such support breaches this Councillor/Officer Code is where the officer concerned would have difficulty being open about the work in question to senior management.

All Members of the Council have a right of access to the Head of Paid Service. Where a member requires information, it will be provided if it is readily available, for example, in committee papers or material published on behalf of the Council. The Head of Paid Service is free to give advice on a confidential basis about procedural matters to any member. In doubtful cases, the Head of Paid Service is entitled to seek the advice of a chairman or the instructions of a committee before responding to a request from a councillor.

Councillors and employees must understand that Council decisions can only be made by full Council, committees or officers acting under delegated authority. Councillors and

## **PART 5 – Protocol for Member/Employee Relations**

employees must ensure that representations made to the Council on any matter during any stage of the formal decision making process should be directed to the appropriate committee. It is particularly important that councillors understand this when performing their representative role as ward councillors.

In respect of Authorities operating Alternative Arrangements, the law does not allow for decisions relating to the discharge of any of the Council's functions to be taken by a chairman or indeed by any other single councillor.

Reports to committees should be written by the Head of Service or another authorised officer.

At pre-agenda meetings all reports, including sensitive ones, are discussed with the Chairman and the Chairman may make suggestions to the Head of Service as to its contents. However, the report is the officer's and even if the Chairman or another committee member in exceptional circumstances is unhappy with its contents, it should not be amended by the Chairman or another committee member, save with the express approval of the Head of Service.

In most cases, discussion between the Chairman and the appropriate Head of Service will resolve any disagreement over a report; however if the report of the Head of Service is not regarded as appropriate by the Chairman, then exceptionally the Chairman should write his/her own report in addition to the report submitted by the Head of Service. In this instance, the Chairman should, under no circumstances, use undue pressure to persuade the Head of Service to withdraw the original report.

Mutual respect between officers and councillors is essential to good local government. Some employees are required to give advice to councillors as part of their job, but close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other officers - it should therefore be avoided. It may impair others' perception of the objectivity and independence of the officer and lead to loss of confidence.

Breach of this rule can easily undermine the Council's decision making process. A breach can render the officer concerned in contravention of National Conditions of Service; and the councillor concerned may be in breach of the Councillor Code of Conduct.

In line with the Code of Conduct's reference to treating others with respect, it is important that any dealings between councillors and officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position. Employees, whether individually or collectively, should not be the subject of attacks or criticism.

In particular, councillors should avoid naming individual employees, if at all possible, and neither councillor nor employee should resort to the media to resolve a disagreement between them.

The Code of Conduct also requires the promotion of equality by not discriminating unlawfully against any person. Council will regard as a serious offence actions by an employee or a councillor which amount to work related bullying, harassment, discrimination

## **PART 5 – Protocol for Member/Employee Relations**

against or victimisation of any employee or councillor and particularly so where such action is on the grounds of a protected characteristic.

Bullying can take the form of shouting at an individual, making persistently negative attacks on an individual's personal or professional performance, criticising an individual in front of others, persistently setting objectives with impossible deadlines or unachievable tasks, excessive monitoring of an individual's performance or withholding information with the intent of deliberately affecting an individual's performance.

Confidentiality is often vitally important, and must be respected by councillors and officers at all times.

A breach of confidentiality may have serious implications for the individual councillor/officer who "leaks" the information. A complaint could be made to the Local Government Ombudsman which could result in a finding of maladministration. For councillors, failure to preserve confidentiality may be a breach of the Code of Conduct and could result in a complaint being made to the Monitoring Officer. There may also be a breach of the Data Protection Act, which could amount to a criminal offence.

It is the duty of the Head of Paid Service and each Head of Service to ensure that the work and responses of employees are conducive to and not undermining of, the foregoing general principles. They are entitled to expect members to respect political restriction and the duties and limitations of employees.

It is also the duty of the Head of Paid Service and each Head of Service to arrange matters so that their employees properly understand the roles of Members and employees and the Council's required approaches to the relations between them. They are also entitled to expect members to respect the degree of seniority of employees with whom they may have dealings and the fact that, while those employees owe duties to the Council as their employer, such duties are first expressed to their respective Head of Service and/ or the Head of Paid service and not to any individual member.

Correspondence or discussion between an individual councillor and an officer should not normally be copied or disclosed (by the officer) to any other councillor. Where, exceptionally, it is necessary to copy the correspondence or disclose a conversation to another councillor, this should be made clear to the original councillor. In particular, a system of "silent copies" should not be employed.

Official letters on behalf of the Council should normally be sent out in the name of the appropriate officer, rather than in the name of the councillor. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear in the name of the councillor, but this should be the exception rather than the norm. Letters which for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a councillor.



## PART 5 - Members' Gifts and Hospitality

This document is intended as a guide to assist members in determining the correct course of action with regard to acceptance and declaration of gifts and hospitality. The guide sets out a recommended approach in dealing with gifts etc, depending on their nature and value. A decision in respect of the gifts and hospitality rests with you, although further guidance can be obtained from the Monitoring Officer.

The Code of Conduct states *"You must not place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties"* This includes any offers of gifts or hospitality and whilst there is general guidance about the value of gifts or hospitality acceptance of any gift or hospitality could still bring you or the Council into disrepute if it creates the impression that someone may be seeking, or has already received, special treatment.

In deciding whether to accept any gifts or hospitality, regardless of the value, you should consider whether a member of the public, knowing the facts, would reasonably think that you might have been influenced by the gift or hospitality received.

The Council has decided that **any gifts or hospitality worth more than £5 should be recorded.**

### Gifts

As a general guide, you are strongly advised not to accept any gift which you know or believe to be worth more than £25. If you are unable to refuse such a gift, you must inform the Monitoring Officer who will record the details in the Register of Gifts and Hospitality. The Register is maintained by Democratic Services in the Council House.

Where a gift is worth less than £25, but worth more than £5, there is no need to inform the Monitoring Officer but the gift must be entered in the Register so you will need to contact Democratic Services. There is no need to declare a gift worth less than £5 in the Register.

If you accept a gift and subsequently discover that the reason behind it was to exert undue influence, then you should, as soon as is practically possible, write to the Monitoring Officer giving details. For your own protection, you should advise the Monitoring Officer of any situation where you are concerned over the underlying intention behind the offer of a gift, even where such an offer has been refused.

### Hospitality

In general, attendance in an official capacity at a function organised by a public authority or local non-profit-making organisation is acceptable. Offers of hospitality from individuals or profit-making organisations should be treated with care. An offer should be declined if you believe that it could have been made to exert influence, or to improve the standing of an individual or organisation, in relation to current or future dealings with the Council.

If you accept an offer of hospitality and subsequently discover that the reason behind it was to exert undue influence, then you should, as soon as is practically possible, write to the Monitoring Officer, giving details. For your own protection, you should advise the

## PART 5 - Members' Gifts and Hospitality

Monitoring Officer of any situation where you are concerned over the underlying intention behind the offer of hospitality, even where such an offer has been refused.

Please also note that even if an offer of a gift or hospitality is refused, it is necessary to inform Democratic Services.

The table below sets out examples of hospitality and the recommended course of action:

Example of Hospitality	Action
Light refreshments prior to site meetings, presentations, etc. (but not related to planning applications or other applications on specific matters, such as grant applications)	No need to record.
Lunch/evening meal provided as part of an event by another public authority	No need to record.
Lunch/evening meal provided as part of a private sector sponsored conference or promotional event	Record in Register.
Meals and overnight accommodation as part of a private sector sponsored conference or promotional event	Caution advised: If possible, decline the offer.
Lunch/evening meal provided by a voluntary body at a meeting or AGM	No need to record.
Lunch/evening meal provided by a voluntary body, at a meeting for the specific purpose of fund raising/lobbying	Caution is advised, especially for Executive Committee Members who might determine grant funding for such bodies. If accepted, it should be recorded in the Register

# **PART 5 - Protocol for Councillors and Officers on Dealing with Planning Matters (including site inspections)**

## **Foreword**

This protocol clarifies how councillors can get involved in planning discussions on plan making and on applications, on behalf of their communities in a fair, impartial and transparent way.

It has been written for officers and councillors of Malvern Hills District Council and is based very largely on the Local Government Association (LGA) and Planning Advisory Service (PAS) guidance "***Probity in planning for councillors and officers***". Councillors should also be familiar with the Council Code of Conduct and guidance.

## **Introduction**

Planning has a positive and proactive role to play at the heart of local government. It helps councils to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action and positive outcomes for the community at large. It balances social, economic and environmental needs to achieve sustainable development.

The planning system works best when officers and councillors involved in planning understand their respective roles and responsibilities, and the context and constraints in which they operate. Planning decisions involve balancing many competing interests. In doing this, decision makers need an ethos of decision-making in the wider public interest on what can be controversial proposals. It is recommended that councillors should receive regular training on code of conduct issues, interests and predetermination, as well as on planning matters.

## **Background**

In 1997, the Third Report of the Committee on Standards in Public Life (known as the Nolan Report) resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. In today's place shaping context, early councillor engagement is encouraged to ensure that proposals for sustainable development can be harnessed to produce the settlements that communities need.

This protocol is intended to reinforce councillors' community engagement role whilst maintaining good standards of probity that minimizes the risk of legal challenges. Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework.

## **PART 5 - Protocol for Councillors and Officers on Dealing with Planning Matters (including site inspections)**

Decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before decisions are taken regarding the preparation of a development plan or in relation to development control (decisions on planning applications) Nevertheless, it is important that the decision-making process is open and transparent.

One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. Opposing views are often strongly held by those involved.

Whilst councillors must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. It is important, therefore, that planning authorities make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable planning reasons. The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.

This protocol is not intended to be prescriptive. Local circumstances may provide reasons for local variations of policy and practice. Every council should regularly review the way in which it conducts its planning business. This protocol refers mainly to the actions of the Area Planning Committees as the principal decision-making forums on planning matters. It is recognised, however, that authorities have a range of forms of decision making e.g. officer delegations and full council.

This protocol applies equally to these alternative forms of decision-making. Indeed, it becomes very important if the full council is determining planning applications referred to it, or adopting local plans and other policy documents, that councillors taking those decisions understand the importance of this guidance. The protocol also applies to councillor involvement in planning enforcement cases or the making of compulsory purchase orders.

### **The general role and conduct of councillors and officers**

Councillors and officers have different but complementary roles. Both serve the public, but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors. A successful relationship between councillors and officers will be based upon mutual trust, understanding and respect of each other's positions.

Both councillors and officers are guided by codes of conduct. The 2011 Localism Act sets out a duty for each local authority to promote and maintain high standards of conduct by councillors and to adopt a local code of conduct. The Malvern Hills District Council adopted

## **PART 5 - Protocol for Councillors and Officers on Dealing with Planning Matters (including site inspections)**

code is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It embraces the standards central to the preservation of an ethical approach to council business, including the need to register and disclose interests, as well as appropriate relationships with other councillors, staff, and the public.

Staff who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. Many authorities will have adopted a code of conduct for employees and incorporated those or equivalent rules of conduct into the contracts of employment of employees.

In addition to these codes, a council's procedure rules set down rules which govern the conduct of council business. Councillors and officers should be cautious about accepting gifts and hospitality and should exercise their discretion. Any councillor or officer receiving any such offers should take account of the local protocol contained within the Council's Constitution.

Employees must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 enables restrictions to be set on the outside activities of senior officers, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly. Officers and serving councillors must not act as agents for people pursuing planning matters within their authority even if they are not involved in the decision making on it.

Whilst the determination of a planning application is not a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), it is a formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. All involved should remember the possibility that an aggrieved party may seek a Judicial Review and/or complain to the Local Government Ombudsman on grounds of maladministration or a breach of the code.

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## **Registration and disclosure of interests**

Chapter 7 of the 2011 Act places requirements on councillors regarding the registration and disclosure of their pecuniary interests and the consequences for a councillor taking part in consideration of an issue in the light of those interests.

The definitions of disclosable pecuniary interests (DPI) are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. A failure to register a disclosable pecuniary interest within 28 days of election or co-option or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest, are criminal offences.

If you have any doubts whatsoever about your interests the Monitoring Officer is available to provide advice but advice should be sought well in advance of any meeting. Ultimately, responsibility for fulfilling the requirements rests with each councillor.

The provisions of the Act seek to separate interests arising from the personal and private interests of the councillor from those arising from the councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the councillor's involvement would be appropriate.

The code of conduct sets out what interests need to be disclosed. All disclosable interests should be registered and a register maintained by the Monitoring Officer is made available to the public. Councillors should also disclose that interest orally at the committee meeting when it relates to an item under discussion.

A councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the councillor becoming aware of such changes.

A disclosable pecuniary interest relating to an item under discussion requires the withdrawal of the councillor from the committee. In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business.

If a councillor has an other disclosable interest (ODI), he or she should disclose that interest, but then may in certain circumstances speak and vote on that particular item. This includes being a member of an outside body; mere membership of another body does not constitute an interest requiring such a prohibition.

## **PART 5 - Protocol for Councillors and Officers on Dealing with Planning Matters (including site inspections)**

It is always best to identify a potential interest early on. If a councillor thinks that they may have an interest in a particular matter to be discussed at an area planning committee or other meeting where a planning matter is to be discussed he or she should raise this with the Monitoring Officer as soon as possible.

See Appendix 1 - Declaring Interests at Meetings for a flowchart of how councillors' interests should be handled.

### **Predisposition, predetermination, or bias**

Members of a planning committee, Local Plan steering group (or full Council when the local plan is being considered) need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application or on planning policies.

The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a 'closed mind' approach and likely to leave the committee's decision susceptible to challenge by Judicial Review.

Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition). The latter is alright; the former is not and may result in a Court quashing such planning decisions.

Section 25 of the Act also provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting.

Nevertheless, a councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased. For example, a councillor who states "Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee" will be perceived very differently from a councillor who states: "Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area."

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If a councillor has predetermined their position, they should withdraw from being a member of the decision-making body for that matter. This would apply to any member of the Area Planning Committee who wanted to speak for or against a proposal, as a campaigner (for example on a proposal within their ward).

### **Development proposals submitted by councillors and officers, and council development**

Proposals submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Proposals could be planning applications or local plan proposals. Such proposals must be handled in a way that gives no grounds for accusations of favouritism. If proposals are submitted by councillors and planning officers the following should apply:

- if they submit their own proposal to their authority they should play no part in its consideration;
- the councillor or planning officer should notify the council's Head of Planning and Infrastructure and the Monitoring Officer in writing of their proposal before it is submitted formally;
- such proposals will be reported to committee and not dealt with by officers under delegated powers.

A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They do have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as applicant and/or land-owner, should also not seek to improperly influence the decision.

Proposals for a council's own development should be treated with the same transparency and impartiality as those of private applicants.

### **Lobbying of and by councillors**

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee.

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As the Nolan Committee's 1997 report stated: *"It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves"*. Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved.

As noted earlier in this protocol, the common law permits predisposition but nevertheless it remains good practice that, when being lobbied, councillors (members of Area Planning Committees in particular) should try to take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they could choose to restrict themselves to giving advice about the process and what can and can't be taken into account

Councillors can raise issues which have been raised by their constituents, with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material planning considerations at committee.

If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision-making committee, they would be well advised to withdraw once any public or ward member speaking opportunities had been completed in order to counter any suggestion that members of the committee may have been influenced by their continuing presence.

It is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor.

Other issues about lobbying:

- Planning decisions cannot be made on a party political basis in response to lobbying; the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.
- Councillors should in general avoid organising support for or against a planning application, and avoid lobbying other councillors.
- Councillors must not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.

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As previously outlined, councillors must always be mindful of their responsibilities and duties under the local code of conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this protocol.

### **Pre-application discussions**

Pre-application discussions between a potential applicant and a council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.

Some councils have been concerned about probity issues raised by involving councillors in pre-application discussions, worried that councillors would be accused of predetermination when the subsequent application came in for consideration. Now, the LGA and PAS recognise that councillors have an important role to play in pre-application discussions, bringing their local knowledge and expertise, along with an understanding of community views. Involving councillors can help identify issues early on, helps councillors lead on community issues and helps to make sure that issues don't come to light for the first time at committee. PAS recommends a 'no shocks' approach.

The Localism Act has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

Although the term 'pre-application' has been used, the same considerations should apply to any discussions which occur before a decision is taken. Councillors who choose to get involved in pre-application discussions on a planning issue or proposal should ensure the following:

- Clarity at the outset that the discussions will not bind the council to making a particular decision and that any views expressed are personal and provisional. By the very nature of pre-application meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- An acknowledgement that consistent advice will be given by officers based upon the development plan and material planning considerations.

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- Officers should where possible be present with councillors in pre-application meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the authority's position is co-ordinated.
- A written note should be made of all meetings. If an officer is to be present, the officer should make the arrangements for the meetings, and write notes. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes or letters/ emails should record issues raised and advice given and should be retained for future reference. If there is a legitimate reason for confidentiality regarding a proposal, where appropriate a note of the non confidential issues raised or advice given can still normally be kept to reassure others not party to the discussion.
- A commitment that care will be taken to ensure that officer advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.
- The scale of proposals to which these guidelines apply needs to be considered. Councillors talk regularly to constituents to gauge their views on matters of local concern. The Nolan Committee argued that keeping a register of these conversations would be impractical and unnecessary. Councillors and Officers will need to think about when discussions should be registered and notes written.

Authorities may have other mechanisms to involve councillors in pre-application discussions including:

- committee information reports by officers of discussions to enable councillors to raise issues, identify items of interest and seek further information;
- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be (with notes taken);
- ward councillor briefing by officers on pre-application discussions.

Similar arrangements can also be used when authorities are looking at new policy documents and particularly when making new site allocations in emerging development plans and wish to engage with different parties, including councillors, at an early stage in the process.

The Statement of Community Involvement will set out the council's approach to involving communities and other consultees in pre-application discussions. Some authorities have

## **PART 5 - Protocol for Councillors and Officers on Dealing with Planning Matters (including site inspections)**

public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consultees. As well as being transparent, these forums allow councillors and consultees to seek information and identify important issues for the proposal to address, although still bearing in mind the need to avoid pre-determination.

### **Officer reports to committee**

As a result of decisions made by the courts and Local Government Ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include a fair summary of the substance of any objections and other responses received to the consultation.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), if relevant any local finance considerations, and any other material planning considerations.
- Reports should have a written recommendation for a decision to be made.
- Reports should contain technical appraisals which clearly justify the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure from the development plan must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.

Any oral updates or changes to the report should be recorded.

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## **Public speaking at planning committees**

Whether to allow public speaking at a planning committee or not is up to each local authority. Most authorities do allow it. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

A protocol for public speaking at the Area Planning Committee meetings is in place. This establishes who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors and how long they are allowed to speak for.

In the interests of equity, the time allowed for presentations for and against the development is the same, and those speaking are asked to direct their presentation to reinforcing or amplifying representations already made where they relate to material planning considerations.

New documents should not normally be circulated to the committee at the meeting; councillors may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. This is made clear to those who intend to speak when they register.

Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.

A copy of the public speaking scheme used at this council's Area Planning Committees is contained elsewhere within the Constitution.

## **Decisions which differ from a recommendation**

The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (s38A Planning & Compensation Act 2004 and s70 of the Town and Country Planning Act 1990). This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.

The courts have expressed the view that the committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other material or non material planning considerations which might cause local controversy will rarely satisfy the relevant tests.

Planning committees can, and sometimes do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions or terms of a S106 legal agreement. Sometimes it will change the outcome, from an approval to a refusal or vice

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versa. This will usually reflect a difference in the assessment of how a policy has been interpreted, or different weight being ascribed to material considerations.

Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation:

- if a councillor is concerned about an officer recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting;
- recording the detailed reasons as part of the mover's motion;
- adjourning for a few minutes to allow officers to consider the reason(s) and then for those reasons to be discussed further and agreed or otherwise by the committee;
- where there is concern about the validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed.

If the Area Planning Committee makes a decision contrary to the officers' recommendation (whether for approval or refusal, or changes to conditions or S106 obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'.

The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made.

All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departure' applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.

The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

### **Committee site visits**

National standards and local codes also apply to site visits. Councils should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should

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avoid accusations that visits are arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- visits should only be used where the benefit is clear and substantial; officers will have visited the site and assessed the scheme against policies and material planning considerations already;
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit. It is a site visit not a site meeting;
- where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply;
- keep a record of the reasons why a site visit is called;

A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers;
- the comments of the applicant and objectors cannot be expressed adequately in writing;  
or
- the proposal is particularly contentious.

Site visits are for observing the site and gaining a better understanding of the issues.

Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.

Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

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## **Annual review of decisions**

It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development. This should improve the quality and consistency of decision-making, strengthen public confidence in the planning system, and can help with reviews of planning policy. A “Quality Tour” is normally arranged annually by the planning officers for district councillors but may also include parish and town councillors. Reviews should include visits to a range of developments such as major and minor schemes; upheld appeals and listed building works.

Overview and Scrutiny or the Audit and Standards Committee may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to develop their understanding of the impact of their decisions. Planning committee members should be fully engaged in such reviews and are encouraged to attend the Quality Tour where possible.

## **Complaints and record keeping**

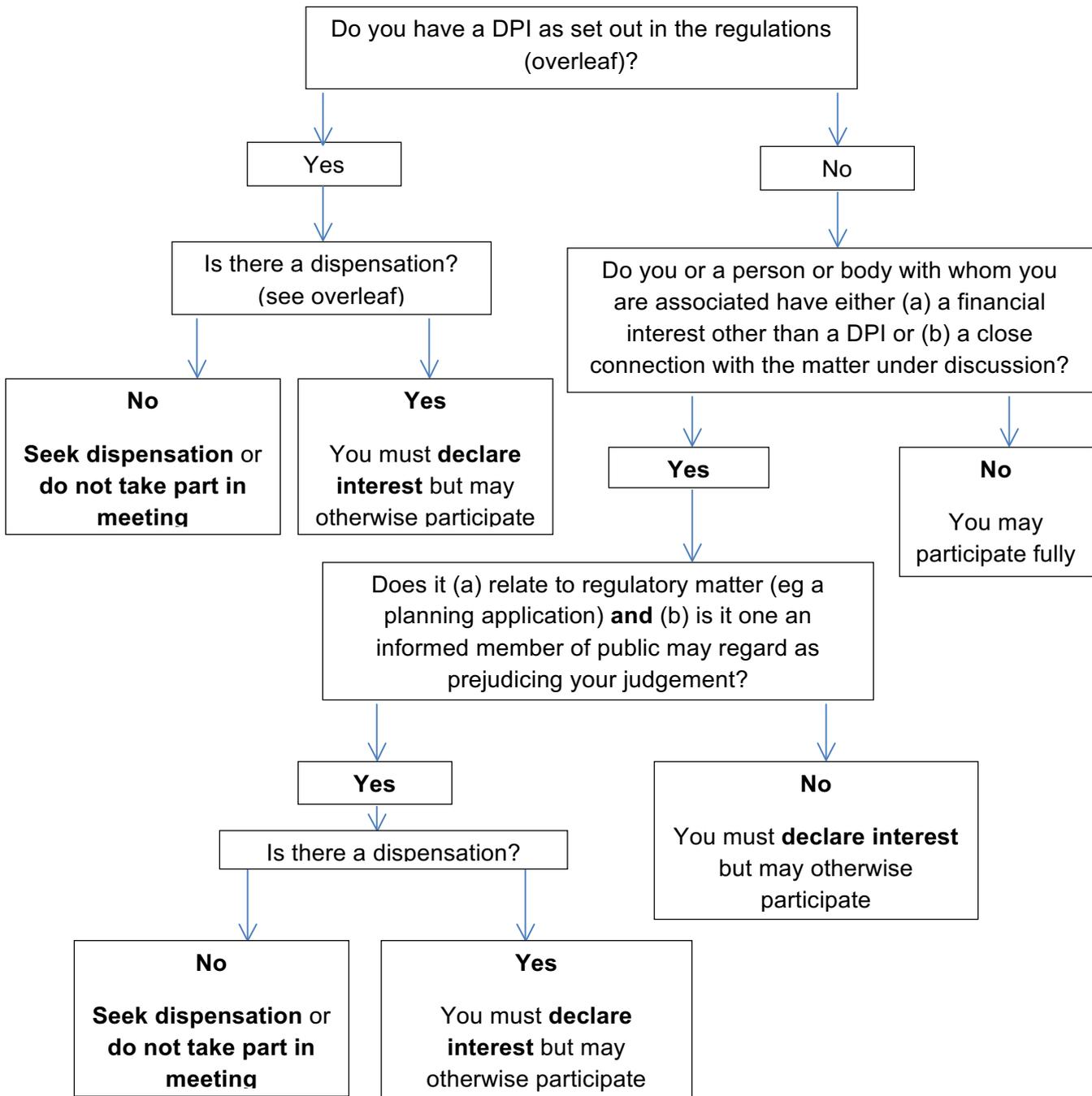
The council has a complaints procedure which applies to all council activities. It is general good practice for record keeping to be complete and accurate. Every planning application file (held in hard copy and electronically) should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by committee and under delegated powers, and to applications, enforcement and development plan matters.

# PART 5 - Protocol for Councillors and Officers on Dealing with Planning Matters (including site inspections)

## Appendix 1 – Declaring Interests at Meetings

It is important that you disclose any pecuniary or other disclosable interests that you have in relation to matters to be considered on an agenda at a meeting. These interests extend by association to your friends and family. Depending upon the exact nature of your interest, this may involve removing yourself from a meeting during consideration of that item of business.

### Do I have an interest affecting my participation in a meeting?



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**Disclosable pecuniary interests (DPIs)** - The table below sets out which interests are DPIs. **Please note** that an interest is a DPI if it is your interest or that of your spouse or civil partner or a person you are living with as spouse or civil partner:

<b>Subject</b>	<b>Prescribed description</b>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.  This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:  (a) under which goods or services are to be provided or works are to be executed; and  (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge):  (a) the landlord is the relevant authority; and  (b) the tenant is a body in which the relevant person has a beneficial interest.

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Securities	<p>Any beneficial interest in securities of a body where:</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either:</p> <p style="padding-left: 20px;">i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p style="padding-left: 20px;">ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>
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There are two general dispensations currently in effect. The first to allow the full participation in Council and committee meetings where members of the Council or their spouse or partner are also members of one or more of the following bodies, and who because of this would or could be prevented from participating in such meetings: (a) any parish or town council; (b) the Malvern Hills Conservators; (c) Worcestershire County Council; (d) any other body of a public nature to which the member has been appointed as the Council's nominee or representative.

The second to allow members who would otherwise be prevented from doing so to address Council and committees in the same way as a member of the public may *[NB Such a member must still then withdraw from the meeting once they have addressed it.]*

If you are in any doubt as to whether you have an interest or not, please contact the Monitoring Officer or legal services as far in advance of the meeting as possible.

**This information is printed in all agendas but if you want advice please contact Legal Services or the Monitoring Officer. Remember, not declaring a DPI at a meeting can be a criminal offence and you are advised to err on the side of caution in all your interests.**



## PART 5 - Protocol for the Role of the Monitoring Officer

1. The Monitoring Officer undertakes to discharge his or her role with determination and a manner which will enhance the reputation of the Council. In general terms his or her ability to discharge these duties depends on excellent working relations with colleagues and members but also the flow of information and access to debate particularly at early stages.
2. The following arrangements and understandings between the Monitoring Officer and colleagues and councillors are designed to help ensure the effective discharge of their functions:
  - (a) If not a member of the Joint Senior Management Team, the Monitoring Officer will have advance notice of those meetings and agenda and reports and the right to attend and speak;
  - (b) Advance notice of meetings whether formal or informal between Chief Officers and members of the Executive Committee or Chairmen will be given to the Monitoring Officer where any procedural, *vires* or other constitutional issues are likely to arise;
  - (c) Strategic Management Team and Heads of Service will alert the Monitoring Officer to all emerging issues of concern including legality, probity, *vires* and other constitutional issues;
  - (d) The Monitoring Officer and his/her deputy will have copies of all reports to members;
  - (e) The Monitoring Officer is expected to develop good liaison and working relations with the Local Government and Social Care Ombudsman, including the giving and receiving of relevant information whether confidential or otherwise;
  - (f) The Monitoring Officer will have a special relationship with the Chairman of the Council, Chairman of Audit and Standards Committee and Overview and Scrutiny Committee and will ensure the Head of the Paid Service and Chief Financial Officer have up-to-date information regarding emerging issues;
  - (g) The Monitoring Officer will be expected to make enquiries into allegations of a breach of the Code of Conduct and if appropriate will seek an informal resolution in consultation with the Independent Person. If this is not possible then he/she will make a written report to the Audit and Standards Committee who will decide on the merits of any complaint and the action to be taken.
  - (h) The Head of the Paid Service, Chief Financial Officer and Monitoring Officer will meet regularly to consider and recommend action in connection with current governance issues and other matters of concern regarding probity;

## **PART 5 - Protocol for the Role of the Monitoring Officer**

- (i) In carrying out any investigation (whether under Regulations or otherwise) the Monitoring Officer will have unqualified access to any information held by the Council and any employee who can assist in the discharge of their functions;
- (j) The Monitoring Officer will have control of a budget sufficient to enable him/her to seek Counsel's opinion on any matter concerning their functions;
- (k) The Monitoring Officer will be responsible for preparing a training programme for members on the ethical framework, subject to the approval of the Audit and Standards Committee;
- (l) The Monitoring Officer will report to Council from time to time on the Constitution and in accordance with authority delegated by Council can make minor changes to the Constitution where it is necessary arising from decisions of the Council and changes to legislation.
- (m) In consultation with the Chairman of the Council and the Chairman of Audit and Standards Committee the Monitoring Officer may defer the making of a formal report under Section 5 LGHA 1989 where another investigative body is involved;
- (n) The Monitoring Officer will make a report to the Council, as necessary, on the staff, accommodation, and resources required to discharge their functions;
- (o) The Monitoring Officer will appoint a deputy and keep him or her briefed on emerging issues;
- (p) The Monitoring Officer will make arrangements to ensure good communication between their office and Clerks to Parish Councils.

# PART 5 – Councillors - Leave of Absence from Council Meetings

## Introduction

1. Councillors are elected to represent the interest of the whole District and those of their ward in particular. In order to fulfill this role it is expected that all councillors will make a full contribution to the work of the Council throughout their term of office. This will include:
  - attendance at meetings of the Council
  - attendance at meetings of committees and working parties to which they may be appointed
  - being available to deal with queries, complaints and requests for assistance from residents and businesses in their ward in person, by telephone, correspondence and email as appropriate
  - responding to consultations from officers on matters such as planning applications
2. All councillors will hopefully have satisfied themselves before standing for election that they are able to commit the necessary time to fulfilling this important and rewarding role within the community. Any councillor who, whether through change of circumstances or otherwise, finds they are no longer able to give sufficient time to the role should in the first instance consult their group leader and/or the Monitoring Officer to discuss what further support may be available but may ultimately have to consider whether, in the interests of their electorate, it is appropriate for them to continue as a councillor.

## Non-attendance at meetings

3. Being a councillor is about much more than just attending meetings; the role as a community leader is equally important but it is at meetings of the Council and its committees where issues are debated and formal decisions are made.
4. Councillors should make every effort to attend all meetings of which they are a member but where this is not possible they should submit their apologies to Democratic Services in advance, inform their group leader and in the case of committees to which the procedure for substitute members apply, arrange for another member to attend as substitute wherever possible.
5. **A Councillor who is absent from all meetings of the Council and any committees of which they are a member for a period of six months automatically ceases to be a member of the Council unless they have been given leave of absence by the Council before the expiry of that six month period – s.85 Local Government Act 1972**
6. Whilst Democratic Services will make every effort to monitor attendance and forewarn any councillors who may be nearing the expiry of the six month period, the responsibility

## **PART 5 – Councillors - Leave of Absence from Council Meetings**

for ensuring that they comply with the requirements of s.85 is that of the individual councillor.

7. There are some specific points and exceptions to note:
  - s.85 relates to meetings of Council, committees and sub-committees. It does not apply to working parties or task or policy groups and so attendance at those meetings is not sufficient for the purposes of the s.85. Neither does attendance as an observer at a meeting of a committee of which the councillor is not a member count, even if invited to speak by the Chairman.
  - A councillor who is represented at a committee meeting by a substitute is regarded as being absent from that meeting.
  - A councillor who attends a meeting as the appointed substitute for another councillor is a member of the committee for that particular meeting and this is therefore sufficient for the purposes of s.85
  - Where a councillor has been suspended from office (e.g. following a breach of the code of conduct) the period of suspension is disregarded for the purposes of calculating the six month period of absence
  - Absence due to service in HM Forces (including Territorial or reserve duties) will normally be disregarded for the purposes of s.85

### **Requests for leave of absence**

8. Any councillor whose absence from meetings is likely to extend to six months or more should request a leave of absence by writing to the Monitoring Officer stating:
  - the reasons for the absence
  - the anticipated period of absence
  - whether the councillor will be available to continue performing any Council functions during this period e.g. continuing to deal with ward matters by telephone or email
  - what arrangements (if any) have been made to cover for the councillor's absence e.g. a fellow or neighbouring ward councillor representing the interests of their ward
9. Requests will normally be considered by full Council and should therefore be made in sufficient time, having regard to the programme of meetings, to allow this to happen before the period of six months expires. Only in the most exceptional circumstances will a request for a leave of absence be considered under the Council's 'urgent business procedure'.

## **PART 5 – Councillors - Leave of Absence from Council Meetings**

### **Granting leave of absence**

**10.** Each request for a leave of absence will be considered on its own merits having regard to:

- the reasons for the proposed absence, from future meetings, and the extent to which this is unavoidable;
- the duration of the proposed absence;
- the extent to which the member will be able to continue carrying out any functions of a councillor notwithstanding their absence from meetings;
- the suitability of any alternative arrangements that are proposed for ensuring that the interests of the ward are adequately represented.

**11.** Requests for leave of absence will normally be granted in cases of:

- serious illness for periods up to 12 months in total;
- pregnancy (for the equivalent period during which an employee of the Council would normally be entitled to maternity leave).

**12.** A leave of absence may be granted for such period as the Council thinks is reasonable in all the circumstances. Once that leave of absence expires, the clock re-starts so far as s.85 is concerned and the councillor has a further six months in which to attend a meeting (or seek a further leave of absence).

**13.** A councillor granted a leave of absence from meetings is still entitled to payment of the basic allowance. However, where it considers it appropriate, the Council may request the councillor to voluntarily waive their entitlement to all or part of that allowance depending upon the degree to which the councillor will be unable to carry out their normal duties.



## PART 5 - Malvern Hills District Council Petitions Scheme

Malvern Hills District Council recognises that petitions are an important way in which people can raise their concerns. We have provided a pro forma to assist you in drawing up your petition which can be accessed on our website.

Petitions in paper form can be sent to Malvern Hills District Council at the address below:

Democratic Services  
Malvern Hills District Council  
The Council House  
Avenue Road  
Malvern  
WR14 3AF

Petitions can also be presented to a meeting of the Executive Committee or Council as part of the public participation at those meetings. Dates can be found from the website.

If you would like to present your petition to the meeting, or would like your Councillor or someone else to present it on your behalf, please email [committee@malvernhills.gov.uk](mailto:committee@malvernhills.gov.uk) or telephone 01684 862416/2273 preferably 5 working days before the meeting and we will talk you through the process.

Your petition will not be debated at that meeting but will be passed to the appropriate officer or Councillor for a response to you. The response to your petition will depend on the number of signatures as detailed below, however if your petition has received 750 signatures or more it will be scheduled for a Council debate and if this is the case we will let you know whether this will happen at the next meeting or a later meeting of the Council.

### **Guidelines for submitting a petition**

Anyone who lives, works or studies in the Malvern Hills District, including under-18s, can sign or organise a petition.

Petitions must include:

- a clear and concise statement covering the subject of the petition. It should state what action the petitioners wish the Council to take or cease to take
- contact details, including an address, for the petition organiser. This is the person we will contact to explain how we will respond to the petition. The contact details of the petition organiser will not be placed on the website. If the petition does not identify a petition organiser, we will treat the first named signatory as the petition organiser
- the name and address and signature of every person supporting the petition

## PART 5 - Malvern Hills District Council Petitions Scheme

Where the Monitoring Officer, in consultation with the Leader of the Council, considers a petition to be vexatious, abusive or otherwise inappropriate it will not be accepted.

In the period immediately before an election or referendum we may need to deal with your petition differently – if this is the case we will explain the reasons and discuss the revised timescale which will apply.

If a petition does not follow the guidelines set out in this Scheme, the Council may decide not to do anything further with it. In that case, we will write to you to explain the reasons.

### Petition Scheme Summary of Council Response

#### Less than 100 signatures

We will acknowledge receipt within 10 working days and tell you how we intend to deal with your petition, including giving a timescale for providing a substantive response if we cannot do this within the initial 10 working days

#### 100 or more signatures

In addition to the above we will include details of the petition and our response to it on the Council's website for others to see.

If the petition organiser is not satisfied with the Council's response, you can ask for this to be reviewed by the Overview and Scrutiny Committee.

#### 350 or more signatures

You may ask for a relevant senior officer of the Council to appear before a meeting of the Overview and Scrutiny Committee to give an account of the matters referred to in the petition.

#### 750 or more signatures

Unless the petition is one asking for a senior officer to appear before Overview & Scrutiny Committee, it will automatically be scheduled for a debate at a meeting of the full Council and the petition organiser will be invited to attend.

***This scheme does NOT apply where other statutory procedures are applicable or to petitions in respect of planning applications, licensing applications or other regulatory functions. Such petitions will continue to be presented to the appropriate Committee considering the application, subject in the case of Licensing Act matters to restrictions on relevant representations.***

All other petitions sent or presented to the Council will receive an acknowledgement from the Council within 10 working days of receipt. This acknowledgement will set out what we

## **PART 5 - Malvern Hills District Council Petitions Scheme**

plan to do with the petition. We will treat something as a petition if it is identified as being a petition, or if it seems to us that it is intended to be a petition.

### **What the Council will do when it receives a petition**

An acknowledgement will be sent to the petition organiser within 10 working days of receiving the petition. It will let them know what we plan to do with the petition and when they can expect to hear from us again with a more substantive response if this is not available within those 10 working days.

If the petition has 100 or more signatories to it, information on the petition along with details of the Council's subsequent response will also be published on our website for others to see. Correspondence relating to the petition may also be published (all personal details will be removed).

If we can do what your petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed. If the petition has enough signatures to trigger a Council debate, or a senior officer giving evidence, then the acknowledgment will confirm this and tell you when and where the meeting will take place. If the petition needs more investigation or consideration, we will tell you the steps we plan to take.

If the petition relates to a planning or licensing application, is a statutory petition (for example requesting a referendum on having an elected mayor), or is on a matter where there is already an existing right of review or appeal, it falls outside this Scheme and other procedures apply. If you are unsure, we are happy to advise.

We will not take action on any petition which we consider to be vexatious, abusive or otherwise inappropriate and will explain the reasons for this in our acknowledgement of the petition.

### **How the Council will respond to a petition**

Our response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:

- taking the action requested in the petition
- considering the petition at a Council meeting or relevant Committee
- holding an inquiry into the matter
- undertaking research into the matter
- holding a public meeting
- holding a consultation
- holding a meeting with petitioners
- referring the petition for consideration by the Council's Overview and Scrutiny Committee\*
- calling a referendum

## PART 5 - Malvern Hills District Council Petitions Scheme

- writing to the petition organiser setting out our views about the request in the petition

\*Overview and Scrutiny Councillors are responsible for scrutinising the work of the Council – and the Committee has the power to hold the Council’s decision makers to account.

In addition to these steps, the Council may consider all the specific actions it can potentially take on the issues highlighted in a petition.

If your petition is about something over which the Council has no direct control (for example the local railway or hospital) we will consider making representations on behalf of the community to the relevant body. The Council works with a large number of local partners and where possible will work with these partners to respond to your petition. If we are not able to do this for any reason (for example if what the petition calls for conflicts with Council policy), then we will set out the reasons for this to you. You can find more information on the services for which the Council is responsible at <http://www.malvern hills.gov.uk>

If your petition is about something that a different Council is responsible for we will give consideration to what the best method is for responding to it. This might consist of simply forwarding the petition to the other Council, but could involve other steps. In any event we will always notify you of the action we have taken.

### Full Council Debates

If a petition contains more than 750 signatures it will be debated by the full Council unless it is a petition asking for a senior Council officer to give evidence at a public meeting – see below.

(Petitions containing less than 750 signatures can also be presented to the full Council or the Executive Committee in accordance with our public participation scheme indicated above, although they will not trigger a debate on the issue).

This means that the issue raised in the petition meeting this threshold of signatures will be discussed at a meeting of Council – at which all 38 District Councillors can attend and speak. The Council will endeavour to consider the petition at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting. The petition organiser will be given five minutes to present the petition at the meeting and the petition will then be discussed by Councillors for a maximum of 15 minutes.

The Council will decide how to respond to the petition at this meeting. They may decide to take the action the petition requests, not to take the action requested for reasons put forward in the debate, or to commission further investigation into the matter, for example by a relevant committee.

The petition organiser will receive written confirmation of this decision. This confirmation will also be published on our website.

## **PART 5 - Malvern Hills District Council Petitions Scheme**

### **Officer Evidence**

Your petition may ask for a senior Council officer to give evidence at a public meeting about something for which the officer is responsible as part of their job. For example, your petition may ask a senior Council officer to explain progress on an issue, or to explain the advice given to elected members to enable them to make a particular decision.

If your petition contains at least 350 signatures, a relevant senior officer i.e. the Chief Executive, Monitoring Officer, Responsible Financial Officer (s.151) or another Head of Service will give evidence at a public meeting of the Council's Overview and Scrutiny Committee.

You must give grounds for your request which must relate to the discharge of functions for which the officer is responsible, not personal circumstances or character. Vexatious, abusive or otherwise inappropriate petitions will not be accepted.

You should be aware that the Overview & Scrutiny Committee may decide that it would be more appropriate for another officer to give evidence instead of any officer named in the petition – for instance if the named officer has changed jobs or is not responsible for the issue in the petition.

The Committee may also decide to call the relevant Councillor to attend the meeting. Petitioners will not be able to question the officer directly but you will be able to suggest questions to the Committee Chairman up to three working days before the meeting. The report or recommendations arising from that meeting will be copied to the petition organiser.

### **What to do if you feel your petition has not been dealt with properly**

If the petition contained at least 100 signatures, once the Council has informed the organiser of the steps to be taken in response to the petition, if you feel that we have not dealt with your petition properly, the petition organiser has the right to request that the Council's Overview and Scrutiny Committee to review the adequacy of the steps that the Council has taken in response to your petition. It is helpful to everyone, and can improve the prospects for a review, if the petition organiser gives a short explanation of the reasons why the Council's response is not considered to be adequate.

The Overview & Scrutiny Committee will endeavour to consider your request at its next meeting, although on some occasions this may not be possible and consideration will take place at the following meeting. Should the Committee determine we have not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include instigating an investigation, making recommendations to Executive Committee and arranging for the matter to be considered at a meeting of the full Council.

## **PART 5 - Malvern Hills District Council Petitions Scheme**

Once the appeal has been considered the petition organiser will be informed of the results within 10 working days. The results of the review will also be published on our website.

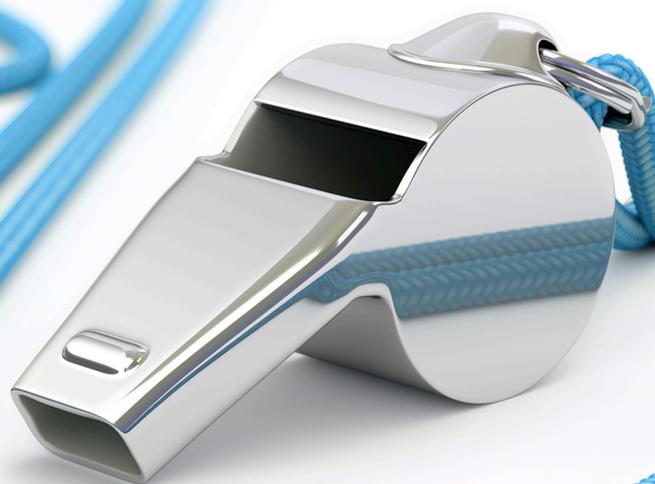
In the case of petitions containing fewer than 100 signatures, if you are dissatisfied with the Council's response you may write to the Council's Chief Executive in accordance with the Council's complaints procedure.

**For further information on any matter relating to this scheme, please contact Democratic Services by emailing [committee@malvern hills.gov.uk](mailto:committee@malvern hills.gov.uk) or by telephone on 01684 862416/2273.**

# Whistleblowing Policy and Procedure HR Services

Malvern Hills District Council and Wychavon  
District Council

**Last Review Date:** September 2018



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## Section A – General Information

### 1. Introduction

- 1.1. Employees are often the first to realise that there may be something seriously wrong within the council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the council. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of wrongdoing. However, this is not a culture that the council wishes to encourage.
- 1.2. We are committed to the highest possible standards of openness, probity and accountability. In line with that commitment we encourage employees and others with serious concerns about any aspect of the council's work to come forward and voice those concerns. It is recognised that certain cases will have to proceed on a confidential basis. This policy document makes it clear that staff can do so without fear of reprisals and is intended to encourage and enable employees and other workers to raise serious concerns within the council rather than overlooking a problem or blowing the whistle outside.
- 1.3. This policy applies to all workers of the council, that is; employees, casual workers, temporary and agency staff, trainees and work experience placements. Further details on the application of this policy in respect of contractors can be found towards the end of this policy.

### 2. Aims and scope of this policy

- 2.1. This policy aims to:
  - Provide confidential avenues for you to raise concerns and receive feedback on any action taken;
  - Allow you to take the matter further if you are dissatisfied with the council's response; and
  - Reassure you that you will be protected from reprisals or victimisation for whistleblowing in good faith.
- 2.2. This whistleblowing policy is intended to cover concerns about wrongdoing that fall outside the scope of other procedures (such as the Grievance Policy and Procedure, or Bullying and Harassment Policy and Procedure) and is not intended to replace them.

### 3. Examples of wrongdoing

In order for you to be protected by the Public Interest Disclosure Act, the disclosure needs to fall under one (or more) of the following:

- A criminal offence has been committed, is being committed or is likely to be committed.
- A person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject.
- A miscarriage of justice has occurred, is occurring, or is likely to occur.
- The health and safety of an individual has been, is being, or is likely to be endangered.
- The environment has been, is being, or is likely to be damaged.
- Information tending to show any matter falling within any one of the preceding paragraphs has been, is being, or is likely to be deliberately concealed.

Examples of wrongdoing include:

- Unlawful behaviour by an individual or a collective body;
- Corrupt or fraudulent behaviour;
- A breach of the council's Standing Orders or Financial Regulations;
- A breach of agreed procedures;
- Discrimination on grounds of sex, race or disability;
- Harassment, including sexual harassment, or victimisation;
- An unsafe working practice.

## 4. Safeguards

### 4.1. Harassment or Victimisation

We recognise that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. We will not tolerate harassment or victimisation and will take action to protect you when you raise a concern in good faith.

Any complaint of bullying or harassment will be treated seriously and dealt with quickly and fairly in a confidential, sensitive and supportive manner under the council's Bullying and Harassment Policy and Procedure.

### 4.2. Confidentiality and Support

The council will do its best to protect your identity when you raise a concern and do not want this to be disclosed. It must be appreciated that the investigation process may reveal the source of the information and a statement by you may be required as part of the evidence (albeit that it may be presented anonymously).

We will do all that we reasonably can to support you once you have taken the decision to voice your concern. You are encouraged to talk to the person with whom you have raised your concern, or with any of the nominated people within this document, at any time whilst your concern is being dealt with.

### 4.3. Anonymous Disclosures

You are strongly encouraged to put your name to your allegation. Where anonymous disclosures are received, the council will take the following factors into account when determining how best to deal with the disclosure:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

### 4.4. Untrue Allegations

If you make an allegation in good faith, and any allegation that it contains is not substantiated, no action will be taken against you. If, however, you make malicious or vexatious allegations, disciplinary action may be taken against you.

## 5. How to raise a concern

5.1. As a first step, you can raise concerns with your Line Manager or Service Unit Manager,

or SMT member. Alternatively, you may, if you wish, contact anyone from the list below:

- Monitoring Officer (currently Legal Services Manager) or Deputy Monitoring Officer (Policy and Governance Manager, MHDC; or Customer Services Manager, WDC)
- Chief Executive/Managing Director
- Deputy Managing Director (WDC) / Deputy Chief Executive (MHDC)
- S151 Officer (who is also the Deputy Managing Director (WDC)/Deputy Chief Executive (MHDC)
- HR Services Manager
- Council Leader
- Head of Internal Audit

- 5.2. You may raise the concern in writing, by telephone or through a direct meeting with any of the people referred to in paragraph 5.1 above. You may wish to set out the background to the concern in writing and provide supporting documents. Alternatively, you may prefer to explain the reasons for your concern verbally. A note of this conversation will be taken. You will be asked to agree to or amend this written note, which may be used as evidence in any subsequent investigation of the matter you have disclosed.
- 5.3. Although you are not expected to prove the truth of an allegation, you will need to clearly demonstrate reasonable grounds for your concern. If in doubt, you may contact one of the officers or members named above and talk to them about the situation before formally making the allegation.
- 5.4. If you wish, you may ask your trade union, professional association or solicitor to raise a matter on your behalf. They will have an equal right to contact the officers named above on the same terms as you.

## 6. How the council will respond

- 6.1. Any action taken by the council will depend on the nature and scale of the alleged wrongdoing and the evidence that is available.
- 6.2. The matters raised may:
- be investigated internally
  - be referred to the Police
  - be referred to the external Auditor
  - form the subject of an independent inquiry
  - any combination of these avenues
- 6.3. In order to protect individuals and the council, initial enquiries will be made by the individual to whom the disclosure has been made, to decide whether an investigation is appropriate and, if so, what form it should take. Allegations or concerns which fall within the scope of specific procedures (for example, harassment or fraud/corruption) will normally be referred for consideration under those procedures.
- 6.4. Some matters may be resolved without the need for formal action.
- 6.5. Within ten working days of an allegation or concern being received, the Council will write to you:
- acknowledging receipt of the allegation or concern
  - indicating how it proposes to deal with the matter
  - telling you whether any initial enquiries have been made

- telling you whether further investigations will take place, and if not, why not
  - with an estimate of how long it is likely to take to provide a full response where the matter is to be dealt with internally
- 6.6. During any investigation, the amount of contact between yourself and the officers considering the issues will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary you may be asked for further information. Depending on the circumstances of the allegation or concern, you may be asked to maintain confidentiality.
- 6.7. You may be accompanied at any meetings by a trade union representative, a professional association representative, a solicitor or a work colleague; such a person must respect any confidentiality that applies.
- 6.8. We will take steps to minimise any difficulties which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the council will advise you about the procedure.
- 6.9. The council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, you will receive information about the outcome of any investigation, which may still remain confidential.

## 7. How the matter can be taken further

- 7.1. This policy is intended to provide you with an avenue to raise concerns within the Council.
- 7.2. If you are not satisfied with the council's response and feel it is necessary to take the matter outside the council, the following are possible contacts:
- the external Auditor
  - relevant professional bodies or regulatory organisations
  - the Police
  - the Charity Commission (see Gov.uk guidance on the Public Interest Disclosure Act for further information).
- 7.3. If you do take the matter outside the council, you need to take care with regard to the possible disclosure of confidential information. If you are in any doubt as to your position, you should check with your external adviser, trade union representative, or the Council's Monitoring Officer.
- 7.4. You are strongly advised not to refer concerns to the press whilst the matter is being investigated because you may be in breach of your contract of employment, liable to disciplinary action and may lose your right to statutory protection against whistleblowing, but if you do, you should make certain that:
- (a) you have exhausted all the avenues described above;
  - (b) you do not disclose confidential information;
  - (c) you do not make false allegations which could result in libel proceedings;

## 8. Councillors

- 8.1. Allegations or concerns about possible wrongdoing by Councillors should be discussed with the council's Monitoring Officer (currently the Legal Services Manager).

8.2. All Councillors are subject to a Code of Conduct. Any breaches of this code are potentially liable to formal investigation and reporting regulations.

## **9. Persons working for council contractors, partners and agents**

9.1. The principles and procedures set out above apply, so far as possible, to employees and others working for council contractors on council work.

9.2. Concerns may be raised about possible wrongdoing by:

- Council officers;
- Councillors; or
- Colleagues or other workers engaged in performing works or services for the council.

9.3. If individuals working for council contractors have concerns, they are encouraged to contact either their manager or the council's Monitoring Officer in the first instance.

9.4. The Monitoring Officer will follow the same approach and endeavour to provide the same safeguards as would apply to a concern expressed by a council employee.

## **10. Public interest disclosure act 1998**

10.1. The Public Interest Disclosure Act 1998 gives statutory protection to persons who raise concerns in good faith about possible wrongdoing. Provisions are also included in the Employment Rights Act 1996 regarding "protected disclosures" and the rights of employees not to suffer detriment through making such disclosures.

10.2. This Whistleblowing Policy is intended to complement the statutory protection now given to employees. For the avoidance of doubt, an employee's statutory rights will not be affected in any way by the Whistleblowing Policy.

## **11. What happens if you are the subject of a concern raised under this policy?**

11.1 We believe that everyone has the right to be treated fairly and in accordance with the principles of natural justice, and therefore will apply these principles to you if you are the subject of an allegation or complaint received under this policy.

11.2 We will ensure that:

- You are informed of the concern both verbally and in writing, and will be encouraged to seek the advice of your trade union, solicitor or professional association.
- You are assigned an officer or member of the council who will be responsible for advising you at regular intervals on how the investigation is proceeding.
- You are advised of the outcome of the investigation and how this may impact upon your employment with the council as soon as possible, once the investigation has been concluded.

11.3 You may be suspended from work on full pay during the investigative process but this will not be regarded as a punitive measure. It may be used in circumstances where, for example, public interest is likely to be high, such that your presence at work may cause significant disruption or distress to yourself or others; or where there are reasonable

grounds for determining that your presence at work is likely to hamper the progress of the investigation.

## **12. Review**

SMT will review this policy on a regular basis to ensure it remains relevant.

# Code of Conduct for Employees HR Services

Malvern Hills and Wychavon District Council

Last Review Date: April 2018



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# Section A – Policy Overview

## 1. Introduction

- 1.1 The public is entitled to expect the highest standards of conduct from all employees who work for Malvern Hills District Council and Wychavon District Council in order to uphold the strong reputation of the Council and its services.
- 1.2 This Code describes the standards of conduct required from all employees and anyone seconded or engaged from other organisations to work for the Council.
- 1.3 Please take time to read this Code and ensure your conduct meets these requirements. If you are at all uncertain about what is expected, seek further clarification from your Service Manager.
- 1.4 Contravening or failing to act within the guidelines set down by this Code and within the Council's policies, or at any time behaving in a manner which could bring the Council in to disrepute, may result in action being taken against employees under the Disciplinary Policy and Procedure.

## 2. Supporting policies

- 2.1 This Code is supported by a number of more detailed policies and further guidance with which you should make yourself aware and follow accordingly. In particular (but not exclusively), the following:
  - Disciplinary Policy and Procedure
  - Declarations of Interest by Officers – Guidance notes and Procedure
  - Protocol for Members & Officers on Planning Matters
  - Anti-Fraud and Corruption Strategy – Policy Statement
  - Whistleblowing Policy
  - Health and safety policies
  - Equal Opportunities Policy
  - Smoking Policy and Procedure
  - IT and information security policy
  - Any rules, regulations, professional standards, codes of practice, financial regulations and accounting instructions, etc. relevant to your job

## 3. Roles and Responsibilities

### 3.1 All Employees

All employees must read, understand and work in accordance with the latest Code of Conduct and:

- Maintain the highest standards of professional competence, knowledge, integrity, confidentiality, financial propriety and personal conduct
- Be fair and honest in all activities at work
- Remain impartial and maintain the highest standards of integrity
- Incorporate and promote equality and diversity in all that that you do

### **3.2 Managers – in addition to the above**

All Managers are responsible for the application of this Code in their work area. They must ensure the Code is adhered to and will:

- Role model the required standards of behaviour
- Reinforce the required standards of behaviour through appropriate communications with their teams
- Explain the provisions of the Code to promote understanding
- Coach, support and provide feedback to employees on their performance in relation to the required standards of conduct
- Take appropriate action at the earliest opportunity to deal with non compliance with the standards of the Code

3.3 Throughout this Code the following positions/titles are referred to:

- Chief Executive/Managing Director
- Deputy Chief Executive/Deputy Managing Director
- Senior Manager (meaning the relevant member of SMT for the employee's service area)
- Service Manager
- Section 151 Officer (Deputy Chief Executive/Deputy Managing Director)
- Monitoring Officer

## **4. Guiding principles**

- 4.1 All employees of the Council are expected to give the highest possible standard of service to the public and provide appropriate advice to the public, Councillors and fellow employees with impartiality.
- 4.2 Employees will be expected to bring to the attention of the appropriate level of management any deficiency in the provision of service. You must report to the appropriate manager any impropriety or breach of procedure.
- 4.3 To the public employees represent the Council. You must adhere to council policies and procedures and be familiar with the performance standards for customer care and the procedures for handling complaints.
- 4.4 It is not acceptable for employees to criticise or blame colleagues, council departments or our Councillors publicly through any medium including social media. Offensive, defamatory, discriminatory or otherwise inappropriate comments will not be tolerated and may constitute a disciplinary and/or criminal offence.

## **5. Health and Safety**

- 5.1 Unsafe working can endanger you, your colleagues and members of the public. You must familiarise yourself with and follow the Council's Health and Safety Policy and guidelines, rules, codes and safe practices for your particular area of work.

## **6. Standards of appearance**

- 6.1 Employees are expected to present a suitable business-like appearance and dress

appropriately to the circumstances within their working environment, the nature of work they are undertaking and the levels and types of both internal and external contacts encountered in the normal course of their duties. Where protective clothing is issued it must be worn as required when at work or representing the Council. When wearing items which identify you as an employee of the Council you must maintain appropriate standards of conduct whether or not on duty e.g. when travelling to and from work.

## **7. Expressing concern about irregularities and tackling malpractice**

- 7.1 If you feel there is something seriously wrong at work please tell an appropriate person. It might be the conduct of another employee, the way a contractor is behaving, a work practice, something that might affect the environment, misuse of plant, machinery or a building.
- 7.2 For further information please see the Council's Whistleblowing Policy.

## **8. Anti-fraud and corruption**

- 8.1 Fraud and corruption are serious issues which can affect the services the Council provides to the community and the public's perception of the integrity of Council Officers and Members. If you suspect fraudulent activity inform the Section 151 Officer and/or Internal Audit who will investigate any concerns raised in the strictest confidence.
- 8.2 For further information please see the Council's Anti-Fraud and Corruption Policy.

## **9. Confidentiality**

- 9.1 You may acquire information at work which has not been made public or is confidential. You must ensure that sensitive and/or confidential information is properly secured and safeguarded at all times.
- 9.2 Confidential information which comes into your possession must not be used for personal benefit or divulged to other parties except in the proper course of duty.
- 9.3 You must decline any approaches or offers made asking for information which could be detrimental to, or help others to gain a contract, grant or any other advantage from the Council and/or its employees. Approaches or offers of this kind must be declared to the Section 151 Officer without delay.
- 9.4 Upon termination of employment, employees are required to return any documents or files (electronically readable or otherwise) in their possession and may not copy, take or retain any documents containing confidential information.

## **10. Information Technology and Data Protection**

- 10.1 You must familiarise yourself with all IT Security documents particularly Information Security, Internet and e-mail Policy, Network and Workstation Security and Virus Protection Policy. You must also comply with any general management, usage and security guidelines for IT within your section.

## 11. Copyright

- 11.1 You should be aware that "intellectual property" such as software, ideas, documents etc. created during your employment, belong to the Council. All files, materials, the media upon which they are located and all software programmes or packages which are utilised or developed solely for or in connection with your job remain Council property.

## Section B – Conflicts of Interest

### 12. Personal interests

- 12.1 The interests of the Council and the way you do your job must not be influenced by or conflict with your personal interests or those of relatives, friends or membership of external organisations or societies. There should be no grounds for suspicion that you are using your position with knowledge of the Council for personal gain or that you could be influenced by improper motives.
- 12.2 Employees must formally declare any financial or non-financial interests where it may be perceived that they could give rise to a conflict with the Council's interests (see further guidance and Declaration of Interests form at the end of this document).

### 13. Secondary employment

- 13.1 Employees 'off duty' hours are their own personal concern, but you should not put yourself in a position where your work and private interests conflict. The Council will not unreasonably attempt to prevent Officers from undertaking additional employment.
- 13.2 You must advise your Service Manager or Senior Manager before engaging in any other paid or voluntary work especially if it could reasonably be seen to conflict with your employment with the Council or lead to misunderstanding or criticism. All employees intending to undertake additional employment are required to consult their Service Manager and complete a Declaration of Interest form which will be kept on the employee's personal file.
- 13.3 Your average working time should not exceed an average of 48 hours per week, taking account of secondary employment. You may be required to disclose your total working hours, to enable the Council to monitor your hours worked in order to comply with the Working Time Regulations (for further information visit [HSE.gov.uk](http://HSE.gov.uk)).

### 14. Gifts and hospitality

- 14.1 Employees should only accept offers of hospitality if there is a genuine need to represent the Council in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community and where the authority should be seen to be represented. They should be properly authorised and recorded.
- 14.2 Minor gifts and hospitality may be offered, especially at Christmas or as a token of appreciation, and in an office situation simple items such as diaries and calendars are often distributed as advertising matter. As a guideline, any gift or hospitality with a value of £25.00 or more is highly unlikely to be viewed as a 'token'. With the exception

of these "tokens", all gifts, vouchers, fees, special discounts, rewards or preferential treatment must be refused.

- 14.3 Employees must consider whether it is appropriate to accept even token gifts e.g. when you are dealing with regulatory or procurement matters it would usually be inappropriate to receive any gift from involved parties. In case of doubt, consult your line manager.
- 14.4 Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal. Where possible the Chief Executive/Managing Director (or relevant Deputy) should give consent in advance and be satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment etc. are required, employees should ensure that the Council meets the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.
- 14.5 Employees must not accept any personal commission, discount, allowance, direct or indirect profit, inducement, payment, perk or benefit in connection with any professional work undertaken, other than any fee recoverable on behalf of the Council.
- 14.6 Any offer of gifts and/or hospitality must be notified by completion of a Declaration of Interest form or alternative formal register approved by SMT.

## **15. Sponsorship – giving and receiving**

- 15.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a council activity, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 15.2 Where the Council wishes to sponsor an event or service, neither an employee, nor any partner, spouse nor relative should benefit from such sponsorship in a direct way. If in doubt, employees must discuss with their Senior Manager and complete a Declaration of Interest form. Similarly, where the Council through the sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

## **16. Procurement of goods and services**

- 16.1 Procurement procedures must be strictly adhered to and you must not accept any inducement or preferential treatment if you are responsible for procuring goods or services for the Council or disposing of surplus property.

## **17. Political neutrality**

- 17.1 You serve the Council as a whole and must serve all elected Members – not just those of the controlling group – and must ensure the individual rights of all Councillors are respected.
- 17.2 Your post may be or become 'politically restricted' if it is considered politically sensitive in accordance with statutory provisions e.g. officers who regularly advise any committee or speak publicly on behalf of the Council, for instance to the media. If your job is politically restricted your political activities (e.g. canvassing on behalf of a political party or on behalf of a candidate for election, or speaking to the public at

large with the apparent intention of affecting support for a political party) normally will be restricted unless it can be shown that such restriction would be unreasonable.

- 17.3 Employees, whether or not politically restricted, must follow every lawful expressed policy and instructions of the Council and must not allow their own personal or political opinions to interfere with their work.

## **Section C – Relationships**

### **18. Councillors**

- 18.1 Some employees are required to give advice to Councillors in the course of their duties. Mutual respect between employees and Councillors is essential to good local government. Close personal familiarity between employees and individual Councillors can damage the relationship and prove embarrassing to other employees and Councillors and should therefore be avoided.

### **19. The local community and service users**

- 19.1 If you work in close proximity with service users or other employees to whom you are related or have a close personal connection you must maintain a strictly professional relationship at work. You should also be aware that if any relationship leads to disruption in the workplace, unacceptable conduct or performance or situations involving undue favouritism or detriment, action may be taken under the appropriate procedure, which could include disciplinary action.

### **20. Contractors**

- 20.1 All relationships of a business or private nature with external contractors, or potential contractors, should be made known to your Service Manager and formally recorded. Orders and contracts must be awarded on merit, by fair competition against other tenders and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process.

### **21. Appointments and other employment decisions**

- 21.1 In order to avoid any possible accusation of bias you should not be directly involved in the appointment, promotion, discipline or other employment decision relating to another employee to whom you are related or with whom you have a close personal relationship. If a situation arises in which you feel you may be in such a position, please seek the advice of the HR Manager.

### **22. Dealing with the media**

- 22.1 In general, all communications with the media relating to the activities of the Council are handled through the Communications Team.
- 22.2 The Chief Executive/Managing Director and Senior Managers may respond directly to media requests relating to matters under their control.
- 22.3 No other employee should initiate contact with the media or respond to media enquiries without consulting the Communications Team and receiving the approval of

their Senior Manager to do so.

## **Section D – Use of Council Resources and Equipment**

### **23. Council equipment and materials**

23.1 Facilities, equipment, vehicles, materials and other resources provided by the Council for use in your work must not be used for any other purpose without permission or appropriate payment e.g. photocopying, private telephone calls.

### **24. Use of financial resources**

24.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner, following regulations and council policy on procurement as applicable. They should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

### **25. Overseas travel on official business**

25.1 Any proposal to travel overseas on official business must be approved by the Chief Executive/Managing Director before the travel takes place.

## **Section E – Criminal Charges, Cautions and Convictions**

### **26. Criminal charges, cautions and convictions**

26.1 You must advise your Service Manager immediately if you are charged with or cautioned or convicted of any criminal offence whilst you are an employee of the Council. While such proceedings will not necessarily affect your employment, the Council needs to be sure there are no implications for its clients, reputation, service delivery or in relation to the role you undertake.

26.2 You must also advise your Service Manager immediately if you have been arrested or appeared in court and released on bail in circumstances where bail conditions have been applied which could have consequences for your work. If you are in any doubt about whether you should report bail conditions, especially where safeguarding could be an issue, you must discuss it with your line manager or HR Services Manager so that any concerns can be addressed from the outset. Failure to report such conditions would be considered as serious misconduct and could potentially lead to a breach of bail.

# CODE OF CONDUCT – OFFICERS’ DECLARATION OF INTEREST

**FULL NAME:**

**POST TITLE:**

While working for the Council you are expected to comply with the Council’s Code of Conduct part of which requires you to declare any interests that you may have that might conflict with the interests of the Council (see in particular Section B “Conflicts of Interest”). The Code of Conduct can be viewed in full on the intranet. The Code requires you to declare to your Service Manager any interests you have that could bring about or be perceived to bring about a conflict with the Council’s interest. Below are some examples of the types of things that you should declare:

I wish to declare the following interests that conflict or may be perceived to conflict with my duties as an officer of Malvern Hills District Council and/or Wychavon District Council (including duties for either Council in the case of joint services) and agree not to take part in any Council decisions or recommendations affected by this interest.

If you have no such interests, please state “nil”.

NATURE OF INTEREST	DETAILS
If you have a job with another employer or undertake any work on a self-employed basis.	
If you have a voluntary role in another organisation that has dealings with the Council.	
Any application to the Council made by yourself or your partner, family, close friends or business associates, e.g. for planning permission, building regulation approval, any form of licence, registration or grant, or housing support, <b>AND</b> that application is still to be determined,	
If you or (so far as you are aware) your partner, family, close friends or business associates object to, actively support or are affected by one of the applications mentioned above or have made a complaint to the Council which Council officers are currently investigating.	

If you have a legal interest (including ownership or tenancy) in any land or property in Wychavon or Malvern Hills districts that you know is subject to an issue with the Council.	
If you have, or you are aware that relatives or friends have, interests or shareholdings in companies that have dealings with the Council or have submitted a tender to the Council.	
If, as part of your duties as an officer, you are required to carry out an inspection of a property owned or occupied by family, friends or business associates.	
If you are a member of any organisation or association where such membership may present an actual or perceived conflict of interest with the business of the Council.	
Any other matter which conflicts, may conflict, or may be perceived to conflict with the interests of the Council	

**NOTES**

If, in connection with your position as an officer of the Council, you have received or purchased any items or been offered any gifts and/or hospitality, or have directly benefitted from any event sponsored by the Council, these must also be reported to your line manager. Please see further guidance regarding gifts and hospitality in the Code of Conduct.

If you have any questions about the completion of this form, please speak to your line manager or Service Manager.

Signed.....

Dated.....

**This form must be submitted to your Service Manager. It will be retained in HR until superseded by any updated form**

## **PART 5**

### **MALVERN HILLS DISTRICT COUNCIL**

#### **ANTI-FRAUD AND CORRUPTION POLICY STATEMENT**

1. The Council is committed to maintaining an honest and open culture within the organisation.
2. Members, employees and all other people that work on behalf of the Council must have high standards of conduct. They are expected to follow the principles of public life, and national and local standards of corporate governance. This includes all local and national codes of conduct.
3. Systems of internal control will be maintained to prevent and detect fraud and corruption, but the Council will not be complacent. When it is suspected that fraud and/or corrupt action has occurred, it will be investigated promptly and fully. Appropriate action will be taken in all cases, including:
  - taking disciplinary action
  - criminal prosecution
  - imposing sanctions
  - seeking compensation
4. This policy applies equally to all members, employees and other people acting on behalf of the Council.
5. From time to time, as necessary, the Council will adopt a strategy for ensuring the compliance of this policy.

Council meeting 25<sup>th</sup> June 2002

**MALVERN HILLS DISTRICT COUNCIL**

**ANTI-FRAUD AND CORRUPTION STRATEGY**

Council meeting 25<sup>th</sup> June 2002

### INTRODUCTION

The Council has agreed a policy on fraud, theft and corruption which embodies the principles of integrity, accountability, openness and leadership.

This strategy details a series of measures which are designed to prevent fraudulent or corrupt acts and the steps to be taken when such acts occur.

For ease of understanding, the strategy is separated into six areas:

- Culture
- Prevention
- Deterrence
- Detection and Investigation
- Awareness and Training
- Fraud Response Plan

### Definitions

**Fraud and corruption are defined by the Audit Commission as:**

**Fraud:** “the intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to conceal the misappropriation of assets or otherwise for gain”.

**Corruption:** “the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person”.

**Misuse of assets:** the use of council assets for personal gain and the abuse of property.

**This strategy also covers:** “the failure to disclose an interest in order to gain financial or other pecuniary gain.”

### CULTURE

The culture of the Council is one of openness, equity, fairness and mutual respect. The prevention and detection of fraud/corruption are everyone's responsibility - elected members and employees play an important role in creating and maintaining this culture. They are positively encouraged to raise concerns regarding fraud and corruption, immaterial of seniority, rank or status, in the knowledge that such concerns will be treated in confidence.

Concerns must be raised when members or employees reasonably believe that one or more of the following has occurred, is in the process of occurring or is likely to occur:

- **a criminal offence**
- **a failure to comply with a statutory or legal obligation**
- **improper, unauthorised use of public or other funds**
- **a miscarriage of justice**
- **maladministration, misconduct or malpractice**
- **deliberate concealment of any of the above.**

Management will ensure that all allegations received in any way, including by anonymous letters or phone calls, will be taken seriously and investigated in an appropriate manner, subject to the requirements of the Human Rights Act 1998.

There is, of course, a need to ensure that any investigation process is not misused and, therefore, any abuse (such as employees raising malicious allegations) may be dealt with as a disciplinary matter.

When fraud or corruption have occurred because of a breakdown in systems or procedures, senior management will ensure that appropriate improvements in systems of control are implemented to prevent a reoccurrence.

### PREVENTION

#### ELECTED MEMBERS

##### The Role of Elected Members

As elected representatives, all members of the Council have a duty to the community to protect the Council from all forms of abuse. This is carried out through this anti-fraud and corruption strategy, compliance with the Councillor Code of Conduct, the Council's Financial Rules, and the relevant legislation.

Elected members sign to the effect that they have read, understood and will observe the Councillor Code of Conduct when they take office. This is brought to the attention of members during induction, which includes the declaration and registration of interests. An annual reminder takes place.

#### EMPLOYEES

##### The Role of Managers

Managers at all levels are responsible for the communication and implementation of this strategy to employees. Managers are also responsible for ensuring that their employees are aware of the Council's financial rules. Furthermore, managers are required to make employees aware of the requirements of any code of conduct for local government employees.

Managers are expected to strive to create an environment in which employees feel able to approach them with any concerns about suspected irregularities. Where managers are unsure of the necessary procedures, they will refer to the Council's Whistleblowing policy.

Special arrangements will apply where employees are responsible for cash handling or are in charge of financial systems and systems that generate payments, for example payroll, housing benefits or council tax. Managers must ensure that proper controls are in place.

It is recognised that a key preventative measure for dealing with fraud and corruption is for managers to follow correct procedures at the recruitment stage to establish, as far as possible, the honesty and integrity of potential employees.

Formal recruitment procedures are in place which contain appropriate safeguards on matters such as written references and verifying qualifications held. As with other public bodies, police checks are undertaken on employees working with children.

### The Responsibilities of Employees

Each employee is governed in his/her work by the Council's financial and other procedure rules, codes of conduct and various protocols and policies. These guidelines cover the acceptance of gifts and hospitality, professional and personal conduct, and conflicts of interest. The guidelines are issued to all employees when they join the Council, and are updated from time to time.

Employees are responsible for ensuring that they follow the instructions given to them by management, particularly in relation to the safekeeping of the Council's assets.

Employees are expected always to be aware of the possibility that fraud, corruption or theft may exist in the workplace and be able to share their concerns with management.

Concerns will be raised, in the first instance, directly with the line manager, or in accordance with the Council's Whistleblowing Policy.

### Conflicts of Interest

Both elected members and employees must ensure that they avoid situations where there is a potential for a conflict of interest and the appropriate entry must be made in the Register of Interest. Such situations can arise with externalisation of services, tendering, planning and land issues, etc. Separation of duties will ensure decisions made are seen to be based upon impartial advice and avoid questions about improper disclosure of confidential information.

### Official Guidance

In addition to financial and other Council procedure rules, services will have their own procedures to prevent and detect fraud. There may also be audit reports that recommend methods to minimise losses to the authority. Managers and employees must be made aware of these various sources of guidance and alter their working practices accordingly.

### The Role of Internal Audit

Internal audit plays an important preventative role in ensuring that systems and procedures are in place to prevent and detect fraud and corruption. Audit will investigate cases of suspected irregularity, and liaise with management to recommend changes in procedures.

### The Role of External Audit

Independent external audit is an essential safeguard in the stewardship of public money. The external auditor has a responsibility to review the Council's arrangements to prevent and detect fraud and irregularity.

### Co-operation with Others

Arrangements are in place to develop and encourage the exchange of information on national and local fraud and corruption activity with external agencies such as:

- the police service
- local government groups
- the Audit Commission
- Department for Work and Pensions
- the Electoral Commission

## DETERRENCE

### Prosecution

***The Council operates a prosecution policy in respect of housing and council tax benefit in line with guidance issued by the Department for Work and Pensions. The policy is designed to clarify the actions taken in specific cases and to deter others from committing offences. However, it also recognises that it may not always be in the public interest to refer cases for criminal proceedings.***

### Disciplinary Action

Theft, fraud and corruption are serious offences, and employees will face disciplinary action if there is evidence that they have been involved in these activities. Disciplinary action will be taken in addition to, or instead of, criminal proceedings, depending on the circumstances of each individual case. It will be applied in a consistent manner, after consultation when necessary with the Chief Executive, the Monitoring Officer, and the Section 151 officer.

Action will be taken against members if they are found to have been involved in theft, fraud or corruption against the Council, depending on the circumstances of each case. Such action will be taken after the matter has been referred, as appropriate, by the Monitoring Officer to the Standards Committee for England and the police.

### Publicity

Any appropriate publicity opportunities associated with anti-fraud and corruption activity will be taken, and the Council will ensure that the results of any action taken, including prosecutions, are reported in the media. In all cases where financial loss to the authority has occurred, the Council will seek to recover the loss and advertise this fact.

All anti-fraud and corruption activities, including updates to this strategy, will be publicised in order to make the public aware of the Council's commitment to taking action on fraud and corruption when it occurs.

Regular reports will be made to the Audit and Standards Committee.

### DETECTION AND INVESTIGATION

Internal audit plays an important role in the prevention of fraud and corruption. Included in the three-year audit plan are reviews of financial system controls and specific fraud and corruption tests, spot checks and unannounced visits.

System controls are in place to deter fraud and corruption, but it is the vigilance of employees and members of the public that often aids detection. In some cases frauds are discovered by chance or 'tip-off', and arrangements are in place to enable such information to be properly dealt with in accordance with the requirements of the Human Rights Act 1998.

All suspected irregularities are required to be reported (verbally or in writing) either by the person with whom the initial concern was raised or by the originator. This:

- ensures the consistent treatment of information, and
- facilitates a proper and thorough investigation by management

This process will apply to all the following areas:

- a) fraud/corruption by elected members
- b) internal fraud/corruption
- c) other fraud/corruption by authority employees
- d) fraud by contractors' employees
- e) external fraud (the public).

Any decision to refer a matter to the police will be taken by senior management after consultation with the Audit Manager, the Monitoring

Officer and the Section 151. The police will normally be informed of any financial impropriety.

### **The Role of the Benefits Investigation Team**

The Council's benefits investigation team is responsible for all benefit fraud investigations. They will work in partnership with internal audit in cases where employees of the Council are suspected of benefit fraud.

### **AWARENESS AND TRAINING**

The Council recognises that the continuing success of this strategy, and its general credibility, will depend on the awareness of all elected members and employees, and the effectiveness of programmed training.

### **CONCLUSION**

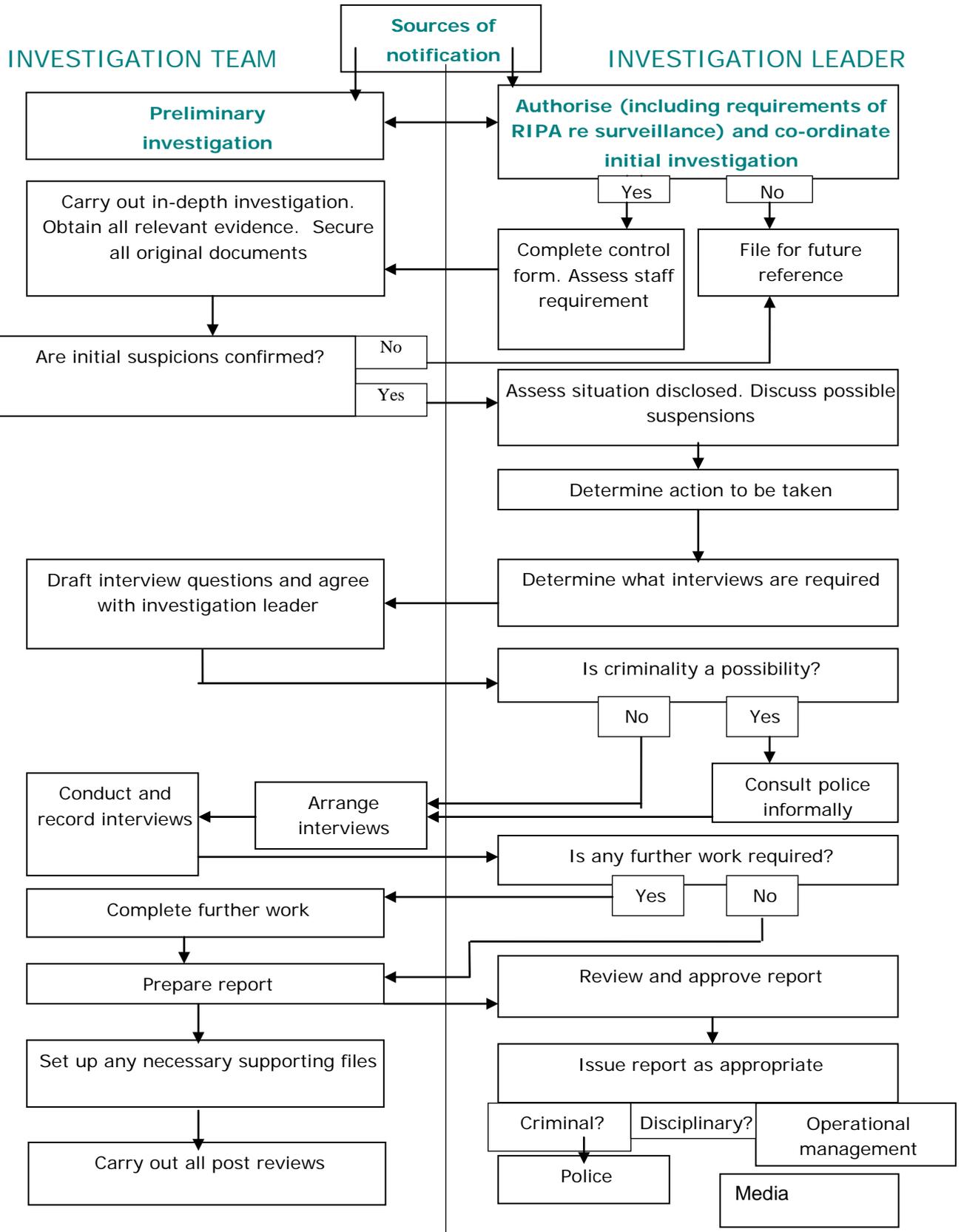
The Council sets and maintains high standards, and encourages a culture of openness, equity, fairness and mutual respect. This strategy fully supports the commitment to maintain an honest authority, free from fraud and corruption.

A network of systems and procedures is in place to assist in dealing with fraud and corruption when it occurs. The Council is determined that these arrangements will keep pace with any future developments in techniques to both prevent and detect fraudulent or corrupt activity that may affect our operation.

This strategy will be reviewed annually with the advice of the Monitoring Officer and the Section 151 Officer.

MALVERN HILLS DISTRICT COUNCIL FRAUD RESPONSE PLAN

OPERATIONAL CONTROL





## **Constitution**

# **PART 6**

# **Members' Allowance Scheme**



# **PART 6 - Members' Allowance Scheme**

## **1. Background**

### **1.1 Introduction**

The Members' Allowances Scheme (the Scheme) sets out details of the duties eligible for payment, the amounts payable and administrative matters relating to making claims etc.

### **1.2 Legislative framework**

The Council is empowered to remunerate Members primarily under The Local Authorities (Members' Allowances) (England) Regulations 2003 (the Regulations). These Regulations require the Council to have regard to the recommendations made to them by an Independent Remuneration Panel.

The Independent Remuneration Panel advises Malvern Hills District Council, Wychavon District Council, Worcester City Council, Bromsgrove District Council, Redditch Borough Council and Wyre Forest District Council and comprises six independent persons.

### **1.3 Policy framework**

The Council adopted a Scheme of Allowances recommended by the Independent Remuneration Panel.

## **2. Statutory scheme**

### **2.1 Basic allowance**

A Basic Allowance must be an equal payment to all Members and is payable at the rate set out in Schedule 1 to this Scheme. The Basic Allowance is a flat rate payable regardless of duties and is intended to reflect both the constituency role of Members and attendance at meetings on Council business, and to cover telephone, postage, stationery and IT costs.

### **2.2 Special Responsibility Allowances**

In addition to the Basic Allowance, Special Responsibility Allowances are payable in respect of the following duties:

- Leader of the Council
- Deputy Leader
- Portfolio Holders
- Chairman of Overview and Scrutiny Committee
- Chairman of Audit and Standards Committee
- Chairmen of Area Planning Committees
- Chairman of Licensing and Appeals Committee
- Leaders of declared political groups
- Chairmen of Overview and Scrutiny Task and Finish groups (pro rata for review period)

## **PART 6 - Members' Allowance Scheme**

### **2.3 Part-Year entitlement to allowances**

Where a Councillor is elected or resigns part way through the year, the amount of Basic Allowance is calculated by dividing the annual sum of Basic Allowance (set out in Schedule 1(a)) by 365 and multiplying the product by the actual number of days in office. The same method of calculation is used in relation to Special Responsibility Allowances, where a Special Responsibility is taken up or relinquished part way through the year.

### **2.4 Renunciation and Give as You Earn**

A Councillor may, by giving written notice to the Monitoring Officer choose to forego all or part of an allowance under this Scheme.

A Councillor may also choose to donate all or part of his/her entitlement to allowances under this Scheme to registered charities of his/her choice. A request to make such an arrangement should be made in writing to the Monitoring Officer. A form will be provided for the Member to set out details of the charitable organisations to benefit, together with the amount to be paid. Donations are then made at source and are tax-free.

## **3. Additional provisions**

In addition to the Scheme, the following allowances and expenses are also payable.

### **3.1 Travel expenses**

Travel allowance rates are set out in Schedule 1(B) to the Scheme. All travel allowance rates in the Scheme are based on car, motorcycle or bicycle transport.

The standard travel allowance rate is the HM Revenues and Custom rate, where there is no tax liability.

The Scheme also includes provision for a passenger mileage supplement to encourage Councillors to share transport where practicable. This allowance is set at the maximum rates, details of which are contained in Schedule 1(B).

The Scheme also makes provision for reimbursement of expenses for using a pedal cycle. This allowance is set at a level to encourage the use of a bicycle where practicable. The current rate is set out in Schedule 1(B).

The duties for which travel expenses are payable are set out in Schedule 2, which includes guidance notes to assist Members.

## **PART 6 - Members' Allowance Scheme**

There are no direct provisions for public transport costs, but a Councillor who uses public transport can expect to receive a payment equivalent to car mileage for duties within the District. For duties further afield Councillors are encouraged to use rail transport where possible, particularly for visits to London. In these circumstances, the officer organising the booking can make arrangements to obtain all necessary tickets or passes. If a car is used it would be reasonable to expect that a Councillor would claim either the cost of first class rail fare or mileage, whichever is the lesser.

### **3.2 Subsistence expenses**

Subsistence payments are also available for Councillors where they are away from home and unable to make their own arrangements. It is intended to reimburse a Councillor for the *actual* expenditure incurred, up to prescribed limits, dependent on the time of day that the duty took place. Payment can only be made on the submission of a receipt with the claim. The duties for which a payment is made are set out in Schedule 2, with the amounts set out in Schedule 1(B).

A separate allowance is also available to meet costs of overnight accommodation, set out in Schedule 1(B).

### **3.3 Dependent Carer's Allowance**

The Dependent Carer's Allowance is intended to provide support to a Councillor with responsibilities for childcare or a dependent relative when attending meetings of the Council. The allowance is to cover reasonable and legitimate costs. Payments are for the actual time that a carer is employed and therefore includes the travelling time of a Councillor to and from a meeting. Payment of this allowance is dependent on the submission of receipts. The age limit for dependent children is under 16 years of age.

### **3.4 Financial Loss Allowance**

Financial loss payments can only be paid to co-opted members of the Council. The allowance is payable to co-opted members in the following circumstances:

- To cover actual loss of earnings which they would otherwise have made, and/or
- Additional expenses (other than travel and subsistence) which they would not have incurred had they not been attending the meeting

The prescribed maximum limits in respect of this allowance are set out in Schedule 1(A).

# PART 6 - Members' Allowance Scheme

## 3.5 Conference and other similar payments

The Regulations preclude payment of allowances in respect of attendance at conferences. However, s175 of the Local Government Act 1972 enables payments similar to Attendance Allowance to be made. The amounts are set out in Schedule 1(A). Attendance at a conference must receive prior authority from either Council, Executive Committee or an authorised officer, depending on the conference in question. A Member wishing to attend a conference should discuss this with the appropriate senior officer.

## 4. Administrative procedures

### 4.1 Payment of allowances

Payments for Basic and Special Responsibility Allowances are made through the Council's Payroll Section, using the Bank Automated Clearing System (BACS). Payments are made on a monthly basis on the 23<sup>rd</sup> of the month.

Following election, a Councillor should provide the following details as soon as possible in order that payments can be set up on the system:

- Name of bank account to which allowance is to be paid
- Bank account and sort code details
- National Insurance number
- Date of birth

Payroll should be notified of any changes to banking details or address as soon as possible. Telephone: 01386 565514 or 01386 565515.

### 4.2 Claims for Expenses

Claims have to be made in respect of Travel and Subsistence and Dependent Carer's Allowances. Claim forms are available to download from the Member's Area of the Council website. If you have any trouble downloading the forms, please contact Democratic Services on 01684 862416/2273 for assistance.

The Members' Allowances claim form should be submitted **on a monthly basis** before the 2nd of the following month and requires a Councillor to provide the following details:

- What the claim is for e.g. attendance at Overview and Scrutiny Committee;
- The start point of the journey (i.e. home) and the destination (i.e. Council House);

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A back dated claim that is submitted by Members; i.e. one that is more than 3 months old, cannot be approved in the first instance without authorisation from the s151 Finance Officer.

As the scope for payments has been widened to include constituency meetings etc., it is important that as much detail as possible is included on meetings. This should include the date, time, where the meeting was held and, within reason, details of those who attended - please refer to the guidance notes contained within Schedule 2.

### **4.3 Queries over entitlement**

A claim that is not within the agreed criteria in this Scheme will not be paid and will be referred back to the member for further clarification. If a Member disagrees with a decision not to pay a claim, he or she may appeal in writing to the Monitoring Officer. If the matter is still not resolved to the satisfaction of the Councillor, it can be referred to the Audit and Standards Committee for consideration.

### **4.4 Tax and National Insurance Implications**

Basic, Special Responsibility and Dependent Carer's Allowances are taxable and may be liable to National Insurance contributions if the monthly threshold is exceeded.

Members' Allowance payments may affect entitlement to certain State Benefits; any Councillor affected by this should discuss this with the Benefits Office. There may be some entitlement to Statutory Sick Pay if illness prevents a Councillor from undertaking duties for four or more days. However, this is likely only to apply where National Insurance contributions are made on a regular basis. For more details on the implications on tax and benefits for Members, please contact the Payroll on 01386 565514 or 01386 565515.

### **4.5 Publicity of the scheme**

A record of all payments made to Councillors under the Scheme for the preceding financial year is kept by Democratic Services at the Council House and is available for Members and public inspection during working hours. The scheme is also published on the Council website.

Members can also check on payments made to them during the current financial year by contacting the Personnel and Payroll Section on the telephone number referred to above.

The Regulations require that the Members' Allowances Scheme for the current year, together with the payments made to Members during the previous year, are publicised annually. To satisfy this requirement, details of all payments made will be published on the Council website. These details will also be circulated to other places such as local libraries where appropriate

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### **4.6 Future revisions to the scheme**

The attached Schedule setting out the amounts payable can be updated separately from the Scheme and re-circulated to Members following any increases agreed by Council. The complete Scheme will be re-circulated following any agreed policy changes.

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### Schedule 1: Allowances and Expenses

<b>(A) Allowances 2018/19</b>	<b>£</b>
<b>Basic Allowance</b>	£ 4,350.00
<b>Special Responsibility Allowances (SRAs):</b>	
Leader of the Council	£13,050.00
Deputy Leader	£ 7,612.50
Portfolio Holders	£ 6,525.00
Overview and Scrutiny Chair	£ 6,525.00
Audit and Standards Committee Chair	£ 1,087.50
Overview & Scrutiny Task and Finish Chair (pro-rata for review period)	£ 1,087.50
2 x Area Planning Committee Chairs	£ 3,150.00
Licensing & Appeals Committee Chair	£ 1,305.00
Group Leaders *reduced by 50% if in receipt of an SRA	£ 1,087.50
<b>(B) Expenses</b>	
<b>Financial Loss and Conference Payments</b>	
Financial Loss Allowance (co-opted members only)	
(a) Period not exceeding 4 hours	29.35
(b) Period of 24 hours (Plus (a) above for every 4 hours over the 24 hour period)	58.70
Conference Payments (Based on previous Attendance Allowance rate)	29.35

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### Schedule 1: Allowances and Expenses

<b>Travel Allowances</b>		
<p>The maximum mileage that can be claimed by a Councillor for travel to meetings within the District if travelling from outside the District is 30 miles each way per journey, as this represents the furthest point in the District.</p>		
	First 10,000 miles	Above 10,000 miles
Cars and vans:	45p	25p
Motorcycles:	24p	24p
Cycles:	20p	20p
Passengers (per person):	5p per mile	
<b>Subsistence Allowances</b> – actual expenditure up to a maximum of:		
Breakfast	6.00	
Lunch	8.09	
Tea	3.34	
Evening Meal	10.07	
Conference Accommodation: (London)	79.82 91.04	
<b>Dependent Carer's Allowance</b>		
<p>For a paid carer looking after dependent relative for the actual time employed i.e. including the Councillor's travelling time and subject to submission of receipt.</p>		

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### Schedule 2: Duties for which Expenses are Payable

Travel and Subsistence is payable in respect of:	Notes:
<p>A meeting of:</p> <ul style="list-style-type: none"> <li>▪ the Council</li> <li>▪ the Executive Committee for duly appointed members</li> <li>▪ a Committee, Sub-Committee, Panel, Group or Working Party for duly appointed and substitute members</li> <li>▪ any other body to which the Council makes appointments or nominations or a meeting of a Committee or Sub Committee of such a body – <b>provided that</b> where travel and subsistence may be claimed from such a body, members must claim from that source</li> </ul>	<p>Refer to the list of Outside Bodies. Members should check with the organisation if they pay expenses.</p>
<p>Any other meeting, the holding of which is authorised by:</p> <ul style="list-style-type: none"> <li>▪ the Council</li> <li>▪ a Committee, Sub-Committee, Panel, Group or Working Party of the Council</li> <li>▪ the Executive Committee</li> <li>▪ a joint Committee of the authority and one or more authorities or a committee of such a joint Committee, <b>provided that</b> it is a meeting to which members of at least two political groups (as appropriate) have been invited</li> </ul>	
<p>Attendance at Parish/Town Council meetings, of which the Councillor is not a member, (where councillors attend Parish/Town Council meetings as both District Councillor and County Councillor they shall only claim expenses from one authority).</p>	
<p>A meeting of any association of authorities of which the Council is a member</p>	<p>e.g. LGA; IDeA</p>
<p>Approved Conferences, Seminars and Training courses</p>	<p>Approved by Council, Executive Committee or an authorised officer</p>

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<p>A meeting at the Council's offices, involving the Council's officers and connected with the authority's functions that has been convened by the Chief Executive or a Head of Service</p>	
<p>Attendance at briefing meetings involving Chairmen</p>	
<p>Meetings of political groups</p>	<p>This must be a properly constituted meeting of a declared political group to which all members of the Group have been invited. Group Leaders are requested to record details of the date, time and duration of the meeting and those in attendance.</p>
<p>Ward surgeries/constituents meeting</p>	<p>This relates to a general meeting to which any constituent can attend. The date, time and duration should be stated on the claim form. It does NOT include meeting with or visits to individual constituents.</p>
<p>Ward meeting with officers of the Council</p>	<p>Informal site meetings arranged by officers to look at a particular matter.</p>
<p>Emergency response work on behalf of the council e.g. sandbag provision</p>	
<p>Any one-off event designated as an Approved Duty by the Council, Executive or Overview and Scrutiny Committee</p>	