

**REVIEW OF COUNCIL CONSTITUTION
(Report by the Head of Administration)**

1. INTRODUCTION

- 1.1 The Local Government Act 2000 changed fundamentally the way in which the District Council and local authorities generally had conducted their business for generations. It transformed the traditional “Committee System of decision making” throughout local government and replaced it with a limited choice of executive/scrutiny models, supported by a range of “non-executive” Panels. The District Council along with the majority of the local authorities then chose to implement the Leader/Cabinet model.
- 1.2 The complexity of the new arrangements required local authorities to adopt written constitutions to regulate their systems of governance and proceedings etc. The requirements of the Local Government Act 2000 were implemented fully in the District Council’s Constitution as from the Annual Meeting in May 2002. Since then and up to 2005, the Standards Committee and more recently the Corporate Governance Panel has undertaken an annual review of the Constitution in the light of the experience of individual Councillors, Cabinet, Panels, Chief Officers and Heads of Service over the preceding year. During the 2005 review, the Panel formed the view that the Constitution should be reviewed comprehensively at biennial interviews thereafter.
- 1.3 The Corporate Governance Panel was established by the Council in July 2004 to deal principally with the non-executive issues of audit, governance and finance. The Panel’s terms of reference include responsibility for “oversight of the Council’s constitutional arrangements and advising the Council on any changes that may be desirable”. This report introduces the review commissioned during the current year. Any changes recommended for adoption to the Council will take effect from the next Annual Meeting which is to be held on 16th May 2007.
- 1.4 Adopting the same approach as was undertaken in 2005, the Cabinet and all Panels have been offered the opportunity to comment collectively on those aspects of the Constitution which affect their terms of reference. Members were invited to submit comments individually and Chief Officers and Heads of Services similarly were requested to highlight issues which had arisen based on practical experience of the operation of the Constitution.
- 1.5 To identify the changes proposed, Members will need to refer to the Constitution circulated to them in October 2006. Alternatively a copy is available electronically on both the Council’s website and intranet. Members are requested to bring their copy with them to the meeting for reference.

2. GENERAL CHANGES

2.1 The Council may amend its Constitution at any time, subject to regard being paid to formal guidance issued by the Secretary of State. Any change will require reference to the Secretary of State only if the Council propose to change significantly the present form of executive and scrutiny arrangements.

2.2 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. With the Constitution having operated satisfactorily for a number of years there appears little need for major change. However, the Constitution continues to evolve and requires regular adjustment to take account of updates in legislation and practice and for these reasons the text has been amended since 2005 to reflect –

- ◆ new legislation;
- ◆ alterations to -
 - table 2 – Appointments to Outside Organisations -
 - to reflect the addition/variation of appointments; and
 - table 4 – scheme of delegations (to incorporate subsequent amendments to the scheme)

3. ARTICLE 8 – REGULATORY AND OTHER COMMITTEES AND PANELS (PAGES 25/26)

3.1 The Gambling Act 2005 has now come into effect. Similar to the Licensing Act 2003, the Gambling Act specifies how the new powers and responsibilities should be undertaken by the Council. Three powers are specifically reserved to full Council, one of which may be delegated to the Licensing Committee created under the Licensing Act. All other powers must be administered by the Licensing Committee but can be delegated to Licensing Sub Committee's or (in certain circumstances) Officers.

3.2 This will necessitate the following changes to the Constitution –

- (a) In Article 4 – The Full Council, the following words should be added to Section 1 (a) – Policy Framework –

“◆ Gambling Act – Statement of Principles”

In order to differentiate with the Statement of Licensing Policy, it would also be preferable if the latter was reworded in Section 1 (a) as –

“◆ Licensing Act – Statement of Licensing Policy”

- (b) In Article 4 – The Full Council, the following words should be added to Section 2 –

“(j) passing a resolution not to issue casino premises licences.”

The existing paragraphs (j) to (l) will then need to be renumbered accordingly.

A further power is reserved to Council; ie. the setting of fees but this may be delegated. A separate report is being submitted to Council recommending that this be delegated to the Licensing Committee.

- (c) Table 2 of the Constitution will require amendment in relation to the functions of the Licensing Committee. It is proposed that the functions column relating to the Committee be amended as follows –

“To discharge the functions of the Council as Licensing Authority under the Licensing Act 2003 and the Gambling Act 2005 (with the exception of those functions which are reserved to Council as defined in Article 4).”

- (d) The Licensing Act and Gambling Act have repealed the previous legislation for the licensing of entertainment and betting, gaming and lotteries which were administered by the Licensing and Protection Panel. The words “gaming, entertainment” should therefore be deleted from the functions column of Table 2 in relation to the Licensing and Protection Panel.

- (e) A report is being submitted to the Licensing Committee on the delegations required to implement the Gambling Act. This will involve changes to Table 4 – the Scheme of Delegations by the addition of delegations to Officers. Certain delegations to Officers by the Licensing and Protection Panel will have been superseded by the changes to the legislation and will require rescission by that Panel. Those changes will be made to Table 4 after approval by the Licensing Committee and Licensing and Protection Panel respectively.

The Panel are recommended to approve the above changes.

4. PART 3: TABLE 5: RESPONSIBILITY FOR FUNCTIONS (PAGES 51 AND 151/1 AND 154/2)

- 4.1 There has been a growing tendency in local government to appoint Champions in recent years encouraged by the Audit Commission, Local Government Association and Others. Table 5 in the Constitution draws together the appointments that have been made by the Cabinet and other Panels. Although not formally required to be part of the Constitution, the inclusion of the table at this point is helpful to maintain a record of these appointments and for reference and access purposes. The Constitution would seem a suitable place to locate them. However, any changes do not require Council or Corporate Governance Panel consideration but it would be preferable to make this qualification clear on page 51 of the Constitution and in Table 5 itself.

- 4.2 **The Panel is therefore requested to note the addition of the following text on Page 51 and as a preamble to Table 5, pages 154/1 and 154/2 –**

“A number of “Member Champions” have been appointed by the Council. These are listed in Table 5. The Champions do not have executive or decision making responsibilities and as such Table 5 does not form part of the Council’s formal Constitution. However, the Champions are listed here for convenience and to highlight the role of each appointment”.

5. PART 4: COUNCIL PROCEDURE RULES (STANDING ORDERS) (PAGES 157 – 174)

5.1 General Principles

All local authorities have statutory powers to make discretionary Standing Orders under the Local Government Act 1972 –

- ◆ for the regulation of Council proceedings and business; and
- ◆ regarding the quorum, proceedings and place of meeting of their Panels, Committees etc.

A review of Standing Orders enables any practical procedural difficulties that have arisen over the operating period to be amended or modified. The following issues have arisen in this respect –

(a) Time and Place of Meetings (p159)

Rule 4 prescribes that meetings of the Council normally shall be convened at 2.30 pm. In special circumstances, the Chief Executive may fix some other hour for commencement. Councillor Downes has proposed that Council meetings should commence at 5.00 pm instead of 2.30 pm to encourage increased public interest in attendance and to facilitate the ability of working councillors to attend.

The Panel is invited to consider the suggestion.

(b) To amend a Motion (p162)

Currently, Rule 10 provides for a series of Motions to be moved without notice. This includes where a Member might wish to amend a recommendation (Motion) which forms part of the Council Agenda. In practice, a suggested form of wording for an amendment to a Motion is prepared and circulated to the Council to afford better understanding and clarity of what is being proposed. However, this practice is not formalised in the Council Procedure Rules. It is suggested that where a Member wishes to move an amendment that the wording of that amendment be made available in sufficient time for copies to be circulated prior to the commencement of a Council meeting. It is proposed that Rule 10 (h) be varied to read “**(h) to amend a motion; (the text of the proposed amendment to be forwarded to the Chief Executive, or in his absence, the Director of Central Services prior to the commencement of the meeting of the Council).**”

The Panel is invited to consider this suggestion.

(c) **Facilities for Broadcasts or Tape Recordings**

There is increasing scope for innovation in enhancing access to members of the public who are not able to attend meetings, especially on those occasions when the Council may be considering business of particular public interest. Currently the Council Procedure Rules do not provide any guidance in the event that a request is received by the Council asking for a meeting to be broadcast or recorded. It is expressly provided in Section 100A (7) of the Local Government Act (Access to Information) Act 1985 that:

“nothing.....shall require a principal council to permit the taking of photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place.”

As there is no express prohibition of photography or video recordings etc. some local authorities now allow, for example, TV cameras and radio reporters to be present at meetings on special occasions so long as there is no adverse effect on the conduct of the proceedings. In anticipation of a request of this nature, it is proposed that the following paragraph be inserted into the Council’s Procedure Rules.

“17A Photography, Broadcasting and Recording of Meetings

Filming, videoing or audio recording of a meeting or photography at a Council meeting shall be permitted only with the consent of the Chairman of the meeting concerned. The necessary consent shall have been obtained and the Chief Executive, or in his absence, the Director of Central Services notified by no later than three working days before the meeting.”

The Panel is invited to consider the suggestion.

(d) **Quorum (p172)**

Council Procedure Rule 7 provides that no business may be transacted at a meeting of the Council unless at least one quarter of the whole number of Members of the Council are present. No specific quorum is prescribed by statute for meetings of committees and sub-committees. In practice this has caused some uncertainty in relation to those meetings which consist of less than ten members. For clarity, it is suggested that the following text be added to Rule 22.

“Regarding Rule No. 7 – in no case should the quorum of sub-committees and sub-groups be less than three Members.”

The Panel is invited to consider the suggestion.

5.2 **Public Speaking at Development Control Panel (p173)**

On the recommendation of the Panel, the Council at its meeting held on 6th December 2006 approved the principle of public speaking at meetings of the Development Control Panel. Subsequently, public speaking was introduced at the Development Control Panel in January. The procedure now followed by the Panel obviates a requirement for Rule 27 and it is suggested that this be deleted in its entirety. The Council agreed that the necessary changes may be made to accommodate the new procedure in the Constitution and it is proposed that the following text be inserted as a new Rule 27

“Rule 27 - Public Speaking at Development Control Panel

Where a planning application falls to be determined by the Development Control Panel and where appropriate notice has been given, an elected Member of the relevant town and parish council/meeting, the District Ward Member, the objector(s), the applicant(s) or their representatives shall be permitted to address the Panel on the application under the direction of the Chairman having regard to the guidelines at Annex (iii).”

Annex (iii) contains the procedure recommended by the Panel at their meeting held on 29th November 2006.

It is proposed that the text of the Constitution be amended accordingly.

5.3 Under the Council’s Policy and Strategic Framework, the adoption of the Council’s Development Plan is reserved to full Council. Consequently any variations to the Plan can only be made by full Council including planning applications which represent a departure from the Plan. On those occasions, the Panel had agreed that the process for consideration of the application should follow the same format as the deliberations of the Development Control Panel and therefore it is suggested that the following text be inserted as **Rule 27(a) -**

“In those circumstances where a planning application is to be determined by full Council, the Council’s Head of Planning Services or his representative and other relevant Officers shall be permitted to present reports to the Council and the public speaking process adopted by the Development Control Panel be applied.”

It is proposed that the text of the Constitution be amended accordingly.

It was envisaged that the Council would consider applications which represent a departure from the Council’s Development Plan, as currently provided under the Council’s Policy and Strategic Framework, and where an application is of such major significance that it is to be determined by the Council.

In response to concern expressed by the Development Control Panel and in the absence of a precise definition as to when a planning proposal is of such significance that it should be referred to the Council, it is suggested that the text of the Constitution be amended as follows:-

“Rule 27 (b) – Consideration of Departures from the Development Plan.

Planning applications considered to be a “significant” departure from the Development Plan shall, on the recommendation of the Development Control Panel, be considered by the Council having regard to advice received from the Heads of Planning Services and Legal and Estates Services and guidelines at Annex (iii). Applications considered to be “significant” are those specified

under the Town and Country Planning (Development Plan and Consultation) (Departures) Directions 1999 and having also to be referred to the Secretary of State as follows –

- ◆ a development which consists of or includes the provision of –
 - (i) more than 150 houses or flats; or
 - (ii) more than 5,000 square metres of gross retail, leisure, office or mixed commercial floorspace;
- ◆ development of land belonging to a planning authority by that authority or any other party; or for the development of any land by such an authority, whether alone or jointly with any other person; or
- ◆ any other development which, by reason of its scale or nature or the location of the land, would significantly prejudice the implementation of the development plan's policies and proposals.”

5.4 **Public Forum at Council Meetings**

Councillor Downes has submitted proposals on ways to broaden the role of full Council meetings by way of the introduction of a time limited session at the commencement of the Council in which Members of the public could be invited to put questions to the Leader of the Council, Cabinet Members and the Chairmen of the Overview and Scrutiny Panels. He considers that this initiative would further promote efficient, effective and accountable decision making and the active involvement of the public in Council meetings. A copy of a scheme that would enable citizens to participate in Council meetings has been submitted by Councillor Downes and this is reproduced as Appendix A hereto.

The Panel is requested to consider the issue.

5.5 **State of the District Address (p168)**

The Panel, at its meeting held on 23rd March 2005 considered a proposal by Councillor P J Downes to change the nature of and arrangements for the State of the District Debate, in the light of the outcome of an investigation and Member consultation. At that time, the Panel resolved that the Constitution should be amended to refer to an annual State of the District Address by the Leader, a response by the Leader(s) of the Opposition and a single oral contribution by other Members of the Council. Councillor Downes has re-submitted a modified version of his proposal for consideration. A suggested structure for a biennial state of the district half day conference is reproduced as Appendix B.

The Panel is requested to reconsider the introduction of a biennial state of the district conference.

5.6 **General**

In the past, the Council has experimented by holding Council meetings, with mixed success, at venues other than Pathfinder House. To progress the new Headquarters and Office Accommodation Project, that part of Pathfinder House which accommodates the Council Chamber and Meeting Rooms will be out of action for a period up to a year or longer. Councillor Downes had suggested that during the re-building of Pathfinder House, Council meetings be held in venues in different parts of the District to relieve car parking pressure and to

seek to encourage greater public participation and promote the Council's community leadership role.

It is probable that all meetings of the Council will require to be held at venues around the District and the Head of Administration has begun to undertake a project to identify those meeting spaces available, their capacities and associated facilities for this purpose. This exercise would present the opportunity for the Council to assess the extent of public interest in Council meetings. **The Panel is therefore requested to note this proposal.**

6. ESTABLISHMENT OF DISTRICT YOUTH FORUM

- 6.1 Councillor Downes has suggested that the Council establish a district youth forum bringing together representatives of youth councils and youth forums created locally by a number of town/parish councils. It is proposed that the youth forum could be invited to report quarterly to the Overview and Scrutiny Panel (Service Delivery) to give young people a voice within the Council and encourage an interest in local democracy. This proposal would build on work previously undertaken by the Panel on Services for Young People and the initiatives being pursued under the school citizenship programmes.

The views of the Panel are invited.

7. MEMBERS' ALLOWANCES (PAGES 285-290)

- 7.1 Following a review by the Independent Advisory Panel appointed to review the scheme of allowances payable to District Councillors, the Council approved at their meeting held on 21st February 2007 a revised scheme of Members allowances which provided for –

- ◆ increases in the level of basic allowance for all District Councillors and changes in the levels of special responsibility allowances;
- ◆ the continuation of the payment of travel and subsistence allowances in line with National Joint Council casual users mileage and subsistence rates for local government employees;
- ◆ the continuation of the use of the retail price index (RPI) as an automatic index mechanism to enable the Members allowances scheme to be adjusted, as necessary, to reflect inflation until 30th April 2011; and
- ◆ the adoption of a formula for calculating the standard and variable elements of the special responsibility allowance for the Leader of the Principal Opposition Group.

The revised Members' Allowances Scheme as approved by the Council will be incorporated into Section 6 of the Constitution.

8. CODES OF FINANCIAL MANAGEMENT AND PROCUREMENT (PAGES 209 – 234/4)

- 8.1 Changes to the Codes of Financial Management and Procurement are proposed. Amended copies of both Codes are attached as Appendices C and D. The changes to the Code of Procurement are relatively small and relate principally to the contracts register. The contracts register is a recently implemented database used to record key information about a purchase during its life cycle. The database will –

- ◆ create a single record of all contracts let by the Council with information on the types of contract, suppliers and values;

- ◆ support small businesses by providing current information on forthcoming opportunities;
- ◆ comply with FOIA best practice by publishing current contract information on the internet;
- ◆ automatically warn contract owners of contracts shortly due for renewal;
- ◆ meet EU requirements to advertise contracts and reduce the need to advertise elsewhere;
- ◆ reduce the time to run full EU competitions by up to ten days;
- ◆ support the management of single tenders by Central Services; and
- ◆ simplify reporting to the Department of Communities and Local Government and the Regional Centre of Excellence.

8.2 The success of the contracts register will depend on its wholesale adoption by Officers and the proposed changes create a measure of compunction previously missing. Other minor amendments have been made to the wording in relation to framework contracts following the publication of The Public Contracts Regulations, 2006 and others to improve clarity and accuracy. The proposed amendments are highlighted in blue text.

8.3 Reproduced at Appendix D is a proposed Code of Financial Management. It incorporates a number of changes but many of them are quite minor. The significant ones involve

- ◆ formalising the financial monitoring process (para 3.1);
- ◆ setting rules for entering into commitments for future years (para 3.2);
- ◆ the introduction of a new process for additional spending with compensatory savings (para 3.5); and
- ◆ revising the section on Budget Transfers to provide the flexibility needed to meet the twin requirements of Growing Success and achieving the Council's savings targets (para 3.6).

The Panel is requested to recommend to Council the adoption of revised Codes of Financial Management and of Procurement.

9. OBSERVATIONS OF THE CABINET, PANELS AND COMMITTEE

9.1 The views of the Development Control Panel have been reflected elsewhere in this report. Although not raised during the course of this review, the Cabinet has expressed the view that substitution arrangements should not form part of the Constitution.

9.2 However, the Overview and Scrutiny Panel (Service Delivery) has made a recommendation in respect of the arrangements for compilation of the Forward Plan which are detailed in the Access to Information Rules (p183). The Forward Plan contains matters which the Leader has reason to believe will be subject to a key decision to be taken by the Cabinet. The Forward Plan also specifies the date on which the decision will be taken. The Panel has raised concern about those occasions when new items appear on the Plan to be considered by the Cabinet on a date which denies the opportunity for that business to be scrutinised by the Panel. In this light, the Panel has recommended that the Constitution be amended to require the Chairman, or in his absence, the Vice-Chairman of the relevant Overview and Scrutiny Panel to permit a decision to be taken on an item on a date earlier than that referred to in the Forward Plan.

9.3 Whilst, the concerns of the Overview and Scrutiny Panel (Service Delivery) are acknowledged, paragraph 15 of the Access to Information Procedure

Rules (p185) allows, given certain circumstances, a key decision still to be taken even if that decision has not been included in the Forward Plan. Although the majority of business considered by the Cabinet can be programmed in advance, there will always be circumstances when items arise that are unforeseen but still require to be dealt within a prescribed timescale. The rules contained in paragraphs 15 and 16 are drafted to manage these circumstances. It would perhaps be unmanageable were the Chairman of a Scrutiny Panel to have the authority to veto, totally, consideration of Cabinet business which was entered late on the Forward Plan. It would also be unlikely that an author could risk their report being deferred by a Scrutiny Chairman by including that business, albeit late, on the Forward Plan when failure to place an item on the Forward Plan, under the terms of paragraph 15 would not prohibit it being considered by the Scrutiny Panel, in any event.

The Panel is requested to consider the issue.

10. RECOMMENDATION

- 10.1 The Panel is requested to consider the recommendations contained in the foregoing paragraphs and to recommend to full Council accordingly.

BACKGROUND PAPERS

HDC Constitution

Minutes of the meetings of the Cabinet, Overview and Scrutiny Panel (Service Delivery) and Development Control Panel.

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DISTRICT COUNCIL PUBLIC QUESTION TIME: GUIDELINES

1. INTRODUCTION

- 1.1 There will be an opportunity for members of the public to ask questions at meetings of the District Council, with up to 15 minutes being available for questions from the public at each ordinary meeting of the District Council (excluding the annual meeting of a new Council and extraordinary meetings). The conduct of public question time will be regulated by the Chairman of Council, having regard to the following guidelines. The Chairman's decision on the relevance of a question and on the method of dealing with any issue in connection with this procedure will be final.

2. CONTENT OF QUESTIONS

- 2.1 All questions:

- Must be clear and concise and be relevant to matters for which the Council has powers or duties.
- Should be limited to obtaining information or pressing for action.
- Should be capable of being adequately answered in two minutes.

- 2.2 Questions should not:

- Contain offensive expressions.
- Divulge, or require the answer to divulge, confidential or exempt information.

3. RECIPIENTS OF QUESTIONS

- 3.1 Questions may only be asked of the following:

- The Leader of Council.
- A portfolio holder (Cabinet member).
- The Chairman of a Scrutiny Committee.

4. PROCEDURE

- 4.1 Members of the public wishing to ask a question at the Council meeting should provide the following details to the Council's Democratic Services by no later than 12.00 noon, two working days before the meeting:

- Name and address and contact details of the person asking the question.
- The name of the organisation if the question is being asked on their behalf.
- Details of the question to be asked.
- The name or position of the member of the Council to whom it is to be put.
- Brief information about how the subject of the question relates to the person asking the question (e.g. as a resident of the area, as a recipient of a service, the owner of a property affected by a proposal).

Only one question may be asked by each member of the public or organisation and the question must relate to a single topic.

4.2 The following process will apply at the meeting:

- The Chairman will invite questions to be asked at the meeting in the order in which they are received by Democratic Services.
- The Chairman of the Council will invite the member of the public to put his/her question from the floor of the Council Chamber using the microphone provided.
- The member of the public will then ask their question. Up to a maximum of two minutes will be allowed in which to ask the question
- The named member will respond to the question which may take the form of:
 - (a) a direct oral response of up to a maximum of two minutes;
 - (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
 - (c) where the reply cannot conveniently be given orally, a written response circulated later to the questioner and made available to all members of Council and to the public.
- After the response has been given, the questioner has up to a further minute in which to put one supplementary question or seek clarification of the response to the original question. The supplementary question must arise directly out of the original question or the reply and must not introduce new material.
- The recipient of the original question then has up to a further two minutes in which to reply to the supplementary question.
- The Chairman of the Council may, in exceptional circumstances, extend the time either for a question or its response.
- Any question which cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the member to whom it was to be put, will be dealt with by a written response.
- No debate will be allowed on any question or the response.
- A transcript of Public Question Time will be made available to all members of the Council and to the public following the meeting.

STATE OF THE DISTRICT CONFERENCE

I propose that every two years there should be a 'State of the District' half-day conference on the second Saturday in September. The public would be invited to come and it would be made clear that they would be able to speak during the morning. Specific invitations to be sent to Parish Councils, local business and various representative bodies, including those for Young People.

The structure of this Conference could be as follows:

- 9.30 Welcome from Council Leader and general outline of the key issues facing the District at this time
- 9.45 Three minute presentations from each Portfolio holder outlining the major topics on the work programme for each area of the District's functions
- 10. 20 Brief statement from the Leader of the Opposition, again highlighting the key issues for consideration from an Opposition perspective.
- 10.30 Coffee break
- 10.50.1 Conference splits into working groups, each one containing a Portfolio holder and at least two members of each Scrutiny Panel. Public choose which one they wish to attend and take a full part in the questions and discussion. A scribe to take notes of the main issues emerging.
- 11.40 Re-convene in plenary to receive a succinct report from each working group
- 12.10.1 Open forum for any member of the public to raise any other issue which has not arisen during the working groups
- 12.25.1 Final comments and thanks from Leader
- 12.30.1 End of Conference

The Hinchingsbrooke Performing Arts Centre would make an ideal venue as there is a good auditorium for the plenary sessions, catering facilities for coffee and there are plenty of nearby rooms for the break-out session.

The following Council meeting, at the end of September, would then have an item during which the Leader and Councillors could respond to what has been heard at the SOTD Conference, having had time to reflect on it for a couple of weeks. This would be early enough in the cycle for important matters to be taken into consideration before the budget cycle and MTP process is too far gone. The Conference might also generate issues for the Scrutiny Panels to consider in greater detail.

CODE OF PROCUREMENT

1. INTRODUCTION

- 1.1 The Code of Procurement defines the regulatory and legal framework for procurement. It has been adopted in accordance with the requirements of Section 135 (2) of the Local Government Act 1972.
- 1.2 This Code applies to the procurement, hire, rental or lease of -
- ◆ land and buildings, roads or other infrastructure;
 - ◆ vehicles or plant;
 - ◆ equipment, furniture and fittings;
 - ◆ construction and engineering works;
 - ◆ information and communication technology - hardware and software;
 - ◆ goods, materials and services;
 - ◆ repairs and maintenance; and
 - ◆ consultants, agents and professional services.
- 1.3 This Code does not apply to purchases made from internal management units.
- 1.4 The Code applies also to the sale of assets and goods by the Council where the appropriate Head of Service estimates that the assets, goods or services to be sold exceed £1000. Where the value is estimated to be less than £1000 then the 'Sale of Equipment' procedures contained within the Inventory procedures shall be followed.
- 1.5 The Council includes the Cabinet, panels, committees or other body or person(s) acting in accordance with delegated authority on behalf or the Council.
- 1.6 All procurements or sales made by or on behalf of the Council shall comply with this Code, subject to any overriding requirements of the Council's Rules of Procedure and Code of Financial Management and British or European Union law or regulation.
- 1.7 Throughout the Code, reference to contractor(s) or sub-contractor(s) shall mean any person, company or supplier who has -
- ◆ requested to be on an approved or ad-hoc approved list of tenderers;
 - ◆ been approached to provide a quotation or tender;
 - ◆ provided a quotation or tender; or
 - ◆ been awarded a contract in accordance with the provisions of this Code.
- 1.8 The Head of Financial Services shall annually review all the financial values contained in the Code to take account of the impact of inflation. The Head of Financial Services shall inform all Heads of Service of any amendments to the values prior to the 1st April from which they shall be operative.

2. REPORTING PROCEDURES AND EU COMPLIANCE

2.1 EU Procurement Directives require the Council, to report procurements likely to exceed EU thresholds, both at the start of the year and on an ad-hoc basis as new or changed requirements arise. The ODPM also seeks a financial year-end report based on procurements and contracts advertised on the Official Journal of the European Union (OJEU). The EU thresholds are:

Contract	Threshold Euros	Threshold £ (Approx)
Supplies	€200,000	£ 144,371
Services	€200,000	£ 144,371
Works	€5,000,000	£ 3,611,319

2.2 Financial Year Start Reporting

At the start of each financial year (1 April) Heads of Service shall:

- ◆ provide the following information to the Procurement Manager -
 - Details of each contract expected to be advertised in the following year.
 - An estimate of the total value for each discrete procurement area where the spend is likely to exceed £100,000.
- ◆ advertise very brief details of each contract expected to be advertised in the following year. The advertisement shall take the form of a Prior information Notice (PIN). The publishing of a PIN does not commit the Council, but can reduce timescales if the requirement is subsequently advertised through OJEU.

A PIN is also required if the estimate of the aggregated value of the contracts for a given coding class exceeds the published PIN thresholds:

Contract	Threshold Euros	Threshold £ (Approx)
Supplies	€750,000	£ 480,000
Services	€750,000	£ 480,000
Works	€5,000,00	£ 3,834,000

Contract values are the Council's aggregated spend and not individual Directorates or Services. Therefore, the Procurement Manager shall advise the Head of Service if their aggregated spend is to be advertised as a PIN.

Aggregated values can be calculated by one of the following methods -

- ◆ the total value purchased over the last financial year; or
- ◆ the estimated value of all contracts expected to be placed in the next financial year or the term of the contract if that is longer; or
- ◆ where the contract is open-ended or of uncertain duration, such as those for the hire of goods or for the delivery of a particular service, the value is based on the estimated average monthly expenditure multiplied by 48 (4 years).

2.3 **Through Year Reporting**

Heads of Service shall report, using a PIN where time permits, new or additional requirements likely to meet or exceed EU thresholds as they arise.

2.4 **End of Year Reporting**

ODPM seeks a report each year from all Councils regarding contracts awarded through OJEU during the previous year. By the 30 Apr each year, Heads of Service shall provide the Procurement Manager with the following details for contracts placed through OJEU procedures -

- ◆ Services: Service Category.
- ◆ Supplies: Nipro Class.
- ◆ Works: Nace Group.
- ◆ Service Provider Nationality.
- ◆ Award Procedure:
- ◆ Justifications if Negotiated procedure.
- ◆ Value.

3. **CONTRACTS REGISTER**

3.1 Heads of Service shall ensure that all procurements over £5,000 are recorded in the Contracts Register

4. **METHODS OF ORDERING**

4.1 All orders shall be placed through one of the following recognised methods -

- ◆ An order raised on CedAR Purchase Order Process.
- ◆ A Procurement Card Order.
- ◆ An Electronic order
- ◆ A Manual Purchase Order.

4.2 Use of an appropriate ordering method ensures that the Council achieves -

- ◆ The opportunity to obtain leverage for volume.
- ◆ Regulatory compliance.
- ◆ Visibility of all procurement activity.

4.3 Where there is an exception requirement and the relevant Director or Head of Service considers that the work is of an emergency nature necessary to enable the service to continue and none of the ordering methods are suitable, the relevant Director or Head of Service shall record the details of the exceptional requirement and the action taken for future Audit.

5. 'BEST VALUE' AND THE NEED TO COMPETE REQUIREMENTS

5.1 The Council seeks 'Best Value' in all procurement activity and will standardise on 'adopted' corporate contracts and frameworks. An adopted contract and framework is the preferred contract for the Council's business within a defined category (a type or group of goods or services). The Procurement Manager shall recommend a contract or framework as 'adopted' to COMT and, subject to approval, shall publish details in Procurement Protocols & Guidelines. Heads of Service shall ensure that orders for such categories are placed through the appropriate 'adopted' framework. The Procurement Manager shall keep under review the continued suitability of any such contracts or framework agreements.

5.2 Where there is no adopted contract or framework, Heads of Service shall, wherever practicable, seek to maximise contract values with other Heads of Service to secure lower costs.

5.3 Where there is no adopted contract or framework, the Council nevertheless wishes to balance the effort of going to the Market with the effort and efficiency of the procurement process. Heads of Service after determining the proposed contract's total value shall then follow one of the procurement procedures detailed below. These procedures shall be used in **all** procurements or sales bar those exceptions at paragraph 5.6.

Estimated Total Value of Procurement	1.2 Requirement
Up to £5,000	Estimates or offers shall be obtained and recorded to ensure the Head of Service has obtained Best Value.
£5,001 to £30,000	Competitive written quotations or offers shall be invited, unless the Head of Service has complied in full with paragraph 6.3e of this Code.
£30,001 to European Union Procurement Threshold	Competitive tenders shall be obtained using one of the tendering options in this Code, and a formal written contract prepared in accordance with paragraph 12.2.
Above the EU Threshold specified below	The appropriate EU procurement directive shall be complied with.

5.4 A Head of Service may choose to competitively tender requirements less than £30,000.

5.5 Achieving 'Best Value' needs valid competition and valid competition is dependant on the existence of an 'open' market with the selected Contractors having the interest, capability and capacity for the work or business being offered. Wherever possible a minimum of three competitive tenders or quotations shall be sought. In selecting contractors to provide a tender or quotation Heads of Service shall ensure that wherever possible -

- ◆ the selection process they are using is fair and equitable, and that no favouritism is shown to any one contractor.
- ◆ checks are made to ensure that contractors are interested in this type of business.
- ◆ repeat or 'automatic' invitations to the 'same' contractor or group of contractors are avoided, particularly where previously invited to bid and had failed to do so.
- ◆ 'new' contractors are sought and invited to tender or quote.
- ◆ the geographic area of the search for potential contractors is widened.
- ◆ 'no-bids' are checked for the reasons for a contractor's failure to bid.

5.6 Exceptions

Nothing in this Code shall require tenders to be sought: -

(a) for purchases through any local authority or government consortium, collaboration or similar body, where the procurement rules of that organisation have been adopted, and;

- ◆ where the contract created is to our requirements or in the case of collaboration, agreed joint requirements, or
- ◆ where there is a single supplier 'call-off contract' or catalogue created with fixed prices, or
- ◆ where there is a multi-supplier framework (and where the framework rules require competitive quotes).

(b) for purchases made at public auction;

- (c) where the relevant Director or Head of Service -
- ◆ considers that the work is of an emergency nature or is necessary to enable the service to continue; or
 - ◆ with the Head of Financial Services' agreement considers that it is in the Council's best interest in negotiating a further contract for works, supplies or services of a similar nature with a contractor who is currently undertaking such work.
- (e) The relevant Director or Head of Service shall report details of all work awarded under paragraph (d) ante -
- ◆ to the Director of Central Services who shall make a record in a register kept for that purpose; and
 - ◆ to the next meeting of the Cabinet.

6. QUOTATION AND TENDER METHODS AND PROCEDURES

6.1 Form of Tenders and Requests for Quotations

To support the Council complying with the Freedom of Information Act 2000 (FOIA), all tenders and requests for quotations shall include as a minimum -

“All information supplied to the Authority will be subject to the provisions of the Freedom of Information Act 2000 and as such may be disclosed by the Authority when required to do so under the Act. When such disclosure is necessary the Authority shall use reasonable endeavours to consult with the provider of the information prior to disclosure”.

6.2 Recording of Quotation Requests and Tenders

The Head of Service shall keep a record, [using the Contracts register](#), of -

- ◆ all those contractors that were requested to [quote or tender](#);
- ◆ the reasons why those particular contractors were selected to [quote or tender](#); and
- ◆ if applicable, the reasons why less than three contractors were selected to [quote or tender](#).

6.3 Tendering Options

Heads of Service shall select one of the following tendering methods. If any alternative tendering method is proposed then approval of the Cabinet is required before the proposed tendering option is followed. In selecting contractors who are to be requested to provide a tender Heads of Service shall comply with paragraph 5.5.

<i>Tender Option</i>	Requirement
A. Ad Hoc Tender Open tender	Public notice shall be given in one or more newspapers and/or in an appropriate trade journal. The notice shall state the nature and purpose of the contract, where tender documentation can be obtained, and state the closing date for the receipt of tenders. Where the Head of Service is satisfied that Expressions of Interest received from a Contracts Register Notice represent contractors with genuine interest and capacity, then no further Public Notice is required.
B. Approved List of Tenderers Restricted tender	Tenders shall be invited from at least three contractors selected from an approved list established in accordance with paragraph 7.1 of this Code.
C. Ad Hoc Approved List of Tenderers Open restricted tender	Tenders shall be invited from a list of contractors compiled in accordance with paragraph 8.1 of this Code for a specific contract.
D. Serial Tenders	The proposed contract shall form part of a serial programme. The contract terms shall be negotiated with a contractor, using as a basis for negotiation the rates and prices contained in an initial contract that was awarded following a competitive tendering process that complied with this Code. No more than two serial contracts shall be negotiated from an initial contract.
E. Single Tenders / Quotations	A Head of Service after consulting the Director of Central Services may obtain a single tender (or quotation – see paragraph 6.3 above) when: <ul style="list-style-type: none"> • Prices are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available. • Work to be executed or goods, services or materials to be supplied consist of repairs to or the supply of parts of existing proprietary machinery, equipment, hardware or plant and the repairs or the supply of parts cannot be carried out practicably by alternative contractors. • Specialist consultants, agents or professional advisers are required and <ul style="list-style-type: none"> ○ there is no satisfactory alternative; or ○ evidence indicates that there is likely to be no genuine competition; or ○ it is in the Council's best interest to engage a particular consultant, agent or adviser. • Products are sold at a fixed price, and market conditions make genuine competition impossible. • No satisfactory alternative is available. <p>If the Single Tender option is used, the Head of Service shall:</p> <ul style="list-style-type: none"> • notify the Director of Central Services who shall make a record in a register kept for that purpose; • retain records that demonstrate that the best price or value for money has been obtained from the negotiations with the tenderer.

Except to the extent that the Cabinet in a particular case or specified categories of contract otherwise decides, all quotations or tenders that are being sought shall -

- ◆ include approved contract terms in accordance with paragraph 11.2 of this Code;
- ◆ be based on a definite written specification, which shall include an award criteria, which if it is not to be the lowest price shall be agreed by the appropriate Director;
- ◆ if appropriate, include a requirement for a performance bond and liquidated damages.

6.4 Non-Traditional Procurement

If a Head of Service believes that by following one of the procurement procedures detailed in paragraph 5.3 above, that the procurement process will not provide him with the most appropriate method of service delivery, the most competitive prices, allow for continuous improvements in service delivery, or stifle procurement innovation, then he may suggest alternative procurement strategies.

The Head of Service shall produce, in accordance with guidance issued by the Director of Central Services and prior to proceeding with the procurement, a written procurement strategy that shall be approved by the Director of Central Services and the Cabinet.

7. PROCEDURE FOR THE APPROVAL AND MAINTENANCE OF APPROVED LISTS OF TENDERERS

7.1 Only those lists containing details of contractors that are compiled and maintained by an external organisation to the satisfaction of the Director of Central Services, after consultation with the Head of Financial Service and the other relevant Heads of Service shall be adopted as approved lists of tenderers. The Procurement Manager shall ensure that the external organisation and approved list of contractors is detailed in Procurement Protocols & Guidelines.

7.2 If a Head of Service believes that the approved list of tenders does not allow him to obtain sufficient competition for 'Best Value', the Head of Service shall write to the Director of Central Services seeking approval to source additional contractors. Instructions for sourcing additional contractors are detailed in Procurement Protocols & Guidelines. All additional contractors sourced will be required to complete the approved list checks and their inclusion in competition will depend on satisfactory completion of the checks.

7.3 The Director of Central Services in conjunction with the Head of Financial Services and relevant Heads of Service shall review the continued suitability of an Approved List of Tenderers periodically and at least prior to the third anniversary of its initial or further adoption.

8. PROCEDURE FOR THE APPROVAL OF AD-HOC APPROVED LISTS OF TENDERERS

8.1 A public notice shall be issued inviting applications for inclusion on a specific approved list for the supply of goods, services or materials. The ad-hoc

approved list of tenderers shall be established from contractors replying to the public notice or who have requested within the previous 12 months to be included on an ad-hoc approved list for work of a similar nature.

8.2 The Head of Service shall undertake sufficient vetting to ensure that **tenderers appointed to** ad-hoc approved lists shall -

- ◆ **comply with minimum standards of Insurance, Health & Safety and Financial viability based on a risk based assessment. Guidance can be found on the appropriate intranet page or from the Audit & Risk Manager or Health & Safety Advisor.**
- ◆ be approved by the appropriate Head of Service after consultation with the Director of Central Services and the Head of Financial Services; and
- ◆ only be used for seeking tenders for the supply of goods, services or materials specifically detailed within the original public notice.

9. SUB-CONTRACTS AND NOMINATED SUPPLIERS

9.1 Quotations or tenders for sub-contracts to be performed or for goods, services or materials to be supplied by nominated sub-contractors shall be invited in accordance with this Code.

9.2 The relevant Head of Service is authorised to nominate to a main contractor a sub-contractor whose quotation or tender has been obtained in full accordance with this Code.

10. RECEIPT AND OPENING OF TENDERS AND QUOTATIONS

10.1 Where tenders or quotations are invited in accordance with this Code no tender or quotation will be considered unless -

- ◆ contained in a plain envelope which shall be securely sealed and shall bear the word "Tender" or "Quotation" followed by the subject to which it relates; or
- ◆ it has been sent electronically to a specific e-mail address, which the appropriate Head of Service shall obtain from the Head of Information Management.

10.2 Further to paragraph 10.1 above -

- ◆ the envelope shall not bear any distinguishing matter or mark intended to indicate the identity of the sender. Contractors shall be notified accordingly. Such envelope shall be addressed impersonally to the Director of Central Services if it contains a "Tender" or the appropriate Head of Service if it contains a "Quotation"; and
- ◆ the Head of Information Technology shall ensure that the e-mail address is secure, can only be accessed by the Director of Central Services or officers specifically appointed by him.

10.3 All envelopes or e-mails received shall be kept securely and shall not be opened or accessed until the time appointed for their opening.

10.4 All tenders or quotations invited in accordance with this Code shall be opened at one time only and by at least two officers -

- ◆ tenders shall be opened by officers nominated by the Director of Central Services and by the appropriate Head of Service. The Head of Financial Services shall be notified of the time and place appointed for the opening; and
- ◆ quotations shall be opened by the appropriate Head of Service and/or his nominee(s).

10.5 All tenders or quotations upon opening shall be recorded in writing on either a tender or quotation opening record, as is appropriate. The format of the opening record shall have been previously agreed with the Director of Central Services and Head of Financial Services. The Form of Tender or Quotation and any accompanying documentation shall be marked with the date of opening, and signed by all officers present at the opening. The tender or quotation opening record shall be signed by at least two officers present at the opening.

10.6 The original opening record shall be retained by the Director of Central Services in respect of tenders, and the relevant Head of Service in respect of quotations.

10.7 Any tenders or quotations received after the specified time shall be returned promptly to the contractor by the Director of Central Services or his nominated officer in respect of tenders, or by the appropriate Head of Service or his nominated officer in respect of a quotation. The tender or quotation may be opened to ascertain the name of the contractor but no details of the tender or quotation shall be disclosed.

11. ACCEPTANCE OF TENDERS AND QUOTATIONS

11.1 The appropriate Head of Service shall evaluate all the tenders or quotations received in accordance with the award criteria set out in the bid documentation and shall accept, subject to the provisos set out in this paragraph -

- ◆ the lowest priced tender or quotation; or
- ◆ the most economically advantageous tender or quotation, as evaluated against the award criteria.

11.2 Tenders or quotations exceeding the approved estimate may only be accepted once approval to further expenditure is obtained.

11.3 If the lowest priced, or most economically advantageous exceeds £30,000 -

- ◆ but is within 15% of the original estimate, the appropriate Head of Service may accept the quotation without seeking further competition; and
- ◆ is in excess of 15% of the original estimate then a competitive tender exercise in accordance with paragraph 6.3 above shall be carried out, unless the appropriate Head of Service has consulted and obtained the approval of the Director of Central Services and relevant executive councillor that the quotation can be accepted.

11.4 A tender or quotation shall not be accepted -

(a) where payment is to be made by the Council and -

- ◆ it is not the lowest priced tender or quotation, or

- ◆ the most economically advantageous tender or quotation in accordance with the award criteria set out in the tender or quotation documentation; or
- (b) if payment is to be received by the Council and the tender or quotation is not the highest price or value;
- (c) unless -
 - ◆ the Cabinet have considered a written report from the appropriate Head of Service, or
 - ◆ in cases of urgency, the Director of Central Services has consulted and obtained the approval of the relevant executive councillor. Tenders or quotations accepted in this way shall be reported by the appropriate Head of Service to the next meeting of the Cabinet.

11.5 Where post-tender negotiations have been undertaken in accordance with paragraph 11.6 below, the appropriate Head of Service shall only accept the lowest priced tender received. A tender other than the lowest shall not be accepted until the Cabinet have considered a written report from the appropriate Head of Service, and recommended acceptance of a tender other than the lowest.

11.6. Arithmetical Errors and Post-Tender Negotiations

Contractors can alter their tenders or quotations after the date specified for their receipt but before the acceptance of the tender or quotation, where examination of the tender or quotation documents reveals arithmetical errors or discrepancies which affect the tender or quotation figure. The contractor shall be given details of all such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing his offer.

In evaluating tenders, the appropriate Head of Service may invite one or more contractors who have submitted a tender to submit a revised offer following post-tender negotiations.

All post-tender negotiations shall -

- ◆ only be undertaken where permitted by law and where the appropriate Head of Service, Head of Legal and Estates and Head of Financial Services consider additional financial or other benefits may be obtained which over the period of the contract shall exceed the cost of the post-tender negotiation process;
- ◆ be conducted by a team of officers approved in writing by the appropriate Head of Service, Director of Central Services and Head of Financial Services;
- ◆ be conducted in accordance with guidance issued by the Director of Central Services; and
- ◆ not disclose commercially sensitive information supplied by other bidders for the contract.

Post-tender negotiations shall not be used to degrade the original specification unless the capital or revenue budget is exceeded, or the appropriate Director or Head of Service considers other special circumstances exist, in which case all those contractors who originally submitted a tender shall be given the opportunity to re-tender.

The appropriate Head of Service shall ensure that all post-tender negotiation meetings are properly minuted with all savings and benefits offered clearly costed. Following negotiations but before the letting of the contract, amendments to the original tender submitted shall be put in writing by the contractor(s) and shall be signed by him.

12. TERMS OF BUSINESS AND THE FORM OF CONTRACTS

12.1 All orders placed by the Council shall be on the Council's Terms and Conditions (T&Cs). Heads of Service shall not use Contractor's documentation to order, acknowledge, instruct to proceed or make any other commitment where the documentation makes any reference to the Contractor's T&Cs. Where a contractor formally insists on trading on T&Cs other than the Council's T&Cs, the Procurement Officer shall be informed, except for -

- ◆ Any contract where the estimated total value is likely to exceed £30,000, paragraph 12.2 shall apply.
- ◆ Any framework or contract formally adopted by the Council.
- ◆ ESPO arranged contracts and orders.
- ◆ Orders of a total value of less than £ 5,000 where the goods or service are purchased on a 'retail' basis on terms available to the general public.
- ◆ Orders for software where the licence is for 'standard' product but not where customisation, development or on-site service is required for the 'standard' product.

12.2 Every contract that exceeds £30,000 in value shall be in writing in a form approved by the Head of Legal and Estates who shall also determine the format of any contract for a lesser value. Heads of Section shall ensure that advice of the Head of Legal and Estates is sought at a stage as early as practicable (normally before the issue of an Invitation to Tender).

12.3 In the case of any contract for the execution of works or for the supply of goods, services or materials, the Head of Service after consulting with the Head of Financial Services and the Head of Legal and Estates shall consider whether the Council should require security for its due performance and shall either certify that no such security is necessary or shall specify in the specification of tender the nature and amount of the security to be given. In the latter event, the Council shall require and take a bond or other sufficient security for the due performance of the contract.

12.4 Heads of Service shall produce the final version of all contracts in 2 copies and present both to the Authorised Officer for signature. Once signed by the contractor, the signed contract, all original documents, including specifications, drawings, tender documents and correspondence relating to a contract exceeding a total value of £30,000 shall be forwarded by the Head of Legal and Estates. Where the total value of the contract is less than £30,000 the relevant Head of Services shall make arrangements for the retention of all the original documentation.

12.5 Heads of Service shall maintain a record (in the form detailed in the Procurement Protocols & Guidance) for their area of each contract or agreement (both written and verbal agreements).

12.6 Heads of Service shall include the specific T&Cs listed in the Procurement Protocols & Guidance in all contracts. Where a Head of Service considers a term or condition inappropriate they shall seek advice of the Head of Legal and Estates on the modification or deletion of the term or condition.

13. LETTERS OF INTENT

13.1 Letters of intent provide a contractor with the authority to proceed prior to the award of a contract. However, letters of intent have two main disadvantages:-

- (a) if the contract is not awarded the contractor is entitled to payment regardless as to whether the work was actually needed;
- (b) the Council's negotiating position is weakened as the contractor may believe actual award of contract is a formality and therefore, the contractor may refuse to accept conditions that are seen as disadvantageous.

13.2 Heads of Service shall ensure that:-

- (a) all letters of intent are in a form approved by Head of Legal and Estates;
- (b) all letters of intent are signed by an Authorised Officer with sufficient authority for either the value of the intended contract or the estimated value of any 'extension' period defined in the letter of intent.

14. RETENTION OF DOCUMENTS

14.1 Heads of Service shall ensure that every contract or order is assigned a unique reference number to be used in all correspondence. The unique reference number shall comprise abbreviation for the Division and year. Formal amendments to a contract or order should also be given unique numbers showing the order in which the amendments were made.

14.2 Documentation retention periods are dictated by the Statute of Limitations and (where applicable) EU requirements. The following rules apply:-

- (a) retention for 12 years from the date of completion of the contract for contracts made under deed;
- (b) retention for 6 years from the date of completion of the contract: -
 - ◆ Contract Documents
 - ◆ Hire/Rental Agreements
 - ◆ Successful Tenders
 - ◆ Summary of Tender Opening
 - ◆ Disposal Board papers
 - ◆ Evaluation reports
 - ◆ Goods Received Notes
 - ◆ HM Customs and Excise Import documentation
 - ◆ Invitations to Tender/Quotation Requests
 - ◆ Maintenance/Software licence agreements
 - ◆ Specifications
 - ◆ Successful Quotations

- ◆ Suppliers' Advice Notes;
- (c) retention for 3 years after the last entry -
 - ◆ Stock and Purchase Record Cards or Registers;
- (d) retention for 2 years after the financial year to which the document relates -
 - ◆ Unsuccessful Quotations.
 - ◆ Unsuccessful Tenders.

15. FREEDOM OF INFORMATION ACT 2000 (FOIA)

15.1 Heads of Sections shall ensure that the handling of requests for procurement information complies with the detailed guidance published as Procurement Protocols & Procedures and the general FOIA guidance published by the Council's Freedom of Information Officer.

16. CONSULTANTS

16.1 It shall be a condition of the engagement of any consultant, agent or professional adviser who is to be responsible to the Council for the management or supervision of a contract on its behalf, that in relation to that contract he shall -

- ◆ comply with this Code as though he were an employee of the Council;
- ◆ at any time during the carrying out of the contract produce to the appropriate Head of Service, on request, all the records maintained by him in relation to the contract; and
- ◆ on completion of the contract transmit all records that he has produced or received that relate to the contract to the appropriate Head of Service.

17. PROCUREMENT TRAINING

17.1 The Procurement Manger shall create, maintain and arrange the delivery of training for Officers undertaking procurement duties.

17.2 Heads of Service shall ensure that all Officers routinely undertaking purchasing or procurement duties have undertaken appropriate training.

17.2 Head of HR and Payroll Services shall arrange to record the details of staff that have completed suitable procurement training.

CODE OF FINANCIAL MANAGEMENT

1. FINANCIAL RESPONSIBILITIES

1.1 General

Before any proposal that affects the Council's financial position is made the body or person(s) responsible for making that decision shall consider a written report, approved by the Director of Commerce and Technology, detailing the financial implications.

1.2 The Council

Will determine the Council's Financial Strategy, including a Medium Term Financial Plan (MTP), approve the annual budget and Prudential Indicators and set the level of the council tax.

Will approve the Council's Treasury Management Strategy.

1.3 The Corporate Governance Panel

Will ensure that the financial management of the Council is adequate and effective.

Will ensure that the Council has a sound system of internal control including arrangements for the management of risk.

Will consider the Council's Code of Corporate Governance and approve the annual statement.

Will approve the terms of reference and strategy for internal audit and comment on the annual internal and external audit plans.

Will consider the external auditor's annual management letter.

Will approve the Council's tax base and final accounts.

1.4 The Cabinet

Will propose to the Council the Financial Strategy, the MTP, the annual budget and council tax level, after appropriate consultation which will include the appropriate Overview and Scrutiny Panel, the Prudential Indicators and the annual Treasury Management Strategy.

Will set financial priorities, allocate and re-allocate resources in accordance with the limits in this Code, monitor and review financial performance and adopt a Treasury Management Policy.

1.5 Overview and Scrutiny Panels

Will contribute to the development of, and review the effectiveness of, the Council's Financial Strategy, MTP and annual budget.

1.6 Panels or Committees

Will ensure that all decisions within their remit are made within the resources allocated within relevant budgets and are consistent with achieving the Council's objectives. If they wish to make proposals that will require additional resources these will need to be subject to the Cabinet or Council making these available.

1.7 **Members and Employees**

Will contribute to the general stewardship, integrity and confidence in the Council's financial affairs and comply with this Code and any systems, procedures, or policies relating to the financial management of the Council.

Specifically, they shall bring to the attention of the Director of Commerce and Technology any act or omission that is contrary to the provisions of this Code or the maintenance of high standards of financial probity, and provide information or explanation on matters within their responsibility to him/her, the Monitoring Officer, Internal Audit Service or the Council's external auditors.

Any member or officer who is involved or who has an interest in a transaction between a third party and the Council shall declare the nature and amount, if material, as required by the Accounting Standards Body's Financial Reporting Standard on related party payments.

1.8 **The Director of Central Services, as Monitoring Officer** or, in his/her absence, the Head of Legal and Estates

Will report to the Council on any proposal, decision or omission that in his/her view is likely to result in the contravention of the law or any code of practice enacted under it, fails to comply with a legal duty, represents maladministration or is unjust, in accordance with section 5 of the Local Government and Housing Act 1989.

For these purposes he/she shall have full and unrestricted access to all Council assets, systems, documents, information, employees and Members.

1.9 **The Director of Commerce and Technology, as Chief Finance Officer** or, in his/her absence, the Head of Financial Services

Will be responsible for the proper administration of the Council's financial affairs, prescribe appropriate financial systems, protocols, procedures and policies, maintain an internal audit service and report to the Council in the event of a decision or action leading to unlawful expenditure, a loss or deficiency or an unlawful accounting entry (in accordance with section 151 of the Local Government Act 1972, section 114 of the Local Government Act 1988 and the Accounts and Audit Regulations).

Will be responsible for ensuring the final accounts are completed and published by the statutory dates and reporting the details of any material amendments specified by the external auditor to the Corporate Governance Panel.

For these purposes he/she shall have full and unrestricted access to all Council assets, systems, documents, information, employees and Members.

1.10 **The Head of Financial Services**

Will be responsible for detailed and operational aspects of the administration of the Council's financial affairs on behalf of the Director of Commerce and Technology, approving new financial systems and undertaking such duties as are set out in this Code.

1.11 Chief Officers and Heads of Service

Whilst Chief Officers will take ultimate responsibility for their employees actions, the Council's management structure is based on Heads of Service or, in a few cases, Chief Officers taking prime responsibility for a service and its related budget.

The Manager responsible for a budget:

- may incur financial commitments and liabilities in accordance with this Code, the Council's Scheme of Delegation and resources allocated in budgets that have been released. In particular they may make purchases of goods and services, subject to the requirements of the Code of Procurement, and employ staff, in accordance with the Officer Employment Procedure Rules. They will normally delegate appropriate elements of this responsibility to members of their staff.
- will be responsible for regular and effective monitoring and forecasting of the financial position relating to their services.
- will be responsible for proper financial and resource management and the prevention of fraud and corruption within the services and functions under their control.
- will determine the inherent risks, within their services, to the achievement of the Council's priorities and establish, maintain and document adequate systems of internal control and financial monitoring, in consultation with the Internal Audit Service, and ensure that relevant employees or Members are familiar with such systems.
- will be responsible for providing in a timely manner, the information necessary to ensure that the final accounts can be completed by the statutory deadlines.
- will be responsible for reviewing and varying fees and charges at least annually for services under their control, after consultation with the relevant Executive Councillor(s) and/or Chairman of the relevant Panel. In doing so, they shall:
 - ensure that relevant legislation is complied with, particularly where it specifies the charges to be made or constrains them in some way.
 - having regard to the charges of any alternative service providers with whom the Council is competing, seek to maximise income, net of applicable costs, as far as is possible without compromising the Council's stated corporate priorities and objectives.

- provide discounts where they are expected to stimulate demand and generate additional net income which would otherwise not be obtained and/or they are in the best interests of the service and its customers, particularly where they make the services available to those who could not otherwise afford them, provided that such discounts do not result in additional net cost to the Council.

1.12 **Internal Audit**

Will be responsible for providing an independent and objective opinion on internal control, risk management and governance systems. In accordance with its terms of reference it shall undertake audit reviews that focus on areas of greatest risk to the Council in accordance with a programme agreed annually by the Director of Commerce and Technology after consultation with Heads of Service.

For these purposes internal audit shall have full and unrestricted access to all Council assets, systems, documents, information, employees and Members.

2. FINANCIAL AND SERVICE PLANNING

2.1 **In the Summer - Overall Review**

The Cabinet shall review the financial performance of the Council in the previous year, compared with the annual budget, on the basis of a report prepared by the Head of Financial Services in conjunction with Heads of Service.

2.2 **In the Autumn - Financial Strategy**

The Cabinet, after consultation with the relevant Overview and Scrutiny Panel and any appropriate organisations or bodies, shall recommend to the Council a Financial Strategy which will be used to determine the overall financial limits within which the annual budget and MTP will be prepared.

2.3 **In the Winter - Annual Budget and MTP**

The Cabinet shall, after consultation with the relevant Overview and Scrutiny Panel, recommend to the Council an annual budget for the next financial year and a MTP for the succeeding four years, incorporating both capital and revenue expenditure, which is consistent with corporate and service strategies and the Financial Strategy. This budget will include the allocation of resources to individual services and capital projects.

2.4 **In the Spring - Service Financial Plans**

Following approval of the annual budget each Head of Service shall update their Service Plan(s) to incorporate a Service Financial Plan, which sets out variations in the level of fees and charges and how the resources allocated will be used to meet service objectives in the forthcoming year.

3. CONTROLLING FINANCIAL PLANS

3.1 Financial Monitoring

Heads of Service will be responsible for regular and effective monitoring and forecasting of the financial position relating to their services.

The financial performance of each service and capital project will be reviewed by Chief Officers quarterly on the basis of monitoring statements prepared by Heads of Service in conjunction with the Head of Financial Services.

The financial performance of the Council will be reviewed by Cabinet quarterly on the basis of monitoring statements prepared by the Head of Financial Services in conjunction with Heads of Service.

Heads of Service will ensure that relevant Executive Councillors are regularly informed of the progress in delivering approved MTP schemes.

3.2 Commitments to Expenditure in Future Years

No new commitment to expenditure beyond the current budget year may be made unless it;

- is consistent with the achievement of the Council's objectives and other relevant Strategies, **and**
- is compatible with the Council's MTP and Financial Strategy, **and, either**
- can be met from within currently approved and released resources. If it is to be funded from savings, these must be defined, permanent and not already earmarked for the achievement of the Council's savings targets, **or**
- is funded from a budget transfer in accordance with section 3.5 below.

If the Head of Service has any concerns about their proposal meeting these requirements they must consult the Head of Financial Services.

3.3 Grants, Cost Sharing and s106 agreements

Where a Head of Service proposes to take advantage of grants from other organisations, or some other form of cost sharing, whereby they will be able to deliver additional or improved services, consistent with their Service Plan, without creating any current or future commitment to additional net expenditure they may do so subject to:

- the funds being dependent upon a particular project or service being provided but, in the case of S106 agreements, the location or some other aspect is at the Council's discretion.
- informing the Head of Financial Services of the details
- consulting the relevant Executive Councillor(s) if the proposal exceeds £30,000 revenue or £50,000 capital in any one year.

A Head of Service may utilise sums of money received under S106, or equivalent, agreements where the nature and location of the item/service is specified. The Head of Financial Services should be informed of the details.

3.4 Approvals for additional spending with a net impact

Proposals for increases to the total allocated to a budget in the current year (Supplementary Estimates) and their impact in future years may be approved by the Cabinet subject to the revenue impact not exceeding £300,000 in aggregate in any financial year. The impact of such approvals will be included in appropriate financial reports within the budget/MTP process and, once Council have noted these items, the Cabinet's limit will be re-set. This

limit excludes any items funded from the contingency budget as described in the following paragraph. A transfer of a sum from capital to revenue will have a revenue impact and so will count as a request for additional spending.

The Director of Commerce and Technology may authorise the use of the contingency budget, subject to the item complying with the approved guidelines (see Annex A) and following consultation with the relevant executive councillor(s).

In all other cases the approval of the Council will be required.

3.5 **Approvals for additional spending with compensating savings**

Proposals that require initial funding but will then result in net surpluses or savings that are at least sufficient to produce a break-even position will be supported in principle if they are:

- consistent with increasing the achievement of the Council's objectives and compatible with relevant Strategies.
- achievable within the Council's Financial Strategy.
- supported by a robust business case which includes a risk assessment.
- supported by the Chief Officers' Management Team.

The Director of Commerce and Technology may approve such a scheme following consultation with the relevant Executive Councillor for the service and the Executive Councillor for finance. The relevant budget(s) and MTP will be appropriately adjusted.

3.6 **Budget Transfers**

The Council has five main types of budgets:

- **Service Revenue Budgets**
Service budgets relate to the provision of services directly to the public and are defined as the lowest level included in the report to Council when the budget is approved. They include depreciation relating to capital assets and recharges from Management Units and Overhead Budgets.

- **Capital Scheme Budgets**
These provide the funding to complete a defined capital project and are likely to include some recharges from Management Units and Overhead Budgets. When the project is completed a charge for depreciation is made to the appropriate Service Revenue Budget.
- **Management Unit Budgets**
Management Unit budgets collect together the costs of employees, and their ancillary costs that relate to supporting services, before they are recharged to service budgets or overhead budgets based on the degree of benefit that is being received.
- **Overhead Budgets**
Overhead budgets collect together a relevant portion of management unit costs together with other related costs before they are recharged based on the degree of benefit that is being received. Examples include the costs of office provision or of the Printing Service.
- **Technical Budgets**
These include items such as interest on investments and the reversal of depreciation charges and will not be available for transfer to other budgets except in meeting the specific purpose for which they were established.

Whilst most budgets will reflect a net cost, some will identify an expected surplus.

The transfer of resources within, or between, any of the types of budgets is supported in principle when it will make it more likely that the Council will achieve its service objectives and targets or enhance value for money. There do, however, need to be some limitations for effective financial management and to ensure that Executive Councillors, Cabinet and Council are aware of, and involved in, the more significant changes or where there is a financial implication.

The limitations fall into three categories. The first relates to Technical Budgets and recharges and Annex B details the budget transfers that will not be permitted in relation to them. The second relates to budgets for pay, national insurance and pension contributions and Annex C explains why and how budget transfers relating to these items are limited. Finally, the required involvement of Members is defined below.

The Council's management structure is based on Heads of Service or, in a few cases, Chief Officers taking responsibility for these budgets.

The **Manager responsible for a budget** may approve a budget transfer within and between the budgets they are responsible for providing it is:

- Consistent with increasing, or at least maintaining the achievement of service objectives and compatible with the Council's Financial and other relevant Strategies.
- Not to or from a Technical Budget or a recharge or from a pay, NI or pension contributions budget unless permitted by Annexes B or C.
- Not from capital to revenue
- Supported by their Chief Officer
- Notified to the Head of Financial Services
- Within the following limits if between budgets (there shall be no financial limits within a budget):

- Revenue to revenue £50k
- Revenue to capital £50k
- Capital to capital £50k

Similarly, a **Chief Officer** may, subject to the same criteria, approve budget transfers between any budgets that are their responsibility or the responsibility of their staff.

The **Chief Officers' Management Team** may, subject to the same criteria except for the enhanced limits shown below, approve budget transfers between any budgets:

- Revenue to revenue £100k
- Revenue to capital £100k
- Capital to capital £100k

Cabinet may approve budget transfers of up to:

- Revenue to revenue £250k
- Revenue to capital £250k
- Capital to capital £250k

Any previous transfers in the same financial year relating to those budgets shall be aggregated for determining whether the limit has been exceeded.

In all other cases the approval of the Council will be required.

3.7 **Re-phasing of Expenditure**

The re-phasing of expenditure, and consequent transfer of budget, between years may be made by the relevant Head of Service, following consultation with the Head of Financial Services, providing that it is consistent with service objectives and compatible with the Council's Financial and other relevant Strategies.

3.8 **Price Changes**

Allocation to individual Budgets of any provision for inflation or other purposes will be determined by the Head of Financial Services.

3.9 **Project Appraisals**

All proposals for changes to the MTP will require an explanatory appraisal, unless the Head of Financial Services considers that the item is of a technical nature. Appraisals for new and modified schemes must be made available to Members, via the Council's intranet, by the date on which the related reports are circulated.

4. CASH AND CREDIT MANAGEMENT

4.1 Banking

The Director of Commerce and Technology is responsible for all Council banking arrangements and shall maintain (an) account(s) with (an) appropriate bank(s) with a credit rating equivalent to 'Long Term AA' or better in the data published by Fitch IBCA. All transactions involving income or expenditure shall be dealt with through the Council's bank account(s).

4.2 Income

All employees receiving money (including cash, cheques, credit card payments etc.) must comply with the relevant procedures issued by the Head of Revenue Services to ensure that the sums are properly recorded, receipted and banked.

The Head of Revenue Services shall manage a debt collection service on behalf of the Council and all sums due must be registered by raising an invoice on the Council's Financial Management System or some other system or procedure approved by the Head of Revenue Services.

4.3 Loans

All borrowing will be undertaken by the Head of Financial Services in accordance with the Code of Practice for Treasury Management in Local Authorities and the Prudential Code for Capital Finance in Local Authorities, both published by the Chartered Institute of Public Finance and Accountancy (CIPFA), and the Council's Treasury Management Policy and Annual Strategy Statement.

A report shall be submitted to the Cabinet prior to the start of each financial year so that it can recommend to the Council the maximum borrowing limits for the forthcoming financial year.

4.4 Investments

Investments shall be made by the Head of Financial Services in accordance with the Prudential Code for Capital Finance in Local Authorities, Government guidance on Local Government Investments, the Council's Treasury Management Policy and Annual Strategy Statement, either directly or by utilising external fund managers.

Periodic reports shall be submitted to the Cabinet on Treasury Management and by 31st July each year an annual report shall be submitted on activities in the previous financial year.

4.5 Payments

Payments due to external suppliers of goods and services must be made through the Council's financial management system and in accordance with the payments procedures of that system, as determined by the Head of Financial Services. Payments shall be made direct to the supplier's bank account wherever this is practical.

5. ACCOUNTING PROCEDURES

5.1 The Council will follow the best practice guidance contained in the Accounting Code of Practice and other relevant publications produced by CIPFA in the preparation and maintenance of its accounts.

5.2 Statement of Accounts

The annual Statement of Accounts shall be presented to the Corporate Governance Panel for approval within the prescribed statutory timescale.

5.3 Records

Each Head of Service is responsible for maintaining records of financial transactions and commitments and employee time, in forms agreed with the Head of Financial Services, and for ensuring that all financial transactions are properly recorded in the appropriate financial period and to an appropriate account within the Council's Financial Management System.

5.4 Retention of Documents

Documents required for the verification of accounts, including invoices, shall be retained in a retrievable format for any statutory period, or otherwise for six years or such other time that is specified by the Head of Financial Services.

5.5 Contingent Liabilities

Any Officer who is aware of a material and outstanding contingent liability shall notify the Head of Financial Services, who shall include details in the Council's accounts or in a Letter of Representation to be presented to the Council's external auditors in respect of those accounts.

5.6 Stock

Where a formal stock account is used in connection with any service, the relevant Head of Service shall ensure that a certified stock-take is carried out in the last week of March each year, and that records of receipt and issue of all stock are maintained throughout the year in a manner agreed with the Head of Financial Services.

5.7 Insurance

The Head of Financial Services shall obtain insurance to protect the Council or minimise its potential losses from risks including those to employees, property, equipment and cash. Any decision not to insure significant risks must be based on a detailed risk assessment.

5.8 Write-off of Irrecoverable Debts

The Head of Revenue Services, or in his/her absence the Head of Financial Services, is authorised to write-off debts with an individual value of up to £4,000, or of a greater amount after consultation with the Executive Councillor responsible for finance, having taken appropriate steps to satisfy himself/herself that the debts are irrecoverable or cannot be recovered without incurring disproportionate costs.

A summary report detailing debts written-off shall be submitted to the Cabinet quarterly.

6. ASSETS

6.1 Definition

An asset is an item of land, building, road or other infrastructure, vehicle or plant, equipment, furniture and fittings or information and communications technology, (hardware and software) with a life exceeding one year.

6.2 Capital Expenditure

The purchase or improvement of any asset will normally be treated as capital expenditure. However, expenditure of less than £10,000, or £5,000 in the case of vehicles, plant and equipment, will not normally be treated as capital expenditure unless the Head of Financial Services considers it is in the Council's interests to do so.

6.3 Asset Register

The Head of Legal and Estates will, after consultation with the Head of Financial Services, determine the procedures for maintaining the Asset Register, including the information that needs to be recorded. Heads of Service will provide the prescribed information for all relevant assets relating to their services in accordance with those procedures.

6.4 Acquisition

The purchase of assets must be in accordance with the procedures specified in the Council's Code of Procurement, having regard to the value of the asset.

The relevant Head of Service shall inform the Head of Financial Services within 10 working days of the acquisition of an asset which meets the definition for capital expenditure.

6.5 Leases

Finance and operating leases are to be used only if they are in the Council's financial interest and with the approval of the Head of Financial Services.

6.6 Control of Assets

Each Head of Service is responsible for ensuring that the assets relating to their services are properly safeguarded, managed and maintained, and used only to achieve the Council's objectives. This will include establishing and maintaining appropriate security, control systems and records. They will need to consult relevant officers in relation to specialist items and, where vehicles are concerned, the officer holding the Council's Operating Certificate who has specific statutory responsibilities.

6.7 Disposal of Assets

The sale of assets must be in accordance with the procedures specified in the Council's Code of Procurement, having regard to the current value of the asset.

The relevant Head of Service shall inform the Head of Financial Services within 10 working days of any disposal of an asset included in the Asset Register.

6.8 Valuations

Assets will be re-valued at five yearly intervals by an appropriately qualified person according to the type of asset. Where appropriate, interim valuations will be recorded on the Asset Register by reference to a suitable index.

GUIDELINES ON THE USE OF THE CENTRAL CONTINGENCY BUDGET

The Director of Commerce and Technology shall, subject to these guidelines, be permitted to approve additional spending to be met from the central contingency budget subject to prior consultation with the relevant Executive Councillor(s).

The additional spending shall not:

- create a commitment to additional spending in a future year.
- be a “key” decision.
- exceed £50k in aggregate on a particular service in any year.

The additional spending shall:

- be consistent with the Council’s published objectives.
- be unavoidable and/or urgent; the following list gives some typical examples:
 - Unavoidable maintenance works to land or buildings
 - Flooding
 - Relocation costs
 - Consultancy costs on property matters
 - Anti-Social Behaviour Orders
 - Urgent Environmental Health matters
 - Planning Appeals
 - Sewer liability payments to Luminus.

TECHNICAL BUDGETS

The following budgets cannot be reduced by officers in order to permit extra expenditure on another budget except where this is part of the specific purpose for which they were established.

- Any contingency, unless it complies with the approved rules for the use of the general contingency or is an adjustment to reflect the technical application of the contingency (e.g. allocation of inflation from an inflation contingency)
- Capital charges
- Commutation Transfer
- Pension Liabilities (as opposed to pension contributions)
- Interest paid
- Interest received
- Any recharge or allocation from a management unit or overhead account.

BUDGET TRANSFERS OF PAY, NI OR PENSION CONTRIBUTIONS

The Council does not provide for a 100% of the estimated costs of employing its staff. This is because experience shows that it is generally impossible to avoid gaps when people leave and are replaced. It is also common for the new member of staff to be on a lower point in the grade than the person who left.

However, in order to simplify budget monitoring, each budget includes 100% of such staff costs but there is a negative, centrally held, contingency that represents the saving that the Council's overall budget is based on.

In order to maximise the likelihood of achieving this saving it is critical that if budget transfers involving staff costs are to be made, **that otherwise meet all the requirements of paragraph 3.6**, they shall include a reduction, determined by the Head of Financial Services, so that the negative contingency can be reduced appropriately on a temporary and/or permanent basis.

An adjustment will also be applied if rephasing takes place in accordance with paragraph 3.7

Variations to the normal level of reduction:

- The transfer of a pay, NI or pension contribution budget to a pay, NI or pension contribution budget **within another** Service, Management Unit etc. The reduction will be nil.
- If the Head of Service can demonstrate the **critical** nature of maintaining immediate service cover the reduction may be reduced or nil. Examples where this might apply would be if staff vacancies would result in insufficient staff with the necessary abilities or skills to run refuse rounds or to safely open swimming pools. Agency, or equivalent staff, must be available with the necessary skills and/or abilities.
- If the Head of Service can demonstrate that a **critical backlog** of work has resulted from continuing vacancies such that the service to the public is seriously compromised or significant additional costs would become unavoidable the reduction may be reduced. Examples where this might apply would be dealing with benefit applications or collecting council tax income. Agency, or equivalent staff, must be available with the necessary skills and/or abilities.