

**REVIEW OF COUNCIL CONSTITUTION
(Report by the Head of Democratic and Central Services)**

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 in the larger local authorities 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 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. 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, the Standards Committee and more recently the Corporate Governance Panel has undertaken a 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 had bedded down sufficiently that it could be reviewed comprehensively at biennial intervals 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 13th May 2009.
- 1.4 Adopting the same approach as was undertaken in 2007, Members have been invited to submit comments individually. Chief Officers and Heads of Service similarly have been requested to highlight any issues which have arisen based on practical experience of the operation of the Constitution.
- 1.5 Running concurrently with this year's exercise has been the review of the democratic structure undertaken by a working party appointed by the Cabinet. This working party has made a series of recommendations which may result in further changes to the constitution in due course. The purpose of this exercise is to identify changes required to the current Constitution to reflect new legislation and working practices which have emerged during the preceding two years, to overcome any inconsistencies which may have arisen and to make positive adjustments to reflect changes in circumstances.

Where there has been any overlap with the working party's review, this report will reflect where this has occurred.

- 1.6 To identify the changes proposed, Members will need to refer to the Constitution circulated to them in November 2007. 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 in to sixteen 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 2007 to reflect –

- new legislation;
- alterations to –
 - table 2 – appointments to outside organisations
 - reflect the addition/variation of appointments; and
 - table 4 – Scheme of Delegations (to incorporate subsequent amendments to the scheme).

3. OTHER CHANGES

PART 2 – ARTICLES OF THE CONSTITUTION

3.1 Article 1 – The Constitution (Pages 9/10)

Growing Success, the Council's Corporate Plan was adopted by the Council at its meeting held on 27th June 2007. "Growing Success" identifies the aims of the Council and how they are to be delivered. The Plan is reviewed every three years. Section 5 of this Article describes the Huntingdonshire Vision. This requires to be updated to reflect the Council's current objectives. **It is recommended that the following text be inserted to replicate that included in "Growing Success" –**

"Huntingdonshire is a place where current and future generations have a good quality of life and can:

- **make the most of opportunities that come from living in a growing and developing district;**
- **enjoy the benefits of continued economic success;**

- access suitable homes, jobs, services, shops, culture and leisure opportunities;
- realise their full potential;
- maintain the special character of our market towns, villages and countryside; and
- live in an environment that is safe and protected from the effects of climate change and where valuable natural resources are used wisely.

To support this, the Council will strive to:

- make the most of opportunities that come from growth by promoting the development of a sustainable community;
- enable people to realise their full potential and have access to suitable homes, jobs and services;
- work towards achieving a balance between social, economic and environmental needs; and
- maintain “excellent” standards.

3.2 Article 3 – Citizens and the Council (Pages 13/14)

Complaints by individuals of a breach of the Members’ Code of Conduct are now addressed directly to the Council as opposed to the Standards Board for England. Therefore, it is **recommended that Section 1(d)(iii) should be amended to reflect that citizens have the right to complain to “the District Council about a breach of the Members Code of Conduct” rather than the Standards Board for England as formerly.**

As that right also extends to the behaviour of councillors of town and parish councils in Huntingdonshire, it is further **recommended that an additional paragraph be added to Section 1(d) as follows - “(iv) the District Council about a breach of the Members’ Code of Conduct of any of the town and parish councils in Huntingdonshire”.**

3.3 Article 4 – The Full Council (Pages 15/16)

A number of changes are required to the policy framework to reflect legislative change and developments in recent years. In addition, matters relating to Local Area Agreements have been classed by Regulation as a local choice function which means that it can be dealt with either by the Council or the Cabinet. In those elements of paragraph 1(a), the policy framework, it is **recommended that the following changes be made –**

- insert the word “sustainable” before the words “community strategy” in line 2;
- substitute the word “strategies” by the word “alterations” in line 5 relating to the Development Plan;
- substitute the words “Local Agenda 21 Strategy” by the words “Environment Strategy” in the 10th line; and
- add the words – “Local Area Agreement”.

The Local Government and Public Involvement in Health Act 2007 has introduced a number of changes to electoral arrangements which will

require clarification as to which functions are reserved to the Council and which are devolved to the Elections Panel. For the purposes of the Council, it is **recommended that paragraph 2(g) be replaced by the words – “(g) the appointment of the Electoral Registration Officer and the Returning Officer to local government elections, power to change the name of the District, petition for borough status and confer honorary titles, functions relating to a change in governance arrangements (the Council’s form of executive) and the passing of a resolution to change the electoral scheme (the electoral cycle)”**.

3.4 **Article 6 – Overview and Scrutiny (Pages 19-21)**

Various changes to overview and scrutiny are contained in the Local Government and Public Involvement in Health Act 2007 which have recently been implemented by statutory instrument. A further report is being drafted on the implications which will be submitted to the Overview & Scrutiny Panels in the first instance and then subsequently to the Panel at its special meeting on 16th April 2009.

In the interim and subject to any further adjustment required by the Structure Review, Section 1 of the Article requires adjustment to reflect the portfolios adopted by the Leader for Executive Councillors at the meeting of the Council held on 25th June 2008. Therefore, it is **recommended that the right hand column of the table in Section 1 in respect of Service Delivery be amended to read “All issues relating to customer services and information technology, health, leisure, housing, operations and countryside”**. Similarly, it is **recommended that the same column be amended to reflect the scope of the functions to be discharged by the Service Support Panel as follows “All issues relating to finance, resources and policy, planning strategy, environment and transport”**.

3.5 **Article 8 – Regulatory and Other Committees and Panels (Page 25)**

Section 2 of this Article refers to the rather unique position of the Licensing Committee, the terms of reference of which are determined by the Licensing Act 2003 and the Gambling Act 2005, the Council’s Statement of Principles under the latter being reserved to Council under that Act. This was omitted from Section 2 in the last review of the Constitution and it is **recommended that the following words be added after the words “statement of licensing policy” in line 3 of the paragraph – “under the Licensing Act 2003 and the Statement of Principles under the Gambling Act 2005”**.

3.6 **Article 9 – Standards Committee (Pages 27/28)**

Implementation of the Standards Committee (England) Regulations 2008 required a series of changes to the Constitution. These changes were approved by the Council at their meeting held on 25th June 2008 but are reproduced here for completeness.

“Section 2 – Membership

Delete the existing contents of Section 2 and insert “The Standards Committee shall comprise –

- 7 Members of the Council (of whom one must be a Member of the Cabinet but excluding the Leader);
- 4 Independent Members who are not Councillors nor Officers of the Council or any other local authority; and
- 3 town or parish councillors representing town and parish councils in the District.

Section 4 – Functions and Role

Bullet point 6 should be deleted and the following text inserted “Undertaking the assessment of complaints which allege breaches of the Members’ Code of Conduct and determining what action should be taken in respect of the allegation”;

In addition the following new bullet points should be inserted –

- “determining requests from complainants to review decisions not to take action or to investigate an alleged breach of the Members’ Code of Conduct;
- undertaking hearings into alleged breaches of the Members’ Code of Conduct;
- determining appropriate sanctions or actions in response to breaches of the Code of Conduct; and
- granting and supervising the exemption of certain posts from political restrictions under the Local Government and Public Involvement in Health Act 2007”.

Section 187 of the Local Government and Public Involvement in Health Act 2007 prescribed that the Chairman of the Standards Committee must be an Independent Member given their key role in ensuring the Standards Committee’s business is conducted in such a way that no one can question its integrity. Therefore, it is **recommended that the following words be inserted in Section 1 of the Article – “The Committee must be chaired by an Independent Member”**.

3.7 **Article 12 – Officers (Pages 33-36)**

Arising from recent changes in the designation of Officers, following the appointment of the current incumbent of the post of Director of Central Services and the appointment of the Head of Law, Property and Governance as the Council’s Monitoring Officer, a series of changes will be required to the terminology used in Article 12.

It is **recommended that the following changes be made –**

- **in paragraph 2(b) delete the words “(and Monitoring Officer)” from the post of Director of Central Services; and**
- **in paragraph 2(c), the substitution of the words “Director of Central Services” by the words “Head of Law, Property and Governance”.**

The Council at their meeting held on 25th June 2008 resolved that in Section 4 of the Article relating to the functions of the Monitoring Officer, paragraph (d) and (e) should be deleted and replaced with the following **“(d) Local Assessment of Code of Conduct Complaints – The Monitoring Officer shall discharge the functions in relation to**

the initial assessment and review of allegations of breaches of the Members' Code of Conduct, act in accordance with the Monitoring Officer's protocol and convene and appoint Members to hearings as necessary; (e) Conducting Investigations – the Monitoring Officer will conduct investigations in matters referred by the Referrals (Assessment) Sub Committee and make reports and recommendations in respect of them to the Standards Committee”.

Further to the recent review of the Central Services Directorate, the Panel is **recommended to substitute in paragraph 4(j), all of the words after “Deputy Monitoring Officer” by the words – “in the absence or at the direction of the Head of Law, Property and Governance and Monitoring Officer, the Democratic Services Manager shall act as Deputy Monitoring Officer”.**

4. Part 3 – Responsibility for Functions (Pages 51-154/2)

- 4.1 Various changes have been made to the Functions and Responsibilities Regulations since the last review of the Constitution which will require some modification to the wording of the functions undertaken by certain of the Council's committees/panels. The Panel is **recommended to approve the following variations -**

Table 1 – Responsibility for Local Choice Functions requires amendment to reflect that there are now nine rather than eight Members of the Cabinet.

Tables 1 and 2 (Responsibility for Council Functions) refer to the Development Control Panel. The recent shift in the national agenda for planning towards “place shaping” which the Lyons enquiry into local government (March 2007) defined as “the creative use of powers and influence to promote the general wellbeing of the community and its citizens”, has highlighted a need for a review of the role and, in particular, the remit and emphasis of development control work within all local planning authorities. Traditionally, the development control function was often seen as negative and reactive and it typically had a reputation for preventing rather than enabling the delivery of development. As part of the move towards delivering a spatial planning system, the nature of the local policy framework, in the form of the Local Development Framework, has already fundamentally changed with much more emphasis now being placed on the creation of a sustainable and deliverable vision for development in the District. To support this change in the local policy framework and to ensure that the planning service can deliver the Council's corporate vision and community objectives for the future, it is proposed that the development control function be transformed into development management. Simplistically, development management is about directing the place shaping agenda and being more positive and proactive in terms of supporting the right schemes in the right place at the right times. As part of this transformation, it is **recommended that the name of the Development Control Panel be changed to the Development Management Panel and the appropriate adjustment made to the references to the Panel in Tables 1 and 2.**

- 4.2 In the section of Table 2 relating to the functions of the Licensing and Protection Panel, it is **recommended that the words “and designation orders for alcohol disorder zones” be added after the words “alcohol consumption”**.
- 4.3 Column 2 of the entry for the Standards Committee requires to be amended to read “seven Members of the Council other than the Leader, four voting co-optees and three voting members appointed by town and parish councils in Huntingdonshire”. In column 3 under the heading “Other Functions”, the following should be added -
- “Functions relating to the initial assessment of Member misconduct and other requirements under the Standards Committee (England) Regulations 2008.
- To grant and supervise exemptions for certain posts from political restriction under the Local Government and Public Involvement in Health Act 2007.”
- (Currently this latter function is delegated to the Chief Executive and Regulations on the transfer of the function to the Standards Committee are awaited from the Department of Communities and Local Government).*
- 4.4 In the section of Table 2 relating to the Elections Panel, it is **recommended that the current description of the Panel’s functions be replaced by the words “to discharge the functions of the Council in relation to elections, other than those reserved to the Council in Article 2(g). To change the name of parishes in Huntingdonshire. To discharge the functions of the Council relating to community governance (parish reviews).**
- 4.5 In respect of Table 3 – Responsibility for Executive Functions and arising from a recent decision of the Cabinet to abolish the roles of the Leisure Centre Management Committees, it is **recommended that all reference to the previous five committees at St Ivo, Huntingdon, St Neots, Ramsey and Sawtry be deleted.**

5 PART 4 – RULES OF PROCEDURE

Council Procedure Rules (Standing Orders) (Pages 157-178/4)

5.1 Motions on Notice

Rule 9.1 relates to the submission of written Notice of Motions. Given the increase in the use of e-mail for correspondence, it is suggested that it be explicit within this section that use of e-mail would be acceptable for the submission of written notice of motions. It is **recommended that the following wording be added to paragraph 9.1 – “The submission of a written notice of motion via e-mail would be acceptable”**.

5.2 Petitions

Rule 10A.3 details those issues which would not be acceptable in the subject matter of a petition. Experience has suggested that it is not

prudent for a petition to be submitted to Council if it relates to the granting of a licence or planning application. Objections to licensing or development applications can be managed formally through the planning and licensing processes so it is therefore **recommended that the following text be inserted after the word “group” in the eighth line of section 10A.3 – “and where the matter relates to a development or licensing application”**.

The Overview and Scrutiny Panel (Service Support) has considered ways of promoting and communicating the work of the Council's Scrutiny Panels in the use of information and communications technology. A series of recommendations arose from the Panel's study on this subject and having considered the one relating to the use of on-line media, the Corporate Governance Panel made a series of recommendations to vary the Constitution which were adopted by the Council. For completeness, the following amendments require to be made –

“That in part 4 of the Constitution the second and third paragraphs of 10A.4 be deleted to be replaced by :

“A written petition shall contain the name, address and signature of each person who signed it. The name and address shall be in a legible format. An on-line petition shall contain the name and address of each person who is party to it. A petition shall indicate which one of the signatories is to present the petition.

The petition shall be sent to the office of the Chief Executive who shall decide whether the petition concerns a matter on the agenda for a full Council meeting and if it is not, it will be scheduled for inclusion on the agenda for the next ordinary full Council meeting. A maximum of three petitions will be presented at any meeting.

If an on-line petition does not have the requisite number of signatories or the organiser is not prepared to present it to the Council, the petition shall be submitted for consideration to the relevant Overview and Scrutiny Panel, subject to the petition containing the names and addresses of at least ten persons who live or work or own property in the District.”

5.3 Development Control Applications

Rule 27(a) and Annex (iii) cover the procedure for public speaking on planning applications at Development Control Panel. Last summer the Overview and Scrutiny Panel (Service Support) undertook a review of the procedure which had been in operation at that time for 12 months. Having discussed the outcome of the review, the Development Control Panel considered whether persons wishing to support a planning application should be permitted to speak at Panel meetings. Having expressed their view that supporters of applications should be entitled to speak, the Development Control Panel **recommended that the paragraph entitled “Who is permitted to speak to the Panel?” in the procedure for public speaking shall be amended so that the 6th bullet point is annotated with an asterisk and the following inserted at the end of that section - “supporters of an application may speak on any application but will only be permitted to do so**

if an applicant or his representative decides not to speak or to use less than the time permitted. In any case, the time limit of three minutes for speaking in support of an application should not be exceeded.”

5.4 State of District Address

In the course of the last review of the Constitution, the Council referred a proposal submitted by Councillor Downes to the Overview and Scrutiny Panel (Service Delivery) to introduce a biennial State of the District conference. At that time, few Councillors supported a proposal to hold a State of the District conference but the Panel was keen to investigate the use of smaller area consultation groups involving all tiers of local government in the process. As a way forward, the Panel established a working group to discuss the concept of local area forums. Subsequently the working group presented a report to the Cabinet which recommended the holding of four events per annum to engage Huntingdonshire residents in discussing the Council's strategies and services. The Cabinet were of the view that this proposal far exceeded the original concept of a biennial "State of the District" half day conference and were concerned at the predicted resources and financial implications of holding four events. The Cabinet requested that a further report be submitted to them to address the financial involvement and implications for the Council's Consultation and Engagement Strategy.

Councillor Downes has now resubmitted a proposal relating to the replacement of the State of the District Address with area public meetings which Executive Councillors could attend to answer questions.

The need for closer engagement with local communities and to encourage people to participate in local activities has been addressed in detail by the Structure Review Working Party who have recommended the establishment of six neighbourhood forums for the areas of Huntingdon, St Neots, St Ives, Ramsey, North and West Huntingdonshire. Whilst these will not necessarily address any perceived shortcomings of the State of the District address they will, if supported, meet the conclusions drawn by the original Scrutiny working group on the need for area forums.

The Committee is requested to consider the issue.

5.5 Scheme of Substitutions

Public Question Time at Meetings

Councillor Downes has further suggested that there should be named substitutes for all Committees on the basis that this would encourage better attendance and widen the knowledge base of Councillors. Councillor Downes also has resubmitted a scheme which would entitle the public to ask questions at the Council meeting. The Member also has requested that some attention be given to the rules of debate at Council to give more scope for debate.

It is suggested that all of these issues have been addressed by the Structure Review Working Party and will be considered separately by

the Cabinet, Corporate Governance Panel and Council in April. In brief, the Working Party has recommended –

- that public question time be introduced at Council meetings;
- that substitution be not introduced for non executive meetings of the Council; and
- Council meetings be enhanced by debates on major policy issues and single issue debates with the opposition political party invited to choose the subject for debate at one meeting per year.

The Panel is therefore requested to note these proposals.

5.6 Overview and Scrutiny Procedure Rules

Although not constitutional issues, Councillor Downes has commented that the scrutiny function should be supported by a dedicated Officer and that the Opposition should have the opportunity to take the chairmen and vice chairmen posts on both Scrutiny Panels. Both these matters have been addressed firstly in the Review of the Central Services Directorate which has provided for the creation of a post of Scrutiny Manager and secondly by the Structure Review Working Party. It was the view of the Working Party that the posts of chairmen and vice chairmen should be undertaken by the best persons for the job, irrespective of party and that no change be made to the present arrangements in terms of the appointment of the chairmen/vice chairmen of panels.

The Panel is therefore requested to note this proposal.

5.7 Codes of Financial Management and Procurement (Pages 209-234)

Changes to the Codes of Financial Management and Procurement are proposed. Amended copies of both Codes are attached as Appendices A and B. The Code of Financial Management regulates the financial management of the Council and it is important that this is a “live” document that adapts to the changing needs of the Council. There are several proposed changes to the Code and these relate to –

- employee responsibilities (Section 1.7);
- requirement for employees to consult the Monitoring Officer if there is a conflict of interests;
- manager responsibilities (Section 1.11 and Annex C);
- requirement for managers to consider surplus capacity, identify and bid for grants and maximise income;
- increase in limits (Section 3.6 and 5.8);
- an increase in the various financial limits from £50k to £60k, from £100k to £120k, from £250k to £300k and from £4k to £5k;
- assets –ongoing review (section 6.3) including - clarifying the role of the Head of Law, Governance and Property in leading a working party on asset management.

It is the view that these changes will reflect the greater need to review efficiency and maximise income and will thus ensure that the Code reflects the current needs of the Council.

Procurement

A number of changes are proposed for the Code of Procurement. The significant changes are designed to support future partnership working and the Council's policy on environment, health and safety and equalities. The minor changes are mainly technical and reflect variations in EU threshold values or EU terminology.

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

6 Part 5 - Codes and Protocols (Pages 241 – 282/8)

6.1 Members Planning Code of Good Practice

The Government has issued the Local Authority (Model Code of Conduct) Order 2007 since the Members Planning Code was originally compiled. Although the Code remains largely unchanged there is one element of it that requires amendment to take into account the revised legislation. This involves Section 2 – Development Proposals and Interests under the Members' Code.

The Code of Conduct aims to provide Members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest.

The new Code of Conduct was adopted in its entirety by the Council at its meeting held on 27th June 2007. Paragraph 12 of the Code provides that a Member with a prejudicial interest must withdraw from any meetings at which the business in which he has that interest is being considered and must not improperly influence decisions in relation to the business. However, a Member with a prejudicial interest may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose.

As the District Council now provides for public speaking at its Development Control Panel, a Member with a prejudicial interest in business to be considered at that meeting could make representations to the Panel in the same way as a member of the public. On the conclusion of the Member's address, that person would be required to leave the room. Accordingly, it is **recommended that paragraph 2 of the Code be amended as follows –**

Delete the second and third paragraph under the second bullet point and insert

“ – do consider, having declared a prejudicial interest whether you wish to make representations to the Development Control Panel in the same way as an ordinary member of the public as permitted under paragraph 12(2) of the Members' Code of Conduct;

- do leave the room immediately after you have made your representations and before any debate commences;
- do not attempt to improperly influence the meeting”.

As it is now the Corporate Governance Panel and not the not the Standards Committee to which Ombudsman’s Reports are submitted and the Standards Committee and not the Standards Board for England to which allegations of misconduct are now directed, it is **recommended that the 4th paragraph of Section 1 – Relationship to the Members’ Code of Conduct be updated accordingly.**

6.2 Employees Code of Conduct

As a result of changes of designation of Officers, it is **recommended** that –

the words in the second paragraph of the introduction – “Monitoring Officer (the Director of Central Services)” be substituted by the words “Monitoring Officer (Head of Law, Property and Governance)”.

the words in the second paragraph of the introduction – “Deputy Monitoring Officer (the Head of Legal and Estates)” be substituted by the words “Deputy Monitoring Officer (Democratic Services Manager)”.

the words “Head of Personnel Services” in paragraph 3.5 be substituted by the words “Head of People, Performance and Partnerships”.

The Code itself is a locally prepared code adopted by the Council pending the introduction of a statutory code under the Local Government Act 2000. Arising from a complaint to the Information Commissioner for the release of information held on registers of disclosures under the Code which were intended to be retained for internal inspection and inspection by the external auditors only, the Commissioner’s office has indicated that he will issue a direction requiring the Council to release the information if the Council does not do so voluntarily. The Chief Officers Management Team has therefore agreed to release the information after consultation with the employees. It is **recommended therefore that all of the words in paragraph 17.1 after the word “available” in the second line be deleted and replaced by the words “for public inspection”.**

In addition, the external auditors have raised the questions of ethics, procurement, risk etc in terms of the Council’s involvement with partnerships as part of our Use of Resources Assessment. Although this is covered by the Members’ Code of Conduct, the Employees Code of Conduct is silent on this issue. To satisfy the requirements of the auditors it is **recommended that the following paragraph be added after section 1.1 of the Code –**

“Partnerships play an increasingly important role in the development of shared objectives and in action planning to achieve priorities and objectives. Employees are expected to apply the same high standards of conduct when representing the

Council at meetings of partnership bodies and to address any issues of potential impropriety through the Council's own whistle-blowing procedure. The rules on the disclosure of information, political neutrality, fraud and corruption and hospitality and gifts contained in the Code will apply equally to an employee's representation on a partnership body."

The role of the Monitoring Officer has increased significantly under the Standards Committee (England) Regulations 2008. To ensure that the necessary arrangements to discharge the functions in relation to the initial assessment and review of allegations are effectively administered in accordance with a clear and transparent procedure, it is **recommended that a Monitoring Officer Protocol setting out the responsibilities and discretions of the Monitoring Officer be introduced and that this should form part of the District Council's Constitution and inserted into Part 5 – Codes and Protocols. A protocol is enclosed at Appendix C.**

7. Part 6 - Members Allowances Scheme (Pages 285-294)

- 7.1 As part of his submission, Councillor Downes has proposed that Members of the minority opposition party be designated shadow portfolio holders and be entitled to an allowance which would signal that the opposition had a strong role to play in the democratic process. This issue has been considered by the Independent Remuneration Panel for Members Allowances in the past and had prompted the decision to adopt a special responsibility allowance for the Leader and Deputy Leader of the principal opposition group. It is for Councillor Downes to raise this issue again with the Remuneration Panel when it revisits Members Allowances in Autumn 2010.

The Panel is requested to note this item.

8. Part 7 – Management Structure (Pages 297/8)

- 8.1 Various changes in the designation of Officers have been made since the last review of the Constitution. **It is recommended that the appropriate changes be made to the management structure shown in the Constitution to reflect those changes.**

9. Other Issues

- 9.1 In his submission, Councillor Downes has raised three further items. One relating to the Council's electoral cycle is under consideration by the Elections Panel; the second matter relating to "job descriptions" for Councillors has been addressed by the Structure Review Working Party and the last relating to member attendance and potential disqualification is a statutory provision and a matter over which the Council has no influence.

10. Recommendation

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

Background Papers:

HDC Constitution

Contact Officer:

Christine Deller, Democratic Services Manager, Tel: (01480) 388007

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 employee 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.

Any employee who becomes involved in a transaction between the Council and a third party in which he/she has an interest shall obtain advice from the Monitoring Officer as to whether decisions on this transaction shall be taken by another employee.

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

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 subject to Annex B. 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 risk management and internal control, 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 annually reviewing their services to identify any aspects where surplus capacity could be utilised to reduce the net cost of the Council's services. All identified opportunities shall be introduced unless Cabinet or both the Executive Councillor for Finance and of the relevant service consider it would not be appropriate.
- will be responsible for identifying opportunities and then bidding for grants or contributions from other bodies to support the achievement of the Council and Community objectives through their services.
- will be responsible for maximising the income from fees and charges relating to their service in accordance with Annex C.

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's control environment 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 or on any discretionary element of a S106 sum.

A Head of Service may utilise sums of money received under S106, or equivalent, agreements where there is no discretion. 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. A transfer of a sum from capital to revenue will have a revenue impact and so will count as a request for additional spending.

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 A 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 B 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 A or B.
- 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 £60k
 - Revenue to capital £60k
 - Capital to capital £60k

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 £120k
- Revenue to capital £120k
- Capital to capital £120k

Cabinet may approve budget transfers of up to:

- Revenue to revenue £300k
- Revenue to capital £300k
- Capital to capital £300k

In all cases, any previous transfers in the same financial year relating to those budgets shall be aggregated for determining whether the limit has been exceeded, however once the impact of any approval has been included in a relevant financial report to Council, the Cabinet's limit will be re-set.

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. Revenue expenditure will only, normally, be rephased to later years if it relates to a specific project with identified funding in the current year, that has been delayed for reasons outside of the control of the relevant Head of Service. The amount is further limited by the net underspending on that Head of Service's relevant budget(s) in the current year.

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 will 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 Customer Services to ensure that the sums are properly recorded, receipted and banked.

The Head of Financial 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 Financial 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 Assets and Liabilities**

Any Officer who is aware of a material and outstanding contingent asset or 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 Customer Services, or in his/her absence the Head of Financial Services, is authorised to write-off debts with an individual value of up to £5,000, 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 of 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 **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.

6.3 **Ongoing Review**

The Head of Legal and Estates will lead a working group of officers that will maintain an ongoing review of the management, control and recording of assets.

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, and follow taking advice from relevant specialist colleagues in appropriate cases e.g. IT, vehicle management, legal, procurement.

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 Disposal

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, and follow taking advice from relevant specialist colleagues in appropriate cases e.g. IT, vehicle management, legal, procurement.

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.

6.6 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.

6.7 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.

6.8 Valuations

In order to comply with accounting requirements assets will be re-valued at five yearly intervals by an appropriately qualified person according to the type of asset. Interim valuations or updating by reference to a suitable index will be necessary in the intervening years.

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.

BUDGETS FOR PAY

(Pay is deemed to include, NI and Pension Contributions for the purpose of this annex)

1. The Council does not provide for a 100% of the costs of its employees. 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 employees to be on a lower point in the grade than the person who left.
2. Obviously it is unlikely that each pay budget will be equally affected in any particular year and therefore, to simplify budget monitoring, each pay budget includes 100% of employee costs but there is a negative, centrally held, contingency that represents the saving that the Council's overall budget is based on. This contingency is based on 2.5% of the pay for most services less a sum for recruitment costs (advertising and interview expenses).
3. Therefore no use of savings, virement or rephasing relating to a pay budget, whether temporary or permanent, will be permitted unless this annex is complied with.

Employees Leaving

4. In order to maximise the likelihood of achieving this saving a Head of Service must, whenever an employee gives their notice, determine whether:
 - a. the post is kept vacant for a period before a decision is made,
 - b. the post can be deleted,
 - c. a restructuring should be proposed,
 - d. the post should be filled at the end of a defined period,
 - e. it should be filled as soon as possible,
 - f. it should be filled as soon as possible and temporary employees or consultants are engaged to provide cover in the meantime.
5. In deciding on which option to take the Head of Service should take appropriate HR and financial advice. The decision must include consideration of any need for temporary or permanent regradings, acting up allowances, honoraria, employees or consultants. Allowance must also be made for an appropriate saving, to help achieve the contingency budget, as determined by the Head of Financial Services.
6. Heads of Service will also need to liaise with HR to arrange recruitment advertising and ensure that the recruitment arrangements comply with the process agreed by Employment Panel.

Other Adjustments and Virement

7. If any other proposal is made to transfer (in accordance with paragraph 3.6) or rephrase (in accordance with paragraph 3.7) a pay budget, a budget reduction, as determined by the Head of Financial Services, shall be made in order to allow the contingency budget to be reduced.

Exceptions

8. If the Head of Service can demonstrate to their Director the **critical** nature of maintaining immediate service cover in certain key work areas then the requirements of paragraph 4 above will not apply and the saving/budget reduction may be reduced or nil. Examples where this might apply would be if vacancies would result in insufficient employees with the necessary abilities or skills to run refuse rounds or to safely open swimming pools. Agency, or equivalent employees, must be available with the necessary skills and/or abilities.

9. 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 net additional costs would become unavoidable the saving/budget reduction may be reduced. Examples where this might apply would be dealing with benefit applications or collecting council tax income. Agency, or equivalent employees, must be available with the necessary skills and/or abilities.

MAXIMISING INCOME FROM FEES AND CHARGES

The Manager responsible for a budget is:

- responsible for annually reviewing their services to identify any aspects that are not currently, but could be charged for. Charges for such aspects shall be introduced unless Cabinet **or** both the Executive Councillor for Finance and of the relevant service consider it would not be appropriate.
- 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 the Chairman of any relevant Panel. In doing so, they:
 - shall ensure that relevant legislation that specifies the charges to be made or constrains them in any way is complied with.
 - shall, after having regard to the charges of any alternative service providers with whom the Council is competing, seek to maximise income, net of applicable costs, unless it will have a clearly detrimental impact on the achievement of the Council or Community objectives.
 - may introduce differential pricing to particular client groups where these are expected to stimulate demand and generate additional net income which would otherwise not be obtained.
 - may set prices lower than could be reasonably achieved if this is demonstrably the most cost effective way of achieving Council or Community objectives and the necessary funding is available. Use of this option requires approval of Cabinet **or** both the Executive Councillor for Finance and of the relevant service.
 - may set fees and charges that allow an element of discretion if it can be demonstrated that this will lead to an overall benefit to the Council. It is important that any use of discretion is recorded so that it can be clearly shown that decisions have been made fairly and consistently.
 - shall keep appropriate records to demonstrate that the required actions have been undertaken and how the decisions were reached.

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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, commissioning, 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 of 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	€206,000	£ 139,893
Services	€206,000	£ 139,893
Works	€5,150,000	£ 3,497,313

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 Indicative Notice (IN). The publishing of an IN does not commit the Council, but can reduce timescales if the requirement is subsequently advertised through OJEU.

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

Contract	Threshold Euros	Threshold £ (Approx)
Supplies	€750,000	£509,317
Services	€750,000	£509,317
Works	€5,150,000	£ 3,497,313

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 -

- ◆ Common Procurement Vocabulary (CPV) code. The CPV is a standardised single classification system for public procurement to identify the subject of a contract.
- ◆ Service Provider Nationality.
- ◆ Award Procedure:
- ◆ Justifications if Negotiated procedure.
- ◆ Value.

3. CONTRACTS REGISTER

3.1 Heads of Service shall keep a record, using the Contracts register, of -

- ◆ all tenders and quotes (greater than £5K)
- ◆ the reasons (if appropriate) for not advertising on the Council's latest Opportunities Internet Site
- ◆ 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.
- ◆ contract renewal date (if appropriate),
- ◆ File or other reference to the contract and location of the hard copy.

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 publish details of the contract or framework 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 some categories are managed corporately by specialist areas. The procurement manager shall provide a list of specialist categories and Heads of Services shall ensure all requirements for such categories are referred to the relevant specialist.

5.3 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. 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	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 made from a Purchasing Agent (ESPO, OGC Buying Solutions)

- ◆ where there is a single supplier 'call-off contract' or catalogue created with fixed prices, or

- ◆ where the contract is created to our requirements, or
- ◆ where there is a multi-supplier framework and further competition has been undertaken through competitive quotes.

(b) for purchases through local authority, government body or agency, police, health or other similar public authority, where the procurement rules of that organisation have been adopted, and the contract is created in co-operation, agreed joint requirements or partnership.

(c) 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 invitations to 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 Selection / Evaluation Criteria

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:

- (a) include approved contract terms in accordance with paragraph 11.2 of this Code;
- (b) be based on a definite written specification, which shall include:
 - ◆ Environmental performance including, where appropriate, as a minimum:

- ◆ low energy and water consumption.
- ◆ elimination of substances hazardous to health and the environment.
- ◆ Contractor's Health and Safety Scheme (where applicable) or equivalent health and safety standard.
- ◆ Appropriate Equalities policy and procedures.

(c) include award criteria, which if it is not to be the lowest price, shall be agreed by the appropriate Director;

(d) include specific weightings applied to individual award criteria.

(e) if appropriate, include a requirement for a performance bond and liquidated damages.

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.

Tender Option	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. 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.

	<ul style="list-style-type: none"> • 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. • 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 • No satisfactory alternative is available. If the Single Tender option is used, the Head of Service shall: <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.
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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, either -

- ◆ 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

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- ◆ 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.
- ◆ Purchasing Agency (eg ESPO, OGC BuyingSolutions) 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 the Unique Reference Number (URN) from the Contract Register, which is to be used in all correspondence. Any Division or Service reference may be included in addition to the URN 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.

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MONITORING OFFICER PROTOCOL

For the discharge of functions in relation to the initial assessment and review of an allegation that a member of Huntingdonshire District or the Parish in the District has failed to comply with the adopted Code of Conduct

1. RECEIPT OF ALLEGATIONS

- 1.1 The Monitoring Officer shall ensure any allegation made in writing that a Member of Huntingdonshire District Council or one of the Parishes in the District may have failed to comply with their Authority's adopted Code of Conduct is referred to him/her immediately upon receipt.
- 1.2 The Monitoring Officer shall maintain a register of such allegations to ensure that the District Council can comply with its obligations under the relevant legislation.
- 1.3 Complaints shall only be valid where they are signed by the complainant, but the Monitoring Officer is authorised to maintain the confidentiality of the identity of the complainant where and for so long as in his/her opinion that would be in the public interest.

2. NOTIFICATON OF RECEIPT OF ALLEGATIONS

- 2.1 All relevant allegations must be assessed by the Referrals (Assessment) Sub-Committee, so the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant Member to observe the Code of Conduct other than by reporting it to the Referrals (Assessment) Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, he/she shall ensure that the matter is dealt with under a more appropriate procedure, for example where it is really a request for service from the Authority, a statement of policy disagreement, a legal claim against the Authority or a complaint against an Officer of the Authority.
- 2.2 Following receipt of the allegation and where the allegation does appear to be a complaint of misconduct against a relevant Member, the Monitoring Officer will –
 - (i) acknowledge receipt of the allegation and confirm that the allegation will be assessed by the Referrals (Assessment) Sub-Committee at its next convenient meeting;
 - (ii) notify the Member against whom the allegation is made of receipt of the complaint, together with a written summary of the allegation and the date upon which the allegation will be assessed by the Referrals (Assessment) Sub-Committee.

Where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation, he/she shall consult the Chairman of the Referrals (Assessment) Sub-Committee, or in his/her absence the Chairman of the Standards Committee, and may then decide that no such advance notification shall be given;

- (iii) collect such information as is readily available that would assist the Referrals (Assessment) Sub-Committee in its function of assessing the allegation;
- (iv) seek local resolution of the matter where practicable, in accordance with paragraph 3 below;
- (v) place a report, including a copy of the allegation, such readily available information and his/her recommendation as to whether the allegation discloses an apparent failure to observe the Code of Conduct, on the agenda for the next meeting of the Referrals (Assessment) Sub-Committee.

3. LOCAL RESOLUTION

- 3.1 Local resolution is not an alternative to reporting the allegation to the Referrals (Assessment) Sub-Committee, but can avoid the necessity of a formal local investigation.
- 3.2 Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he/she shall approach the Member against whom the allegation has been made and ask whether he/she is prepared to acknowledge that his/her conduct was inappropriate, and whether he/she would be prepared to offer an apology or undertake other appropriate remedial action. With the consent of the Member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is satisfied by such apology or other remedial action. The Monitoring Officer should then report to the Referrals (Assessment) Sub-Committee as required, and at the same time report the response of the Member concerned and of the complainant. Where the Member has acknowledged that his/her conduct was inappropriate, and where the complainant is satisfied with the proffered apology or remedial action, the Referrals (Assessment) Sub-Committee might take that into account when considering whether the matter merits investigation.

4. REVIEW OF DECISIONS NOT TO INVESTIGATE

- 4.1 Where the Referrals (Assessment) Sub-Committee has decided that no action be taken on a particular matter, the Monitoring Officer shall advise the complainant of the decision, and the complainant may then within thirty days of receipt of notification request that the Review Sub-Committee review that decision.
- 4.2 Whilst the review shall normally be a review of the reasonableness of the original decision rather than a reconsideration, the Monitoring Officer shall report to the Review Sub-Committee the information which was provided to the Referrals (Assessment) Sub-Committee in

respect of the matter, a summary of the decision of the Referrals Sub-Committee and any additional relevant information which has become available prior to the meeting of the Review Sub-Committee.

5. LOCAL INVESTIGATION

- 5.1 It is recognised that the Monitoring Officer will not personally conduct a formal local investigation.
- 5.2 It will be for the Monitoring Officer, where appropriate after consultation with the Chairman of the Referrals (Assessment) Sub-Committee, to determine who to instruct to conduct a formal local investigation and this may include another senior Officer of the Authority, a senior Officer of another Authority or an appropriate experienced consultant.