

## Part C – Codes and Protocols

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## 31 Code of Conduct for Members

### Application of the Code

1. The Code applies to the Mayor, councillors and co-opted members of the Council, collectively referred to as member(s) in the remainder of this document.
2. It applies in all aspects of your activities as a member, including when acting on Council business or when you are perceived by the public to be acting as a member. The Code does not seek to regulate what you do in your private and personal life.
3. The obligations set out in this Code are complementary to related Codes and Protocols which form part of the Council's governance arrangements.

### Purpose of the Code

4. The Code of Conduct will assist you in the discharge of your obligations to the Council, local communities and the public at large by:
  - a) setting out the standards of conduct that are expected of you; and
  - b) providing the openness and accountability necessary to ensure public confidence in the way in which you perform your public duties.

### General Expectations of Conduct

5. You are expected to observe the following general principles of conduct. These principles will be taken into consideration in determining allegations of a breach of this Code.
  - a) **Selflessness:** you should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
  - b) **Integrity:** you should not place yourself in situations where your integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
  - c) **Objectivity:** you should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
  - d) **Accountability:** you are accountable to the public for your actions and the manner in which you carry out your responsibilities and should co-operate fully and honestly with any scrutiny appropriate to your particular office.
  - e) **Openness:** you should be as open as possible about your actions and those of the council and be prepared to give reasons for those actions.

- f) **Honesty:** – you should be truthful in your council work and avoid creating situations where your honesty may be called into question.
- g) **Leadership:** you should promote and support these principles by leadership and by example and should act in a way that secures or preserves public confidence.

### **Rules of Conduct**

- 6. You must act solely in the public interest. You should promote equality and not discriminate unlawfully against any person. You should treat all people with respect, you should not bully or harass any person and you should respect the impartiality and integrity of the Council's officers.
- 7. You should not improperly confer (or seek to confer) an advantage or disadvantage on any person. You should not act to gain financial or other benefit for yourself, your family, your friends or your business associates.
- 8. You should not place yourself under a financial or other obligation to any individual or organisation that might seek to influence the performance of your duties as a member.
- 9. You should act to ensure Council resources are used prudently. When using or authorising the use by others of Council resources, you must ensure that they are used only for legitimate Council purposes and not for any other purpose. In particular, they must not be used improperly for political purposes (including party political purposes).
- 10. You should promote and support high standards of conduct by leadership and example.
- 11. You should make decisions on merit, including when awarding contracts, making appointments, or recommending individuals for rewards or benefits.
- 12. You are accountable to the public for your actions and the manner in which you carry out your responsibilities and should co-operate fully and honestly with any scrutiny appropriate to your office.
- 13. You should be as open as possible about your decisions and actions and those of the Council. You should be prepared to give reasons for decisions and have regard to the advice of the Council's statutory officers before making any decision.
- 14. You should take account of the views of others, including your political group, but you must reach your own conclusions and act in accordance with those conclusions.

15. You must not disclose confidential information unless you are required by law to do so, or you have the consent of the person authorised to give it, or disclosure is reasonable and in the public interest and made in good faith and not for an ulterior motive.
16. You must ensure that your use of allowances, facilities and services provided at public expense is strictly in accordance with any rules or requirements set by the Council.
17. You must comply with any formal standards investigation and you should not make trivial or malicious allegations of breach of this Code.
18. You must comply with the Council's Social Media Policy.

### **Members' Interests**

19. There are two categories of interest that you must register with the Monitoring Officer. These are:
  - Disclosable pecuniary interests (DPI's); and
  - Non-DPI interests that the Council has decided should be registered (Non-DPI's)
20. A DPI is defined by statutory regulation. You must within 28 days of taking office as a member, notify the Monitoring Officer of any DPI to be included in the Register of Members' Interests. If you fail to register a DPI it is a criminal offence.
21. DPI's also includes your partner's interests. A partner is your spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners. You and your partner are referred to in the statutory definition of a DPI as 'relevant person'.

### **22. The categories of DPI are:**

(a) Employment, office, trade, profession or vocation

Any employment, office, trade, profession or vocation carried on by a relevant person for profit or gain.

(b) Sponsorship

Any payment or provision of any other financial benefit (other than from the Council) made or provided within the 12 months prior to the date of giving

notice of interest for inclusion in the register in respect of any expenses incurred by the member in carrying out duties as a member, or towards the election expenses of the member.

This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

(c) Contracts

Any contract which is made between a relevant person (or a firm in which they are a partner, or a body corporate in which they are a director or in the securities of which body corporate they have a beneficial interest) and the relevant authority:-

under which goods or services are to be provided or works are to be executed and which has not been fully discharged.

(d) Land

Any beneficial interest in land which is within the Borough.

(e) Licences

Any licence (alone or jointly with others) to occupy land in the borough for a month or longer.

(f) Corporate tenancies

Any tenancy where (to the member's knowledge):-

the landlord is the Council; and

the tenant is a body in which the relevant person is a firm in which they are a partner, or a body corporate in which they are a director or in the securities of which body corporate they have a beneficial interest.

(g) Securities

Any beneficial interest in securities of a body where:-

that body (to the member's knowledge) has a place of business or land in the borough; and

either:-

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

23. **Non DPI's - other interests that the Council has decided should be registered.** You must also within 28 days of taking office as a member, notify the Monitoring Officer of such Non DPI interests that the Council has decided you should be included in the register of Members' Interests. These are:

(a) Membership or position of control or management in:-

Any body to which you have been appointed or nominated by the Council;  
and/or

Any body exercising functions of a public nature (described below) or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party

There is no definitive list of bodies exercising functions of a public nature, but those bodies which:-

- carry out a public service, or
- take the place of local/central government (including through outsourcing); or
- carry out a function under legislation or in pursuit of a statutory power;
- or
- can be judicially reviewed,

are likely to be bodies carrying out functions of a public nature. They include bodies such as government agencies, other councils, health bodies, council owned companies and school governing bodies.

24. You must ensure that your entries in the Register of Members' Interests are kept up to date and must notify the Monitoring Officer of any change to your interests within 28 days of the change arising. For a DPI remember this also includes your partner's interests.

### **Gifts and Hospitality**

25. Any gift or hospitality offered to you (even if declined) with an estimated value of £25 or more must be included in the Register of Gifts & Hospitality kept by the Monitoring Officer within 28 days of the offer being made.

### **Declaration of Interests – DPI's**

26. If you have a DPI in an item of Council business you may not participate in any discussion of, vote on, or discharge any function relating to the matter, unless a dispensation has been granted under Section 33 Localism Act 2011.

27. If you are present at a meeting where you have a DPI in an item of business on the agenda you must:
- (a) Disclose to the meeting the existence and nature of the interest at the start of the meeting and specify the agenda item to which the interest relates. You must also leave the room (including any public viewing area) for the duration of consideration and decision on the agenda item and not seek to influence the debate or decision in respect of the item of business.
  - (b) If the DPI is not already included in your register of interests you must within 28 days of the meeting notify the Monitoring Officer of the interest for inclusion in the register.

N.B. If you fail to disclose a DPI it is a criminal offence.

### **Declaration of Non-DPI's**

28. If you are present at a meeting and have registered a non-DPI in a matter which is to be discussed at the meeting, you must declare the nature of the interest at the earliest opportunity and before the matter is considered. You may stay in the room and participate in consideration of the matter and vote on it unless:
- (a) a reasonable person would think that your interest is so significant that it would be likely to impair your judgement of the public interest. If so, you must withdraw and take no part in consideration or discussion of the matter.

### **Declaration of Interests not included in the Register of Members' Interests**

29. Occasions may arise where you have an interest in a matter being considered at a meeting which is not a DPI or Non-DPI that you are required to include in the Register of Members' Interests. An example would be where the decision on the agenda item would affect the wellbeing of you, your family, or a close friend or associate of yours more than it would anyone else living in the local area.
30. In this situation you should consider whether a reasonable person would think that your interest is so significant that it would be likely to impair your judgement of the public interest. If so, you must withdraw and take no part in consideration or discussion of the matter.

Note: The provisions of paragraphs 26 - 30 apply not only to meetings but to circumstances where a member makes a decision alone.

### **Sensitive DPI's**

31. You should notify the Monitoring Officer if you feel that a DPI you are required to register should be treated as sensitive. The Monitoring Officer may agree to treat the DPI as sensitive if satisfied that registration/declaration of the DPI could lead to you, or a person connected with you, being subject to violence or intimidation. If the Monitoring Officer agrees the DPI is sensitive you will be obliged to register it but details will not be disclosed in the published version of the register and when attending a meeting you will only need to declare that a DPI exists and will not be required to give details of the interest itself.

### **DPI Dispensations**

32. If you have a DPI in a matter coming before a meeting of the authority, you can make a written request to the Monitoring Officer beforehand for a dispensation, which may allow you to participate in the discussion and vote. A dispensation may be granted in the following circumstances:
- (a) Where members of the decision-making body have disclosable pecuniary interests in a matter that would “impede the transaction of the business”.
  - (b) That without the dispensation, the representation of different political groups on the body conducting the business would be so upset as to alter the outcome of any vote on the matter.
  - (c) That the authority considers that the dispensation is in the interest of persons living in the authority's area.
  - (d) That the authority considers that it is otherwise appropriate to grant a dispensation.
33. Any grant of dispensation must specify how long it will last, up to a maximum of 4 years. Dispensations under (a) and (b) above shall be decided by the Monitoring Officer, those in (c) and (d) shall be decided by the Monitoring Officer in consultation with the Chair of the Standards (Advisory) Committee.

### **Access to Information**

34. You must not disclose confidential information given to you in the course of your duties without the consent of the person entitled to give it unless:-
- there is a legal requirement to disclose the information, or
  - the disclosure is to a third person for the purpose of obtaining professional advice and the third party agrees not to disclose it, or



- the disclosure is reasonable, in the public interest, made in good faith and made in accordance with any reasonable requirements specified by the Council in relation to the disclosure.

35. You must not prevent access to information to which another is entitled by law.

### **Protocols**

36. This Code should be read in conjunction with the following additional Codes and Protocols which have been approved by the Council:

- Planning Code of Conduct
- Licensing Code of Conduct
- Member/Officer Protocol
- Employees' Code of Conduct

### **Complaints**

37. Any alleged breach by a member of the provisions of this Code will be dealt with in accordance with the arrangements set out in Appendix A to the Code.

**NB a breach of any of the statutory requirements relating to the registration and declaration of disclosable pecuniary interests may result in prosecution. If you need of advice about the application of this Code you should contact the Monitoring Officer.**

**LONDON BOROUGH OF TOWER HAMLETS**  
**ARRANGEMENTS FOR DEALING WITH COMPLAINTS OF BREACH OF THE**  
**CODE OF CONDUCT FOR MEMBERS**  
**Arrangements agreed by Council on 5th December 2016.**

**Introduction**

The Council has adopted a Code of Conduct for Members which is available on the Council's website and on request from the Monitoring Officer.

In accordance with section 28 of the Localism Act 2011, these arrangements set out how an allegation may be made that the Mayor, an elected Member or a Co-opted Member of the London Borough of Tower Hamlets has failed to comply with the Council's Code of Conduct for Members and how the Council will deal with such allegations.

These arrangements also require that the Monitoring Officer shall ensure that the Council appoints at least one Independent Person and at least one reserve Independent Person for the purposes of meeting the statutory requirements of the Localism Act 2011.

Any reference in these arrangements to the Monitoring Officer shall include a deputy Monitoring Officer. The timelines set out are for guidance and shall be observed where practicable but may be extended by the Monitoring Officer as necessary if they cannot be complied with by any relevant party due to sickness, holidays or other reasonable cause.

**Complaints**

1. Allegations concerning possible breaches of the Code of Conduct for Members should be made in writing to the Monitoring Officer.
2. On receipt of a complaint the Monitoring Officer shall within five working days acknowledge receipt to the complainant. The Monitoring Officer will also within five working days and on a confidential basis, inform the subject Member of the substance of the complaint and the identity of the complainant (unless the Monitoring Officer considers that such notification would prejudice the proper consideration and investigation of the complaint).
3. Complainants must provide their name and postal address when submitting a complaint. Anonymous complaints will not be considered unless the Monitoring Officer decides (after consultation with the Independent Person) that the complaint raises a serious issue affecting the public interest which is

capable of investigation without the need to ascertain the complainant's identity.

4. A complainant when making an allegation should specify the identity of the person(s) alleged to have breached the Code, the conduct that is alleged to give rise to the breach, the evidence that supports the allegation and the names (and contact details) for any potential witnesses able to give direct evidence of the events complained about.

### **Assessment of Complaints**

5. The Monitoring Officer shall, after consultation with the Independent Person and within ten working days of receiving the complaint:
  - a) Decide whether or not a complaint merits formal investigation and where appropriate arrange for an investigation; OR
  - b) Decide to attempt to facilitate informal resolution of the complaint (such attempt shall be subject to a four week time limit).
6. In making this determination the Monitoring Officer may at their discretion report the matter to the Investigation & Disciplinary Sub-Committee (IDSC) of the Standards (Advisory) Committee for consideration and/or consult other persons as appropriate.
7. The Monitoring Officer may decide not to refer the matter for investigation where:
  - (a) The allegation does not demonstrate any potential breach of the Code (because for example it relates to dissatisfaction with a Council decision/service or relates to events which occurred when the person complained about was not acting in an official capacity).
  - (b) The event(s) complained about took place more than six months ago and there are no valid reasons for the delay in bringing the complaint, such as fresh evidence not available at the earlier date or only recently discovered.
  - (c) The allegation is about someone who is no longer the Mayor or a Member/Coopted Member.
  - (d) The complainant has failed to provide the information specified in paragraph 4 above or any other information reasonably requested by the Monitoring Officer.
  - (e) The same or a similar allegation has been investigated and determined.
  - (f) The Mayor, Member or Co-opted Member has already accepted they made an error in their conduct and/or has apologised for their conduct and the Monitoring Officer considers the matter would not warrant a more serious sanction.
  - (g) The allegation is politically motivated and/or 'tit for tat'.

- (h) The allegation is not considered sufficiently serious to merit the cost to the public of carrying out an investigation.
  - (i) The Monitoring Officer has facilitated an informal resolution of the complaint (see below) and the Mayor or Member/Co-opted Member complained about has offered to take remedial action that the Monitoring Officer considers appropriate in all the circumstances (for example by apologising to the complainant and/or undertaking training or issuing a statement of factual correction).
8. Where the Monitoring Officer decides to reject a complaint they shall inform the complainant in writing giving the reasons for rejection.

### **Investigation and Monitoring of Complaints**

9. If a complaint of failure to comply with the Code is referred for investigation the Monitoring Officer shall appoint an investigator or complete the investigation him/herself. Such investigation should whenever possible be completed within two months of the decision to refer the matter for investigation. The Monitoring Officer may extend this period by up to a further two months where they feels it is necessary to ensure a proper and adequate investigation. The Monitoring officer may refer a complaint for investigation by the Monitoring Officer in a different authority where they have a conflict of interest.
10. The Monitoring Officer will keep the complainant and the subject Member informed as to progress at appropriate intervals and shall inform them of any extension to the period for the investigation.
11. The Monitoring Officer will report quarterly (or less frequently if there are no complaints to report) to the Standards (Advisory) Committee on the number and nature of complaints received and action taken as a result. This will include details of complaints that have been rejected by the Monitoring Officer and any extension made to the period for an investigation of a complaint.
12. Where any investigation into a complaint of breach of the Code finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer shall within four weeks of receipt of the investigation report, consult with the Independent Person and decide whether the matter should be closed without reference to a Hearings Sub-Committee. The Monitoring Officer shall provide a copy of the report and findings of the investigation which shall be kept confidential to the complainant and to the Member concerned and shall report the matter as part of the quarterly report to the Standards (Advisory) Committee for information. The Monitoring Officer may also seek advice from the IDSC before deciding that a matter should be closed without reference to the Hearings Sub-Committee.

13. Where an investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer following consultation with the Independent Person, may seek local resolution of the complaint. If local resolution succeeds the Monitoring Officer shall report the matter as part of the quarterly report to the Standards (Advisory) Committee. If local resolution does not succeed or if following consultation with the Independent Person, the Monitoring Officer considers that it is not appropriate to seek local resolution, the Monitoring Officer shall report the investigation findings to a Hearings Sub-Committee of the Standards (Advisory) Committee for local hearing and determination. The Hearings Sub-Committee will whenever practicable be convened within one month of the Monitoring Officer receiving the investigation report.

### **Hearings Sub-Committee**

14. The Hearings Sub-Committee will consider the investigation report and any submissions from the subject Member and determine:
- (a) If there has been a breach of the Code of Conduct having taken into account the views of the Independent Person; and if so
  - (b) Whether any sanction is appropriate having taken into account the views of the Independent Person.
15. Possible sanctions may include any of the following:-
- (a) Publication of the Sub-Committee's decision.
  - (b) Reporting the Sub-Committee's decision to Council.
  - (c) Requesting the Monitoring Officer to arrange training for the Member (subject to the Member's agreement).
  - (d) Issuing a censure or reprimand which may also be reported to Council.
  - (e) Requiring the Member to contact the Council and officers via specified point(s) of contact.
  - (f) Withdrawing facilities provided to the Member by the Council, such as a computer or internet access.
  - (g) Excluding the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Executive, Committee and Sub-Committee meetings (as appropriate).
  - (h) Recommending to the Member's Group Leader that they be removed from any or all Committees or Sub-Committees of the Council.
  - (i) Recommending to the Mayor that the Member be removed from the Executive, or removed from particular portfolio responsibilities.
  - (j) Recommending to Council or the Mayor as appropriate the removal from outside appointments to which the Member has been appointed or nominated.

(k) Recommending to Council that the Member be removed from any or all Council Committees or Sub-Committees.

16. In determining any recommended sanction the Hearings Sub-Committee may take into account any previous breach by the Member concerned and/or their compliance with any previous sanction applied.

## LONDON BOROUGH OF TOWER HAMLETS BULLYING AND HARASSMENT POLICY

### **Introduction:**

Everybody has a right to be treated with dignity and respect, and to live and work in an environment which is free from bullying, harassment, discrimination and victimisation.

Bullying, harassment, discrimination and victimisation (either directly or indirectly) are unacceptable behaviours and should not be tolerated. As an elected member, it is important to recognise the impact such behaviour can have on any individual experiencing it, as well as on the London Borough of Tower Hamlets as a public body, in terms of morale and operational effectiveness.

You are responsible for your own behaviour and must ensure that you are aware of and comply with the provisions concerning bullying and harassment in this Code of Conduct for Members and Member/Officer Relations Protocol of the Constitution.

### Definition

Bullying includes offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

### Examples of harassment:

- Unwelcome physical contact such as touching or invading personal space;
- Inappropriate remarks about someone's appearance, lewd comments, offensive jokes (including ones of a racial or sexual nature);
- Intrusive questioning about a person's sexual practices, sexual orientation or religious beliefs; and
- Sending unwelcome emails, messages or notes.

### Examples of bullying:

- Deliberately making someone's work life difficult, such as humiliating or ridiculing other members or officers about their work, constantly criticising the work of other members or spreading malicious rumours and gossip;
- Intimidating behaviour, including verbal abuse and making threats;
- Making false accusations about others;
- Physical violence; and

- Deliberately excluding someone from conversations, work or social activities, in which they have a right or legitimate expectation to participate.

### **Your responsibilities as a member:**

- Behave in accordance with the Code of Conduct for Members in all situations where you act as a councillor, including representing London Borough of Tower Hamlets and/or your work on official business and when using social media.
- Ensure that you are familiar and comply with the terms of any policy the London Borough of Tower Hamlets has issued on bullying and harassment.
- Treat all individuals with courtesy and respect when carrying out duties as a member. Do not participate in or condone acts of harassment, discrimination, victimisation or bullying.
- Be aware of the influence the role of a member brings to ensure that you demonstrate respect for others and encourage colleagues to do the same.
- Be aware of the role officers play and ensure you are not compromising this by behaving in a manner that could make them feel threatened or intimidated, which could prevent them from undertaking duties properly and appropriately. You must not bring undue influence to bear on an officer to take certain action, particularly if it is contrary to the law or the council's policies or procedures.
- Become aware of what is meant by bullying or harassment in the event you are made aware through your position of victims to this kind of behaviour.
- Encourage complainants to seek support and assistance and make it clear you will assist in offering assistance.
- Challenge inappropriate behaviour as it happens and consider making a complaint.

### **Hypothetical Scenarios**

These examples are a list of examples demonstrating behaviour which as a member, you should prevent either in yourself or others:

- Member A disagrees with the council procedure for enforcing parking breaches. They use disrespectful and abusive language towards THEOs in the borough and seek to use position as member improperly in relation to parking offences they commit.



- Member B makes threatening comments suggesting loss of employment or promotion and/or physical violence to officers of the council at both junior and senior grades if they do not take action on certain incidents occurring in their ward.
- Member C disagrees with a decision passed at full council and makes disrespectful comments about members involved in the motion on their personal blog and through tweets.

## 32 Member / Officer Relations' Protocol

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#### 1. INTRODUCTION

- 1.1 Councillors and officers are indispensable to one another and mutual respect between both is essential for good local government. Together, they bring the critical skills, experience and knowledge required to manage an effective public sector organisation. Councillors provide a democratic mandate to the Council, whereas officers contribute the professional expertise needed to deliver the policy framework agreed by Councillors.
- 1.2 The protocol is part of the Council's ethical framework and should be read in conjunction with the Council's Constitution, the Code of Conduct for Members, disciplinary codes which regulate the conduct of officers and other relevant codes and guidance.
- 1.3 This Protocol seeks to define what should be considered a proper working relationship between Councillors and officers in Tower Hamlets and to provide a framework within which confidence in the machinery of local government can be maintained. It contains interpretation and guidance on some of the issues which commonly arise. It cannot cover every matter which will arise in council life but it reflects an approach and sets standards which will serve as a guide to dealing with other issues. It is intended to guide Councillors and

officers and explain what they can expect of each other. It also explains what to do when things go wrong.

- 1.4 This protocol also applies to co-opted members of committees and also to consultants and agency staff working for the Council, to whom a copy will be supplied. With regard to associates from partnership organisations, where their organisation has no code of conduct, it is expected they will abide by the principles of Tower Hamlet's code and this protocol.
- 1.5 Councillors appointed to outside bodies or partnership organisations as representatives of Tower Hamlets Council need to be aware that the Code of Conduct for Members applies to these appointments. However, Councillors are advised to be aware that other conduct arrangements of the outside body are likely to exist. In those circumstances, Councillors should comply with both sets of conduct arrangements, unless the Code of Conduct for Members conflicts with the lawful obligations of the outside body.
- 1.6 A failure to abide by this Protocol by Councillors is likely to be a breach of the Code of Conduct for Members and may result in a complaint being made to the Monitoring Officer. As to officers, a failure to abide by this Protocol may result in a disciplinary investigation.
- 1.7 Any reference to 'Councillor' or 'Councillors' in this Protocol, or any appendices or related Codes/ Protocols, means the Mayor, elected and co-opted members. This Code applies at all times when Councillors act in their capacity as Councillors (or claim to act or give the impression of acting in their capacity as a Councillor).
- 1.8 'Officers' and 'staff' mean all persons employed by the Council: whether full or part time; fixed term contract; agency; or consultant.
- 1.9 A Councillor in need of advice about the application of this Protocol should contact the Monitoring Officer, whereas an officer in need of advice about the application of this Protocol should contact their line manager in the first instance.

## **2. ROLES OF COUNCILLORS AND OFFICERS**

- 2.1 Councillors and officers are indispensable to one another and mutual respect between both is essential for good local government. Together, they bring the critical skills, experience and knowledge required to manage an effective public sector organisation but their responsibilities are distinct.

Councillors

- 2.2 Councillors are democratically accountable to residents of their Wards and serve only so long as their term of office lasts. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.
- 2.3 All Councillors have responsibilities to determine the policy of the Council, monitor its performance, represent the Council externally and act as advocates on behalf of their constituents.

#### Officers

- 2.4 Officers are employed by and are accountable to the Council as a whole. With the exception of Political Assistants and the Mayor's Assistant, officers work to the instructions of their senior officers, not individual Councillors or Political Groups.
- 2.5 Officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
- 2.6 Officers have a duty to keep Councillors of all political groups fully informed about developments of significance in relation to council activities.

### **3. THE RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS**

- 3.1 Bad relations between Councillors and officers are counter-productive to good governance and therefore the conduct of Councillors and officers should be such as to instil mutual trust and respect. Councillors and officers should understand and respect each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.

#### Obtaining or granting favours

- 3.2 The Code of Conduct for Members emphasises the need for Councillors to avoid behaviour which could be viewed as conferring an advantage or disadvantage on an officer. Councillors must not seek personal favours from officers. Officers must not be tempted to give favours to please a Councillor. An example of favour seeking would be asking whether a Councillor's parking ticket could be withdrawn or whether an application for a service could be expedited. Similarly officers must not seek to circumvent agreed staff consultative procedures by lobbying Councillors on matters which directly concern them as employees

#### Councillor involvement in officer issues

- 3.3 Issues relating to the appointment, management and dismissal of most officers are reserved by law to the Head of Paid Service and officers appointed by him/her. Councillor involvement in employment issues generally, including where they relate to senior officers, is set out in the Local Authorities (Standing Orders) (England) Regulations 2001.
- 3.4 Occasions may arise where officers try to involve Councillors in day-to-day staff/ management issues. Councillors should strongly discourage such approaches. Officers should be advised to pursue matters with their management through the established procedures for resolving grievances etc. Officers must not raise matters concerning their employment with individual Councillors; to do so may result in disciplinary action being taken.

#### Personal Familiarity

- 3.5 Personal familiarity between Councillors and officers can create the suspicion of improper conduct, however unfounded and can undermine public confidence in the Council. Whilst it is clearly important that there should be a close working relationship between when officers and Cabinet members or chairs of Committees, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question, the officer's ability to deal impartially with other Councillors and other party groups.
- 3.6 Informal and collaborative two-way contact between Councillors and officers is encouraged; personal familiarity can damage the relationship, as might a family or business connection. It is accepted that some close relationships will develop, particularly when Councillors and officers work closely together but it is important that close relationships between Councillors and officers are openly declared and if any relationship might be seen as unduly influencing their work in their respective roles then they should inform the Monitoring Officer.
- 3.7 It is not enough to avoid actual impropriety, Councillors and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a Councillor should not sit on a body or participate in any decision which directly affects the officer on a personal basis.

#### Courtesy

- 3.8 Councillors and officers should respect each other's non-working time.

- 3.9 Councillors and officers should be courteous to each other at all times even if they disagree strongly with their respective views. Councillors and officers should not shout or raise their voice in an aggressive or rude manner.

### Bullying

- 3.10 Councillors and officers must not bully or harass any person. Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person whom the Councillor or officer has some actual or perceived influence over. This can be contrasted with the legitimate challenges which a Councillor or officer can make in challenging policy or scrutinising performance.
- 3.11 Bad relations between Councillors and officers can be destructive to good governance. Councillors may from time to time become frustrated by what they regard as unacceptable or incompetent officer behaviour. It is self-evident that sometimes these feelings may be entirely justified although occasionally there may be a legitimate reason why member expectations cannot be met, e.g. because of a council policy or a legal requirement such as confidentiality.
- 3.12 Where a Councillor has a concern about an officer or the Council services then this should be made to the [Corporate Director](#) of the service where the Councillor feels the fault lies or to the Chief Executive where it involves a [Corporate Director](#) personally. Indeed, Councillors have a duty to raise any issues where they have reason to think that fraud/ probity, corruption or malpractice of any sort is involved within the Council. Councillors should not criticise officers in public as Councillors should bear in mind that officers are instructed not to “answer back” in public. Attacking an officer’s conduct in public can constitute bullying, as will undue pressure brought by either officers or Councillors in private.

### Lines of conduct between Councillors and officers

- 3.13 Councillors must remember that Officers within Directorates are accountable to their chief officer. Chief officers, through their senior management, are responsible for the allocation and prioritising of work by their staff. Councillors should not seek to influence such decisions.
- 3.14 A Councillor is free to approach any Council Department to provide them with such information, explanation and advice about the Department’s functions as they may reasonably need as a Councillor. This can range from a request for general information or documentation about some aspect of the Department’s activities, to a request for specific information on behalf of a constituent.

- 3.15 In making such an approach, the request should be made to the Chief Officer or ~~Divisional~~ Director for the Department concerned. If access is denied or the Chief Officer/ ~~Divisional~~ Director is in doubt, the matter must be referred to the Monitoring Officer for determination.
- 3.16 Councillors should raise constituents' queries or concerns through the proper channels and not go direct to junior officers. Further in seeking to deal with constituents' queries or concerns, Councillors should not seek to jump the queue, but should respect the Council's procedures. Officers have many pressures on their time and officers may very well not be able to carry out the work required by Councillors in the requested timescale. Councillors should respect this. The Council does operate a Member's Enquiries system (see section 8.1 for more details).
- 3.17 Where Councillors and officers share an office building particular care needs to be taken to maintain appropriate lines of contact. Councillors and officers are reminded that within an open plan environment office certain standards are expected to be maintained. In particular meetings should not be held at workstations, Councillors and officers should use the meeting facilities provided and sensitive or confidential issues should not be discussed in the open plan environment.
- 3.18 Officers within a Directorate are accountable to their ~~Chief Officer~~~~Corporate Director~~ and whilst officers should always seek to assist a Councillor, they must not go beyond the bounds of whatever authority they have been given by their ~~Corporate Director~~~~Chief Officer~~.

#### **4. COUNCILLOR TO COUNCILLOR EXPECTATIONS**

4.1 Whilst this Protocol is primarily aimed at the interaction between Councillors and Officers, the same principles apply to interactions between Councillors. Therefore Councillors should be entitled to expect from each other:

- respect, dignity and courtesy;
- not to be subjected to bullying or personalised attacks;
- respect for differing political views and values;
- maintenance of confidentiality;
- commitment to high standards of debate; and
- compliance with the Council's Constitution including the Code of Conduct for Members.

#### **5. COUNCILLORS AND LEGAL ACTION BY OR AGAINST THE COUNCIL**

- 5.1 There is a whole range of circumstances where the Council as a corporate body may be involved in legal proceedings. This could be against residents or other individuals, organisations and companies, and across the whole range of service areas including housing, planning, highways, etc. Councillors have a clear role in representing residents' and general public interests. In this representative capacity, Councillors will inevitably become involved in issues where the Council is considering, or is in the process of taking legal action, or where the Council is the defendant to legal actions brought by third parties.
- 5.2 Conflicts of interest will almost certainly occur when a Councillor is enquiring on behalf of an individual or body involved in legal action by or against the Council. In such cases, Councillors will be required to balance their representative role with their wider responsibilities in representing the corporate interests of the authority. For this reason, Councillors must be circumspect in any dealing with persons taking action against the Council, or against whom any legal action is being taken. Particularly, Councillors must be extremely cautious about having any dealings with professional representatives, advisers or witnesses in the case. Not only could such intervention prejudice the Council's position but the Councillor could find himself/ herself accused of an offence of Misconduct of Public Office or, Perverting the Course of Justice or an attempt or conspiracy to do so.
- 5.3 It is therefore particularly important that Councillors should be sure not only to avoid any actual impropriety, but at all times avoid any occasion for suspicion or any appearance of improper conduct.
- 5.4 In that regard, Councillors must not:
- attempt in any way to exercise improper influence over the legal process in which the Council is involved;
  - attempt to exert improper influence on Council officers involved in the legal process or witnesses in the case;
  - attempt to engage the community to exert improper influence on Council officers involved in the legal process or witnesses in the case.
- 5.5 Whilst Councillors have every right to information on how any such matter is being dealt with and a duty to represent their constituents, Councillors must also realise that the response on behalf of the Council must be limited to comments on process, so as not to prejudice the proceedings.
- 5.6 In respect of any ongoing or contemplated proceedings, all enquiries must be addressed to either the appropriate Divisional Director or Corporate Director. On no account is the Councillor to contact any officers involved in the proceedings to discuss or make any enquiries regarding the proceedings.



5.7 If a Councillor believes that the Council's actions or intentions are wrong, they should inform the Corporate Director concerned. It must then be for the Corporate Director to determine what action to take. If the Councillor remains unhappy with the action taken, then they should refer the matter to the Council's Monitoring Officer or to the Chief Executive.

## **6. REPORTS**

6.1 Officers' reports should contain clear, evidence-based advice as to why a course of action is being recommended. From time to time corporate advice is given to officers on report writing and they should take care to follow it. The report should lay out all relevant factors for the decision maker, and examine all alternatives in an even handed way. Officers should take care to include even unpopular options if they feel they are relevant.

6.2 The relevant Corporate Director will always be fully responsible (and retains ultimate responsibility) for the contents of any report submitted in their name. Any issues arising between a Councillor and a Corporate Director in this area should be referred to the Monitoring Officer or Chief Executive for resolution.

6.3 Councillors have the right to criticise reports or the actions taken by officers, but they should always:-

- seek to avoid personal attacks on officers; and
- ensure that criticism is constructive and well-founded.

6.4 Councillors have the ability to agree or reject proposals placed before them by officers, irrespective of the advice or recommendations made by officers so long as they generally act in good faith and exercise reasonableness in decision-making and specifically:-

- take into account relevant and dismiss irrelevant matters; and
  - do not come to a conclusion that no reasonable authority would come to.
- Officers must therefore, be able to report to Councillors as they see fit and without any political pressure.

6.5 A resolution may be passed at meetings which authorises an officer to take action between meetings after consultation with the Chair/ Lead Member/ Portfolio Member etc. It is the officer, not the Chair etc., who takes the action and is responsible for it. The Chair etc. does not himself/ herself have the power between meetings to make decisions.

## **7. OFFICER ADVICE TO PARTY GROUPS**

- 7.1 It must be recognised by all officers and Councillors that in discharging their duties and responsibilities officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual Councillor. Special rules apply to Political Group Assistants and the Mayor's Assistant and those post holders are made aware of them through separate guidance.
- 7.2 There is statutory recognition for party political groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Senior officers may properly be called upon to support and contribute to such deliberations by political groups but must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual Councillors treat them in a fair and even-handed manner.
- 7.3 The support provided by officers can take many forms, ranging from a briefing meeting with the Mayor, a Cabinet Member/ Chair/ Spokesperson prior to a Council, Cabinet, Committee or Sub-Committee meeting to a presentation to a political group meeting. Whilst in practice such officer support is likely to be in most demand from whichever political group is in control of the Council at the time, such assistance is available to all political groups.
- 7.4 Certain points, however, must be clearly understood by all those participating in this process, Councillors and Officer alike. In particular:
- (i) Requests for officers to attend any political group meeting must be made only to the appropriate member of the Corporate Leadership Team. Normally only that person will attend the meeting, although in exceptional circumstances they may be accompanied by one or more Senior Officers.
  - (ii) Unless otherwise agreed in advance with the Chief Executive, officers will not attend political group meetings that include persons who are not Councillors. However, where the Chief Executive has authorised such attendance special care needs to be exercised by officers involved in providing information and advice to such political group meetings. Persons who are not elected Councillors will not be bound by the Code of Conduct for Members (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a Councillors only meeting.

- (iii) Officer support (whether in the form of a written report or otherwise) must not extend beyond providing information and advice in relation to matters of Council business. Officer support will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the Authority. Reports or other support will not deal with any political implications of the matter or any option, and officers will not make any recommendations to a political group. Officers (with the exception of Political Group/ Mayor's Assistants) are not expected to be present at meetings or part of meetings when matters of party business are to be discussed.
- (iv) Political group meetings, whilst they form part of the preliminaries to Council decision making are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
- (v) It must not be assumed by any political group or Councillor that any Officer is supportive of any policy or strategy developed because of that officer's assistance in the formulation of that policy or strategy.
- (vi) Officers must respect the confidentiality of any political group discussions at which they are present in the sense that they should not relay the content of any such discussion to another political group or Councillor thereof. However, Councillors should be aware that this would not prevent officers from disclosing such information to other officers of the Council so far as is necessary to perform their duties.
- (vii) Where officers provide information and advice to a political group meeting in relation to a matter of Council business, it should be understood that the officers have a statutory duty to provide all necessary information and advice to the Mayor or Cabinet or relevant Committee/ Sub-Committee when the matter in question is considered.

## **8. MEMBERS' SERVICES AND THE USE OF COUNCIL FACILITIES**

### Members' Services and Members' Enquiries

- 8.1 The Council operates a Member's Enquiries system which is for the Mayor and Councillors to use for routine requests for information and advice. The maximum turn round time expected for such enquiries is 10 working days and officers will chase outstanding enquiries exceeding this period. Matters which are not routine or involve policy should be directed initially to the relevant Corporate Director or Divisional Director or any officer nominated by them.
- 8.2 Both Mayor's Office secretarial staff and the Councillors' Support Team provide assistance to Councillors in their role as Council Members. Staff in these sections may, therefore, be used, as appropriate, to help with work such

as casework, meetings and correspondence to do with Council matters. Full details of the service offered are contained in the Members' Services Guide.

- 8.3 The Mayor's Office and Councillor Support Team staff will assist with booking venues for, and publishing details of, Councillor' surgeries. Councillors' surgeries should normally be held within a Councillor's own ward, but Councillor may arrange a surgery in premises outside their ward if this is necessary to provide suitable surgery facilities for their own constituents. Councillor must not ask Council officers to assist with any personal, business or party political matters; attend surgeries; or decide how case work will be dealt with.

#### Council Facilities

- 8.4 Councillors must use any Council facilities that are provided in their role as a Councillor strictly for that purpose and no other. For example, Councillors must not use rooms in the Town Hall or other buildings or any of the Council's paper, computers, photocopiers, or printers for any personal, business related or party political matter, nor, for example, on behalf of any community groups of which the Councillor is a member, unless formal approval has been given by the appropriate chief officer.
- 8.5 The use of Council facilities and services by Councillors during a pre-election period for election campaigning or political purposes is not allowed. Specific guidance will be issued at that time to both Councillors and officers.
- 8.6 The Council can only provide legal representation to an individual Councillor where the action is taking place in the name of the Council and the individual deserves the protection of the Council. All such matters should be raised with the Chief Executive in the first instance.

#### Political Party Workers

- 8.7 Councillors are often assisted by political party workers. There is no objection to this, but no non-elected party worker has any entitlement to:
- information to which a Councillor has access in their role as Mayor or Councillor;
  - use Council facilities provided for the use of Councillors.

The principles which apply to use of facilities provided for Councillors (and the officers employed to assist them) apply equally to all Council property and facilities and all Council employees.

#### Use of IT

8.8 From time to time training and guidelines on the proper and effective use of Council IT resources will be issued.

## **9. POLITICAL ASSISTANTS**

9.1 Section 9 of the Local Government and Housing Act, 1989 gives councils a power to appoint political assistants to qualifying political groups. Whilst the Act allows the political affiliation of an individual to be taken into account in the appointment of any Political or Mayor's Assistant, they remain officers of the Council and must therefore not undertake any activity, which may be deemed unlawful. In this context, it should be realised that officer support to the political groups is in the context of their role in the discharge of Council business and although it may require liaison with political parties, at both local and national level, should not be used in promoting the views of an individual political party or undertaking campaigning or other party political business.

9.2 Political assistants hold politically restricted posts and therefore also face restrictions on their personal political activity.

## **10. COUNCILLORS' ACCESS TO INFORMATION**

### General

10.1 The following paragraphs identify the rights of Councillors and the procedures that they must comply with when applying for access to Cabinet/ Committee/ Sub-Committee papers and other documents/ information. These paragraphs take into account the following:

- Relevant legislation including the Local Government Act 1972; the Data Protection Act 1998; the Freedom of Information Act 2000; and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089)
- Local Government Transparency Code 2015
- Open and accountable local government: plain English guide
- Access to Information Procedure Rules (Part B Section 27 of the Constitution)
- Relevant case law

10.2 In principle, Councillors have the same ordinary rights of access to certain information as is enjoyed by the general public but they also have the right to access any other information (i.e. confidential or exempt) held by the Council of which they are a Councillor provided that it is reasonably necessary to enable the Councillor to properly perform their duties as a Councillor (see "Need to Know" below). This right of access of additional access may not

extend to the publication of or otherwise making public such information as there may be issues of confidentiality.

#### Access to Committee Papers for Forthcoming Meetings

10.3 The rights of Councillors can be summarised as follows:-

- (i) Councillors enjoy the same access rights as members of the public in respect of Part I Cabinet/Committee/Sub-Committee papers.
- (ii) Councillors of the appropriate Cabinet/ Committee/ Sub-Committee will have a good reason for access to all Part II exempt information on the respective Cabinet/ Committee/ Sub-Committee agenda under the “Need to Know” principles (see below).
- (iii) Councillors of the Overview and Scrutiny Committee will have a prima facie “Need to Know” where they require access to Part II Cabinet agenda items as part of their scrutiny function provided the subject matter is within the Committee/ Sub-Committee’s terms of reference.
- (iv) All other Members who require access to confidential/ exempt Cabinet/ Committee/ Sub-Committee documentation will need to request disclosure under the Freedom of Information Act 2000 or demonstrate a “Need to Know” by complying with the principles set out below.

#### Access to Other Documents/Information – “The Need to Know”

- 10.4 It is important to note that in some cases access to information to which the public is not entitled only applies where Councillors are clearly carrying out their role as elected representatives. Where a Councillor has a financial or personal interest in a matter the Councillor will only be entitled to the same access as would be the case for a private individual. In these circumstances, the Councillor must make it clear that they are acting in their private capacity and not as a Councillor.
- 10.5 Under common law principles Councillors have the right to access information held by the Council where it is reasonably necessary to enable the Councillor to properly perform their duties as a Councillor. This is known as the “Need to Know”. This means that information must not be used for party political purposes.
- 10.6 The common law “Need to Know” is the prima facie right of Councillors to inspect documents of the authority which exist as Councillors are under a duty to keep themselves informed of Council business which relate to their role as elected representatives. Thus, this right applies to Councillors who do not have statutory rights to exempt or confidential information and to other

documents held by the Council under local government legislation or the Freedom of Information Act 2000.

- 10.7 For example, a Councillor is likely to have a prima facie “Need to Know” where they has been a legitimate Ward problem and needs access to the documents that are relevant to that specific problem. Also, for example, a Cabinet Member whose Portfolio covers the matter in question and they need to be aware of what is occurring for the purpose of their Cabinet position.
- 10.8 Access to information on the basis of a ‘Need to Know’ does not exist where the Councillor is considered to be “fishing” for information or seeks access for an ulterior/improper purpose (e.g. for a private purpose). Case law has established that mere idle curiosity as to what is in the documentation will not be sufficient.
- 10.9 It should be noted that some material (for example if commercial sensitive) may be redacted from information that is disclosed, if this does not affect the ability of a Councillor to exercise their role as an elected representative.
- 10.10 There will also be a range of documents which, because of their nature are either not accessible by Councillors (such as the personal records of an individual) or are accessible only by the political group forming the administration and not by the Councillors of other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft Committee reports, the premature disclosure of which might be against the Council’s and the public interest.
- 10.11 Whilst the term “Council document” is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a Councillor of one political group will not have a “Need to Know” and therefore, a right to inspect, a document which forms part of the internal workings of another political group.

#### Use of Council Information – Confidentiality

- 10.12 Procedural Rules and specific local procedures (e.g. on contracts) require Councillors and officers to maintain confidentiality in certain circumstances. Officers are bound by their contracts of employment and any breach of confidentiality will almost certainly lead to disciplinary action. Officers must distinguish between assisting an elected representative in the course of the Councillor’s Council business and dealing with the same person as a client or customer, e.g. a Housing Benefit claimant. In the latter case, Officers will treat the Councillor with the same degree of helpfulness, courtesy and confidentiality as would be afforded to any other member of the public in the

same situation, and interpret the relevant rules and procedures as they would for any other client or customer.

- 10.13 Equally, any Council information provided to a Councillor on the basis of a 'Need to Know' must only be used by the Councillor for the purpose for which it was provided, i.e. in connection with the proper performance of the Councillor's duties as an elected representative of the Council. Confidential or exempt information provided to Councillors may be discussed in Part II Committee meetings or in private meetings of appropriate Councillors and Officers. However, it should not be discussed with, or released to, any other persons. Any information that is provided should be clearly marked as confidential before it is released to Councillors.
- 10.14 In cases where a Councillor discloses information given to him/her in confidence by anyone, or information acquired by the Councillor which they believe, or ought reasonably to be aware, is of a confidential nature then that Councillor may find themselves the subject of a complaint to the Standards Advisory Committee that they have contravened the Code of Conduct for Members.
- 10.15 Similarly, the unauthorised disclosure of confidential or exempt information is regarded by the authority as a serious disciplinary offence for Officers. This includes an unauthorised disclosure to a Councillor.
- 10.16 Any request from a Councillor for information will be treated in confidence by Officers and will not be made known to any other Councillor or political group. Officers are also under a duty not to relate any information disclosed privately by a Councillor(s) (e.g. during Part II discussions at Committee, etc., informal briefings, private conversations or Group meetings) to another Councillor, Officer or person not already privy to that information.
- 10.17 The duty of officers to observe a Councillor's confidence however will not apply if the information disclosed relates to something which could severely damage the Council or which is illegal or constitutes maladministration. In this event the matter will be referred to the appropriate Corporate Director and/or Monitoring Officer and Chief Executive for further investigation and action as appropriate.

## 11. WHEN THINGS GO WRONG

### Procedure for officers

- 11.1 If an officer has a complaint about a Councillor it is always preferable to resolve matters informally, through an appropriate senior manager. If the



matter cannot be resolved informally or it is not suitable for such then officers can make a complaint to the Monitoring Officer.

#### Procedure for Councillors

10.2 If a Councillor has a concern about the conduct or capability of an officer, they should raise the matter privately with the appropriate Divisional Director or Corporate Director. Any concern about a Corporate Director should be raised privately with the Chief Executive. Any concern about the Chief Executive should be raised privately with the Monitoring Officer.

#### 11. REVIEW

11.1 The Standards Advisory Committee and the Monitoring Officer will jointly keep this Protocol under review and make recommendations for changes as appropriate. A review will take place annually in any event.

## 33 Employee Code of Conduct

### INTRODUCTION

1. This code aims to guide all employees on their conduct inside work and outside work where this has a bearing on their position within the Council. It is the responsibility of all Council employees to read this Code and work in accordance with it. If you are unsure about any aspect, check it with your line manager or Human Resources.
2. As an employee you should read this Code in conjunction with other relevant parts of the Constitution, Council policies and procedures relevant to your work and more detailed operational guidelines for example in areas such as computer use, The Code, in setting out our values, rules and principles, should not be interpreted as a complete list of what you can and cannot do, but rather to enable you as an employee to understand the ground-rules that all must observe, and the differences in the roles and duties of Members (the Mayor and Councillors) and employees.
3. Any breach of this Code may lead to disciplinary action and may in some instances constitute gross misconduct.

### GENERAL CONDUCT

4. The public is entitled to demand the highest standards of conduct from all local government employees.
5. The Council is extremely conscious that public confidence can be damaged where the integrity of a Council employee is called into question and they are suspected of being influenced by improper motives.
6. Paragraphs 2.1 and 2.2 of the National Joint Council for Local Government Services, National Agreement on Pay and Conditions of the Service states:
  - “Employees will maintain conduct of the highest standard such that public confidence in their integrity is sustained
  - Local codes of practice will be developed to cover the official conduct and the obligations of employees and employers.”

The Council believes:

- (a) The public is entitled to demand of a Local Government Officer conduct of the highest standard and public confidence in their integrity would be shaken were the least suspicion to arise that they could in any way be influenced by improper motives.

- (b) An Officer's off-duty hours are their personal concern but they should not subordinate their duty to their private interests or put themselves in a position where their duty to their private interests conflict. The employing Authority should not attempt to preclude Officers from undertaking additional employment, but any such employment must not, in the view of the Authority conflict with or react detrimentally to the Authority's confidence in the conduct of the Authority's business.
- (c) The Officer should not be called upon to advise any political group of the employing Authority either as to the work of the group or as to the work of the Authority, neither shall they be required to attend any meeting of any political group.

### **WORKING RELATIONSHIPS, EQUALITIES AND THE CUSTOMER PROMISE**

7. The Council expects all employees to deal with one another, the public, clients and elected Members in a courteous and civil manner. This may be in the exercise of their duties but can cover other circumstances, e.g. when in the role of Trade Union Representative. Employees should promote equality by not discriminating unlawfully against any person and by treating people with respect regardless of their race, age, religion, gender, sexual orientation or disability.
8. It is important that there is clarity about the respective roles of elected Members and employees and that the relationship between the two is clearly understood by everyone concerned. To achieve this the Council has adopted the Member/Officer Protocol which applies to all Members (the Mayor and Councillors) and employees and should be read in conjunction with this document.
9. You must always remember your responsibilities to the community that you serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Council. All employees are required to be familiar with and implement the Council's policies, particularly those relating to Equalities and the Customer Promise and to ensure that the principles within those policies and other policies are followed.
10. The Council expects relationships between work colleagues (including those between managers and team members) to be supportive, co-operative and respectful. Employees should behave in a way that enhances the performance and well-being of others and the effectiveness of Council services. Employees should not have managerial responsibility for those with whom they have close private relationships (e.g. partners and family). If such

a relationship arises, during the course of your employment, it must be declared to your divisional director or chief officer.

11. Other organisations and agencies support, assist and partner the Council in the provision of services. Employees must work within the terms of the contracts/agreements made between contractors/suppliers/partners and the Authority.

## **DUTY TO DECLARE INTERESTS**

12. You are responsible for declaring interests which conflict with the impartial performance of your duties or put you under suspicion of improper behaviour. These interests may be financial or personal/social interests (e.g. interests of family and friends, commercial or voluntary associations). The interest may be advantageous or have a detrimental effect on you (an example of a detrimental interest may be a situation where you experience threats or pressure from family or friends to act in a particular way in your official capacity).
13. You must declare in writing to your ~~divisional~~ director any financial or personal/ social interests that you consider could bring about conflict with the Council's business or interests. You are reminded in particular that you must comply with Section 117 of the Local Government Act 1972 regarding the disclosure of pecuniary interests in contracts relating to the Council. Orders and contracts must be awarded on merit and no special favour should be shown to businesses in which you have a financial interest or which are run by, for example, friends, partners or relatives. If you have such an interest you must not be involved in any way in the negotiation of agreements or the letting of contracts with these contractors/firms.
14. Interests, relationships and associations must also be declared when dealing with recruitment, management responsibilities, the allocation of resources and services, the provision of services and access to confidential information. Interests, friendships and associations, which could conflict with your professional roles and responsibilities, must also be declared to your divisional director.
15. Each directorate maintains a confidential register of declarations which must be in writing, giving information about the nature of the interest and the names of the parties and the functions involved. Chief officers and ~~divisional~~ directors are also required to complete returns to be included in a confidential register maintained by Human Resources. These records may be accessed, on application to the monitoring officer, during the process of an investigation if the conduct of an employee is brought into question.

## **THE COUNCIL'S BUSINESS INTERESTS**

16. All employees are bound by a duty of fidelity not to breach confidence and not to participate in competing activities. The Council has the right to take necessary and reasonable steps to protect its legitimate business interests.
17. The Council can legitimately seek to restrict the work activity of certain ex-employees (for a specified period of time after the end of their employment and within a specified geographical area) where the individuals could use contacts and information derived from the Council to compete with the Council for work. These restrictions would take the form of a loyalty clause (or restrictive covenant) within the employee's contract of employment.
18. The Council retains intellectual property rights for work undertaken by employees. Research, reports, designs, drawings, software developments or similar work, when created in the course of an employee's normal duties, remain the property of the Council. These should not be removed from Council premises or passed on to a third party by any employee acting in a private capacity without the express consent of the Council.

## **GIFTS AND HOSPITALITY**

19. The acceptance of gifts and hospitality, even on a modest scale, may arouse suspicion and must be capable of public justification. A register of gifts and hospitality is therefore kept for each of the Council's directorates containing the following information:
  - The name of the person or body making an offer of a gift or hospitality.
  - The name of the employee to whom the offer was made.
  - The gift or hospitality offered.
  - The circumstances in which the offer was made.
  - The action taken by the member of staff concerned.
  - The action taken (if any) by the divisional director or chief officer.
20. Where it is in the Council's interests to offer hospitality to organisations on Council premises such arrangements must only be made with the express permission of the divisional director or chief officer and be on a scale appropriate to the occasion.
21. You are strongly advised to refuse or return any gifts, hospitality or other favours from persons inside or outside the Council as any such acceptance

could well put you in a compromising position and could render you liable to accusations by other parties who become aware of this. You should bear in mind how the acceptance of a gift or a free meal would look to a third party and how this could appear to compromise your professional judgement even if it is accepted in all innocence. When declining a gift or hospitality you should courteously but firmly inform those making the offer of the procedures and standards operating within the Council.

22. Under no circumstances should you ask for a reward, tip, gift, “Christmas box” or any other inducement. You should also not put yourself in debt to someone where this would be likely to influence your work.
23. It is a serious criminal offence for employees of the Council to corruptly receive or give any gift, loan, fee, reward or advantage in order to influence official conduct. If an allegation is made, it is for the employee to demonstrate that any such rewards have not been corruptly obtained. It is also an offence to accept any gift or consideration in the knowledge or belief that it is intended as inducement or reward, whether the employee receiving it is influenced or not.
24. There may be occasions where refusal of personal hospitality or a small token gift (e.g. at Christmas or another notable religious occasion) would clearly cause offence or be impracticable for cost or other reasons. The dividing line between what is and what is not acceptable is not a clear one and you should always exercise extreme caution. If you are considering acceptance, you should discuss the matter with your line manager before doing so and seek approval from your ~~divisional~~ director or in their absence your chief officer.
25. Before accepting a gift or hospitality staff should consider:
  - The timing of decisions for letting contracts for which a provider may be bidding (under no circumstances should gifts or hospitality be accepted from a contractor during a tendering period).
  - Whether the gift or hospitality is appropriate e.g. an inexpensive promotional pen or diary may be accepted but more expensive items, such as a bottle of whisky, must be declined. Similarly, lunch at on-site cafeterias or invitations to local cultural events as a representative of the Council may be appropriate whereas invitations to prestigious sporting events, theatre tickets or personal invitations where you are not attending in an official capacity are not appropriate.
26. Where the refusal of an unsolicited gift may cause offence, the gift may be donated to the Speaker of the Council’s official charity and the donor informed accordingly in writing.

27. You should exercise discretion in offering and accepting hospitality. You should bear in mind how it might affect your relations with the party offering it and how it might be viewed by elected Members, other potential suppliers/contractors, the public and other officers. The criteria which determine whether you should accept hospitality from firms or other organisations include:
- Whether the invitation comes from a firm likely to benefit from the goodwill of the
  - Council or from a charity or other organisation which may not have the same kind of vested interest in the outcome;
  - Whether the firm is seeking a contract, or one has already been awarded;
  - Whether the visit is genuinely instructive or constitutes more of a social function;
  - The scale and location of hospitality, and whether it falls in working hours;
  - The frequency of the hospitality;
  - Whether it is directed just at you or to a group.
28. With the exception of minor gifts such as inexpensive calendars, pens or small stationery items, or hospitality such as refreshments during a site visit or an inexpensive working lunch, the acceptance of gifts and/or hospitality must be authorised in advance by a ~~divisional~~ director or chief officer and recorded in writing in the directorate register. Offers that are declined must also be recorded in the register. ~~Divisional d~~irectors and ~~e~~Chief ~~e~~Officers are also required to complete the register although they are not required to seek prior authority for any action they decide to take.

## LEGACIES

29. On occasion members of the public or clients may wish to express their appreciation of Council officers or services of a particular employee by leaving money/gifts in their will. Members of the public should be discouraged from doing this.
30. Where an employee has notice that they are to be bequeathed money/gifts from a member of the public or client they must report this to their ~~e~~Chief ~~e~~Officer.
31. Details of the amount involved, the reason for the legacy and the service provided must be forwarded to the chief officer before the employee accepts the legacy.

## CONFIDENTIAL AND OTHER INFORMATION

32. The Council expects all employees to safeguard confidential information, including when they leave the Council's service. Information which can be classified as 'confidential' can broadly be grouped into the following areas:
- Information of a specific and personal nature about employees, potential employees, service users, customers, individuals and organisations who come into contact with the Council.
  - Sensitive organisational information.
  - Business/commercial information e.g. pricing, quotes, matters affecting negotiations with suppliers, trade unions etc.
33. Exempt committee papers (i.e. those on Part II of any Agenda) must not be released to the public or a fellow officer (unless they have a clear right of access) without the consent of the Director of [Human Resources and Transformation Workforce, OD and Business Support](#).
34. You must not use any information obtained in the course of your employment for personal gain or benefit. You must not pass on such information to others who might use it in a similar way. All employees are under an obligation not to access or attempt to access information which they are not authorised to have.
35. Employees are bound by their contracts of employment to maintain confidentiality. Any deliberate breach of confidentiality, improper disclosure of information or misconduct in relation to official documents will be treated as a serious matter and will lead to disciplinary action.

## OUTSIDE AND ADDITIONAL WORK

36. Employees must comply with Section 107 of the Local Government Act 1972 regarding the non-acceptance of any fees or rewards whatsoever other than their proper remuneration. It is a criminal offence for you corruptly to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in your official capacity. If an allegation is made, it is for you to demonstrate that any such rewards have not been obtained corruptly. You must therefore ensure that any reward or fee that you receive from employment outside the Council has been authorised in advance in accordance with this Code.
37. Any additional work (whether paid or unpaid) you wish to undertake must not conflict with the Council's interests or in any way weaken public confidence in the Authority. Accordingly, all employees of the Authority are required to obtain consent, in writing (to be retained on their HR file), from their [eChief](#)



eOfficer in advance, and on each occasion, if they wish to engage in any other business, take up additional employment or work outside the Authority. This provision also applies to chief officers who will require the prior consent of the Chief Executive should they wish to engage in such activity.

38. Also you must not undertake any duties/work (whether for payment or otherwise) of a type that you normally undertake for the Council on behalf of:
  - Any other Council employee, without the prior written agreement of your chief officer who shall, if agreement is given, notify the Director of Human Workforce, OD and Business Support~~Resources and Transformation~~; or
  - Your eChief eOfficer, without the prior written agreement of the Chief Executive.
39. Employees do not need approval to undertake voluntary work or work for trade unions or political parties (subject to the provisions of the 1989 Local Government Housing Act as set out below), provided this work does not conflict with the Council's interests as specified in paragraph 37.
40. The Council will generally not give approval for additional or outside work if it:
  - Is for anyone who is in a supervisory or managerial relationship with an employee.
  - Places the employee in a position where their official duties and private interests may conflict.
  - Affects the employee's health or ability to maintain acceptable standards of work.
  - Might weaken public confidence in the conduct of the Council's business.
  - Involves the employee being in direct competition with the Council.
41. Where approval has been given to undertake additional or outside work, employees must not:
  - Use Council accommodation or facilities (vehicles, computing equipment, photocopiers, telephones etc.).
  - Submit applications of any description to the Council on behalf of any other person without written permission from their chief officer.
  - Use their knowledge of the Council or staff to help secure particular decisions or outcomes.
  - Undertake private work in office hours or when they are absent due to ill health.
  - Portray themselves as employees or agents of the Council when undertaking additional or outside work.

42. Outside work should not be undertaken for any person, company or contractor who is known by the employee to have a contractual relationship with the Council, or who is seeking work from the Council.

### **APPOINTMENTS AND RELATED EMPLOYMENT MATTERS**

43. The Council recruits on merit and requires that its appointments are made without bias, on the basis of clear assessment criteria. If you are responsible for appointing employees, it is unlawful for you to make an appointment other than on the basis of merit. It would be unlawful for you to make an appointment based on anything other than the ability of the candidate to meet the present and future needs of the Council. In order to avoid any possible accusation of bias, you should not be involved in an appointment where you are related to an applicant, or have a close personal relationship outside work. You must not canvas on behalf of any applicant.
44. Similarly, you must not be involved in decisions relating to discipline, promotion or pay adjustments for another employee who is a relative, partner, close friend, or where you have some other close personal relationship.
45. As an employee/potential employee you must ensure that you:
- are open and honest at any interview;
  - are open and honest on any application form;
  - disclose all criminal convictions\*;
  - disclose any pending criminal charges;
  - disclose if you are a friend or relative of (or have other links with) a Member or an employee who may influence your appointment;
  - disclose if you are the tenant or landlord of someone who may influence your appointment;
  - do nothing to seek undue favour from employees or Members in Council selection procedures.

[\* Although under the terms of the Rehabilitation of Offenders Act 1978 certain offences are categorised as being “spent” for employment purposes this exemption does not apply to certain posts, for example where the individual is engaged in work that entails contact with children.]

### **LOCAL GOVERNMENT AND HOUSING ACT 1989**

46. As a result of provisions introduced under the Local Government and Housing Act 1989 to ensure the political impartiality of local government employees, some employees’ posts are subject to political restriction. This means that the postholders are prohibited from involvement in political activities as these could conflict with the responsibilities at work.

47. The Local Government and Housing Act 1989 requires that anyone who is employed by a local authority in a politically restricted or sensitive post is disqualified from being elected as a Member in another local authority or as a Member of Parliament or as a Member of the European Parliament. Employees holding politically restricted posts are also unable to undertake certain political activities within the following broad categories:-
- Writing or speaking publicly on politically controversial issues.
  - Canvassing at any election on behalf of a political party or at elections for MPs, MEPs, Mayor or Councillors.
  - Holding office in any political party.
  - Publicly declaring themselves a candidate for Mayor, Councillor, MP or MEP.
48. The Act requires that employees holding the following posts should be politically restricted:
- Employees giving regular advice to Committees or Sub-Committees.
  - Employees who regularly speak to journalists or broadcasters on behalf of the Council.
49. A list of politically restricted posts is held by the Corporate Director, [Resources and Governance](#). It contains the post designations and the section of the Act relating to their inclusion on the list
50. Under the Local Government (Political Restrictions) Regulations 1990, the failure of a postholder holding a politically restricted post to comply with the restriction will result in disciplinary action being taken on the grounds of misconduct.

## **POLITICAL NEUTRALITY AND CONTACT WITH MEMBERS**

51. Employees serve the Authority as a whole. It follows that they must serve all Members (the Mayor and all Councillors, not just those of the ruling political group) and must ensure that the individual rights of all Members are respected treating political groups and individual Members in a fair and even handed manner. Insofar as employees may be required to advise political groups, they must do so in ways that do not compromise their own political neutrality. This subject is covered in detail in the Member/Officer Protocol which governs relations between elected Members and Council officers.
52. It is important that Members' enquiries should be dealt with efficiently and effectively within the established policy and procedures for the service area concerned. If employees consider that unreasonable Member pressure is

being brought to bear with a particular issue outside of established procedures and policies, the relevant details must be referred to your chief officer. It is the Chief Executive's responsibility to determine whether the incident concerned should be reported to the Group Secretaries.

53. Lines of communication between Members, employees and members of the public should accord with defined and established management practice, be readily identifiable and respected by all concerned.
54. Individual employees should not approach elected Members directly on employment matters.
55. Representations to Members should be made through chief officers or normal Trade Union/Member communication forums.
56. Employees must not disrupt official meetings of the Council or of its Cabinet, Committees, Sub-Committees, etc.

#### **PUBLICATIONS - BROADCASTS**

57. Employees who are broadcasting on a subject connected with the work of the Council are required to obtain permission from the Chief Executive and their chief officer in advance and to submit where possible a copy of the script of the broadcast or otherwise advise on general subject matter.
58. Employees should not publish, or authorise without the permission of their chief officer the publication of any book or article by them or with others which indicates that the writer is an employee of or connected with the London Borough of Tower Hamlets.
59. Similarly, employees should not, without permission from the Council, make any communication to a newspaper or other journal in which there is any indication that they are an employee or otherwise connected with the London Borough of Tower Hamlets. Employees acting in either a personal capacity or as a spokesperson for outside groups should not bring the Council into disrepute by publicising material adverse to the Council or other employees. This is not intended to preclude Trade Unions from pursuing their legitimate industrial relations activities.
60. The Council has established a Communications Section, which is responsible for all official press releases and statements. Individuals who are asked by the media to make comments should refer such requests direct to that section.
61. Employees should consider whether their public statements made about the Council (whether as a spokesperson for an organisation or as an individual)

could reflect in some unacceptable way upon the employer-employee relationship.

## **WHISTLEBLOWING**

62. The Council expects employees who witness, or have their suspicions raised, or are approached to become party to potentially fraudulent, corrupt, dangerous or improper behaviour, to report these incidents or concerns either to their line manager or other council manager or through the agreed whistleblowing procedures. Failure to do so could implicate you in the misconduct.
63. The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate harassment or victimisation and will take appropriate action to protect employees who raise a concern in good faith.
64. Employees who are subject to procedures (such as but not limited to disciplinary or redundancy) will not have those procedures halted as a result of raising concerns under this procedure.
65. Concerns should normally be raised initially with your line manager or supervisor. However, the most appropriate person to contact will depend on the seriousness and sensitivity of the issues involved and who is suspected of the misconduct/ malpractice. If for any reason you do not feel that it is appropriate to express your concerns in this way, the Council's whistleblowing policy explains the other routes available to you.
66. Malicious allegations i.e. deliberately raising false complaints with the intention of harming someone will be regarded as serious misconduct.
67. Raising concerns through the media is not an appropriate or effective channel and may result in an employee breaching obligations under this Code resulting in disciplinary action. The Council's whistleblowing policy gives details of how to raise concerns with more appropriate and independent organisations outside the Council.

## **COUNCIL POLICIES, PROCEDURES AND OPERATING GUIDELINES**

68. In addition to this Code of Conduct, the work of Council employees is governed, in most areas, by established policies, procedures and operational guidelines which ensure:

(a) that the Council meets its statutory obligations,

- (b) that service standards are maintained,
- (c) that staff operate within their approved authority, and
- (d) that proper monitoring and auditing processes can be applied.

69. Whilst your manager will assist you, employees also have a personal responsibility to ensure that they are familiar with their responsibilities under the Council's Constitution and work within Council policies, procedures and operating guidelines.
70. Allegations of any failure to meet the requirements of this Code may be dealt with under the Council's Disciplinary Procedure.

## 34 Licensing Code of Conduct

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## 1. INTRODUCTION

- 1.1 The Licensing Code of Conduct has been adopted by Tower Hamlets Council to regulate the performance of its licensing functions that fall within the Terms of Reference for the Licensing Committee. Its major objectives are to guide Councillors and officers of the Council in dealing with licensing related matters and to inform potential licensees and the public generally of the standards adopted by the Council in the exercise of its licensing functions. Except where otherwise stated, references in this Code are to the Licensing Committee and its Sub-Committees and the expression "Licensing Committee" should be interpreted accordingly.
- 1.2 The Licensing Code of Conduct is in addition to the Code of Conduct for Members adopted under the provisions of the Localism Act 2011. Councillors should follow the requirements of the Code of Conduct for Members and apply this Code in light of that Code. Whilst most decisions taken by Councillors are administrative in nature, the work of the Licensing Committee is different in that its proceedings are quasi-judicial and the rules of natural justice apply. This imposes a new and higher set of standards on those Councillors who are involved in the decision-making process.
- 1.3 The provisions of this Code are designed to ensure that licensing decisions are taken on proper licensing grounds, in a fair consistent and open manner and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist Councillors in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved.
- 1.4 This Code is part of the Council's ethical framework and in addition to the Code of Conduct for Members should be read in conjunction with the Member/Officer Protocol. If a Councillor does not abide by the Code then that Councillor may put the Council at risk of proceedings on the legality or maladministration of the related decision and the Councillor may be at risk of either being named in a report to the Standards Advisory Committee or Council. A failure to abide by the Code is also likely to be a breach of the Code of Conduct for Members and which could result in a complaint being made to the Monitoring Officer.
- 1.5 **If a Councillor has any doubts about the application of this Code to their own circumstances they should seek advice early, from the Monitoring Officer and preferably well before any meeting takes place.**

## 2. HUMAN RIGHTS ACT

- 2.1 The Human Rights Act 1998, which came into full effect on 2<sup>nd</sup> October 2000, incorporated the key articles of the European Convention on Human Rights into domestic law. The Convention guarantees certain basic human rights. As far as possible legislation (including the licensing laws) must be interpreted in such



a way as to conform to Convention rights. Decisions on licensing issues are actions of a public authority and so must be compatible with Convention rights.

**2.2** Councillors of the Committee need to be aware of the rights contained in the Convention when making decisions and in particular:

***Article 6: Right to a fair trial***

In the determination of a person's civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

***Article 8: Right to respect for family and private life***

1. Everyone has a right to respect for his or her private life, and his or her home and correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

***Article 1: of the First Protocol: Protocol of property***

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

***Article 14: Prohibition of discrimination***

The enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**2.3** Article 6 is an 'absolute' right and cannot be interfered with. This means that these rights can never be detracted from because it is considered to be fundamental to the rights of people. The Licensing Committee's decisions on most licensing functions are subject to independent tribunals, usually the Magistrates' Court, so satisfying the provisions of Article 6. The Licensing Committee must however conduct a fair hearing in accordance with the rules of natural justice.

- 2.4** Article 8 and Article 1 of the First Protocol are both qualified rights and the Council can interfere with these provided that such interference had a clear legal basis. In therefore deciding whether to interfere with this right, Councillors should consider the matter within the framework of a 'fair balance' test. This requires that a balance be struck between the protection of the right of property and the general interests of the community. An interference with a person's rights must be proportionate and go no further than is necessary.
- 2.5** Specifically as to Article 1 of the First Protocol, an existing licence is a possession under this Article and therefore if a person does not currently hold a licence then it will not apply. Article 1 of the First Protocol also has relevance in respect of any third parties objecting to a licensing application, because of their right to the enjoyment of their property.
- 2.6** As to Article 14, whilst this is also an 'absolute' right it does not create an independent right as it only operates to prevent discrimination in the exercise of other convention rights. If there is discrimination however in respect of a particular protected right then there is no need to show a violation of the article giving such right for there to be a breach of Article 14. All it is necessary to show is that there has been discrimination. Accordingly, in exercising its Licensing Functions, the Council must not treat persons differently where such persons are placed in an analogous situation.

### **3. QUASI-JUDICIAL HEARINGS**

- 3.1** A quasi-judicial hearing is one:
- which affects a person's livelihood;
  - which involves disciplinary action; or
  - which affects property
- 3.2** These hearings are subject to the rules of natural justice. Properly applied, the rules of natural justice will ensure that the requirements of the Convention that a hearing is both "fair" and presided over by an "independent and impartial tribunal" are met.
- 3.3** There are two principles underlying the rules of natural justice. First, all parties must be given a chance to put their case under conditions which do not put one party at a substantial disadvantage to the other party. All parties should be given sufficient notice of the hearing and the applicant should have disclosure of the nature of the objections/ representations as well as knowing who is objecting/ making a representation so that they can prepare a response to the points raised in such objections/ representations.
- 3.4** The rules of natural justice could also include asking questions of other parties. In respect of 'Alcohol and Entertainment Licensing' however, the Licensing Act 2003 (Hearings) Regulations 2005 ('the 2005 Regulations') provide that the

hearing should take the form of a discussion led by the authority and cross-examination should not be permitted unless the Licensing Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require.

- 3.5** As to sufficient notice of the hearing, in respect of ‘Alcohol and Entertainment Licensing’, the 2005 Regulations also address this point as they specify the **period of time within which a hearing must be commenced; the minimum time before the hearing that notice should be given; persons to whom notice of hearing is to be given; and the documents to accompany notice of hearing.** The 2005 Regulations **do provide that a failure to comply with the Regulations does not of itself render the proceedings void** but where there is such an irregularity, the authority shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination.
- 3.6** The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.
- 3.7** Second, a person who has an interest in an application must be disqualified from considering it. The Licensing Committee must be impartial – not only must there be no actual bias but there must be no perception of bias.
- 3.8** The procedure rules which govern hearings of the Licensing Committee reflect the requirements of the Human Rights Act and the rules of natural justice. To avoid any allegations of bias or perceived bias, Councillors sitting on the Licensing Committee must strictly observe those procedure rules.
- 3.9** The use of a party political whip is inconsistent with the rules of natural justice and must be avoided by Councillors sitting on the Licensing Committee.

#### **4. PREDISPOSITION, PREDETERMINATION OR BIAS**

- 4.1** Section 25 of the Localism Act 2011 (‘the 2011 Act’) provides that a Councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a Councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased.

- 4.2** As to predetermination, this is a legal concept and is used in situations where a decision maker either has, or appears to have, a closed mind. That is they have made up their mind in advance of proper consideration of an issue and the merits of an application. Section 25 of the 2011 Act does not amount to the abolition of the concept of predetermination however, as no one should decide a case where they are not impartial or seen to be impartial. Critically, Councillors need to avoid any appearance of bias or of having a predetermined view before taking a decision. Indeed, Councillors should not take a decision on a matter when they are actually biased in favour or against the application, or where it might appear to a fair and informed observer that there was a real possibility of bias, or where a Councillor has predetermined the matter by closing their mind to the merits of the decision.
- 4.3** Councillors must not make up their mind on how they will vote on any licensing matter prior to formal consideration of the matter at the meeting of the Licensing Committee and the Councillor hearing the evidence and arguments on both sides. A Councillor should not make comments on Licensing policy or procedures, or make any commitment in advance as to how they intend to vote on a matter, which might indicate that they have closed their mind.
- 4.4** **Any licensing decision made by a Councillor who can be shown to have approached the decision with a closed mind will expose the council to the risk of legal challenge.**
- 4.5** Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition).
- 4.6** If a Councillor considers that they do have a bias or cannot be impartial then they should withdraw from being a Member of the Licensing Committee for that application.
- 4.7** Councillors should note that, unless they have a disclosable pecuniary interest or a significant personal interest (see section 5 below), they will not appear to be predetermined through-
- listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to prejudging the issue and the Councillor makes clear that they are keeping an open mind;
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Councillor, provided the Councillor explains their actions at the start of the meeting or item and makes it clear that, having expressed the opinion or ward/ local view, they have not committed themselves to vote in

accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

**4.8** The following advice applies:

- Councillors must not make up their mind, or appear to have made up their mind on how they will vote on any licensing matter prior to formal consideration of the matter at the meeting of the Licensing Committee and of the Councillor hearing evidence and arguments on both sides. This includes deciding or discussing how to vote on any application at any sort of political group meeting, or lobby any other Councillor to do so. If a Councillor has an interest in a local lobby group or charity or pressure group they may appear predetermined by their actions and/ or statements made in the past. The Councillor should take advice from the Legal Adviser to the Licensing Committee on how to deal with this.
- It must be noted that if a Councillor is predetermined then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or predetermination or, a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- A Councillor may appear pre-determined where the Council is the landowner, developer or applicant and the Councillor has acted as, or could be perceived as being, a chief advocate for the proposal. This would arise where that through the Councillor's significant personal involvement in preparing or advocating the proposal the Councillor will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its licensing merits.
- Councillors should recognise that in being a Councillor of a political group they are allowed to be predisposed in relation to licensing policies of the Council or to licensing policies of the Councillor's political party, providing that predisposition does not give rise to a public perception that the Councillor has, due to his/ her political membership, predetermined a particular matter.
- When considering a licensing application, Councillors must:
  - act fairly and openly;
  - approach each application with an open mind; carefully weigh up all relevant issues; and
  - determine each item on its own licensing merits
- And Councillors must not:
  - take into account irrelevant issues;
  - behave in a manner that may give rise to a public perception that they may have predetermined the item; and

- behave in such a manner which may give rise to a public perception that they may have been unduly influenced in reaching a decision.

## **5. INTERESTS**

- 5.1** In order to avoid allegations of bias it is important that Councillors are scrupulous in declaring interests at the hearing.
- 5.2** There are three (3) categories of interests, namely:
- Disclosable pecuniary interests (DPIs);
  - Other registerable interests; and
  - Non registerable interests.
- 5.3** Chapter 7 of the 2011 Act places requirements on Councillors regarding the registration and disclosure of their pecuniary interests ('DPI') and the consequences for a Councillor taking part in consideration of an issue in the light of those interests. The definitions of DPI taken from the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are set out in paragraph 3.4 of the Code of Conduct for Members. A Councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. These interests can be either an interest of the Member or an interest (of which the Member is aware) of a spouse, civil partner or a person that the Member is living with as a spouse or civil partner. Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes.
- 5.4** A failure to register or declare a DPI or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a Councillor has a DPI, are criminal offences.
- 5.5** A DPI relating to an item under discussion requires the immediate withdrawal of the Councillor from the Licensing Committee. In certain circumstances, a dispensation can be sought from the Monitoring Officer to take part in that particular item of business and which could arise where the Councillor is the applicant or has made a representation for or against the application.
- 5.6** Having regard to the rules of natural justice and the requirement that a Councillor who has an interest in an application must be disqualified from considering it, then consideration must also be given to other non-DPI personal interests that are either registrable as required by the Code of Conduct for Members or are personal interests that do not require registration.
- 5.7** A personal interest in a matter arises if a Councillor anticipates that a decision on it might reasonably be regarded as affecting (to a greater extent than other council tax payers, ratepayers or residents of the Council's area) the well-being or financial position of the Councillor, a relative or a friend or

- the employment or business carried out by those persons, or in which they might be investors (above a certain level);
- any of the bodies with which the Councillor is associated, and which the Councillor will have registered in the register of interests.

**5.8** If a Councillor has a personal interest in any licensing application or other matter before the Licensing Committee then the Member shall, if present, disclose the existence and nature of the interest at the start of the meeting and, in any event, before the matter is discussed or as soon as it becomes apparent. The full nature of the interest must be declared. The declaration and disclosure of a personal interest does not usually debar a Councillor from participation in the discussion or voting provided that the personal interest is not so significant that there is a real possibility of bias or predetermination and which is likely to prejudice the Councillor's judgement of the public interest (see 5.9 below).

**5.9** The position is different however where a member of the public, with knowledge of the relevant facts, would reasonably regard the personal interest as so significant that there is a real possibility of bias or predetermination and which is likely to prejudice the Councillor's judgement of the public interest. Examples of this are working closely with an applicant or a group of objectors to achieve a certain outcome; lobbying other Councillors on the Committee; acting as an agent for a person pursuing a licensing matter with the Council; or generally declaring voting intentions ahead of the meeting etc.

**5.10** A Councillor with a personal interest which might appear to a fair and informed observer that there was a real possibility of bias must not participate in the discussion on the application and must leave the room immediately when the discussion on the item begins or as soon as the interest becomes apparent. They cannot seek to influence the decision, save that if a member of the public has the right to attend the meeting, make representations, answer questions, or give evidence, then a Councillor will have the same right. Once the Councillor has exercised that right then the Councillor must withdraw from the room for the rest of that item and play no further part in the discussion or vote.

**5.11** Being a Councillor for the ward in which particular premises are situated is not necessarily declarable and as a general rule Councillors of the Committee may deliberate on matters affecting their wards provided they do so with an open mind. Councillors should remember, however, that their overriding duty is to the licensing objectives and not to the residents and businesses within their ward. Councillors have a duty to make decisions impartially, and should not improperly favour, or appear to improperly favour, any person, company, group or locality. If a Member feels that they cannot do this then the Member must leave the room when the discussion on the item begins.

**5.12** More information on what constitutes an interest as well as the obligation on Councillors to register their interests is contained in the Code of Conduct for Members set out in Part C Section 31 of the Constitution. The ultimate

responsibility for fulfilling these requirements rests with individual Councillors but the Council's Monitoring Officer ~~or the Service Head Legal Services are~~ is available to give advice if required.

## **6. TRAINING OF COUNCILLORS**

- 6.1** As the technical and propriety issues associated with licensing are not straightforward, Councillors on the Licensing Committee must participate in a programme of training on the licensing system and related matters agreed by and organised by officers. The programme will consist of compulsory and discretionary elements. The aim of the training is to assist Members in carrying out their role properly and effectively. If a Councillor fails to participate in the compulsory elements of the training this may result in that Councillor being asked to stand down as a Councillor of the Licensing Committee.
- 6.2** Councillors should be aware that training is particularly important for Councillors who are new to the Licensing Committee and for Councillors who have not attended training in the recent past. Other Councillors are free to attend the training in order to gain an understanding of licensing issues.
- 6.3** Where a Member has a genuine difficulty in attending any particular training session officers will try when practicable to accommodate a request for an individual or repeat session.

## **7. APPLICATION BY A COUNCILLOR OR OFFICER**

- 7.1** The Licensing Committee may need to determine an application submitted by a Councillor or an officer, or by a company or individual with which a Councillor or officer has an interest or relationship. For the avoidance of doubt, the term Councillor or an officer includes any former Councillors or officers. In such cases, it is vital to ensure that such application is handled in a way that gives no grounds for accusations or favouritism. Accordingly the matter will be dealt with as follows-
- (a) On receipt of such an application, a copy of the application will be referred to the Corporate Director.
  - (b) The Corporate Director will pass a copy of the application to the Monitoring Officer who will satisfy himself/ herself that the application can be, and is being, processed and determined without suspicion or impropriety.
  - (c) If a Councillor or an officer submit their own proposal to the Council which they serve, they must take no part in its processing or the decision making process.
  - (d) The Councillor making the application would almost certainly have a DPI and should not address the Committee as the applicant but should appoint an independent agent to represent their views.



- (e) Councillors of the Licensing Committee must consider whether the nature of any relationship with the person (either a Member or an officer) making the application requires that they make a declaration of interest and if necessary also withdraw from the meeting.
- (f) In respect of former Councillors or former officers the above requirements shall apply for a period of three years following their departure from the Council.

## **8. APPLICATION BY THE COUNCIL (OR WHERE THE COUNCIL IS THE LANDOWNER)**

- 8.1** Councillors may need to determine an application submitted by the Council for the Council's own land or in respect of land where the Council is the landowner. It is perfectly legitimate for such applications to be submitted to and determined by the Licensing Authority. –Applications should be treated with the same transparency and impartiality as those of other applicants so as not to give rise to suspicions of impropriety.
- 8.2** If a Councillor has been heavily committed or involved in an area of policy/issue relating to such an application (e.g. as a Cabinet Member), then that Councillor must consider whether they have an interest which should be disclosed. –In such circumstances, the Councillor should seek advice from the Legal Adviser to the Licensing Committee.

## **9. LOBBYING**

- 9.1** Councillors may be approached or lobbied by an applicant, agent or objector about a particular licensing application. This can happen prior to an application being made or at any time after the application is made. Whilst lobbying is a normal and perfectly proper part of the political process, it can cause the perception of bias or predetermination especially when a Councillor must enter the meeting with an open mind and make an impartial determination on the relative merits of all the evidence presented at the hearing.
- 9.2** To avoid such perception, if a Member is approached then they should:
  - (a) inform such applicant or agent or interested party/ objector that such approach should be made to officers or to elected Councillors who are not Councillors of the Licensing Committee;
  - (b) forthwith notify in writing to the Monitoring Officer the fact that such an approach has been made, identifying the application, the nature of the approach, by whom it was made, and the action taken by the Member concerned; and
  - (c) keep an adequate written record so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.

- 9.3** If the Councillor does discuss the case then in no circumstances should a Councillor give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. –To do so without all relevant information and views would be unfair and detrimental. As stated in 9.2(c) above, the Councillor must keep an adequate written record of the discussion so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.
- 9.4** If a Councillor who is not a Councillor of the Licensing Committee is contacted by an applicant, objector or interested party then that Councillor can discuss the issues raised by their constituent with the appropriate licensing officer and may forward any representations or evidence to that officer, who will, provided it is lawful, include the relevant information in the report to the Licensing Committee. If a Councillor wishes to make their own representations about a matter they should likewise make those representations to the appropriate Licensing officer.
- 9.5** When attending a public meeting at which a licensing issue is raised, a Councillor of the Licensing Committee should take great care to maintain an impartial role and not express a conclusive view on any pre-application proposals or submitted application. –As stated in 9.2(c) above, the Councillor must keep an adequate written record of the discussion so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee
- 9.6** Correspondence received by any Councillor (whether on the Licensing Committee or not), should be passed without delay to the Corporate Director so that all relevant views can be made available to those Councillors or officers responsible for determining the application. A reply by a Councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to officers.
- 9.7** Councillors should not accept gifts or hospitality from any person involved in or affected by licensing application. If a degree of hospitality is entirely unavoidable, then the Councillor must comply with the provisions in the Code of Conduct for Members on Gifts and Hospitality.
- 9.8** Councillors should not become a member of, lead or represent a national charity or local organisation whose ———primary purpose is to lobby to promote or oppose licensing applications. If a Councillor does then it is likely to appear to a fair and informed observer that there is a real possibility of bias and that Councillor will be required to withdraw from the debate and decision on that matter.
- 9.9** Councillors must also not lobby fellow Councillors regarding their concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any licensing decision is to be taken.

## **10. PRE HEARING DISCUSSIONS**

- 10.1** Discussions between a potential applicant and representatives of the Council may be of considerable benefit to both parties. Similarly, a meeting between the Council and potential objectors may also be beneficial. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process. In the circumstances, pre-application discussions should be avoided by Councillors of the Licensing Committee.
- 10.2** Generally, any contact with applicants and/ or objectors should only be conducted with and through officers and should always be reported to the Licensing Committee. Requests to a Councillor for a meeting should be passed to the Corporate Director.

## **11. SITE VISITS**

- 11.1** If a site visit takes place, its purpose is to gain information relating to the premises which are the subject of the licensing application or revocation to be considered by the Licensing Committee. A site visit may also assist Councillors in matters relating to the context of the application or revocation, the characteristics of the premises and the surrounding area. Councillors should avoid expressing opinions during site visits to any person present, including other Members. Councillors can, of course, rely upon their own local knowledge.
- 11.2** During site visits, Councillors of the Licensing Committee shall not engage individually in discussion with applicants or objectors.
- 11.3** On site visits applicants, agents, objectors or other interested parties shall only be permitted to point out to Councillors features to look at either on the premises or in the vicinity, which are relevant to the application. No discussion will take place on the merits of the application or revocation.
- 11.4** A Councillor of a Licensing Committee may request a site visit, prior to the meeting of the Committee, in which case their name shall be recorded. They shall provide and a record be kept of:
- (i) their reason for the request; and
  - (ii) whether or not they have been approached concerning the application and if so, by whom

and unless the Councillor provides these at least one week prior to the relevant meeting, a site visit will not proceed.

- 11.5** If any Councillor of the Licensing Committee wishes to informally view an application's site then that viewing must only take place if it can be done from

a public place. Councillors of the Licensing Committee shall not enter any premises which are the subject of a licensing application or known by them to be likely to become such in order to meet the agent, applicant, licensee or other interested party, save in the course of a formal accompanied site visit. In exceptional circumstances such as where a Councillor is unable to attend an official site visit that has been arranged, a site visit by an individual Councillor may be carried out provided that the Councillor is accompanied by a licensing officer.

## **12. RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS**

- 12.1** Councillors of the Licensing Committee shall not attempt in any way to influence the terms of the officers' report upon any application.
- 12.2** Any criticism by Councillors of the Licensing Committee or an officer in relation to the handing of any licence application should be made in writing to the Corporate Director and/ or the Monitoring Officer and not to the Officer handling the application.
- 12.3** If any officer feels or suspects that pressure is being exerted upon him/ her by any Councillor of the Council in relation to any particular application, they shall forthwith notify the matter in writing to the Monitoring Officer.
- 12.4** If any officer of the Council who is involved in dealing with any licensing application has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare this interest in the public register held by the Monitoring Officer and take no part. This public register is to be available for inspection at the Licensing Committee meeting.
- 12.5** No officer of the Council shall engage in any paid work for any licensing matter for which Tower Hamlets is the Licensing Authority other than on behalf of the Council.

## **13. CONDUCT AT THE HEARING**

- 13.1** The essence of the rules of natural justice is that Councillors not only act fairly but are also seen to act fairly. Councillors must follow agreed procedures at all times and should only ask questions at the appropriate points in the procedure. At no time should a Councillor express a view which could be seen as pre-judging the outcome. During the course of the hearing Councillors should not discuss (or appear to discuss) aspects of the case with the applicant, an objector, their respective advisers or any member of the public nor should they

accept letters or documents from anyone other than an officer from Democratic Services or the Legal Advisor to the Committee.

- 13.2** Councillors of the Licensing Committee shall refrain from personal abuse and party-political considerations shall play no part in the Committee's deliberations. Councillors shall be respectful to the Chair and to each other and to officers and Members of the public including applicants, their agents and objectors and shall not bully any person.
- 13.3** When questioning witnesses at a meeting of a Licensing Committee, Councillors shall ensure that their questions relate only to licensing considerations relevant to the particular application.
- 13.4** Councillors must ensure that they hear the evidence and arguments for and against the application, in accordance with the rules of natural justice. Councillors must ensure that both the applicant and the objectors receive a fair hearing. Applicants must have the opportunity in advance of the hearing to prepare their case in answer to the objectors/ interested parties/ responsible authorities.
- 13.5** If a Councillor of the Licensing Committee arrives late for a meeting, they will not be able to participate in any item or application already under discussion. Similarly, if a Councillor has to leave the meeting for any length of time, they will not be able to participate in the deliberation or vote on the item or application under discussion at the time of their absence. If a Councillor needs to leave the room, they should ask the Chair for a short adjournment
- 13.6** It is permissible for the Chair of the meeting to curtail statements of parties or witnesses, if they are merely repeating matters which have already been given in evidence.
- 13.7** In considering objections/ representations Councillors are advised that if such are founded on a demonstrable misunderstanding of the true factual position, or otherwise indicate no more than an uninformed reaction to a proposal then they carry no weight whatever and must be ignored. Further Councillors are advised that the mere number of objections irrespective of their content can never be a good reason for refusing an application. What matters are the grounds on which such are based.
- 13.8** Also in considering the application, it may well be that hearsay evidence is presented. Councillors are advised that the strict rules of evidence do not apply in licensing applications and therefore hearsay is admissible. Indeed, hearsay might by its source, nature and inherent probability carry a greater degree of credibility than first hand evidence. What must be discounted, however, are gossip, speculation and unsubstantiated innuendo. In considering hearsay evidence, it should only be accepted where it can fairly be regarded as reliable although Councillors must give the other side a fair opportunity of commenting on it and contradicting it. Ultimately, hearsay evidence must be treated with

great reservation by Councillors, who must make an assessment of its weight and credibility.

- 13.9** When new matters are raised as objections by any person at a hearing, the Licensing Committee is not obliged to hear them. However, if Councillors feel that the new matter raised by the objector should be considered, but the applicant needs further time to consider their response then the applicant should be offered an adjournment of the meeting (either for a short period during the meeting itself or if necessary to a new date). (This paragraph does not apply to 'Alcohol and Entertainment Licensing' under the Licensing Act 2003 or 'Gambling Licensing' under the Gambling Act 2005, as new objections cannot be raised at the hearing).

#### **14. COUNCILLORS WHO ARE NOT ON THE COMMITTEE**

- 14.1** A Councillor who is not a member of the Committee may speak at the meeting, with the agreement of the Chair, as an advocate for either the applicant or the objectors. A Councillor wishing to speak should submit a written statement within the relevant consultation period. The applicant has the right to see any objections in advance. They also have a right of reply.
- 14.2** Councillors addressing the Committee should disclose any interests they may have, including the fact that they have been in touch with the applicant, the objectors or their respective agents and whether they are speaking on behalf of any of those people at the meeting.
- 14.3** A Councillor who is not on the Committee but who is at one of its meetings should normally sit apart from the Committee to demonstrate that they are not taking part in the discussion, consideration or vote. They should not communicate with Councillors on the Committee or pass papers or documents to them before or during the meeting. They may not attend briefings or accompany the Committee if it retires to deliberate in private..
- 14.4** Councillors who are opposed in principle to any category of application or form of public entertainment, either in their own ward or borough-wide, should not seek nomination to the Committee.

#### **15. MAKING THE DECISION**

- 15.1** The decision whether or not to grant a licensing application is a decision for the Councillors of the Licensing Committee only. The assessment of the weight and credibility of evidence is also for Councillors alone to decide.
- 15.2** Councillors shall retire to decide the matter in closed session. The Legal Officer and Democratic Services Officer present at the meeting will retire with them.

During such closed session, the Legal Officer will only provide advice on legal issues relating to the application and will assist in the drafting of any proposed conditions to ensure that they are legally enforceable.

- 15.3** In accordance with regulations, Councillors considering applications relating to ‘Alcohol and Entertainment Licensing’ under the Licensing Act 2003 or ‘Gambling Licensing’ under the Gambling Act 2005 should disregard any information provided by any party which is not relevant to;
- a) their application, representations or notice (as applicable); and
  - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the Police.
- 15.4** Councillors will normally return to open session to announce its decision and give reasons for the same but in cases where the prescribed time limit allows for a later determination and it is appropriate to determine the matter within that time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place within the prescribed time limit and that written notification will be dispatched to all parties advising then of the determination.
- 15.5** Written notice of the decision together with Councillors’ reasons will always be given and such notice will set out any rights of appeal against the decision.
- 15.6** Councillors own knowledge of the circumstances surrounding an application is valid provided that they are put to the applicant for a response. In reaching their decision Councillors must have regard to the evidence presented at the hearing, both the documents circulated in advance and the oral evidence. The decision must be based on the evidence alone and Councillors have a duty to ensure that they have regard to all the relevant matters before them and only those matters.
- 15.7** Councillors considering an application have a duty to determine it only on the facts before them relating to that individual case and not decide it as a matter of general policy. Councillors must not make unreasonable decisions that no other reasonable licensing authority would arrive at, having regard to the legal principle of “Wednesbury reasonableness”.
- 15.8** In considering applications, Councillors must also have due regard to any Council Policy (e.g. the Council’s Statement of Licensing Policy) and any statutory guidance (e.g. Licensing Guidance issued under section 182 of the Licensing Act 2003). Any departure from such should be justified and based on the facts before them.
- 15.9** Councillors should be aware that an unreasonable decision taking into account the above criteria is unlikely to be sustained on appeal. In this instance, the authority foregoes the opportunity to attach terms and conditions to a licence and will likely have to pay costs. The role of officers is to point this out and

advise Councillors as to the potential risk of losing an appeal and being required to pay the other parties costs as a consequence. This needs to be balanced with the Council's fiduciary duty towards the local taxpayer in terms of the Council being a public body spending public money.

## **16. APPEALS**

- 16.1** The Licensing Committee's decision is not a final one and applicants (and in certain cases interested parties and responsible authorities) have the right to appeal to the Magistrates Court and beyond in certain cases.
- 16.2** An appeal must be lodged within a prescribed time of receiving written notification of the decision.
- 16.3** On such appeals the hearing takes on an increasingly formalised nature, based solely on the evidence given. The Council will only be able to sustain its defence if it can substantiate its grant or refusal of a licence by relevant admissible evidence. Councillors who consider basing the grant or refusal of a licence on their personal knowledge should be prepared to testify to the relevant facts in any appeal proceedings.
- 16.4** Taking this factor into account along with the real risk of costs against the Council, Councillors must be wary of relying on any matters which could not readily be proved in evidence. Essentially, for Committee decisions to "stand up" on appeal and to avoid costs being awarded against the Authority, decisions to grant or refuse licences or impose conditions must be justified.

## **17. RECORD KEEPING**

- 17.1** In order that licensing procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every licensing application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interests by Councillors. Records will be kept in accordance with the Council's Information Governance Framework and, specifically, the Council's Records Management Policy.

## **18. SUMMARY DOS AND DO NOT'S**

- 1.** Councillors must:
  - (a) Attend compulsory training sessions;
  - (b) Be open minded and impartial;
  - (c) Declare any actual interest;
  - (d) Listen to the arguments for and against;



- (e) Carefully weigh up all relevant issues;
- (f) Ask questions that relate only to licensing considerations relevant to the particular application;
- (g) Make decisions on merit and on licensing considerations only;
- (h) Respect the impartiality and integrity of the Council's officers;
- (i) Report any lobbying from applicants, agents, objectors or any other Councillor;
- (j) Promote and support the highest standards of conduct; and
- (k) Promote equality and not discriminate unlawfully against any person, and treat all people with respect.

**2. Councillors must not:**

- (a) Be biased or give the impression of being biased;
- (b) Improperly confer an advantage or disadvantage on any person nor seek to do so;
- (c) Act to gain a financial or other benefit for themselves, their family, friends or close associates;
- (d) Place themselves under a financial or other obligation to any individual or organisation that might seek to influence the performance of their duties as a member (e.g. by accepting gifts or hospitality from any person involved in or affected by a licensing application);
- (e) Place themselves in a position where their integrity might reasonably be questioned;
- (f) Participate in a meeting where they have a DPI;
- (g) Participate in a meeting where they have an interest which does or could be reasonably considered as giving rise to bias; and
- (h) Express opinions during any site visit to any person present, including other Members.

**19. PROCEDURE NOTES**

**19.1** Appendix A to this Code of Conduct sets out the Rules of Procedure Governing Applications for Premises Licences and other permissions under the Licensing Act 2003. This is set out in Part D Section 53 of the Constitution.

**19.2** Appendix B to this Code of Conduct sets out the Rules of Procedure Governing Applications for Sex Establishment Licences under Section 2 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended). This is set out in Part D Section 53 of the Constitution.



## 35 Planning Code of Conduct

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## 1. INTRODUCTION

- 1.1 The Planning Code of Conduct has been adopted by Tower Hamlets Council to regulate the performance of its planning functions. Its major objectives are to guide Councillors and officers of the Council in dealing with planning related matters and to inform potential developers and the public generally of the standards adopted by the Council in the exercise of its planning powers.
- 1.2 The Planning Code of Conduct is in addition to the Code of Conduct for Members adopted under the provisions of the Localism Act 2011. Councillors should follow the requirements of the Code of Conduct for Members and apply this Code in light of that Code. The purpose of this Code is to provide more detailed guidance on the standards to be applied specifically in relation to planning matters.
- 1.3 Planning decisions involve balancing many competing interests and making an informed judgement against a local and national policy framework. In doing this, Councillors need to make decisions having regard to the wider public interest on what can sometimes be controversial proposals. The provisions of this Code are designed to ensure that planning decisions are taken with sound judgement and for justifiable reasons, in a fair consistent and open manner and that Councillors making such decisions are perceived as being accountable for those decisions. The Code is also designed to assist Councillors in dealing with and recording approaches from developers and objectors and is intended to ensure that the integrity of the decision-making process is preserved.
- 1.4 This Code applies to Councillors at all times that they are involved in the planning process. This would include, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings. It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.
- 1.5 This Code is part of the Council's ethical framework and in addition to the Code of Conduct for Members should be read in conjunction with the Member/Officer Protocol. If a Councillor does not abide by the Code then that Councillor may put the Council at risk of proceedings on the legality or maladministration of the related decision and the Councillor may be at risk of either being named in a report to the Standards Advisory Committee or Council. A failure to abide by the Code is also likely to be a breach of the Code of Conduct for Members and which could result in a complaint being made to the Monitoring Officer.
- 1.6 **If a Councillor has any doubts about the application of this Code to their own circumstances they should seek advice early, from the Monitoring Officer and preferably well before any meeting takes place.**

## 2. PREDISPOSITION, PREDETERMINATION OR BIAS

- 2.1 Section 25 of the Localism Act 2011 ('the 2011 Act') provides that a Councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a Councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased.
- 2.2 As to predetermination, this is a legal concept and is used in situations where a decision maker either has, or appears to have, a closed mind. That is they have made up their mind in advance of proper consideration of an issue and the merits of an application. Section 25 of the 2011 Act does not amount to the abolition of the concept of predetermination however, as no one should decide a case where they are not impartial or seen to be impartial. Critically, Councillors need to avoid any appearance of bias or of having a predetermined view before taking a decision. Indeed, Councillors should not take a decision on a matter when they are actually biased in favour or against the application, or where it might appear to a fair and informed observer that there was a real possibility of bias, or where a Councillor has predetermined the matter by closing their mind to the merits of the decision.
- 2.3 Any planning decision made by a Councillor who can be shown to have approached the decision with a closed mind will expose the Council to the risk of legal challenge.
- 2.4 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition).
- 2.5 If a Councillor considers that they do have a bias or cannot be impartial then they **must** withdraw from considering that application.
- 2.6 Councillors should note that, unless they have a disclosable pecuniary interest or a significant personal interest (see section 3 below), they will not appear to be predetermined through-
- listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to

prejudging the issue and the Councillor makes clear that they are keeping an open mind;

- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a Ward Councillor, provided the Councillor explains their actions at the start of the meeting or item and makes it clear that, having expressed the opinion or ward/local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

## 2.7 The following advice applies:

- Councillors must not make up their mind, or appear to have made up their mind on how they will vote on any planning matter prior to formal consideration of the matter at the meeting of the Committee and of the Councillor hearing the officer's presentation and evidence and arguments on both sides. This includes deciding or discussing how to vote on any application at any sort of political group meeting, or lobby any other Councillor to do so. If a Councillor has an interest in a local lobby group or charity or pressure group they may appear predetermined by their actions and/ or statements made in the past. The Councillor should take advice from the Legal Adviser to the Committee on how to deal with this.
- It must be noted that if a Councillor is predetermined then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or predetermination or, a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- A Councillor may appear pre-determined where the Council is the landowner, developer or applicant and the Councillor has acted as, or could be perceived as being, a chief advocate for the proposal. This would amount to more than a matter of membership of both the Cabinet and Development Committee, but that through the Councillor's significant personal involvement in preparing or advocating the proposal the Councillor will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits. (See Section 6 below for guidance on applications submitted by the Council).
- Councillors should recognise that in being a Councillor of a political group they are allowed to be predisposed in relation to planning policies of the Council or to planning policies of the Councillor's political party, providing that predisposition does not give rise to a public perception that the Councillor has due to his/ her political membership predetermined a particular matter. (See Section 7 below relating to Lobbying).

- When considering a planning application or any other planning matter Councillors must:
  - act fairly and openly;
  - approach each planning issue with an open mind; carefully weigh up all relevant issues; and
  - determine each item on its own planning merits
- And Councillors must not:
  - take into account irrelevant issues;
  - behave in a manner that may give rise to a public perception that they may have predetermined the item; and
  - behave in such a manner which may give rise to a public perception that they may have been unduly influenced in reaching a decision.

### **3. INTERESTS**

- 3.1 In order to avoid allegations of bias it is important that Councillors are scrupulous in declaring interests at the meeting.
- 3.2 Chapter 7 of the 2011 Act places requirements on councillors regarding the registration and disclosure of their pecuniary interests ('DPI') and the consequences for a councillor taking part in consideration of an issue in the light of those interests. The definitions of DPI taken from the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are set out in paragraph 5.1 of the Members' Code of Conduct. A Councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes. A failure to register or declare a DPI or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a Councillor has a DPI, are criminal offences.
- 3.3 A DPI relating to an item under discussion requires the immediate withdrawal of the Councillor from the Committee. In certain circumstances, a dispensation can be sought from the Monitoring Officer to take part in that particular item of business and which could arise where the Councillor is the applicant or has made a representation for or against the application.
- 3.4 Having regard to the requirement that a Councillor who has an interest in an application must be disqualified from considering it, then consideration must also be given to personal interests. A personal interest in a matter arises if a Councillor anticipates that a decision on it might reasonably be regarded as affecting (to a greater extent than other council tax payers, ratepayers or residents of the Tower Hamlets) the well-being or financial position of the Councillor, a relative or a friend or

- the employment or business carried out by those persons, or in which they might be investors (above a certain level)
  - any of the bodies with which the Councillor is associated, and which the Councillor will have registered in the register of interests.
- 3.5 If a Councillor has a personal interest in any planning then the Councillor shall, if present, disclose the existence and nature of the interest at the start of the meeting and, in any event, before the matter is discussed or as soon as it becomes apparent. The full nature of the interest must be declared. If, in accordance with the Members' Code of Conduct, the interest is 'sensitive', the Councillor must disclose to the meeting that they have an interest that is sensitive but need not disclose the nature of the interest or any other sensitive information. The declaration and disclosure of a personal interest does not usually debar a Councillor from participation in the discussion provided that the personal interest is not so significant that there is a real possibility of bias or predetermination and which is likely to prejudice the Councillor's judgement of the public interest (see 3.6 below).
- 3.6 The position is different however where a member of the public, with knowledge of the relevant facts, would reasonably regard the personal interest as so significant that there is a real possibility of bias or predetermination and which is likely to prejudice the Councillor's judgement of the public interest. Examples of this are the Councillor is working closely with a developer or a group of objectors to achieve a certain outcome; lobbying other Councillors on the Committee; acting as an agent for a person pursuing a planning matter with the Council; or generally declaring voting intentions ahead of the meeting etc.
- 3.7 A Councillor with a personal interest which might appear to a fair and informed observer that there was a real possibility of bias must not participate in the discussion on the application and must leave the room immediately when the discussion on the item begins or as soon as the interest becomes apparent. They cannot seek to influence the decision, save that if a member of the public has the right to attend the meeting, make representations, answer questions etc., then a Councillor will have the same right. Once the Councillor has exercised that right then the Councillor must withdraw from the room for the rest of that item and play no further part in the discussion or vote.
- 3.8 Being a Councillor for the ward in which particular premises is situated is not necessarily declarable and as a general rule Councillors of the Committee may deliberate on matters affecting their wards provided they do so with an open mind. Councillors should remember, however, that their overriding duty is to the whole community not just to the residents and businesses within their ward. Councillors have a duty to make decisions impartially, and should not improperly favour, or appear to improperly favour, any person, company, group or locality. If a Councillor considers that it is appropriate to make representations for their ward then the Councillor can declare this and make representations and must not participate in the debate and vote. It may be that



by remaining in the Committee room during the debate and vote that a reasonable person could perceive that the Councillor was seeking to influence the decision by their continued presence. In deciding therefore whether to remain, Councillors, especially Executive Members or the Mayor, should consider the perception that their continued presence could cause.

- 3.9 More information on what constitutes an interest as well as the obligation on Councillors to register their interests is contained in the Code of Conduct for Members set out in Part B Section 31 of the Constitution. The ultimate responsibility for fulfilling these requirements rests with individual Councillors but the Council's Monitoring Officer ~~or the Divisional Director Legal~~ are available to give advice if required.
- 3.10 Further, at Appendix C, there are a series of What Ifs and which will assist in Councillors determining whether they have a personal interest which they should declare and whether it could give rise to a reasonable observer in possession of the facts considering that the Councillor would be biased or would be unable to be impartial.

#### **4. TRAINING OF COUNCILLORS**

- 4.1 As the technical and propriety issues associated with planning are not straightforward, Councillors who sit on either the Development Committee or the Strategic Development Committee must participate in a programme of training on the planning system and related matters agreed by and organised by officers. The programme will consist of compulsory and discretionary elements. If a Councillor fails to participate in the compulsory elements of the training this may result in that Councillor being asked to stand down as a Councillor of relevant Committee.
- 4.2 Councillors should be aware that training is particularly important for those who are new to the Development Committee and for Councillors who have not attended training in the recent past. Other Councillors are free to attend the training in order to gain an understanding of planning issues.
- 4.3 The compulsory training programme will cover issues relating to probity in planning, principles in planning to reflect government guidance and case law. Discretionary training will seek to extend Councillors' knowledge of planning law, regulations, procedures, Codes of Practice, Development Plans and best practice. The aim of the training is to assist Councillors in carrying out their role properly and effectively.
- 4.4 Where a Councillor has a genuine difficulty in attending any particular training session officers will try, when practicable, to accommodate a request for an individual or repeat session.

## **5. APPLICATION BY A COUNCILLOR OR OFFICER**

- 5.1 Councillors may need to determine an application submitted by or made on behalf of a Councillor or an officer, or by a company or individual with which a Councillor or officer has an interest or relationship. For the avoidance of doubt, the term Councillor or an officer includes any former Councillors or officers. In such cases, it is vital to ensure that such application is handled in a way that gives no grounds for accusations or favouritism. Accordingly the matter will be dealt with as follows-
- (a) The matter will be referred to the Corporate Director, Place, who shall decide whether or not the application should be referred to the relevant Committee, or determined under delegated powers, if the application is in accordance with development plans and all other material planning considerations.
  - (b) On receipt of such an application, the Corporate Director, Place will pass a copy of the application to the Monitoring Officer who will satisfy himself/herself that the application can be, and is being, processed and determined without suspicion or impropriety.
  - (c) If a Councillor or an officer submit their own proposal to the Council which they serve, they must take no part in its processing or the decision making process.
  - (d) The Councillor making the application would almost certainly have a DPI and should not address the Committee as the applicant but should appoint an independent agent to represent their views.
  - (e) Councillors of the Committee must consider whether the nature of any relationship with the person (either a Councillor or an officer) applying for planning permission requires that they make a declaration of interest and if necessary also withdraw from the meeting.
  - (f) In respect of former Councillors or former officers the above requirements shall apply for a period of three (3) years following their departure from the Council.
- 5.2 The onus is on the Councillor or Officer to bring to the attention of the Corporate Director, Place that they are personally involved in an application as well as the nature of that involvement.

## **6. APPLICATION BY THE COUNCIL**

- 6.1 Councillors may need to determine an application submitted by or on behalf of the Council for the Council's own development. It is perfectly legitimate for such proposals to be submitted to and determined by the Local Planning Authority. Proposals for such development should be treated with the same transparency and impartiality as those of private developers so as not to give rise to

suspicions of impropriety. In the interests of transparency, the Committee Report will clearly state that the application is made by or on behalf of the Council.

- 6.2 If a Councillor has been heavily committed or involved in an area of policy/issue relating to such an application (e.g. as a Cabinet Member), then that Councillor must consider whether they have an interest which should be disclosed. In such circumstances, the Councillor should seek advice from the Legal Adviser to the Committee

## **7. LOBBYING**

- 7.1 Lobbying is the process by which applicants and their agents, objectors, non-Committee Councillors and other interested parties seek to persuade Councillors who sit on the Committee to come to a particular decision. It is a legitimate part of the planning process for them to approach Councillors who sit on Committee as these discussions can help Members to understand the issues and concerns. This can happen prior to an application being made or at any time after the application is made.

- 7.2 Whilst lobbying is a normal and perfectly proper part of the political process, it can cause the perception of bias or predetermination especially when a Councillor must enter the meeting with an open mind and make an impartial determination on the relative merits based on all the evidence presented at the meeting. To avoid such perception if a Councillor is approached they should following the principles set out in section 2.6 of this Code and also:

- (a) explain the potentially conflicting position they are in if they express a final opinion on a proposal before consideration at the Committee;
- (b) explain the procedures by which representations can be made;
- (c) explain the kinds of planning issues that the Council can take into account;
- (d) inform the person making the approach that such approach should be made to officers within the Place Directorate or to elected Councillors who are not Councillors of the either the Development Committee or Strategic Development Committee;
- (e) forthwith notify in writing to the Monitoring Officer the fact that such an approach has been made, identifying the application, the nature of the approach, by whom it was made, and the action taken by the Councillor concerned. This should include any offers made of planning gain or constraint of development, through a proposed section 106 Planning Obligation or otherwise; and
- (f) keep an adequate written record so as to enable the Councillor to disclose the fact and nature of such an approach at any relevant meeting of the Committee.

- 7.3** If the Councillor does discuss the case then in no circumstances should a Councillor give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair and detrimental. As stated in 7.2(c) above, the Councillor must keep an adequate written record of the discussion so as to enable the Councillor to disclose the fact and nature of such an approach at any relevant meeting of the Development Committee.
- 7.4** Councillors should not accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, then the Councillor must comply with the provisions in the Code of Conduct for Members on Gifts and Hospitality.
- 7.5** Councillors should not become a member of, lead or represent a national charity or local organisation whose primary purpose is to lobby to promote or oppose planning proposals. If a Councillor does then it is likely to appear to a fair and informed observer that there is a real possibility of bias and that Councillor will be required to withdraw from the debate and decision on that matter.
- 7.6** Where Councillors contact fellow Councillors regarding their concerns or views they must not seek to attempt to persuade or put pressure on the Councillor that they should vote in a particular way.
- 7.7** In no circumstances should a Councillor give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair and detrimental.
- 7.8** Where a Committee member feels that they have been unreasonably or excessively lobbied on a particular proposal they must make a declaration at the Committee on that application that they have been lobbied. Provided that member has followed the principles in this Code then they will still be able to speak and vote on the application.

## **8. PRE-MEETINGS, PRESENTATIONS AND BRIEFING SESSIONS**

- 8.1** Councillors should avoid agreeing to any formal meeting with applicants, developers or groups of objectors. If a Councillor considers that a formal meeting would be useful in clarifying the issues, then the Councillor should not seek to personally arrange such a meeting but should request the **Divisional** Director of Planning and Building Control to organise it and a planning officer will attend any such meeting. This ensures that if such a meeting takes place then it will be properly recorded on the application file and a record of the

meeting will be disclosed when the application is considered by the Committee. The Councillor should take no other person to the meeting unless that person is that Councillor's carer.

- 8.2** If a Councillor does arrange a private meeting with an applicant, developer, agent or objector then this must be declared at the Development Committee meeting by the Councillor. The Councillor should also arrange to be accompanied by a planning officer and they should take no other person to the meeting unless that person is that Councillor's carer. As in Section 7.2(c) above, the Councillor should keep an adequate written record of the meeting. This record should then be referred to the ~~Divisional~~ Director of Planning and Building Control to organise it so that it will be properly recorded on the application file and a record of the meeting will be disclosed when the application is considered by the Committee.
- 8.3** Where there is to be a presentation by applicants/ developers, Councillors should not attend unless it has been organised by an officer. If a Councillor does attend a presentation not organised by officers then the Councillor must inform the Divisional Director Planning and Building Control that they have done so. The Councillor should keep an adequate written record of the presentation. This record should then be referred to the ~~Divisional~~ Director of Planning and Building Control to organise it so that it will be properly recorded on the application file and a record of the meeting will be disclosed when the application is considered by the Committee.
- 8.4** When Councillors attend presentations, they should ask relevant questions to clarify their understanding of the proposal. Councillors should be mindful, however, that the presentation is not part of the formal process of debate and determination of any subsequent application and that this will be carried out by the appropriate Development Committee.
- 8.5** Councillors should bear in mind that a presentation is a form of lobbying and they must not express any strong view or state how they or other Councillors might vote. Further Councillors are reminded that if they do attend a presentation then any hospitality or gifts received over the value of £25.00 must be disclosed and registered in the normal way.
- 8.6** Public meetings are sometimes organised as part of the Council's pre-application process (contained in the Council's Planning tool kit). All Councillors are encouraged to participate in such pre-application discussions.
- 8.7** Further where briefing sessions (generally for major applications) have been arranged (by officers) for Councillors following submission of an application then Councillors should attend these sessions as it will give them an opportunity

to better understand the Council's planning policies and its economic objectives.

- 8.8** Councillors should note that the Code of Conduct of Member and this Code apply to any of the above meetings, presentations or briefing sessions and that at any subsequent Committee considering the application that Councillors must disclose attendance at any such meetings and/ or presentations.

## **9. SITE VISITS**

- 9.1** Site visits by Councillors determining schemes are an essential part of determining a planning application. It is good practice for Councillors to visit an application site before a meeting, so that they can familiarise with the site or surrounding area and Councillors should try to attend the pre-Committee site visits organised by officers. A site visit may also assist Councillors in matters relating to the context of the application and the characteristics of surrounding area. Whilst Councillors can make comments and ask appropriate questions during the site visit they should avoid expressing opinions which can cause the perception of bias or predetermination. Further Councillors shall not make a decision whilst on site. Councillors can, of course, rely upon their own local knowledge.

- 9.2** During site visits, Councillors of the Planning Committees shall not engage individually in discussion with applicants or objectors.

- 9.3** On site visits applicants, developers, objectors or other interested parties who attend shall only be permitted to point out to Councillors features to look at either on the site or in the vicinity, which are relevant to the application. No discussion will take place on the merits of the application.

- 9.4** Should it is not possible for a Councillor to attend an organised site visit and a Councillor then carries out a site visit on their own, the guidelines below apply-

- The Councillor must notify the ~~Divisional~~ Director of Planning and Building Control of the intention to visit (which will be recorded on the file).
- The Councillor must carry out the visit discreetly and the Councillor must not make himself/ herself known to the applicants or neighbours.
- The Councillor must treat the site visit as an opportunity to seek information and to observe the site only. The Councillor must not use the site visit as or allow it to become an impromptu lobbying opportunity for the applicant or objectors.
- Councillors should not hear representations from the applicant or any other party and the Councillor shall have regard to the provisions on Lobbying in Section 7 above, and advise them that they may make representations in writing to the Council and direct them to relevant officers.

- Councillors must not express opinions or views on the application to anyone as this may lead to an allegation of apparent bias or pre-determination.
- Councillors should note that the Code of Conduct for Members and this Code apply to any such visit.

**9.5** As in Section 7.2(c) above, the Councillor should keep an adequate written record of the site visit, including any new information gained from such visit. This record should then be referred to the ~~Divisional~~ Director of Planning and Building Control to organise it so that it will be properly recorded on the application file and a record of the meeting will be disclosed when the application is considered by the Committee.

**9.6** Once the application has reached the determination stage, Councillors should not request a site visit unless the Councillor considers that it is really necessary, and the Committee may decide to revisit the site where particular site factors are significant in terms of the weight attached and it would be difficult in the absence of a site visit to assess the application or there are significant policy or precedent implications and specific site factors need to be carefully addressed.

## **10. THE ROLE OF THE EXECUTIVE**

**10.1** The Executive consists of 10 people, namely the Mayor and 9 Councillors. Each of the 9 Councillors has a specific Portfolio and one of those Portfolios is Strategic Development. The Mayor is responsible for most decisions about day-to-day Council services but this excludes the regulatory council functions such as planning.

**10.2** Councillors on the Planning Committees have specific responsibility for planning. However, planning is important to all Councillors and can help deliver other local objectives. Further, planning takes account of wider, long-term public interests including the environment, economic growth and prosperity, a cohesive and empowered society, good health and wellbeing, enhancement of heritage, conservation, local culture and community identity.

**10.3** The Executive therefore has an interest in Strategic Planning: hence the Member of the Executive with the Strategic Development portfolio. As such, the Mayor, the lead Member and other Members of the Executive may be approached regarding or become involved in planning applications. This is perfectly acceptable but where the Mayor, the lead Member or other Members of the Executive are approached or become involved then this Code of Conduct also applies to them, particularly paragraphs 6, 7, 8 and 10. Further, they should not attend the pre-Committee site visits organised by officers unless they sit on the Planning Committee.

- 10.4 Additionally, Councillors of the Executive should not meet to discuss how to vote on any application at any sort of political group meeting, or lobby any other Councillor to do so.

## **11. RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS**

- 11.1 Councillors shall not attempt in any way to influence the terms of the officers' reports upon any application including a particular recommendation. Officers are advising Councillors. They must give impartial policy advice on planning considerations and the recommendations as set out in the report without seeking to persuade Councillors. (This does not prevent a Councillor from asking questions or submitting views to the ~~Divisional~~ Director of Planning and Building Control, which may be incorporated into any Committee report).
- 11.2 Any criticism by Councillors of an officer in relation to the handing of any application should be made in writing to the Corporate Director, Place and/ or the Monitoring Officer rather than to the Officer handling the application.
- 11.3 If any officer feels or suspects that pressure is being exerted upon him/her by any Councillor in relation to any particular application, they shall forthwith notify the matter in writing to the Monitoring Officer.
- 11.4 If any officer of the Council who is involved in dealing with any application has had any involvement with an applicant, developer or objector, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare this interest in the public register held by the Monitoring Officer and take no part. This public register is to be available for inspection at the Development Committee meeting.
- 11.5 No officer of the Council shall engage in any paid work for any planning matter for which Tower Hamlets is the Planning Authority other than on behalf of the Council.

## **12. CONDUCT AT THE COMMITTEE**

- 12.1 Councillors must not only act fairly but must also be seen to act fairly. Councillors must follow agreed procedures (at all times and should only ask questions at the appropriate points in the procedure. At no time should a Councillor express a view which could be seen as pre-judging the outcome. During the course of the meeting Councillors should not discuss (or appear to discuss) aspects of the case with the applicant, a developer, an objector, their respective advisers or any member of the public nor should they accept letters or documents from anyone other than an officer from Democratic Services or the Legal Advisor to the Committee.



- 12.2** Councillors of the Committee shall refrain from personal abuse and party-political considerations shall play no part in the Committee's deliberations. Councillors shall be respectful to the Chair and to each other and to officers and members of the public including applicants, developers, objectors and their representatives and shall not bully any person.
- 12.3** When asking questions at a meeting, Councillors shall ensure that their questions relate only to planning considerations relevant to the particular application.
- 12.4** The Committee must ensure that they hear the evidence and arguments for and against the application and approach each planning issue with an open mind.
- 12.5** If a Councillor arrives late for a meeting, they will not be able to participate in any item or application already under discussion. Similarly, if a Councillor has to leave the meeting for any length of time, they will not be able to participate in the deliberation or vote on the item or application under discussion at the time of their absence. If a Councillor needs to leave the room, they should ask the Chair for a short adjournment
- 12.6** It is permissible for the Chair of the meeting to curtail statements of parties if they are merely repeating matters which have already been said.
- 12.7** In considering the application, Councillors are advised that if objections are founded on a demonstrable misunderstanding of the true factual position, or otherwise indicate no more than an uninformed reaction to a proposal then such carry no weight whatever and must be ignored. Further Councillors are advised that the mere number of objections irrespective of their content can never be a good reason for refusing an application. What matters are the grounds on which such are based.

### **13. DECISION MAKING**

- 13.1** When a report goes before the Committee rather than being determined through officer delegation, the reasons why will be set out in the report to the Committee.
- 13.2** Councillors must come to meetings with an open mind and in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2007 and section 70(2) of the Town and Country Planning Act 1990, Councillors must make decisions in accordance with the Development plan unless material considerations indicate otherwise.
- 13.3** Councillors should only come to their decision after due consideration of all of the relevant information reasonably required upon which to base a decision. If it is considered that there is insufficient time to digest new information or that there is simply insufficient information before Councillors then Councillors can

request that further information be provided and, if necessary, defer or refuse the application.

- 13.4 Councillors must not take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including the officers' introduction to the matter. If an application has previously been deferred then the same Councillors will be asked to reconsider the application when it is returned to Committee.
- 13.5 Where Councillors take a decision to defer any proposal then the reasons for Committee's decision must be given and recorded.
- 13.6 When a Councillor is proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan then they must clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. The Councillor must be aware that they may have to justify the resulting decision by giving evidence in Court or at Enquiry in the event of any challenge. Further advice on this is set out in the Development Procedure Rules at Appendix B.
- 13.7 Prior to deciding the matter before the Committee, Councillors must consider the advice that planning, legal or other officers give to the Committee with respect to the recommendation or any proposed amendment to it.
- 13.8 **At the end of the day, Councillors must bear in mind that they are involved in planning matters to represent the interests of the whole community and must maintain an open mind when considering planning applications. When Councillors take decisions on planning applications they must do so in accordance with the development plan unless material considerations indicate otherwise. Councillors must only take into account material planning considerations, which can include public views where they relate to relevant planning matters. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid material planning reasons.**

#### 14. RECORD KEEPING

- 14.1 In order that planning applications are processed properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interests by Councillors. Records will be kept in accordance with the Council's Information Governance Framework and, specifically, the Council's Records Management Policy.

#### 15. DOS AND DO NOT'S

**15.1** Councillors must:

- (a) Attend compulsory training sessions;
- (b) Be open minded and impartial;
- (c) Declare any actual interest;
- (d) Act solely in the public interest;
- (e) Listen to the arguments for and against;
- (f) Carefully weigh up all relevant issues;
- (g) Ask questions that relate only to planning considerations relevant to the particular application;
- (h) Make decisions on merit and on material planning considerations only;
- (i) Respect the impartiality and integrity of the Council's officers;
- (j) Report any lobbying from applicants, agents, objectors or any other Councillor;
- (k) Promote and support the highest standards of conduct; and
- (l) Promote equality and not discriminate unlawfully against any person, and treat all people with respect.

**15.2** Councillors must not:

- (a) Be biased or give the impression of being biased;
- (b) Improperly confer an advantage or disadvantage on any person nor seek to do so;
- (c) Act to gain financial or other benefit for themselves, their family, friends or close associates;
- (d) Place themselves under a financial or other obligation to any individual or organisation that might seek to influence the performance of their duties as a Councillor (e.g. by accepting gifts or hospitality from any person involved in or affected by a planning proposal);
- (e) Place themselves in a position where their integrity might reasonably be questioned;
- (f) Participate in a meeting where they have a DPI;
- (g) Participate in a meeting where they have an interest which does or could be reasonably considered as giving rise to bias; and
- (h) Express opinions during site visits to any person present, including other Councillors.

## 16 WHAT IF?

### 16.1 Examples

1. What if you have a good friend who lives next door to the premises in respect of which there is an application and the friend has objected?  
**Would be considered predetermined – do not participate**
2. Now what if your spouse/ significant other is a good friend of that person?  
**Would be considered predetermined – do not participate**
3. Now what if you know the person casually but they are not a good friend?  
**Could be considered predisposed – could still determine with open mind – declare interest but can still participate**
4. Now what if person works in the same organisation as you and you may say hi occasionally but there is no other interaction?  
**Could not be considered predisposed – can determine with open mind – nothing to declare**
5. What if you are a member of the Board of Tower Hamlets Homes and the application is by or on behalf of Tower Hamlets Homes?  
**Firstly, not a DPI as membership of the Board does not amount to an office carried on for profit or gain – Could be considered predisposed or predetermined due to membership of Board however – This is dependent on nature of the application and is a matter of whether the application can be determined with an open mind – If the application has not been discussed at the Board or is not relevant to Board projects then likely to be considered predisposed and therefore declare the interest but you can still participate in the meeting – If however application was discussed at the Board or is relevant to projects discussed at the Board then likely to be considered predetermined and therefore declare an interest and do not participate**

## 17. GUIDANCE/ PROCEDURE NOTES

- 17.1 Appendix A to this Code of Conduct is the Council's Guidelines for determining planning applications. This is set out in Part D Section 53 of the Constitution.
- 17.2 Appendix B to this Code of Conduct sets out the Development Procedure Rules that apply to all meetings of the Development Committee, Strategic Development Committee and Council in relation to the determination of planning applications. This is set out in Part D Section 53 of the Constitution.

## 36 Financial Regulations and Procedure Rules

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## Section 1 – Introduction

The purpose of these Financial Regulations (Regulations) is to provide the governance framework for managing the Council's financial affairs.

To conduct its activities efficiently, a local authority needs to ensure it has sound financial management policies in place and which are strictly adhered to. Part of this process is to establish Financial Regulations that set out the financial policies of the authority. The Financial Regulations are underpinned by detailed financial procedures.

Financial Regulations provide clarity about the financial responsibilities of individuals within the organisation. All individuals engaged on Council activities are responsible for ensuring that their actions comply with the objectives specified in the financial and procurement procedures.

In compiling these regulations and procedures the objective has been:

- To provide advice on how to undertake the financial aspects of your duties;
- To disseminate best practice throughout the Council;
- To ensure consistency; and
- To ensure legal requirements are adhered to.

To do this, the regulations set out the Council's requirements in respect of:

- financial management roles and responsibilities
- financial planning and budgeting
- financial monitoring and control
- internal control and audit
- financial systems and procedures
- external arrangements

The procedures have been developed by the council's Finance Department and have been the subject of extensive consultation. However, it is impossible for the procedures to cover every eventuality and an element of interpretation may be necessary. If further advice is required, please contact your Directorate Finance Business Partner. The business partnering model and the term Finance Business partner (FBP) describes a broad range of skills exhibited by individuals at different levels depending on customer requirements; in Tower Hamlets these people may be described variously as Strategic Heads of Finance, Finance Managers, Senior Accountants etc.

The ~~Chief Finance Officer~~~~Corporate Director, Resources~~ is responsible for the administration of the Council's financial affairs. As part of her/his duties, s/he will,

when s/he considers it appropriate, issue Financial Regulations/ Procedures which are the rules governing the management of the Council's financial resources. S/he will ensure that the Regulations/ Procedures and any updated or amended versions are made available to all chief officers, the Mayor and Members of the Council. These Regulations/ Procedures and any updated or amended versions will then be placed in Appendix A of these Rules.

It is the responsibility of all Chief Officers to comply personally with Financial Regulations/ Procedures and to ensure that all officers within their Directorate with financial responsibilities also comply with them. Failure to comply with Financial Regulations/ Procedures is likely to constitute a disciplinary offence and be investigated under the appropriate disciplinary procedure.

### **Compliance CIPFA Guidance for Local Government**

Local government finance in the UK is governed by primary legislation, regulation and professional standards set by CIPFA. As a matter of principal, the Council will conduct its financial affairs in accordance with accepted standard practice embodied by CIPFA's Code of Practice framework. This includes:

- CIPFA Treasury Management in the Public Services Code of Practice
- CIPFA Code of Practice on Local Authority Accounting
- CIPFA/SOLACE guidance 'Delivering Good Governance in Local Government'
- CIPFA's Audit Committees – Practical Guidance for Local Authorities
- CIPFA's Code of Practice for Internal Audit in Local Government

To date, the general financial management of a local authority, has not been supported by a professional code. CIPFA is now proposing that a Financial Management Code (CIPFA FM Code) should be designed and developed to support good practice in financial management and to assist local authorities in demonstrating their financial sustainability. The CIPFA FM Code would therefore for the first time set standards of financial management for local authorities in the UK. The Council is committed to developing financial management arrangements that align to the proposed CIPFA FM Code.

## Section 2 – Financial Regulations

### A: General

<b>A1</b>	<b>Application</b> <ol style="list-style-type: none"><li>1. Financial regulations provide the framework for managing the Council’s financial affairs. -They apply to the Mayor, every elected Member and officer of the Council and anyone acting on its behalf.</li><li>2. The Mayor, all Members, staff, agents and consultants have a general responsibility for taking action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, properly authorised, provides value for money and achieves best value.</li></ol>
<b>A2</b>	<b>Delegation</b> <ol style="list-style-type: none"><li>1. The Constitution of the Council sets out the main delegations and these Regulations identify the additional financial delegations that the Council has decided to make to its officers. The Constitution of the Council also includes the Financial Procedure Rules.</li><li>2. Where decisions have been delegated, references to the Senior Manager refers to these delegations. No other delegations should be inferred from these Regulations.</li><li>3. A ‘Senior Manager’ for the purpose of these Regulations means the Head of Paid Service, Corporate Directors, <del>Service Heads</del><u>Directors</u>, and Budget Managers unless otherwise specified in these Regulations</li><li>4. The Council operates a system of devolved financial responsibility under which Directorates administer their financial affairs.</li><li>5. A written record should be maintained of all corporate and directorate schemes of delegation which form part of the Council’s Constitution. This should include the delegated financial powers exercised by specified Council Officers, such as the power to incur costs on behalf of the Council. A scheme of Financial Delegation is set out in Section 3 of these Financial Regulations.</li><li>6. Delegation empowers junior officers, but ultimate managerial accountability remains with the Senior Manager taking a decision under delegated authority.</li></ol>
<b>A3</b>	<b>All staff to have access to Financial Regulations</b>



	<ol style="list-style-type: none"> <li>1. Senior Managers are responsible for ensuring that all staff in their Directorate or Service Area are aware of the existence and content of the Council's financial regulations and other internal regulatory documents and that they comply with them.</li> </ol>
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## **B: The Financial Control Framework**

<b>B1</b>	<p><b>Full Council</b></p> <ol style="list-style-type: none"> <li>1. Full Council is responsible for approving the Budget and Policy Framework within which the Executive operates.</li> <li>2. Full Council is also responsible for approving and monitoring compliance with the Council's overall framework of accountability and control. The framework is set out in the Council's Constitution and Code of Corporate Governance.</li> </ol>
<b>B2</b>	<p><b>The Executive</b></p> <ol style="list-style-type: none"> <li>1. The Executive is responsible for proposing the policy framework and budget to the full Council, and for discharging executive functions in accordance with the budget policy framework as contained in the Constitution.</li> <li>2. In making any decision, the Executive must take account of legal and financial liabilities and risk management and other relevant issues that may arise from the decision.</li> <li>3. The Executive is responsible for specifying the limits within which officers have delegated authority to make decisions. These thresholds are as set out in section B10 of these Regulations.</li> </ol>
<b>B3</b>	<p><b>Overview and Scrutiny</b></p> <ol style="list-style-type: none"> <li>1. The Overview and Scrutiny Committee is responsible for scrutinising executive decisions and for holding the executive to account. The Committee is also responsible for making recommendations on future policy options and for reviewing general policy and service delivery of the authority.</li> </ol>
<b>B4</b>	<p><b>Audit Committee</b></p> <ol style="list-style-type: none"> <li>1. The Audit Committee is the Committee charged with scrutinising the financial governance and system of internal controls of the authority.</li> </ol>

	<ol style="list-style-type: none"> <li>2. The Audit Committee has right of access to all the information it considers necessary and can consult directly with internal and external auditors.</li> <li>3. The Audit Committee is responsible for reviewing the external auditor's reports and the annual audit letter and internal audit's annual report.</li> <li>4. The Audit Committee is responsible for approving the Statement of Accounts of the authority.</li> <li>5. The Audit Committee is responsible for scrutinising the Treasury Management report.</li> </ol>
<b>B5</b>	<p><b>Chief Executive/Head of Paid Service</b></p> <ol style="list-style-type: none"> <li>1. The Chief Executive/Head of Paid Service is responsible for the corporate and overall strategic management of the Council as a whole.</li> <li>2. The Chief Executive/Head of Paid Service must report to and provide information for the Executive, the full Council, the Overview and Scrutiny Committee and other Committees.</li> <li>3. The Chief Executive/Head of Paid Service is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation.</li> <li>4. The Chief Executive/Head of Paid Service is also responsible for ensuring that all decisions made by the Executive and the reasons for them are made public. They must also ensure that Council Members are aware of decisions made by the Executive and of those made by officers who have delegated executive responsibility.</li> </ol>
<b>B6</b>	<p><b>Monitoring Officer</b></p> <p>The Council's Monitoring Officer is responsible for:</p> <ol style="list-style-type: none"> <li>1. Promoting and maintaining high standards of ethical conduct and provides support to the Standards Committee.</li> <li>2. Reporting any actual or potential breaches of the law or maladministration to the Full Council and/or the Executive.</li> <li>3. Advising all Councillors and officers about who has authority to take a particular decision.</li> </ol>

	<p>4. Advising the Executive or Full Council about whether a decision is likely to be considered contrary or not wholly in accordance with the Budget &amp; Policy Framework.</p> <p>5. Maintaining an up-to-date constitution.</p>
<p><b>B7</b></p>	<p><b><u>Chief Finance Officer</u><del>Corporate Director of Resources</del></b></p> <p>The <u>Chief Finance Officer</u> <del>Corporate Director, Resources</del> is the officer responsible for financial administration under s.151 of the Local Government Act 1972 and is responsible for:</p> <ol style="list-style-type: none"> <li>1. The proper administration of the Council's financial affairs.</li> <li>2. Setting and monitoring compliance with financial management standards.</li> <li>3. Advising on the corporate financial position and on the key financial controls necessary to secure sound financial management.</li> <li>4. Providing financial information in conjunction with Senior Managers.</li> <li>5. Ensuring that the annual statement of accounts is prepared in accordance with International Financial Reporting Standards, the Code of Practice on Local Authority Accounting and the Service Reporting Code of Practice within the statutory deadlines. This includes producing a timetable and a closure manual which specifies the information required to enable the accounts to be produced.</li> <li>6. To liaise with External Audit on the completion of the Statement of Accounts and the arrangements for the audit of these.</li> <li>7. To ensure that working papers are prepared to support the statement and these are sufficient to meet the needs of external audit.</li> <li>8. To sign and date the Statement of Accounts, stating that these give a true and fair view of the financial position of the Council.</li> <li>9. To ensure the Accounts are approved by Audit Committee.</li> <li>10. Preparing the revenue budget and capital programme relating to the General Fund and the Housing Revenue Account.</li> <li>11. Ensuring that reports requesting decisions of Members include appropriate statements as to the financial and use of resources implications of the matter under consideration.</li> <li>12. Treasury management.</li> </ol>

	<p>13. Section 114 of the Local Government Finance Act 1988 requires the Corporate Director, Resources to report to the full Council, executive and external auditor if the authority or one of its officers:</p> <ul style="list-style-type: none"> <li>i. has made, or is about to make, a decision which involves incurring unlawful expenditure.</li> <li>ii. has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the Council.</li> <li>iii. is about to make an unlawful entry in the authority's accounts.</li> </ul> <p>14. Section 114 of the 1988 Act also requires the <del>Corporate Director of Resources</del> <b>Chief Finance Officer</b> to nominate a properly qualified member of staff to deputise should <del>he or she</del> <b>they</b> be unable to perform the duties under section 114 personally.</p> <p>15. Selecting accounting policies and ensuring that they are applied consistently.</p> <p>16. Determining the accounting procedures and records for the authority.</p> <p>17. Issuing advice and guidance to underpin the Financial Regulations.</p> <p>18. Maintaining a continuous review of the Financial Regulations and issuing updates as necessary.</p> <p>19. In conjunction with Senior Managers reporting breaches of the Financial Regulations to the Audit Committee.</p> <p>20. Preparing reports to Corporate Management Team and the Executive to set the <del>Cabin</del>et Thresholds for reporting specific financial issues to the Executive.</p>
<p><b>B8</b></p>	<p><b>Corporate Directors <del>and, Divisional Directors and Service Heads</del> (Senior Managers)</b></p> <p>Corporate Directors <del>and, Divisional Directors and Service Heads</del> are responsible for:</p> <ul style="list-style-type: none"> <li>1. Ensuring that the Executive are advised of the financial implications of all proposals and that the financial implications have been agreed by the Corporate Director of Resources.</li> <li>2. Signing contracts on behalf of the Council.</li> <li>3. The exercise of budgetary control.</li> </ul>

	<p>4. Consulting with the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u> to seek approval on any matter liable to affect the Council's finances materially, before any commitments are incurred.</p> <p>5. Ensuring that matters requiring a decision by Members are drawn to the attention of the <u>Chief Finance Officer</u> <del>Corporate Director, Resources</del> before any such decision is taken.</p>
<b>B9</b>	<p><b>The Finance Business Partners</b></p> <p>1. The Finance Business Partners report directly to the <u>Divisional Director of Finance, Procurement and Audit</u> through to the Corporate Director of Resources <u>and Governance / Chief Finance Officer</u>.</p> <p>2. The Finance Business Partner is responsible for informing the <u>Chief Finance Officer</u> <del>Corporate Director, Resources</del> of any issue which may have implications for the exercise of the <u>Corporate Director's</u> <del>Chief Finance Officer's</del> responsibilities under Section 151 of the Local Government Act 1972 and Section 114 of the Local Government Finance Act 1988.</p> <p>3. The Finance Business Partner is responsible for ensuring Directorate compliance with the Financial Regulations, Schemes of Financial Delegation, the Procurement Procedures and other instructions and guidance issued by the <u>Corporate Director of Resources</u> <del>Chief Finance Officer</del>.</p>
<b>B10</b>	<p><b>Individual Members of the Council</b></p> <p>No financial decisions are delegated to individual Members of the Council under these Regulations, and no individual Member may instruct any officer to act in any particular way or to take any decision without the authority of the Full Council or the delegated authority of the Executive.</p>
<b>B11</b>	<p><b>Cabinet Reporting Thresholds</b></p> <p>The following thresholds have been set by the Executive for reports to be submitted to Cabinet/the Executive for approval.</p> <p>Issues which are projected to involve sums below the "Delegated Authority Threshold" may be authorised by Corporate Directors in line with the scheme of delegations.</p> <p>Issues which are approved by Corporate Directors under delegated authority but involve sums in excess of the "Noting Report Threshold" must be the subject of a noting report to the next available Cabinet.</p>

	Please also see the Virements Section at D2 for more information.
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	<b>Delegated Authority Threshold</b>	<b>Noting Decision Report Threshold</b>
Transfer of a budget allocated for a particular purpose to be used for another purpose (Virement)	SEE TABLE AT SECTION D2	£1M
Approval of a supplementary or additional of a Capital Budget	£1M250,000	£1M250,000
Waiving Competition Requirements for Contracts and Orders (Subject to EU Threshold)	£1M250,000	£2501M,000
Capital Overspends	£250,000	£250,000
Settlement of Uninsured Claims	£1M250,000	£1M250,000

## C: Financial Planning

<b>C1</b>	<p><b>Budgets and Capital Programmes</b></p> <p><b>Budgets</b>  The budgets are prepared in line with the Budget Framework which comprises the following;  General Fund Budget  Housing Revenue Account Budget  Dedicated Schools Budget  General Fund Capital Programme and Strategy  Housing Revenue Account Capital Programme</p> <p>The Council is responsible for agreeing the Budget Framework. It is the responsibility of the Executive (whether the Mayor, the Cabinet, individual Members or an officer acting on delegated authority) to operate within the Budget Framework.</p> <p>Any proposal or decision by the Mayor or Executive that would result in expenditure exceeding the limits within the budget framework as defined above will be considered a breach of that framework and must be dealt with in accordance with the Budget and Policy Framework Procedure Rules at <a href="#">Part B Section 28</a><del>Part 4.3</del> of the Constitution.</p> <p><b>Setting the Budget</b></p>
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1. The process for compilation of the budget will be approved by the Executive on the advice of the Chief Finance Officer~~Corporate Director, Resources~~.
2. The draft budget should include projected net expenditure on services and projects, proposed taxation and other income levels as well as any contingency funds.
3. The Chief Finance Officer ~~Corporate Director, Resources~~ is responsible for ensuring that a —revenue budget and a Medium-Term Financial Plan for a three-year review period are prepared annually for consideration by the Executive, —before submission to the Full Council.
4. Senior Managers will ensure the proper administration of the Revenue Budgets and the Capital Programme allocated to them. They will also ensure compliance with guidance and instructions issued by the Chief Finance Officer~~Corporate Director, Resources~~.

### **Revenue Budget**

The current elements which comprise the budget setting process are as set out below:

1. The Government publishes its spending plans, indicating the aggregate resources to be allocated to Local Authorities in the medium term.
2. This is followed by final announcement and more information each year of the resources to be allocated by Central Government to Local Authorities.
3. The Council has to calculate its tax base, which is formally approved by the Executive in January.
4. The Greater London Authority will notify the Council of the amount it requires to be collected from the residents and this is incorporated into the Council Tax calculation.
5. The Executive must propose its budget to Council in accordance with the Budget and Policy Framework Procedure Rule.
6. The Council has to agree the level of Council Tax before 11th March each year and at the same time Full Council will also formally agree a legal balanced budget.

### **Capital Programme**

The Council produces a three-year capital programme to ensure resources are maximised, and potential resource gaps identified. This avoids abortive costs being incurred.

### **Objectives**

	<ol style="list-style-type: none"> <li>1. A Capital Programme is to be prepared annually projecting capital expenditure and associated resources for the next 3 years.</li> <li>2. All capital receipts are to accrue to the Corporate budget in the first instance and are to be allocated on the basis of criteria corresponding to the capital strategy document.</li> <li>3. Central Government resources, which are not specific to a project or programme area, also accrue to the Corporate pot and are allocated based on criteria corresponding to the capital strategy document.</li> <li>4. All Directorates are entitled to bid for resources within the Corporate budget.</li> <li>5. All capital programme expenditure must satisfy the statutory definitions of capital.</li> <li>6. The contents and format of the Capital Programme is to be specified by the Corporate Director, Resources <u>and Governance / Chief Finance Officer</u>.</li> </ol> <p>The detailed responsibilities of the <u>Chief Finance Officer Corporate Director, Resources</u> and the Senior Managers can be found in the separate Financial Procedures Manual.</p>
<p><b>C2</b></p>	<p><b>Maintenance of Reserves</b></p> <p>The Authority must decide the level of General Reserves it wishes to maintain as part of its financial planning before it can set the annual Council Tax.</p> <p>Reserves are maintained as a matter of prudence. They enable the authority to provide for unexpected events and thereby protect it from overspending, should such events occur.</p> <p>Reserves for specific purposes may also be maintained, such as the purchase or renewal of capital items. Accounting policies require these to be differentiated from Provisions, the latter being maintained to meet future expenditure arising from a past event the timing of which is uncertain and cannot therefore be contained in the annual budget.</p> <p><b>Objectives</b></p> <ol style="list-style-type: none"> <li>1. To maintain Reserves in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice, LAAP Bulletin 55 and other agreed accounting policies.</li> <li>2. For each Reserve established, the purpose, usage, procedures for the management and control of reserves, and basis of transactions should be clearly identified.</li> <li>3. Authorisation of expenditure from Reserves is agreed by the <u>Corporate Director, Resources Chief Finance Officer</u>.</li> </ol>



	<p>It is the responsibility of the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u> to advise the Executive on prudent levels of reserves for the Council. Further details on the detailed responsibilities of the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u> and the Senior Managers can be found in the separate Financial Procedures Manual.</p>
<p><b>C3</b></p>	<p><b>Financial Implications of Decision Making</b></p> <ol style="list-style-type: none"> <li>1. The <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u> is responsible for: <ol style="list-style-type: none"> <li>a. Issuing guidance in relation to the presentation of financial implications within the Council’s decision-making processes.</li> <li>b. Ensuring sufficient information on financial implications is presented within individual decision-making reports and have appropriate sign-off.</li> </ol> </li> <li>2. Senior Managers are responsible for: <ol style="list-style-type: none"> <li>a. Ensuring that all decision-making reports properly set out the financial implications of any proposed actions, through the provision of adequate information to relevant people and departments to allow this section to be prepared.</li> <li>b. Ensuring they act in accordance with guidance issued by the <del>Corporate Director of Resources</del> <u>Chief Finance Officer</u>.</li> <li>c. Arranging for all financial implications to be validated and formally signed off by the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u>, or his/her nominated representative, prior to their progression through the approval process.</li> <li>d. Consulting with relevant parties where there may be financial implications for them, including other Cabinet members.</li> </ol> </li> </ol>
<p><b>C4</b></p>	<p><b>Financial Planning Responsibilities</b></p> <p><b>Capital Programme</b></p> <p><b>Responsibilities of <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u></b></p> <ol style="list-style-type: none"> <li>1. To issue detailed guidelines annually on the format and content of the three-year capital programme and produce the three-year programme for approval by the Executive.</li> <li>2. To produce the criteria for the approval of Directorate bids to be allocated corporate capital resources.</li> <li>3. To produce a corporate capital programme for approval by the Executive, including elements to satisfy local priorities.</li> <li>4. To devise a mechanism that allocates resources to Directorate Capital Programmes.</li> <li>5. To produce a report for the Executive for the approval and the allocation of capital resources to Directorates.</li> </ol> <p><b>Responsibilities of Senior Managers</b></p>

1. To prepare bids for capital resources corresponding to the guidance issued by the ~~Corporate Director, Resources~~Chief Finance Officer.
2. To prepare monitoring reports of the schemes in the approved capital programme in the format and timetable specified by the ~~Corporate Director, Resources~~Chief Finance Officer.
3. To ensure that records which satisfy internal and external audit requirements are maintained for all contracts.
4. To proceed with projects only when there is a budget within the agreed capital programme and adequate capital resources have been identified.
5. To obtain a supplementary capital budget where an individual Capital Scheme is projected to spend in excess of the original approval, or an additional scheme needs approval.
  - A supplementary capital budget can be granted by the appropriate Corporate Director if the overspend is less than £1M250,000 – Financial Regulation B10.
  - Executive approval must be obtained for Supplementary Capital budgets in excess of £1M250,000. An explanatory report is required.
6. To comply with Financial Instructions relating to procurement as issued by the ~~Chief Finance Officer Corporate Director, Resources~~.
7. To comply with the financial accounting instructions relating to capital items issued by ~~Corporate Director, Resources~~Chief Finance Officer.
8. To ensure that adequate provision is made in the revenue budget for any ongoing revenue costs arising from capital schemes.

### **Revenue Budget Preparation**

#### **Responsibilities of the ~~Corporate Director, Resources~~Chief Finance Officer**

1. To issue detailed guidance and instructions on the procedures, responsibilities and timetable for preparing Revenue Budgets.
2. To provide guideline cash budget options to Members following Government announcements.
3. To work within the political budget strategy provided by the Executive.
4. To manage, in conjunction with Directorates, a process to deliver a balanced budget.
5. To calculate the resource/projected expenditure position for the period of the Medium-Term Financial Plan (3-5 years ahead).
6. To collate the exemplifications of savings or growth from departments, as required by the budget strategy.
7. To advise and agree the levels of inflation that may be applied to specific areas of expenditure.
8. To prepare and submit reports to the Executive, in line with the Scheme of Delegation, on the aggregate spending plans of Directorates and on the resources available to fund them, identifying, where appropriate, the implications for the level of Council Tax to be levied.
9. To obtain Full Council approval for both the Council Tax and the budget setting report each year within the statutory timetable.

	<p><b>Responsibilities of Senior Managers</b></p> <ol style="list-style-type: none"> <li>1. To take responsibility for delivering the budget strategy.</li> <li>2. To assist in the development and delivery of the budget process.</li> <li>3. When drawing up draft budget requirements, to have regard to: <ul style="list-style-type: none"> <li>• spending patterns and pressures revealed through the budget monitoring process.</li> <li>• legal requirements.</li> <li>• policy requirements as determined by the Full Council in the approved policy framework.</li> <li>• initiatives already under way.</li> </ul> </li> <li>4. To work within budget limits.</li> <li>5. To provide the specific Directorate information requested.</li> <li>6. To compile a Directorate budget within the guidelines issued by the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u>.</li> <li>7. To obtain the approval of the Executive for new proposals, of _____ whatever _____ amount, that: <ul style="list-style-type: none"> <li>• create financial commitments in future years.</li> <li>• change existing policies, initiate new policies or cease existing policies.</li> <li>• in the opinion of the Senior Manager and appropriate Lead Member materially extend or reduce the Council's services.</li> </ul> </li> </ol>
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## D: Financial Management

<b>D1</b>	<p><b>Budget Monitoring and Control</b></p> <p><b>Background</b></p> <p>Budgetary control ensures that resources allocated are utilised for their intended purposes, are properly accounted for, and provides timely information on variations from financial targets. Budgetary control is a continuous process, enabling the Council to review and adjust its budget targets during the financial year and identifies managers responsible for defined elements of the budget.</p> <p>Capital budget monitoring ensures that capital resources allocated by the Executive are used for their intended purposes. Capital control provides the mechanism to review progress on capital schemes, by comparison with the capital programme. The Corporate Capital Monitoring Statement is a report that is produced every quarter that details projected capital expenditure and resources.</p>
	<p><b>Objectives</b></p> <ol style="list-style-type: none"> <li>1. Identify a nominated budget manager for each cost centre.</li> <li>2. Ensure budget managers accept accountability for their budgets, the level of service to be delivered and understand their financial responsibilities.</li> </ol>

	<ol style="list-style-type: none"> <li>3. Ensure budget managers follow an approved certification process for all expenditure.</li> <li>4. Ensure income and expenditure are properly recorded and accounted for.</li> <li>5. Ensure levels of service are monitored in conjunction with the budget and necessary action is taken to align service outputs and budget.</li> <li>6. Ensure actual income and expenditure is equal to that recorded on the corporate financial systems.</li> <li>7. Ensure that there is a nominated officer for each capital budget, project and programme.</li> <li>8. Budget managers are accountable for their projects and budgets.</li> <li>9. Ensure potential resource under or over provision is identified early in the capital programme cycle to enable remedial action to be taken.</li> </ol> <p><b>Responsibilities</b></p> <ol style="list-style-type: none"> <li>1. Senior Managers are responsible for ensuring that within any financial year they take all reasonable measures to ensure an approved Revenue or Capital Budget within their control is not overspent.</li> <li>2. Senior Managers must seek to ensure that there is no shortfall in the budgeted level of income.</li> <li>3. When a projected overspend (or under recovery of income) is forecast to occur in a section of the Revenue Budget, or on a scheme within the Capital Programme, Senior Managers and other responsible officers must take measures to eliminate or reduce the overspend and maintain records of such actions.</li> <li>4. The <del>Corporate Director, Resources-Chief Finance Officer</del> must be informed of potential budget variances in accordance with budget monitoring guidelines. The overspend will be the subject of a report to the Executive.</li> </ol> <p>Further details on the detailed responsibilities of the <del>Corporate Director, Resources-Chief Finance Officer</del> and the Senior Managers can be found in the separate Financial Procedures Manual.</p>
<b>D2</b>	<p><b>Virements</b></p> <p>These rules aim to allow the Executive to manage the budget once it has been approved by Council, whilst also providing for good governance of financial matters. For more details on Virements please see FM2, FM5 and FA10 of Appendix A to these Rules.</p> <p>A virement is the transfer of resources from one budget head to another, during a financial year. It is thus the financial consequence of a change in priority of service delivery or in the means by which services are delivered. It can also be the use of resources provided within the budget framework, but which are not allocated for any specific purpose e.g. unallocated contingency. A virement will naturally flow from, and be part of, a decision.</p>

	The Executive shall have the power to vire resources within each of the above components of the Budget Framework agreed by Council, subject to the following limitations:
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<b>Virement within a Portfolio</b>	
Up to £100,000	Budget Holder in agreement with a <del>Divisional</del> Director
From £100,000 up to but not including £250,000	The relevant Corporate Director in agreement with the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u>
From £250,000 up to but not including £1m	The relevant Corporate Director following consultation with the relevant Cabinet Member as well as the Cabinet Member for Resources and <del>Corporate Director of Resources</del> <u>Chief Finance Officer</u>
£1m and above	The Mayor <del>and/or</del> Cabinet
<b>Virement between Portfolios</b>	
Up to £100,000	Budget Holder in agreement with the <del>Divisional</del> Directors from both affected portfolios
From £100,000 up to but not including £250,000	The relevant Corporate Directors from both affected portfolios in agreement with the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u>
From £250,000 up to but not including £1m	The relevant Corporate Director following consultation with the relevant Cabinet Member as well as the Cabinet Member for Resources and <del>Corporate Director of Resources</del> <u>Chief Finance Officer</u>
£1m and above	The Mayor <del>and/or</del> Cabinet

	<p><b>Virements – Non-Financial Consequences</b></p> <p>The Virement Rules refer only to the financial consequences of proposals and decisions by the Executive. However, such proposals and decisions can also impact upon services and upon the community. This needs to be acknowledged when determining the procedural arrangements for those proposals and decisions, for example they may represent a “key decision”.</p>
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## E: Risk Management and Control of Resources

<b>E1</b>	<b>Risk Management</b>
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	<ol style="list-style-type: none"> <li>1. Audit Committee is responsible for approving the authority’s risk management policy statement and strategy and for reviewing the effectiveness of the risk management.</li> <li>2. The Executive is responsible for ensuring that proper insurance exists where appropriate.</li> <li>3. The <del>Corporate Director, Resources</del><u>Chief Finance Officer</u> is responsible for preparing the authority’s risk management policy statement, for promoting it throughout the authority and for advising the Executive on proper insurance cover where appropriate.</li> </ol>
<b>E2</b>	<p><b>Internal Control</b></p> <ol style="list-style-type: none"> <li>1. Internal control refers to the systems of control devised by management to help ensure the authority’s objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the authority’s assets and interests are safeguarded.</li> <li>2. The <del>Corporate Director, Resources</del><u>Chief Finance Officer</u> is responsible for advising on ———effective systems of internal control.</li> <li>3. Senior Managers are responsible for organising their operations to ensure appropriate controls are in place, ensure the Council’s objectives are achieved, VFM secured and assets are safeguarded.</li> <li>4. Such arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice.</li> <li>5. Senior Managers must ensure that public funds are properly safeguarded and used economically, efficiently, and effectively and in accordance with the statutory and other authorities that govern their use.</li> <li>6. It is the responsibility of Senior Managers to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve economy, efficiency and effectiveness and for achieving their financial performance targets.</li> </ol>
<b>E3</b>	<p><b>Audit Arrangements</b></p> <ol style="list-style-type: none"> <li>1. The Accounts and Audit Regulations 2015 require every local authority to maintain an adequate and effective internal audit.</li> <li>2. The Audit Committee, in conjunction with an Independent Auditor Panel is responsible for appointing external auditors to each local authority.</li> </ol>

	<p>The basic duties of the external auditor are governed by part 5 of the Local Audit and Accountability Act 2014.</p> <p>3. The authority may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenue and Customs, who have statutory rights of access.</p> <p>4. Officers and Members will cooperate fully with auditors and inspectors in the pursuance of their duties.</p>
<b>E4</b>	<p><b>Preventing Fraud &amp; Corruption</b></p> <p>1. The <del>Corporate Director, Resources</del><u>Chief Finance Officer</u> is responsible for the development –and maintenance of an anti-fraud and anti-corruption policy.</p> <p>2. Senior Managers are responsible for designing their systems of controls —and putting in place internal controls that adequately manage the risk of —fraud and corruption.</p> <p>3. Senior Managers must report all instances of actual or attempted fraud to the <del>Corporate Director, Resources</del><u>Chief Finance Officer</u> and/or the Head of Audit and Risk —Management.</p>

## F: Financial Administration

<b>F1</b>	<p><b>General</b></p> <p>Departments have many systems and procedures relating to the control of the Council's assets, including purchasing, transaction processing and management systems. Departments are reliant on computers for their financial management information. The information must therefore be accurate and the systems and procedures sound and well administered. They should contain controls to ensure that transactions are properly processed, and errors detected promptly.</p> <p>The <del>Corporate Director, Resources</del><u>Chief Finance Officer</u> has a professional responsibility to ensure that the Council's financial systems are sound and should therefore sign off any new developments or changes.</p> <p><b>Objectives</b></p> <ol style="list-style-type: none"> <li>1. Basic systems and controls are in place to ensure the integrity of data held on computer systems.</li> <li>2. Performance of systems is communicated to the appropriate managers on an accurate, complete and timely basis.</li> <li>3. Systems produce timely reports of management information which is usable by managers.</li> <li>4. Operating systems and procedures are secure.</li> </ol>
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	<p>5. Computer systems are co-ordinated with manual procedures and operate efficiently alongside them.</p> <p><b>Responsibilities</b></p> <ol style="list-style-type: none"> <li>1. The <del>Corporate Director, Resources</del><u>Chief Finance Officer</u> is responsible for the operation of the authority's accounting systems, the form of accounts and the supporting key financial records.</li> <li>2. Any changes made by Senior Managers to the existing financial systems or the establishment of new systems must be approved by the <del>Chief Finance Officer</del><u>Corporate Director, Resources</u>.</li> <li>3. Senior Managers are responsible for the proper operation of financial processes in their own departments.</li> <li>4. Any changes to agreed procedures by Senior Managers to meet their own specific service needs should be agreed with the <del>Corporate Director, Resources</del><u>Chief Finance Officer</u>.</li> <li>5. Senior Managers should ensure that their staff receive relevant financial training.</li> <li>6. Senior Managers must ensure that, where appropriate, computer and other systems are registered in accordance with data protection legislation.</li> <li>7. Senior Managers must ensure that staff are aware of their responsibilities under freedom of information legislation.</li> </ol> <p>Further details on the detailed responsibilities of the <del>Chief Finance Officer</del><u>Corporate Director, Resources</u> and the Senior Managers can be found in the separate Financial Procedures Manual.</p>
<b>F2</b>	<p><b>Income and Expenditure</b></p> <ol style="list-style-type: none"> <li>1. It is the responsibility of Senior Managers to ensure that a proper scheme of financial delegation has been established within their area and is operating effectively. The scheme of financial delegation must be submitted to the Head of Financial Systems and reviewed quarterly at a minimum.</li> <li>2. The scheme of financial delegation must identify staff authorised to act on the Senior Managers' behalf in respect of payments, income collection and placing orders, together with the limits of their authority. The scheme of financial delegation is subject to the approval of the <del>Corporate Director, Resources</del><u>Chief Finance Officer</u>.</li> <li>3. The Executive is responsible for approving procedures for writing off debts as part of the overall control framework of accountability and control.</li> </ol>
<b>F3</b>	<p><b>Payments to employees and Members</b></p>



	<p>1. The <del>Chief Finance Officer</del><del>Corporate Director, Resources</del> is responsible for all remuneration –payments to all staff, including any payments for severance, and for –payment of allowances to Members.</p> <p>2. Senior Managers are responsible for providing information in a timely manner to enable the <del>Corporate Director, Resources</del><del>Chief Finance Officer</del> to discharge these responsibilities.</p>
<b>F4</b>	<p><b>Taxation</b></p> <p>1. The <del>Corporate Director, Resources</del><del>Chief Finance Officer</del> is responsible for advising Senior —Managers, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the ——authority.</p> <p>2. The <del>Corporate Director, Resources</del><del>Chief Finance Officer</del> is responsible for maintaining the —authority’s tax records, making all tax payments, receiving tax credits —and submitting tax returns by their due date as appropriate.</p> <p>3. Senior Managers are responsible for ensuring that sufficient information is provided in a timely manner to enable the <del>Corporate Director, ——Resources</del><del>Chief Finance Officer</del> to discharge the Council’s obligations under the tax legislation.</p>
<b>F5</b>	<p><b>Trading accounts and /business units</b></p> <p>1. It is the responsibility of the <del>Corporate Director, Resources</del><del>Chief Finance Officer</del> to advise on ——the establishment and operation of trading accounts and business ——units.</p>
<b>F6</b>	<p><b>Internal Recharges</b></p> <p>Much of the flow of money across the Council originates from services provided by one department to another. This, in a number of cases, stems from internal trading account services.</p> <p>To facilitate proper controls and the management of the Council's budgets, transactions need to be raised and processed in an efficient and effective manner. This should ensure that purchasers are charged promptly and pay within a commercially acceptable timescale, and that trading services invoice their customers in the knowledge that payment will be received within that stated time-scale. Where practicable these processes will be automated. The budget for core services e.g. admin buildings, payroll and legal will remain with the purchaser and the <del>Corporate Director, Resources</del><del>Chief Finance Officer</del> will stipulate corporate arrangements for managing these recharges.</p>

	<p>For ad-hoc and project works the process follows similar principles to the ordering of and payment for goods and services.</p> <p>To ensure that the process is operating in accordance with the framework, regular departmental monitoring of incoming and outgoing recharges needs to be carried out.</p> <p>The <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u> (or <del>his/her</del> <u>their</u> delegate) will act as an arbitrator to resolve disputes that cannot be settled between purchaser and provider. This is to ensure that all disputes are resolved within a stated timescale and will not adversely affect financial monitoring.</p> <p>It is the responsibility of the purchaser to ensure that they have sufficient resources to pay for commissioned project and ad-hoc work. It is the responsibility of the provider before work commences to advise the purchaser if the work is not covered by the core support service budget and needs specific financing.</p>
<p><b>F7</b></p>	<p><b>Banking</b></p> <p>The efficient operation of a bank account is an essential element of the Council's financial arrangements.</p> <p>Bank accounts also represent an area where there is significant scope for fraudulent activity, and it is essential that adequate controls exist.</p> <p><b>Objectives</b></p> <ol style="list-style-type: none"> <li>1. To ensure that only bank accounts authorised by designated officers, are operated by the Council.</li> <li>2. To ensure that only authorised entries are made in the Council's bank account.</li> </ol> <p>Further details on the detailed responsibilities of the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u> and the Senior Managers can be found in the separate Financial Procedures Manual.</p>
<p><b>F8</b></p>	<p><b>Imprest</b></p> <p>The Council operates a number of petty cash imprest accounts to finance minor expenditure.</p> <p><b>Objectives</b></p> <p>To ensure the minimum petty cash balances are held consistent with the effective operation of services.</p>

	<p>Further details on the detailed responsibilities of the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u> and the Senior Managers can be found in the separate Financial Procedures Manual.</p>
<b>F9</b>	<p><b>Insurance</b></p> <p>The Council effects insurance for high level risks, where this is economic to do so, in order to protect its taxpayers against the impact on local charges, should a catastrophe occur.</p> <p>It is essential that Directorates advise the Insurance Section of any change to their activities which insurance underwriters might consider could materially affect the risk. Failure to do so might invalidate the insurance cover.</p> <p><b>Objectives</b></p> <ol style="list-style-type: none"> <li>1. Procedures are in place to identify, assess, prevent or minimise material known risks, and these procedures are operating effectively throughout the Council.</li> <li>2. Monitoring and regular review of risk reduction strategies.</li> <li>3. Procedures are in place to identify and record all insurance and the property or risk covered.</li> <li>4. Procedures are in place to notify and record the occurrence of any incident or loss that may give rise to a claim by the Council for <u>recovery</u> —from insurance companies of the loss.</li> <li>5. Procedures are in place to notify the Insurance Section of any claim against the Council.</li> <li>6. Procedures are in place to investigate claims within required timescales.</li> </ol> <p>Further details on the detailed responsibilities of the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u> and the Senior Managers can be found in the separate Financial Procedures Manual.</p>
<b>F10</b>	<p><b>Assets</b></p> <ol style="list-style-type: none"> <li>1. Senior Managers shall ensure that records and assets are properly maintained and securely held</li> <li>2. Senior Managers should ensure that contingency plans for the security of assets and continuity of service in the event of disaster or system failure are in place.</li> <li>3. The Corporate Director, Place is responsible for ensuring that valuations of the Council's assets are undertaken for management and reporting purposes.</li> </ol>
<b>F11</b>	<b>Treasury</b>

	<ol style="list-style-type: none"> <li>1. The authority has adopted CIPFA's Code of Practice for Treasury Management in Local Authorities.</li> <li>2. The Full Council is responsible for approving the treasury management policy statement setting out the matters detailed in paragraph 15 of CIPFA's Code of Practice for Treasury Management in Local Authorities. The policy statement is proposed to the full Council as part of the annual budget setting process.</li> <li>3. The <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u> has delegated responsibility for implementing and monitoring the statement.</li> <li>4. All money in the hands of the authority is controlled by the officer designated for the purposes of section 151 of the Local Government Act 1972, referred to in the code as the <u>Chief Finance Officer</u> <del>Director of Finance</del>.</li> <li>5. All executive decisions on borrowing, investment or financing shall be delegated to the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u>, who is required to act in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities.</li> </ol>
<b>F12</b>	<p><b>Employees</b></p> <p>Full Council is responsible for confirming the appointment of the Chief Executive/Head of Paid Service, and has delegated to the Appointments Sub-Committee of the General Purposes Committee responsibility for appointing to the other Chief Officer and Deputy Chief Officer posts. These are the only appointments that elected Members are involved in apart from the group/Mayor's political assistants.</p>
<b>F13</b>	<p><b>External Funding</b></p> <p>External funding can prove an important source of income but funding conditions must be carefully examined before any agreement is entered into to ensure they are compatible with the aims and objectives of Council.</p> <p>The <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u> is responsible for:</p> <ol style="list-style-type: none"> <li>a. Ensuring that any match funding requirements are considered prior to entering into any agreement, that future revenue budgets reflect these requirements, and that any longer term sustainability costs have been properly assessed.</li> <li>b. Ensuring that all external funding is received and properly recorded in the Council's accounts and in the name of the Council.</li> </ol>

	<ul style="list-style-type: none"> <li>c. Maintaining a central register of external funding/grant arrangements.</li> <li>d. Ensuring that all audit requirements are met.</li> </ul> <p>Senior Managers are responsible for:</p> <ul style="list-style-type: none"> <li>a. Ensuring that the sustainability of funding is assessed for risk, any agreements entered into are consistent with and support the <del>the</del> Council's service priorities, and necessary approvals <del>have been</del> obtained.</li> <li>b. All claims for funds are made by the due date.</li> <li>c. Work is progressed in accordance with the project plan and all expenditure is properly incurred and recorded.</li> </ul>
<b>F14</b>	<p><b>Third Party Work</b></p> <p>Work can only be undertaken for third parties where the Council has the legal powers to undertake the work.</p> <p>With regard to the financial aspects of third party contracts, the Council must;</p> <ul style="list-style-type: none"> <li>I. Comply with any guidance issued by the <del>Corporate Director,</del> <del>Resources Chief Finance Officer</del> and will ensure that the appropriate insurance arrangements are made.</li> <li>II. Ensure that all costs arising from the provision of services to a third party are recovered and hence that there is no subsidy included within the contract.</li> <li>III. Ensure that the Council is not unnecessarily exposed to the risk of bad debts.</li> </ul> <p>A written agreement must be put in place between the Council and the third party, which details the services to be provided, over what period and at what price; this will be signed by both parties to the agreement in order that the appropriate disclosures can be made within the Council's annual statement of accounts.</p> <p>The Head of Procurement is responsible for monitoring the contractual arrangements for any significant work for third parties or external bodies. For this purpose, significant is deemed to be contracted annual income from a body that is greater than £100,000.</p>
<b>F15</b>	<p><b>Accounting System</b></p> <p>Good systems and procedures are essential to the effective management and administration of the Council's financial affairs. This includes:</p>

	<p>The main accounting system provides the prime source of financial data for management accounts, statutory accounts and government returns. It is essential that this system complies with legislation and proper accounting practice and that all information is recorded accurately, completely and in a timely manner, and that any errors are detected promptly and rectified.</p> <p>The <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u> is responsible for:</p> <ol style="list-style-type: none"> <li>a. Determining the Council's main accounting system for the preparation of the Council's accounts and for monitoring all income and expenditure.</li> <li>b. Determining any financial systems which may sit outside of the main accounting system, and ensuring, if approved for implementation, that these are sound and properly integrated and interfaced.</li> <li>c. Issuing guidance on the use and maintenance of the main accounting system and related financial systems, and ensuring that supporting records and documents are retained.</li> <li>d. Ensuring that regular balance sheet and holding account _____ reconciliations _____ are undertaken.</li> <li>e. Preparing the Council's consolidated accounts, balance sheet and governance statement for audit and publication, and issuing guidance (including a detailed timetable and plan) to ensure achievement of statutory deadline.</li> </ol> <p>Senior Managers are responsible for:</p> <ol style="list-style-type: none"> <li>a. Ensuring that the main accounting system is used to accurately _____ record _____ financial transactions in accordance with guidance _____ issued by the _____ <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u>.</li> <li>b. Ensuring an adequate audit trail of financial information and _____ compliance _____ with the Council's policies in respect of the retention of _____ documents.</li> <li>c. Ensuring that the implementation of any Unit financial system has the express approval of the <del>Corporate Director, Resources</del> <u>Chief Finance Officer</u>, and is _____ adequately documented, tested and interfaced _____ with the main _____ accounting system.</li> </ol>
<p><b>F16</b></p>	<p><b>Amenity and Unofficial Funds</b></p> <p>Relevant to all officers handling official and unofficial funds, including residents' cash and valuables.</p> <p><b>General Principles</b></p> <ol style="list-style-type: none"> <li>1. Cash is always attractive and vulnerable to theft. Cash holdings must be kept to the practical minimum and never in excess of the _____ insurance _____ limit for the particular establishment. The Insurance _____ Section can advise _____ on the limit.</li> <li>2. Risk assessments must be carried out regularly to check if risks have changed and always when procedures or staff have changed.</li> </ol>

	<p>3. Where larger sums of money have to be held, a safe may be essential. —For smaller sums, a locked cash box in a locked drawer or cupboard may be acceptable. The Insurance Section can advise on the need for —a safe or otherwise.</p> <p>4. Cash must always have a full management trail – cash to be banked must be banked intact and never used to cash personal cheques, provide a petty cash float or for any other purpose.</p>
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## G: External Arrangements

<b>G1</b>	<p><b>Partnerships</b></p> <ol style="list-style-type: none"> <li>1. The Executive is responsible for approving delegations, including frameworks for partnerships.</li> <li>2. The Executive is the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.</li> <li>3. The Executive may delegate functions – including those relating to partnerships – to officers. Where functions are delegated, the Executive remains accountable for them to the Full Council.</li> <li>4. The Authority may nominate individual Members and or officers to represent the Authority on external bodies.</li> <li>5. The Monitoring Officer is responsible for promoting and maintaining the same high standards of ethics in partnerships that apply throughout the Authority.</li> <li>6. The <del>Corporate Director, Resources</del>Chief Finance Officer will advise on the accounting arrangements to be adopted relating to partnerships and joint ventures. He or she must ensure that the risks have been fully appraised before agreements are entered into with external bodies.</li> <li>7. Senior Managers are responsible for ensuring that appropriate Council approvals are obtained before any negotiations are concluded in relation to work with external bodies.</li> </ol>
<b>G2</b>	<p><b>Companies</b></p> <ol style="list-style-type: none"> <li>1. In relation to companies that the Council has an interest in, it is imperative that they are set up, managed and run according to rules of good governance so that risks are mitigated.</li> <li>2. No company can be created without the express approval in writing of the <del>Corporate Director, Resources</del>Chief Finance Officer.</li> </ol>

3. The ~~Corporate Director, Resources~~Chief Finance Officer is responsible for advising the \_\_\_\_\_ company directors of the accounting arrangements the company must adopt.

4. The ~~Monitoring Officer~~Director of Legal is responsible for advising on the legal requirements and implications with respect to the creation and \_\_\_\_\_ ongoing \_\_\_\_\_ running of a company.



## 37 Contracts and Procurement Procedure Rules

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A	Procurement Procedures

#### 1. PROCUREMENT PROCEDURES

- 1.1. Every contract or official order for works, goods or services made by the Council shall be for the purpose of achieving the Council's statutory or approved objectives and shall conform to all relevant EU Directives and United Kingdom legislation.
- 1.2. The Procurement Procedures shall govern the Council's tendering and contract procedures. The ~~Corporate Director, Resources~~Chief Finance Officer shall maintain and issue these Procedures. Any procurement activity shall proceed in accordance with the Procedures and any financial thresholds for procurement specified by the Procedures. These Procedures and any updated or amended versions will then be placed in Appendix A of these Rules.
- 1.3. The ~~Corporate Director, Resources~~Chief Finance Officer shall make the latest version of the Procurement Procedures available to every Chief Officer, the Mayor and all Members of the Council and any other person engaged in procuring works, goods or services on behalf of the Council. Chief Officers or officers acting on their behalf shall apply the requirements of the Procedures when engaging in any procurement activity.
- 1.4. The purpose of procurement activity shall be to achieve best value for local people in accordance with the Council's statutory or approved objectives. Officers with responsibility for procurement shall ensure that they are able to demonstrate achievement of best value by having regard to a combination of economy, efficiency and effectiveness (otherwise known as the Council's Best Value Duty).
- 1.5. Nothing in the Procurement Procedures shall be construed as removing or diminishing the responsibility of all involved to meet individual and collective accountabilities. Any failure by an officer to comply with the Procurement Procedures is likely to constitute a disciplinary offence and be investigated under the appropriate disciplinary procedure.

- 1.6. Chief Officers shall ensure that the Executive or an Executive Member is consulted on any procurement activity of a controversial nature. If however the decision is a 'key' decision that has not been delegated then a report must be submitted to Cabinet for determination having proper regard to the Access to Information Rules at Part 4.2 of the Constitution.

#### Contract Awards

- 1.7. The contracting strategy and/or award of any contract for goods or services with an estimated value exceeding ~~the Council's Key Decision threshold (currently £1,000,000 – or £5,000,000 for capital works)~~250,000, ~~and any contract for capital works with an estimated value exceeding £5,000,000,~~ shall be approved by the Executive in accordance with the Procurement Procedures. Contracts for goods or services with an estimated value of less than ~~the Key Decision threshold £250,000 and contracts for capital works with an estimated value of less than £5,000,000~~ shall be approved by the relevant Chief Officer, in accordance with the Procurement Procedures. ~~As set out in Part A Section 3 (How Decisions are Made) - All officer decisions with an estimated value below the Key Decision threshold but higher than £250,000 must be published on the Council's website as an officer decision as soon as practical after the decision has been taken.~~

#### Contract Variations

- 1.8. ~~Where a contract variation (which was not provided for in the original contract) is itself greater than the Key Decision threshold, or would take a contract for the first time above that threshold then it must be presented to the Mayor and/or Cabinet for decision.~~

#### Direct Awards

- 1.9. ~~Key Decision thresholds in respect of the Direct Award of a contract are as above. However, any Direct Award of a contract up to that value must be approved via the Council's RCDA process.~~

- 1.8. ~~Any decisions reports to the Mayor and/or Cabinet for determination if however the decision is a 'key' decision that has not been delegated then a report must be submitted to Cabinet for determination having proper regard to the Access to Information Rules at Part 4.2 of the Constitution.~~

**Procurement Procedures**

**The purpose of these Procedures is to lay down a set of rules which provide a framework for all those involved in procuring supplies, works and services on behalf of the Council, or interacting with providers, or potential providers.**

**They apply to all representatives of the Council, Officers, Agents, or Members.**

**Failure to comply with these Procurement Procedures may put the Council at risk and can lead to disciplinary action against the person responsible.**

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**APPENDIX 1: TOLLGATE PROCESS**

## PART 1 – INTRODUCTION

### 1. Introduction

- 1.1 The purpose of these Procedures is to lay down a set of rules which provide a framework for representatives procuring supplies, works and services on behalf of the Council. For ease of use, the specific rules are set out in shaded boxes throughout the Procedures. The Procedures are supplemented by an RFQ (Request for Quotation) toolkit for expenditure with a total value up to £100,000 and a more detailed contracting Tender Toolkit for expenditure above £100,000. These toolkits provide guidance on techniques to achieve best value for money, and a series of templates to be used throughout the procurement process.
- 1.2 Where a corporate contract is in place it **must** be used unless otherwise agreed by Corporate Procurement.
- 1.3 All Council representatives are warned that it is a **disciplinary offence** to fail to comply with these Procurement Procedures when letting contracts. All Council representatives have a duty to report breaches of the Procedures to the relevant Corporate Director and the Head of ~~Corporate~~ Procurement. The Procedures apply to all expenditure by the Council on supplies, services and works, provided by external organisations.
- 1.4 The Procedures include mandatory requirements, which are normally identified by the word “**must**” in bold letters. These requirements **must** always be followed. The words “**should**” and “**should not**” relate to good practice advice. Whilst not mandatory, you must have a good reason for not following the good practice advice and this must be recorded on your tender or quotation file. If in doubt, you must contact Corporate Procurement and/or Legal Services for advice, and where appropriate, Internal Audit.
- 1.5 The generic term **Bid** covers both tenders and quotations. A bid process below a total value of £100,000 will be classed as a quotation. A bid process at or above a total value of £100,001 will be classed as a tender.
- 1.6 All representatives who commission contracts for supplies, works or services are required to follow these Procedures. This requirement also covers all persons who commission contracts on behalf of the Council, such as external consultants. The person who commissioned the consultant **must** ensure that consultants are given copies of the Procedures and that they comply with them.
- 1.7 The Head of ~~Corporate~~ Procurement will be responsible for updating the Procurement Procedures, and shall make the latest version available to every

Corporate Director and Member of the Council as well as posting a copy in the Corporate Procurement area on the Council intranet.

- 1.8 All representatives of the Council must comply with all aspects of legislative requirements relating to purchases made by a public authority.

## **PART 2 - APPLICABLE TO ALL CONTRACTS**

### **2. Hierarchy of Rules**

- 2.1. These Procedures attempt to summarise in a single place all of the Council's Procurement Procedures. The Procedures are derived from provisions contained in the Council's Constitution and Financial Regulations. Every effort has been made to ensure a consistency between the documents, but in the event of any conflict, the Constitution takes precedence, followed by Financial Regulations, followed by these Procedures. These Procedures and Financial Regulations can be amended by the ~~Corporate Director, Resources~~Chief Finance Officer, whilst changes to the Constitution must be approved by the General Purposes Committee or full Council.
- 2.2. The Procedures refer to European and UK legislation as well as Council policy. Where there is a conflict between European law, English law and Council policy, the requirements of European law take precedence over English law, and the requirements of English law take precedence over Council policy. The Procedures **must not** be waived if failing to comply with these procedures would contravene either UK or European legislation.

### **3. Procurement Objectives and Imperatives**

- 3.1 The purpose of procurement activity is to achieve best value for local people in accordance with the Council's statutory or approved objectives and the Corporate Procurement Strategy. This should include an innovative approach to relationships with the private and not-for-profit sectors within a robust contractual framework. Officers with responsibility for procurement must ensure that they are able to demonstrate achievement of best value by having regard to a combination of economy, efficiency and effectiveness.

### **4. Procurement Strategy**

- 4.1. The Procurement Strategy sets out key policy priorities and an operating framework that **must** be taken into account when procuring supplies, services and works on behalf of the Council. These priorities are:

- Integration - full integration of commissioning, procurement and contract management activity and commercial principles into our core business
- Governance - governance, transparency, accountability and probity with proportionality in our operational processes
- Approach – a unified approach to managing the activities in the commercial cycle and in our engagement with markets and suppliers
- Partnership - working with our partners
- Technology - effective use of digital technology
- People - making the most of our people, increasing capacity and skills and building an in-house strategic commissioning and procurement capability.

4.2. Every contract or official order for works, supplies or services made by the Council **must** be for the purpose of achieving the Council's statutory or approved objectives and must conform to all relevant domestic and European Union legislation.

## **5. Responsibilities of Corporate Directors**

- 5.1. Corporate Directors have responsibility for all contracts tendered, let and managed by their departments. They are accountable to the Chief Executive and the Executive Mayor for the performance of their duties in relation to contract letting and management. These duties include:
- a. Ensuring compliance with English and EU legislation and Council Policy;
  - b. Ensuring value for money in all procurement activities;
  - c. Ensuring compliance with these Procurement Procedures;
  - d. Ensuring that all relevant staff are familiar with the provisions of these Procedures and that they receive adequate training;
  - e. Ensuring compliance with any guidelines issued in respect of these Procurement Procedures;
  - f. Taking immediate action in the event of a breach of Procurement Procedures within their department;
  - g. Ensuring that IR35 regulations requirements are complied with when engaging suppliers;
  - h. Keeping records of waivers of any provisions within these Procurement Procedures;
  - i. Ensuring appropriate contract management takes place of all contracts;
  - j. Ensuring that all contracts to be tendered are entered onto the Forward Plan of contracts (administered by Corporate Procurement) at the earliest opportunity, and no later than the point at which the procurement exercise commences;
  - k. Ensuring high value and/or high risk contracts are recorded in the corporate risk register;
  - l. Ensuring that their staff act ethically in all their procurement activities;



m. Ensuring that a quarterly report of variations exceeding 10% of the contract value, where the total contract value exceeds the EU threshold, is presented to their own Directorate Management Team.

5.2. Corporate Directors **must** comply with these rules and have a responsibility to ensure that their staff and any consultants or agency staff also comply with them. Corporate Directors **must** put mechanisms in place to ensure that staff who carry out any procurement exercise receive appropriate induction, information and training. Corporate Procurement will provide support for this.

#### Rule 1

- Where a Corporate Contract is already in place it must be used unless agreed otherwise by the Head of ~~Corporate~~ Procurement.
- Corporate Directors have responsibility for all contracts let by their Departments. Authority to make decisions under the Procurement Procedures may be delegated. Those who have delegated authority to make decisions in the name of the Corporate Director will be set out in the Scheme of Delegation in the Constitution for the relevant department (or a specific delegation in writing).

## 6. Financial Thresholds and Procedure for Contract Letting

6.1 The following financial thresholds shall apply to all contract award processes.

To clarify the table below, the following points should be noted:

- a) Total Value refers to the full remuneration to be paid to the supplier or contractor over the life of the contract, including any extensions; (N.B. a 3 year contract with an extension of 1 year at £20,000 per annum has a total value £80,000. A contract to purchase supplies, works or services may also include the purchase of additional supplies and services such as, but not limited to, maintenance, consumables, upgrades, training and documentation. The total value includes these elements even if they come from separate budgets, and separate orders are placed.) The life of the contract includes any actual or potential extension to the contract period that is included in the contract
- b) Where there are a number of linked contracts – e.g. those using the same suppliers, or for similar supplies, services or works – the option for joining them up should be explored;

6.2 Table of Threshold Values

Table 1 below summarises the different procurement thresholds, the procedures to be followed and the officers who are authorised to undertake an RFQ or procurement at each level. The authority to award contracts, following a RFQ or procurement process, is set out at paragraph 10.2 of Part 3 of the Constitution.

**TABLE 1 - SUMMARY OF PROCUREMENT THRESHOLDS**

	Total Value	Procurement Process	Advertising	Authority
LEVEL 1	Up to £25,000	<ul style="list-style-type: none"> <li>• One quotation, through Request for Quote (RFQ) system</li> <li>• Should use local suppliers (E1, E2, E3, &amp; E14). If a good reason exists for not using local suppliers this should be documented and kept on file.</li> <li>• Price only or Price and quality</li> </ul>	None required	Budget Holder
LEVEL 2	£25,001 to £50,000	<ul style="list-style-type: none"> <li>• Two quotation, through Request for Quote (RFQ) system</li> <li>• Should use local suppliers (E1, E2, E3 &amp; E14) If a good reason exists for not using local suppliers this should be documented and kept on file.</li> <li>• Price only or Price and quality</li> </ul>	None required	Budget Holder
LEVEL 3	£50,001 to £100,000	<ul style="list-style-type: none"> <li>• Three quotations, through Request for Quote (RFQ) system.</li> <li>• Should use local suppliers (E1, E2, E3 &amp; E14) If a good reason exist for not using local suppliers this should be documented and kept on file.</li> <li>• Price and quality only</li> </ul>	None required	Budget Holder
LEVEL 4	£100,001 to <del>£16489,476330</del> (EU threshold for Supplies & Services)	<ul style="list-style-type: none"> <li>• PIF must be completed</li> <li>• Award criteria to be decided in advance.</li> <li>• Tender process managed by corporate procurement service through the central e-tendering system</li> </ul>	Council's website, London Tenders Portal Contracts Finder	<del>Divisional</del> Director

	<p>£100,001 to <del>£589663,148540</del> (EU threshold for Light Touch Regime: social and other specific services)</p> <p>£100,001 to <del>£4,373322,012252</del> (EU threshold For Works)</p>	<ul style="list-style-type: none"> <li>• Cabinet approval &amp; Tollgate process to be followed for contracts above <del>£1,00250,000</del> – Supplies and Services; above £5million – Works.</li> </ul>		
<p>LEVEL 5 EU Procedure</p>	<p>EU TENDERS Over <del>£164189,476330</del> Supplies &amp; Services <del>£589663,148540</del> Light Touch Regime £4,322,012 Works</p>	<ul style="list-style-type: none"> <li>• PIF must be completed</li> <li>• Cabinet approval &amp; Tollgate process to be followed for contracts above <del>£1,000250,000</del> – Supplies and Services; above £5million – Works.</li> <li>• Tender process to follow the requirements of the EU &amp; Public Contracts Regulations 2015</li> <li>• Tender process managed by corporate procurement service through the central e-tendering system</li> </ul>	<p>OJEU Council's website,  London Tenders Portal</p>	<p><del>Divisional</del> Director or Corporate Director (<u>up to</u> <del>above</del> cabinet threshold)</p>

## **7. Specifications**

- 7.1. An appropriate specification must be prepared which sets out a clear and comprehensive description of the Council's requirements with regard to the works, goods or services to be supplied.
- 7.2. All works, goods and services must be specified by reference to European standards, or national standards if no European standards are set. Named products or manufacturers should not be specified.
- 7.3. The specification should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the service director to see whether the Council's requirements are being met by the supplier. All necessary professional and technical advice and assistance must be obtained in preparing the specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests.
- 7.4. Officers must take careful consideration of the requirements; in doing so they may undertake research, discussions or briefings with several suppliers before the quotation or tender is issued. Any engagement with supplier must be undertaken in a manner that does not restrict competition or prejudice a fair and transparent procurement process.
- 7.5. In the interests of fairness, non-discrimination and equality of treatment, under no circumstances should an incumbent supplier or contractor be involved in the preparation of a specification for the future procurement of the same or similar contract which they are delivering, or which they would reasonably have an interest in bidding for.

## **8. E-Procurement**

- 8.1. The Council uses secure e-procurement systems and, unless exceptional circumstances apply and a Waiver is granted, all quotations and tenders must be managed electronically through this system.
- 8.2. The Head of ~~Corporate~~ Procurement must make arrangements for the receipt, custody, opening and witnessing of all tenders over £100,000, and must ensure that these arrangements are fully auditable.
- 8.3. The administration and development of the e-procurement system is the responsibility of Corporate Procurement including any enhancements to reflect legislative and policy changes within public procurement.

## Rule 2

- All quotation and tenders must be managed electronically through the e-procurement system(s) whose administration and development is the responsibility of Procurement.
- Once a contract has been awarded a purchase order must be raised in R2P unless supplies, services or works fall within the approved exceptions list.

## 9. Late Bids

- 9.1. Late quotations through the RFQ system are not to be accepted by the system.
- 9.2. Electronic tenders are automatically marked as “Late” by the e-tender system. In any event they must not be considered if they arrive after all the other bids have been opened, unless exceptional circumstances apply and the Head of ~~Corporate~~ Procurement (following consultation with the ~~Divisional~~ Director of Legal ~~Services~~) agrees to accept the late tender. Any unacceptable late bid must not be opened unless it is purely to determine the sender’s details so that the bidder can be advised of the reason for rejection by the Corporate Director or the Head of ~~Corporate~~ Procurement.

## 10. Conflict of Interest

- 10.1. All members of staff must avoid any conflict between their own interests and the interests of the Council. This is a requirement of the Council's Employee Code of Conduct, which all employees of the Council are bound by.
- 10.2. All consultants engaged to act on behalf of the Council must sign a Consultant’s Undertaking and declare that:
  - a. There is no conflict between their own interests or those of any of their other clients and the interests of the Council; and
  - b. There is no conflict between their own interests or any links with (e.g. a family member or close friend works for) an organisation or supplier who is tendering or quoting for a contract with the Council or already has a contract with the Council.
  - c. They will notify the appropriate director and Corporate Procurement if any conflict of interest arises within the bidding process.

### **Rule 3**

- Conflict of interest in a procurement exercise and subsequent contractual arrangement must be promptly disclosed through the HR Self Service system or, in the case of external consultants, through the completion of a Declaration of Interest document from corporate procurement.

## **11. Supplier registration and approval**

11.1. New supplier registration and approval is managed through the council's procurement system. Supplier approval process is carried out in two stages:

- a) Stage one - registration: suppliers wanting to trade with council are required to complete the basic online supplier registration.
- b) Stage two – approval: To receive Purchase Orders and payments, a supplier will need to be fully adopted, that is, registered in the Finance system (Agresso) and made visible in the requisition to pay system (R2P). Procurement will issue the supplier adoption form through the electronic procurement portal and verify key registration information provided before the supplier can be approved.

11.2. Officers engaging with any organisation where the contract of engagement may fall within the scope of IR35 regulations, that is, individual(s) that will be providing the services under the contract could be considered 'disguised employees' must undertake the HMRC employee's status assessment (IR35 assessment) before engaging in or awarding a contract. Guidance and process map on how to undertake the assessment will be on the Council's intranet. Failure to undertake the assessment and follow the agreed process may lead to disciplinary procedure.

## **12. Official Purchase Orders**

12.1. Once a contract has been awarded an official purchase order must be placed through the Purchase to Pay (R2P) system quoting the contract reference.

12.2. Contracts should only commence once an official purchase order has been issued. Purchase orders can only be issued to suppliers that have gone through the supplier adoption process.

12.3. There are exceptional exclusions to this process and information on these will be available within the Corporate Procurement area of the Council's intranet. The exclusions list is a live document and it will be reviewed by Financial Compliance and Procurement when required. Cases which do not fall within the exclusions listed will be rejected.

### **13. ICT related supplies, services and works**

13.1 In the case of procurement of ICT related supplies and services, the Corporate ICT partner may need to be engaged and officers must consult with the ICT Client Team and/or their ICT Business Partner.

### **14. Consortia and collaborative Framework Agreements**

14.1. Recognised consortium or collaborative procurement arrangements which have been properly tendered may be used, provided that the relevant Corporate Director:

- is satisfied that such an approach represents best value;
- is satisfied – having due regard to advice from Corporate Procurement and Legal Services as appropriate – that use of the arrangements are consistent with all UK and European legislation;
- is satisfied that the terms and conditions of the arrangement do not place undue restrictions or liabilities upon the Council;
- is satisfied that the parties to the arrangement are recognised public bodies or providers from the private sector operating appropriate procurement arrangements on behalf of the public sector;
- ensures that a full, open and proper competition in respect of the creation of the contract has taken place or will take place in accordance with the Relevant UK and European legislation and these Procurement Procedures.

14.2. A list of approved Frameworks Agreements will be managed by Corporate Procurement and published on the Council's intranet.

14.3. Where the relevant Corporate Director so decides, the Central Government Catalogues operated by the Crown Commercial Services at <http://ccs.cabinetoffice.gov.uk/> or any other appropriate framework may be used on the condition that the process set out in these Procedures are followed.

14.4. The award of call off contracts must comply with the procedure set out within the Framework Agreement. This can be either by Direct Award or Mini-competition. Where there is a choice of options, preference should be given to carrying out a mini-competition in order to demonstrate value for money.



Where price is not set out in the framework agreement, a mini-competition must always be undertaken.

- 14.5. Legal Services and Corporate Procurement must be involved before joining or buying from a framework agreement not let by the Council where the value of the contract will exceed the £100,000 procurement threshold. The process in Part 4 of these Procedures will be applicable to the procurement exercise.

## **15. Use of Standard Templates**

- 15.1. All quotations must be invited using the approved templates published on the Council's intranet. Procurement documentation for the selection, invitation, receipt, evaluation, award and management of contracts are regularly updated to ensure compliance with procurement regulations as well as Council procurement policies.
- 15.2. All tenders must be invited using approved standard documentation available from Corporate Procurement.

## **16. Separation of Duties**

- 16.1 Within each Directorate, arrangements should be made to ensure that there is adequate separation of duties and checking procedures to ensure probity and compliance with these procedures and financial regulations.

## **17. Local Businesses**

To be classified as local, a supplier must be based in one of the following post codes:

- E1, E2, E3 and E14

Certain postcodes in E15, E16 and EC are also part of the geographical limits of Tower Hamlets.

## **18. Supply Chain Ethical Code of Conduct**

- 18.1. The Council has adopted a Supply Chain Ethical Code of Conduct which must be included in all quotation and tender documentation, and with which all suppliers must comply. The full details of this Code are available on the Procurement intranet site, but in summary, the code set out the principles and standards of delivery for our suppliers and contractors:

- Maintaining integrity in business relationships.
- Rejecting improper business practice.

- Declaring any potential personal or business conflicts of interest.
- Acquiring and maintaining latest standards of technical knowledge and ethical behavior.
- Optimising the use of resources.
- Compliance with UK law, industry guidelines and contractual obligations.
- Fair, honest and respectable treatment of suppliers.
- Common courtesy at all times.
- Incorporating sustainable procurement aspects into procurement processes including human and employee rights and the environment.

18.2. Whilst it will not be possible to check that every single supplier to the Council complies with the Code, officers should draw suppliers' attention to the Code. Subscription to the code will be mandatory for those suppliers participating in a quotation or tender process.

#### **Rule 5**

- The Council is committed to maintaining the highest standards of ethical conduct. The Supply Chain Ethical Code of Conduct is essential to the operation and reputation of the Council. Suppliers are required to sign acceptance of the code when dealing with the Council.
- Quotations and tenders must be undertaken using approved procurement templates which will be updated by Procurement.

18.3. Corporate Directors must report to Corporate Procurement any issues or breaches arising under the Supply Chain Ethical Code of Conduct. Corporate Procurement may refer the report to Strategic Competition Board, if considered necessary.

### **19. The Bribery Act**

19.1 This Act deals only with bribery – no other forms of white collar crime. The Council may be liable for failing to prevent a person from bribing on its behalf. The Council's policy regarding the Bribery Act is set out on its website at [www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk) and must be adhered to in the contracting process.

### **20. Sustainable Procurement**

20.1. The Council is committed to sustainable economic business development which minimises any adverse impact on the environment and supports social cohesion.

20.2. Sustainable criteria must be included as part of the award criteria in all contracts where appropriate. Sustainability will be assessed taken into consideration the following areas:

- a) Environmental sustainability - purchasing supplies, works and services in a way that minimises, where practically possible, the carbon footprint and encourage a positive impact on the local environment and utilises whole-life analysis.
- b) Economic sustainability – recognises the importance of Small and Medium Enterprises (SME) to the local community and ensures every opportunity is made not to discriminate against SME's during the tender process.
- c) Social Sustainability – ensures that community well-being is considered and that supply chain partners operate under ethical working practices.

## 21. Freedom of Information Act

21.1 The council has an obligation to publish specific information in the public domain. However, the Freedom of Information Act enables certain confidential information and commercially sensitive material to be withheld. Officers must therefore ensure that bid information is kept confidential at all stages, especially during the bid evaluation process and after the contract is awarded. Suppliers must also be given the opportunity to highlight in their bid any information that they would not wish disclosed under freedom of information request.

## 22. Contract Register and Contract Publication

22.1 Contracts let through a quotation process, that is, with a value at or below £100,000, will be published on the Council's website. Contracts let through a tender process, that is with a value in excess of £100,000 will be published through the London Contract Register website:

<http://www.londoncontractsregister.co.uk/>

22.2 Corporate Directors must ensure that all contracts over £100,000 are registered with **Corporate** Procurement and tendered through Corporate Procurement.

22.3 In line with Part A – Section 3 (How Decisions are Made), officer decisions with a value over £250,000 must be published through the Council's officer decisions portal.

## 23. Contract Management

- 23.1. All contracts must be monitored to ensure they achieve the objectives and outcomes set out in the specifications. The Contract Management Framework sets out the principles and general guidance for the management of contracts. The Service, under its Director's supervision, will be responsible for the day-to-day operational delivery of contract management.
- 23.2. Corporate Procurement shall agree with Strategic Competition Board critical contracts (based upon value, business and reputation risk) that will be subject to performance monitoring and scrutiny by the Strategic Competition Board.
- 23.3. Corporate Procurement and Legal Services will provide second line support where performance failure is demonstrated.

#### **Rule 6**

- All contracts awarded through the quotation and tender processes must be published on the London Contract Register and the Council's website.
- All contracts should be managed in line with the Council's agreed Contract Management Framework
- Tender and quotation documentation and contract management records must be kept in accordance with the Retention Schedule published on the Council's intranet.

## **24. Extensions and Variations**

- 24.1. Subject to any statutory restrictions and compliance with the Constitution and Financial Regulations [\(including Key Decision thresholds set out in the introduction\)](#), a Corporate Director may authorise the following extensions and variations to an existing contract, following consultation with Legal Services and Corporate Procurement:

### **24.2. Extensions**

- (i) Extension(s) for a particular period provided for within the terms of the original contract (but subject to satisfactory outcomes of contract monitoring);
- (ii) Extension(s) beyond the original contract are considered a new contract and therefore subject to Procurement Procedures and, where applicable, EU Regulations.

Any extensions that fall outside the original terms of the contract must be justified on the grounds provided by the waiver of the procurement procedures outlined in section 50.1.

A copy of the extension documentation must be provided to Corporate Procurement in order to update the Contract file and Contract Register accordingly.

### 24.3. Variations

The following variations/modifications to a contract are permitted with Corporate Director approval (following advice from Corporate Procurement and Legal Services):

- (i) Variations provided for in the original contract in 'clear, precise and unequivocal' terms; or
- (ii) Variations outside the original contract terms that fall within any of the following **four situations**:
  - a. where the change in value is relatively small - under 10% (services & supplies) or under 15% (works) and where the revised total contract value is under the applicable EU financial threshold (this is cumulative where there is a series of changes); or
  - b. where there are unforeseen circumstances, provided that change does not alter the overall nature of contract and the price increase is not greater than 50%; or
  - c. Where additional works, services or supplies necessary and a change in contractor cannot be made for economic or technical reasons e.g.: interoperability with existing kit; or

- d. Where to change suppliers would cause significant inconvenience or duplication of costs. In any case, the price increase must not exceed 50% of the value of the original contract.
  - (iii) There has been a replacement of the supplier following a corporate restructuring, insolvency or merger, and the new supplier still meets the original selection criteria.
- 24.4. In any case, a substantial modification not originally provided for in the contract will trigger a new procurement process. This will arise where the modification materially changes the nature of the contract.
- 24.5. Any Variations that fall outside the original terms of the contract and do not fall under the exceptions listed in section 49.1 must be justified on the grounds provided by the Waiver of the Procurement Procedures outlined in section 50.1.
- 24.6. A copy of the variation documentation must be provided to Corporate Procurement in order to update the Contract file and Contract Register accordingly.

#### **Rule 7**

- (a) Subject to compliance with UK and EU law, a Corporate Director may authorise an extension to a Contract which was provided for in the original contract terms.
- (b) A Corporate Director may authorise variations, including price variations, determined in accordance with the original contract terms, or other variations which do not materially change the contract, and which fall within the scenarios listed in 50.1.
- (c) All extensions and variations outside of the term of the contract that amount to a contract value in excess of the Key Decision threshold (currently £1,00250,000 (for services or supplies) or £5m (for —works) must be referred to Mayor and/or Cabinet for approval.

## **PART 3 - APPLICABLE TO CONTRACTS BELOW £100,000**

### **25. Competition**

- 25.1. Contracts that fall within the level one, two and three that is equal to or below £100,000 in value, the Request for Quotation (RFQ) process **must** be followed and all quotations **must** be invited through the electronic RFQ system.
- 25.2. Officers undertaking the quotation process are responsible for the selection of suppliers. Suppliers selected for quotation **should** be located in the Tower Hamlets area unless a good business reason exists for selecting suppliers who are not based locally.
- 25.3. The Procurement Threshold table in section 6.2 of the Procedures sets out the required number of quotations for each level and the process to be followed.

### **26. Evaluation and contact award**

- 26.1. Evaluation criteria for level one and two quotations **CAN** be based on cost only or cost and quality.
- 26.2. Evaluation criteria for level three quotations (£50,001 – £100,000) **MUST** be based on cost and quality.
- 26.3. In the case of nil response to a quotation exercise, the project manager should investigate the reasons for the lack of responses prior to commencing a new RFQ.
- 26.4. In the event only one quotation is received for level two and three quotation exercises, the evaluation must still be undertaken in accordance with the evaluation criteria. Upon completion, the project manager will need to assess whether the submission received satisfies the requirements and is acceptable to proceed to award or if required commence a new RFQ.
- 26.5. All contracts up to £100,000 **must** be awarded through the RFQ system.

### **27. Clarification and additional information**

- 27.1 All bidder queries relating to RFQ should be in writing and managed through the RFQ system. In circumstances where a clarification response is assessed not be commercially restricted to a single bidder then the question and response should be released to all bidders without disclosing the identity of the originating bidder.

27.2 Further clarifications regarding quotation(s) received before contract award may be necessary. This might include areas of ambiguity, assumptions or possible errors. In such circumstances, all clarifications must be treated as commercial in confidence and managed through the RFQ system.

## **28. Timescales for Quotations**

28.1. All requests for quotation include a default minimum of seven working days for the return of responses. This time period can be amended to allow a longer period where it is deemed necessary.

## **29. Terms and Conditions**

29.1 All Requests for Quotation are invited with the Council's standard terms and conditions, which must be issued to suppliers with each RFQ. In the event that the standard terms and conditions are unsuitable, any alternative terms must be agreed with Legal Services.

## **30. Use of Purchasing Cards**

30.1. Purchase Cards are to be used to order low value supplies and services (e.g. hotels, business travel and tickets) that do not require the additional risk management of terms and conditions encompassing orders or contracts, and only where there is no existing contract or suitable supplier available on the e-procurement system.

30.2. Purchasing Cards are to be used in accordance with the Visa Card User guide and associated documents available through the Corporate Procurement area on the Council intranet. The transactions **must** be reviewed and authorised in the Purchasing Card monitoring system. Any misuse may result in the Purchasing Card being withdrawn and lead to disciplinary action.



## PART 4 - APPLICABLE TO CONTRACTS IN EXCESS OF £100,000

### 31. Competition

31.1. All contracts with a value in excess of £100,000 must be procured through Corporate Procurement to ensure compliance with the requirements of the Public Contracts Regulations 2015.

31.2. The Public Contracts Regulations set out detailed procedures for the award of contracts over specific thresholds. Details of the current thresholds are given below and are net of VAT.

	SUPPLIES	SERVICES	WORKS	LIGHT TOUCH REGIME	CONCESSION
Local Government	£ <del>164189,17</del> <u>6330</u>	£ <del>164189,17</del> <u>6330</u>	£ <del>4,104322,3</del> <u>94012</u>	£ <del>589663,14</del> <u>8540</u>	£ <del>4,170433,3</del> <u>94252</u>

### 32. Forward Plan

32.1. Corporate Directors must ensure that all contracts to be tendered are entered onto the forward plan of contracts, administered by Corporate Procurement at the earliest opportunity but with a minimum of six months before commencement of the procurement unless circumstances of urgency apply.

### 33. Project Initiation Form

33.1. In preparation for the Tendering exercise the Procurement Initiation Form (PIF) must be completed. The PIF will include:

- a) Identification and definition of needs;
- b) Options appraisal and business case development;
- c) A review of market conditions;
- d) Assessment of scope for collaboration; internally, externally with other organisations or the voluntary sector;
- e) Review of the implications for HR issues, sustainability, equalities, local businesses, etc;
- f) An analysis of the potential for achieving financial savings;
- g) Project planning, including definition of roles and responsibilities throughout the process;
- h) Risk analysis and recording on risk registers as appropriate
- i) Determining the process for contract management, including the arrangements for collating on a routine basis the financial and

performance information needed to evaluate the effectiveness of the procurement exercise;

- j) Where an external agent is to be involved in the preparation of specifications, tender documentation, tender evaluation or any other procurement activity in relation to a contract, a declaration of interest and a confidentiality agreement must be completed;
- k) Service Heads or officers with delegated power must assess any potential conflict of interest and seek advice from Legal Services. The procurement should not proceed until such time as the assessment is made;
- l) Any disclosure of conflict of interest in a procurement process will be assessed by the Corporate Procurement and Legal Services on a case-by-case basis. Individuals will be excluded on a case-by-case basis from the procurement process where the identified conflict is material and/or cannot be mitigated.

33.2. Corporate Procurement **must** be contacted as early as possible and full support given to enable the Procurement Instruction Form (PIF) to be fully completed.

33.3. No commitment can be made, and the procurement process **must not** commence, before this has taken place, and procurement advice on how to proceed has been received.

33.4. Corporate Procurement in liaison with the project manager and Legal Services will assess the procurement strategy, specification requirements and market conditions to determine the most suitable procurement procedure to employ and what internal governance measures are required.

33.5. For tenders above the EU threshold, and as part of the PIF process, Corporate Procurement will advise on current EU Law. EU Law is frequently evolving, so you should not assume guidance previously given will be unchanged in the future.

#### **34. Cabinet Approval – Automatic Referral**

34.1. Nothing in these rules obviates the requirement within the Constitution that “The contracting strategy and/or award of any contract for goods (supplies) or services with an estimated value exceeding £~~1,000~~250,000, and any contract for capital works with an estimated value exceeding £5,000,000, shall be approved by the Mayor and/or Cabinet in accordance with the Procurement Procedures.”

34.2. In order to comply with this requirement, the Head of ~~Corporate~~ Procurement will submit a quarterly report to Cabinet, laying down a forward plan of contracting exercises across the Council for the forthcoming 12 months. This

report will identify all contracts with a value exceeding £~~1,000,000~~250,000 (for services and supplies) and £5m (for works) during the period in question, and will seek Cabinet's approval to the outline contracting strategies.

34.3. Cabinet will be invited to identify those contracts they consider to be key decisions, and about which they wish to receive further reports on prior to contract award. The Corporate Director must ensure that the Head of ~~Corporate~~ Procurement is notified in good time in order to ensure that contracts are included in this report.

34.4. Prior to review by Cabinet, the Strategic Competition Board must have reviewed the strategy and/or award proposal.

### **35. Cabinet Approval – Referral by Head of ~~Corporate~~ Procurement**

35.1. If in the view of the Head of ~~Corporate~~ Procurement, either a contract strategy or contract award needs to be approved by Cabinet, the project lead must submit the relevant report to the next available Cabinet meeting, after it has been presented to the Strategic Competition Board, and must not proceed with either the contracting process or the contract award until Cabinet approval has been obtained.

### **36. Tollgate Process**

36.1. Contracts for supplies and services in excess of £~~1,000,000~~250,000 in value, or for capital works in excess of £5,000,000 in value, will be subject to the Council's Tollgate Review Process. This is a procurement project appraisal methodology which assesses the health of the project, makes recommendations for improved outcomes and, where appropriate, provides a post-contract peer review. The Tollgate process is administered by Corporate Procurement on behalf of the Strategic Competition Board. Contracting officers must respond appropriately to recommendations in tollgate reports. In respect of contracts in excess of £~~1,000,000~~250,000 (supplies & services) or £5,000,000 (capital works), you must obtain the approval of the Strategic Competition Board at two key points in the contracting cycle:

- a. To obtain agreement to the contracting strategy, prior to inviting tenders; and
- b. To obtain agreement to award contract, prior to issuing any award notification

36.2. The Procurement Cycle, including the Tollgate procedure, is set out in Appendix 1.

- Where the Contract is subject to the tendering rules of the EU Public Procurement Regulations, then those rules shall apply to the letting of the Contract.
- The contracting strategy for contracts for supplies and services in excess of £~~1,000~~250,000 in value, or for capital works in excess of £5,000,000 in value, will be subject to Mayor and/or Cabinet approval.

### **37. Engagement with the Strategic Competition Board**

37.1. The approval of the Strategic Competition Board will normally be through the internal Tollgate process. In the case of urgency, approval may be granted to the Contracting Strategy (but not the contract award) by the Head of ~~Corporate~~ Procurement and the ~~Divisional~~ Director of Legal ~~Services~~ with a subsequent report to the Strategic Competition Board.

### **38. Timescales**

38.1. The Public Contract Regulations set out specific timescales for the letting of contracts for supplies, services and works above the EU threshold. It also sets out specific procedures and timescales to be followed. An appropriate timetable must be drawn up in liaison with ~~Corporate~~ Procurement and Legal Services.

### **39. Tender Documentation**

39.1. In inviting Tenders from suppliers, the Tender packs which are issued to suppliers must as a minimum include: Form of Tender, Valuing Diversity, Supply chain Ethical Code of Conduct, Confidentiality Agreement, Bona Fide and Anti-Collusion Certificate, Freedom of Information Disclosure, Conflict of Interest Declaration, Subcontractor or Consortium Member, Specifications, Quality Statements, Cost Schedule and Terms and Conditions

39.2. Local Employment and Community Benefits are intended to improve the economic, social or environmental wellbeing of the Council's area in addition to the main purpose of the contract. The Local Employment and Community Benefit must be considered in all relevant contracts above £100,000 and considered on appropriate contracts below £100,000.

### **40. Terms and conditions**

40.1. The Terms and Conditions of a contract will be drafted by Legal Services and incorporated as part of the Tender pack. Where a bidder rejects acceptance of the Terms and Conditions (expressly, or by qualifying, caveating or

supplying their own terms and conditions), the bid should be rejected as non-compliant.

- 40.2. Variations to the Terms and Conditions proposed by a bidder **must** only be accepted with the approval of Legal Services.

## **41. Tender Clarification and Additional Information**

Pre-tender clarification

- 41.1. All queries from the bidders relating to the invitation to tender should be in writing through the e-procurement system. Where questions are considered of relevance to the subject matter of the contract and likely to affect some or all bidders' response to the tender, the clarification from the Council must be released to all bidders with the questioner's identity kept confidential.
- 41.2. Where the question is specific to one of the bidders (and therefore irrelevant to the submissions of the other bidders), it may be kept confidential between the Council and that bidder.

Post-tender clarification and request for additional information

- 41.3. Tender clarifications may be necessary in order to clarify areas of ambiguity, assumptions or possible errors in the cost and delivery of specifications. Clarifications must be fairly undertaken against the requirements specification released to all suppliers. In certain circumstances, it may be necessary to issue a response to a clarification to all bidders. Equally, competition must not be distorted by allowing any bidders to improve their offer without giving the same opportunity to all other bidders.

## **42. Negotiations**

- 42.1. Tender negotiations refer to the discussions that take place between a Council's officers and the bidders. Unless expressly allowed for within the procedure, tender negotiations must not be conducted as they distort competition and adversely affect trust in the competitive bidding process and contravene procurement regulations. Under no circumstances is it permissible to use the lowest bid to seek a reduction in costs from the other bidders.
- 42.2. Only under specific circumstances laid down in the PCR 2015, and with the agreement of the Head of ~~Corporate~~ Procurement and ~~Head~~ Director of Legal

**Services** will it be acceptable to negotiate as part of a procurement process. Prior to entering into negotiations, agreement and advice must be obtained from Legal Services and Corporate Procurement, and the process must be conducted in a fair manner that does not disadvantage or show undue favour to any tenderers. All negotiations must be fully documented.

#### **43. Tender Evaluation**

43.1. Evaluation criteria must be decided in advance of the advert and clearly stated in the tender documentation. All contracts must be awarded on the basis of most economically advantageous tender. For contracts over £100,000 a minimum of three officers must be involved in the evaluation of tender responses.

#### **44. Supplier Selection Criteria**

44.1. Selection Criteria (through the Standard Questionnaire – the SQ) are used to assess a bidder's ability to perform the proposed contract. Selection Criteria can apply at pre-tender stage in order to short-list bidders or, as part of the Open Procedure, to determine which bidders' tender submissions can be considered. Where a SQ evaluation is required, the statutory Selection Questionnaire published by Crown Commercial Services must be used.

44.2. There is statutory guidance on the use of the SQ and Corporate Procurement and Legal advice must be sought before the SQ is used. There are very limited criteria under which potential suppliers may be ruled out at the SQ stage.

44.3. Where a SQ evaluation is required, the SQ will be issued and returned electronically via the Council's e-procurement systems with appropriate access given to officers to evaluate online. The tender documentation must clearly state the minimum requirements and how they will be assessed.

#### **45. Supplier Award Criteria**

45.1. Award Criteria are used to identify the tender that is the most economically advantageous to the Council. This will be the optimum combination of cost and quality benefits. Requirements must be related and proportionate to the subject-matter of the contract, and be clearly set out in the Contract Notice together with the means of proof, where appropriate.

45.2. Where Local Employment and Community Benefits are included as part of the award criteria, its weighting must not be more than 5% of the overall quality assessment.

## **46 Tender Report**

- 46.1 A full tender report should be prepared by the Project Manager and kept on file. The report should include a complete review of the bidding strategy, methods used, details of bids received, and any justification for the opening of any late bids, the actual written approval for opening late bids, detailed bid evaluation and recommendations for award.

## **47 Debriefing**

- 47.1 For EU tenders supplier debriefs are a statutory requirement and must be completed within 15 days of the date of the receipt of a written request from the tenderer. Legislation requires a comparison between the bid of the person being debriefed with the winning bid. This must be done in such a way as to comply with the regulations without breaching the FOIA. If you have any doubt as to how to proceed, guidance should be sought from Corporate Procurement and Legal Services.

## **48 Contract Award**

- 48.1 Corporate Directors or ~~Divisional~~ Directors are responsible for signing contract award letters in respect of all contracts with a value between £100,000 and ~~£1,002~~50,000 for supplies, services; and works below £5,000,000.
- 48.2 Corporate Directors are responsible for signing contracts award letters in respect of all contracts with a value equal or above £250,000 for supplies, services; and works above £5,000,000.
- 48.3 When no bids are received in response to a tender undertaken in accordance with these procurement procedures, the project manager should investigate the reasons for the lack of responses.
- 48.4 Where only one bid is received, the evaluation may still be undertaken in accordance with the tender evaluation criteria. Once this is concluded, the Project Manager will need to assess whether the submission received is sufficient (such assessment to include consideration of best value and value for money) for the Council to proceed to award or whether it would be in the Council's best interest to re-tender.
- 48.5 Alternatively, but only on the advice of Corporate Procurement and Legal Services, it may be appropriate to invoke a negotiated process with the single supplier.

48.6 When a procurement exercise is to be abandoned, the ~~Divisional~~ Directors or Corporate Directors must authorise the decision. The Head of Procurement may request that the tender report for the procurement exercise is presented to Strategic Competition Board for approval.



## PART 5 – EXCEPTIONS TO THE PROCUREMENT PROCEDURES

### 49 Valid Exceptions to the Procurement Procedures

- 49.1 All contracts must follow a quotation or tender process in accordance with this procedures unless, either:
- a. A waiver via the completion of a Record of Directors Action (RCDA) is obtained from the relevant Corporate Director, in accordance with the RCDA Guidance; or
  - b. An existing, recognised consortium contract or framework, which has gone through an appropriate competitive tendering process, is being used in line with section 15. The Framework requirements to award a Call-off contract must be followed, either through a mini-competition or a direct call off process; or
  - c. An existing term contract, Framework or appropriate arrangement let by the Council, which complies with these rules, is being used (see section 13) ; or
  - d. The contract is to be funded in full by another public or voluntary organisation that has requested in writing that its own procedures are followed, subject to compliance with European law.

Corporate Procurement and Legal services must be involved in the award of such contracts where the value exceeds £100,000 the completion of a PIF and a Contract Award Report may be required.

### 50 Record of Corporate Director's Actions (RCDA) - Waiving of Procurement Procedures

- 50.1 Procurement Procedures may be waived by a Corporate Director in liaison with the Head of ~~Corporate~~ Procurement and the Director of Head of Legal Services, where the total value of the contract does not exceed the value of £164189,476330 (this is cumulative where there are a series of RCDA's in a period of 12 months), after considering a written report (RCDA) by the appropriate officer, that the waiver is justified because:
- a. The nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and has demonstrated that only a single source of supply is available, or
  - b. On balancing the risk and circumstances, it is clearly in the Council's interest to do so; or
  - c. The contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been

- foreseen – e.g. to protect life or property when no existing contractual arrangement is in place, or if the purchase is needed to urgently comply with an order of Civil or Criminal Court; or
- d. The purchase is from a supplier where there is an existing obligation to the Council (e.g. under a warranty to contribute to the cost).
  - e. Variations of contracts that do not fall within the exceptions listed in section 24.3
- 50.2 Corporate Director's Actions must be used only in the circumstances listed above, and not to compensate for poor planning or a desire to retain incumbent suppliers through avoidance of competition.
- 50.3 A record of the decision approving a waiver and the reasons for it must be published on the Council's website once the decision has been taken and kept in a departmental Register of Corporate Directors' Actions.
- 50.4 Corporate Director's Actions in respect of contracts over £100,000 must be reported to Corporate Finance for submission to the next available meeting of the Cabinet.
- 50.5 Corporate Directors' Actions must be completed on the appropriate form.
- 50.6 Waivers of the Procurement Procedures relating to contracts in excess of the OJEU threshold can only be made by a decision of the Mayor, either in Cabinet or through an Individual Mayoral Decision. In such circumstances, consideration must be given to the requirements set out within the Public Contracts Regulations 2015.

#### **Rule 10**

- Where the Procurement Procedures apply to a Contract a Corporate Director's Action may be taken to waive any provision, so long as it is justified in accordance with section 50 and this will not lead to a breach of UK or EU legislation.
- Waivers granted by the relevant Corporate Director must be agreed by the Head of ~~Corporate~~ Procurement and the ~~Legal Monitoring Officer~~ Director of Legal.
- Waivers are an exception and must not be sought unless absolutely necessary.
- Corporate Director Waivers in respect of contracts over £100,000 must be reported to the next available meeting of the Cabinet.

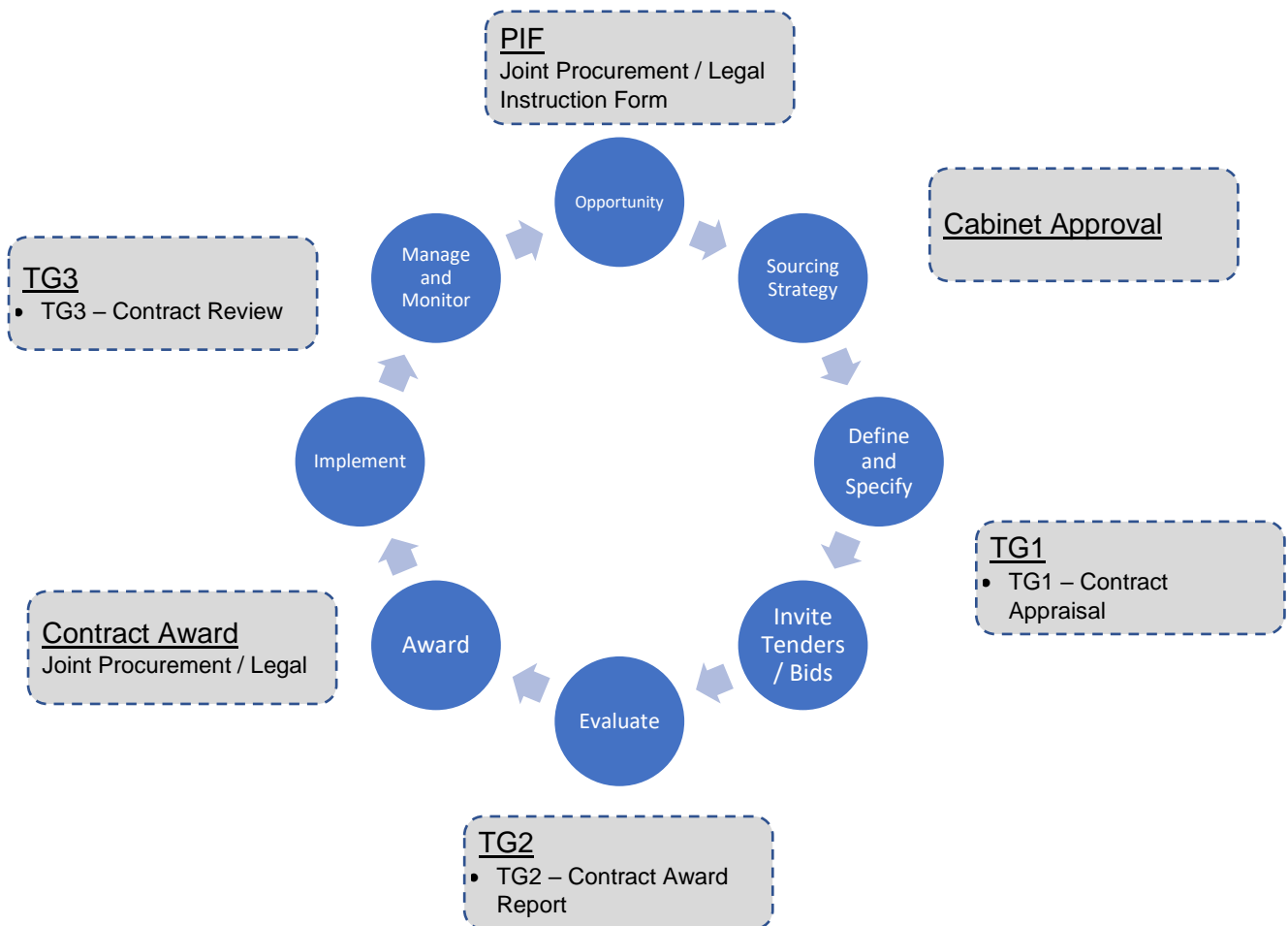
- Where there is any doubt about an action breaching UK or EU Legislation advice from Legal Services must be sought.
- A record of the decision approving a waiver and the reasons for it must be kept in a Departmental Register of Corporate Directors' Actions.

### Appendix 1: Tollgate process

Purchases of goods and services in excess of ~~£1,000,000~~£250k in value, or for capital works in excess of £5m in value are subject to the Councils Tollgate Process.

The Tollgate Process examines projects at key decision points in their lifecycle to determine the likelihood of successful delivery of the project, adherence to the Council Strategy and Community Plan and compliance with existing Policies and Procedures.

### Procurement Cycle



## **Project Initiation Form (PIF)**

The Procurement Instruction Form acts as the initiation of a procurement project and must be completed to instruct Corporate Procurement and Legal Services to support the identified project. This will involve a joint assessment between stakeholders and the procurement category manager.

Assessment will include:

- Identification of project resource to complete the procurement.
- Background and Strategic fit: summary of supplies and works being procured; justification for contract; key changes to current arrangements; link with Council's strategy and objectives.
- Market Assessment: market conditions; possible collaboration; procurement options.
- Financials - Cost and benefit realisation: initial contract value; funding streams; efficiencies.
- Approach to risk management; controls, mitigation and monitoring.
- Agreed procurement timetable

### **Tollgates 1, 2 and 3**

Tollgate reviews will take place for contracts for supplies and services in excess of **£1,000,000**~~250,000~~ or capital works in excess of **£5,000,000**.

The review is undertaken in a two stage process by: Competition Planning Forum and Strategic Competition Board.

#### **a) Tollgate 1**

Tollgate 1 is completed in liaison with the procurement category manager and MUST be signed off by the Project Sponsor (~~Service Head~~Director) and presented to Competition Planning Forum, who will review and make recommendation to Strategic Competition Board for approval with any specific recommendations prior to any advert being placed. Tollgate 1 will examine:

- The outcomes and objectives for the programme
- Confirm that the programme's potential to succeed has been considered in the wider context of Council's policy and procurement imperatives

- Programme takes account of joining up with other programmes, internal (consolidation) and external (collaboration)
- Arrangements for identifying and managing risks
- Provision for financial and other resources has been identified, including a minimum of 10% savings.
- Local Employment and Community Benefits are included and appropriate.
- Sustainability strategy has been outlined.
- LLW has been factored in the cost.
- Procurement is supported by key stakeholders and has been appropriately communicated to Lead Member and to Cabinet.

## **b) Tollgate 2**

Tollgate 2 is completed in liaison with the procurement category manager and MUST be signed off by the Project Sponsor (~~Service Head~~Director) and presented to Competition Planning Forum who will review and make recommendation to Strategic Competition Board for approval with any specific recommendations prior to contract award.

Tollgate 2 objectives are to ensure:

- The Business Case is still valid and unaffected by internal and external events or changes.
- The original projected business benefit are to be achieved
- There are feasible and tested business contingency, continuity and/or reversion arrangements in place.
- All on-going risks and issues are being managed effectively and do not threaten implementation.
- Contract management arrangements are in place.
- Lessons for future projects are identified and recorded
- Recommendations from TG1 have been actioned.
- Compliance with all internal governance and reporting procedures

## **Tollgate 1 and 2 combined**

In exceptional circumstances, where it is agreed for a TG1 and TG2 may be combined (5.23), a detailed contract award report (TG2-Report) must be completed in liaison with the procurement category manager and must be signed off by appropriate Project Sponsor (~~Service Head~~Director).

## **c) Tollgate 3**

High risk contracts or contracts with a value in excess of £1,000,000 will be selected by Strategic Competition Board to present a review report after initial 12 months into the life of the contracts.

Tollgate 3 report will be completed by the contract managers. Procurement Category Managers will provide guidance on report requirements.

The report will be presented by the Contract Manager to Strategic Competition Board which may provide specific recommendations.

The purpose of the Tollgate 3 is to assess:

- There is still a business need for the investment.
- Financial and efficiency benefits are being realised.
- Funding issues and risks
- Variations are being recorded and reported in accordance with the Council's Procurement Procedures.
- Contract Monitoring and Management arrangements in place
- Where applicable, confirm the validity of exit strategy and arrangements for re-competition.
- Local Employment and Community Benefits achievement.
- Compliance with policies and procedures and corrective measures where non-compliance has occurred.

## 38 Officer Employment Procedure Rules

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Rule	Subject
1	General
2	Recruitment and Appointment
3	Recruitment of Head of Paid Service and Chief Officers
4	Appointment of Head of Paid Service
5	Appointment of Chief Officers and Deputy Chief Officers
6	Procedure for the Appointment of Chief Officers and Deputy Chief Officers
7	Other Appointments
8	Disciplinary Action
9	Dismissal
10	Appeals
11	Designation as Statutory Officer

#### 1. GENERAL

- 1.1 Subject to Rule 1.2 and Rule 10 below, the function of appointment and dismissal of, and taking disciplinary action against, a Member of staff of the authority must be discharged, on behalf of the authority by the Head of the Paid Service or by an officer nominated by her/him.
- 1.2 Rule 1.1 shall not apply to the appointment or dismissal of, or disciplinary action against:
- (a) The Head of the Paid Service;
  - (b) A statutory chief officer within the meaning of section 2(6) of the Local Government and Housing Act 1989;
  - (c) A non-statutory chief officer within the meaning of section 2(7) of the Local Government and Housing Act 1989;
  - (d) A deputy chief officer within the meaning of section 2(8) of the Local Government and Housing Act 1989 (subject to Rule 5.6 below);
  - (e) A political assistant appointed in pursuance of section 9 of the Local Government and Housing Act 1989; or
  - (f) A Mayor's assistant appointed in pursuance of regulations under paragraph 6 of Schedule 1 to the Local Government Act 2000.

#### 2. RECRUITMENT AND APPOINTMENT

##### 2.1 Declarations

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

## **2.2 Seeking support for Appointment**

- (a) The Council will disqualify any applicant who directly or indirectly seeks the support of the Mayor or any Councillor for any appointment with the Council. The content of this Rule will be included in any recruitment information.
- (b) Neither the Mayor nor any Councillor will seek support for any person for any appointment with the Council.
- (c) Neither the Mayor nor any Councillor shall give a reference (oral or written) for a candidate for employment by the Council.

## **3. RECRUITMENT OF HEAD OF PAID SERVICE AND CHIEF OFFICERS**

**3.1** Where the Council proposes to appoint a chief officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- (a) draw up a statement specifying:
  - (i) the duties of the officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed.
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in Rule 3.1(a) to be sent to any person on request.

## **4. APPOINTMENT OF HEAD OF PAID SERVICE**

**4.1** Where a Committee, Sub-Committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the head of the authority's paid service, the authority must approve that appointment before an offer of appointment is made to that person.

**4.2** The full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by an Appointments



Sub-Committee established in accordance with Rule 5.1 below. That Sub-Committee must include at least one Member of the Executive.

- 4.3 The full Council may only make or approve the appointment of the Head of Paid Service where no well-founded objection has been made by any Member of the Executive.

## 5. APPOINTMENT OF CHIEF OFFICERS AND DEPUTY CHIEF OFFICERS

- 5.1 The Chief Executive will establish Appointments Sub-Committees upon criteria approved by the General Purposes Committee comprising relevant Members to make appointment to Chief Officer and Deputy Chief Officer posts. Any Appointments Sub-Committee established in accordance with this rule must include at least one (1) Member of the Executive.

- 5.2 Engagement of Chief Officers, to permanent positions or interim positions of over ~~three-six (36)~~ months, will be through the normal recruitment process overseen by the General Purposes Committee. The Chief Executive may make appointments to interim positions of up to ~~threesix (36)~~ months.

- 5.3 ~~Where an interim appointment, approved by the Chief Executive, extends beyond six months it must be approved at the next available General Purposes Committee and in any case not later than two months after the end of the extension.~~

- 5.34 An offer of employment as a chief officer or deputy chief officer shall only be made where no well-founded objection from any Member of the Executive has been received. Subject to Rule 5.56 below, in these Rules, chief officers are defined as:

- (a) the Chief Executive (as Head of Paid Service)
- (b) the statutory Chief Officers, (including the Chief Financial Officer, Corporate Director, Children and Culture's Services, Corporate Director, Health, Adults' and Community Services, and the Monitoring Officer)
- (c) the non-statutory chief officers which are:
  - (i) Officers for whom the Chief Executive is responsible (other directors);
  - (ii) Officers who report to or who are directly accountable to the Chief Executive by virtue of the nature of their duties; and
  - (iii) Officers who report to or who are directly accountable to the Council itself or any committee of the Council by virtue of the nature of their duties.

- 5.45 Subject to Rule 5.56 below, in these Rules, deputy chief officers are defined as officers in departments who, by virtue of the nature of their duties, either report

to or are directly accountable to the statutory or non-statutory chief officer responsible for that department.

**5.56** Rules 5.34 and 5.45 do not apply to:

- (a) officers whose duties are solely secretarial and clerical or are in the nature of support services; or
- (b) Head Teacher and Deputy Head Teacher posts in schools with delegated budgets.

### **Recruitment to the Chief Finance Officer and Monitoring Officer Statutory Positions**

**5.7** A permanent appointment to either the Chief Finance Officer or Monitoring Officer positions proposed by the Appointment Sub-Committee must be confirmed by a meeting of Council.

~~5.5~~ The procedure in this section for appointing chief officers and deputy chief officers shall only apply to the following post within the Governance Directorate:

- Corporate Director, Governance

~~Appointments to all other posts shall be the responsibility of the Head of the Paid Service or a person nominated by her/him.~~

~~5.7~~ The appointment of a statutory chief officer may not occur unless the prior written agreement of the DCLG Commissioners has been obtained for such an action.

## **6. PROCEDURE FOR THE APPOINTMENT OF CHIEF OFFICERS AND DEPUTY CHIEF OFFICERS**

**6.1 Appointments Sub-Committee Membership.** The Chief Executive, will set up an Appointments Sub Committee upon criteria approved by the General Purposes Committee comprising relevant Members to make appointments to chief officer and deputy chief officer posts.

**6.2 Appointment Process.** The following process will apply after an Appointments Sub Committee has interviewed all shortlisted candidates:

- (a) If the Sub Committee agree on a candidate suitable for the post, they will indicate their 'provisional intention to make an offer' to the Chief Executive.
- (b) The Sub Committee will inform the Chief Executive of the name of the candidate to whom they wish to make an offer together with any other

particulars which the Sub Committee considers relevant in making the appointment.

- (c) The Chief Executive will notify the Mayor and each other Member of the Executive within twenty-four (24) hours of:
- (i) The name of the person the Sub-Committee wish to make an offer to.
  - (ii) Any other particulars relevant to the appointment notified by the Sub-Committee.
  - (iii) The period within which any objection to the making of the offer is to be made by the Mayor on behalf of the Executive to the Chief Executive.
  - (iv) The period of objection will normally be two (2) working days. If the period of objection is to be shortened, then notification will be by telephone and e-mail.
  - (v) If:
    - (1) The Mayor, within the period of objection, notifies the Sub-Committee that neither they or any other Member of the Executive has any objection to the making of the offer; or
    - (2) The Chief Executive notifies the Sub-Committee that no objection has been received by him/her within the objection period from the Mayor,the 'provisional intention to make an offer' will become a firm offer and the offer of appointment may be made without the need for the Sub-Committee to re-convene.
  - (vi) If an objection is received within the objection period from the Mayor on behalf of the Executive, the Sub-Committee will reconvene to consider the objection. If the Sub-Committee is satisfied that any objection received from the Mayor is not material or is not well founded, they may confirm their decision and a formal offer will be made.

## **7. OTHER APPOINTMENTS**

**7.1** Officers below Deputy Chief Officer. Appointment of officers below deputy chief officer (other than any assistants to the political groups and any Mayor's assistant as defined at (e) and (f) respectively of Rule 1.2 above) is the responsibility of the Head of Paid Service or her/his nominee, and may not be made by the Mayor or Councillors.

**7.2** Assistants to Political Groups. Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

**7.3** Mayor's Assistant. Appointment of a Mayor's Assistant shall be made in accordance with the wishes of the Mayor.

## 8. DISCIPLINARY ACTION

### 8.1 In this Rule 8:

- “the 2011 Act” means the Localism Act 2011;
- “independent person” means a person appointed under section 28(7) of the 2011 Act;
- “local government elector” means a person registered as a local government elector in the council’s area
- “The Panel” means a committee appointed by the Council for the purposes of advising the Council on matters relating to the dismissal of the Head of Paid Service, the Monitoring Officer or the Chief Financial Officer;
- “relevant meeting” means a meeting of the Full Council to consider whether or not to approve a proposal to dismiss the Head of Paid Service, Monitoring Officer or Chief Financial Officer

**8.2 Suspension.** The Head of the Paid Service, the Monitoring Officer or the Chief Financial Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and may last no longer than two (2) months.

**8.3** The Head of Paid Service, Monitoring Officer or Chief Financial Officer may not be dismissed for disciplinary or misconduct reasons unless the procedure set out in the following Rule 8.3 (a) to (g) is complied with:

- (a) The Council must invite relevant Independent Persons to be considered for appointment to the Panel, with a view to appointing at least two (2) such persons to the Panel.
- (b) In paragraph (a) above “relevant Independent Persons” means any Independent Person who has been appointed by the Council, or where there are fewer than two such persons, such Independent Persons as have been appointed by another authority or authorities as the Council considers appropriate
- (c) Subject to paragraph (d), the Council must appoint to the Panel such relevant Independent Persons who have accepted an invitation issued in accordance with paragraph (a) in accordance with the following priority order –
  - (i) a relevant Independent Person who has been appointed by the Council and is a local government elector;
  - (ii) any other relevant Independent Person who has been appointed by the Council;

- (iii) a relevant Independent Person who has been appointed by another authority or authorities
- (d) the Council is not required to appoint more than two (2) relevant Independent Persons in accordance with paragraph (c) but may do so
- (e) the Council must appoint any Panel at least twenty (20) working days before the relevant meeting
- (f) before the taking of the vote at the relevant meeting on whether or not to approve such a dismissal, the Council must take into account, in particular –
  - (i) any advice, views or recommendations of the Panel;
  - (ii) the conclusions of any investigation into the proposed dismissal; and
  - (iii) any representations of the officer whose dismissal is being considered at the meeting
- (g) any remuneration, allowances or fees paid by the Council to an Independent Person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that Independent Person in respect of that person's role as Independent Person under the 2011 Act.

**8.4 Involvement of Members in Disciplinary Action.** Neither the Mayor nor any Member of the Council will be involved in disciplinary action against any officer below deputy chief officer ~~except where such involvement is necessary for any investigation or inquiry into alleged misconduct, through the Council's disciplinary, capability and related procedures, as adopted from time to time which may allow a right of appeal to Members in respect of disciplinary action.~~

**8.5** A Disciplinary Policy and Procedure for the Head of Paid Service, the Monitoring Officer and the Chief Financial Officer shall from time to time be issued or updated. That document does not form part of the Council's Constitution but should be read alongside these Officer Employment Procedure Rules.

## **9. DISMISSAL**

**9.1** Neither the Mayor nor any Member of the Council will be involved in the dismissal of any officer below deputy chief officer ~~except where such involvement is necessary for any investigation or inquiry into alleged misconduct, through the Council's disciplinary, capability and related procedures, as adopted from time to time which may allow a right of appeal to Members in respect of dismissals.~~

**9.2** Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the head of the authority's paid service, as the authority's chief finance officer, or as the

authority's ~~M~~onitoring ~~e~~Officer, the authority must approve that dismissal before notice is given to that person.

**9.3** Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the dismissal of any officer referred to at (a) to (d) of Rule 1.2 above, at least one member of the Executive must be a member of that committee or sub-committee.

**9.4** Where the authority or a Committee, Sub-Committee or officer ("the dismissor") proposes to dismiss:

- The Head of the Paid Service;
- A statutory chief officer;
- A non-statutory chief officer; or
- A deputy chief officer,

notice of dismissal must not be given until the dismissor has notified the Head of the Paid Service (or where the officer to be dismissed is the Head of the Paid Service, the Monitoring Officer) of the name of the person whom the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal; and

- (a) The Head of the Paid Service, or as the case may be, the Monitoring Officer, has notified the Mayor and every other member of the Executive of:
  - (i) The name of the person whom the dismissor wishes to dismiss;
  - (ii) Any other particulars relevant to the dismissal which the dismissor has notified; and
  - (iii) The period within which any objection to the dismissal is to be made by the Mayor on behalf of the Executive to the Head of the Paid Service/ Monitoring Officer; and
- (b) Either:
  - (i) The Mayor has, within the period specified in the notice under 9.4(b) above, notified the dismissor that neither they nor any other Member of the Executive has any objection to the dismissal; or
  - (ii) The Head of the Paid Service/Monitoring Officer has notified the dismissor that no objection was received by her/him within that period from the Mayor; or

- (iii) The dismissor is satisfied that any objection received from the Mayor within that period is not material or is not well founded.

**9.5** If a valid objection is made by the Mayor to a dismissal proposed by a Committee or Sub Committee that body shall re-convene to consider the objection. If the Committee or Sub Committee is satisfied that the objection is not well founded they will confirm their decision.

## **10. APPEALS**

**10.1** Nothing in Rule 1.1 above shall prevent a person from serving as a member of any committee or sub-committee established by the authority to consider an appeal by:-

- (a) another person against any decision relating to the appointment of that other person as a member of staff of the authority; or

~~(b) a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.~~

## **39 London Borough of Tower Hamlets: Members' Allowances Scheme**

**This Scheme is made by the London Borough of Tower Hamlets in accordance with the provisions of the Local Authorities (Members' Allowances) (England) Regulations 2003 as amended.**

1. This Scheme shall be called The London Borough of Tower Hamlets Members' Allowances Scheme 2021 and it shall come into effect on 1 April 2021. The Scheme shall apply to the Mayor, Councillors and Co-opted Members of the London Borough of Tower Hamlets.

### **Basic Allowance**

2. Subject to paragraph 8, a basic allowance of £11,693 shall be paid to each Councillor for each year. The Basic Allowance shall not be payable to the elected Mayor.
3. The basic allowance of £11,693 shall be payable with effect from 1 April 2021.

### **Special Responsibility Allowance**

4. Subject to paragraphs 5-8, a special responsibility allowance shall be paid for each year to those Members who hold a position of special responsibility as specified in Schedule 1.
5. The amount of each such allowance shall be the amount specified against the respective special responsibility in Schedule 1 and it shall be payable with effect from 1 April 2021.
6. Any special responsibility allowance payable under paragraphs 4 and 5 shall be in addition to the basic allowance payable under paragraph 2 above.
7. Any Member who holds more than one position of special responsibility shall receive only one special responsibility allowance which shall be at the higher level.

### **Part-Year Entitlement**

8. If, in the course of the year, this scheme is amended or a Member's entitlement changes, the relevant basic and/or special responsibility allowance shall be calculated and paid pro-rata during the particular month in which the scheme amendment or entitlement change occurs.

### **Dependants' Carers' Allowance**

9. A maximum of £10.85 per hour shall be paid to those Members who necessarily incur expense in arranging for the care of their children or other dependants to



enable them to undertake any of the activities specified in Schedule 2 to this Scheme.

10. The following conditions shall apply:
- payments shall be claimable for children aged 15 or under or for other dependants where there is medical or social work evidence that care is required;
  - only one weekly payment shall be claimable for the household of each Member, unless the Council's Standards Advisory Committee considers there are special circumstances;
  - the allowance shall be paid as a re-imbusement of incurred expenditure against receipts;
  - the allowance shall not be payable to a member of the claimant's own household;
  - any dispute as to entitlement and any allegation of abuse shall be referred to the Council's Standards Advisory Committee for adjudication.

### **Indexation**

11. The Basic, Special Responsibility, Mayor's and Dependants' Carers' Allowances will be adjusted to reflect the annual pay settlement for local government staff effective 1 April 2021. The Dependents' Carers' Allowance will also be adjusted to, as a minimum, be in line with the London Living Wage.

### **Travel and Subsistence Allowance**

12. An allowance shall be paid to any Member for travelling and subsistence undertaken outside the Borough in connection with any of the duties specified in Schedule 2.
13. An allowance shall be paid to a co-opted member of a Committee, Sub-Committee or Panel of the Council for travelling and subsistence in connection with any of the duties specified in Schedule 2, irrespective of whether the meeting or duty is inside or outside the Borough.
14. The amounts payable shall be the amounts which are for the time being payable to officers of the Council for travelling and subsistence undertaken in the course of their duties.

### **Co-optees' Allowance**

15. Subject to paragraph 16, a co-opted member of the Standards Advisory Committee, the Overview and Scrutiny Committee or any of its Sub-Committees, may claim a co-optee allowance of £132 and a co-opted member who is appointed as Chair of the Standards Advisory Committee may claim a

co-optee allowance of £267, for attendance at any meeting of the Committee or the Panel or attendance at any conference or mandatory training event, where attendance is on behalf of and authorised by the Council.

16. A claim for co-optees' allowance shall be made in writing within two months from the date of attendance at the meeting, conference or training event.
17. Where a member is suspended or partially suspended from his or her responsibilities or duties as a co-opted member under Part III of the Local Government Act 2000, any co-optee's allowance payable to him or her for the period for which he or she is suspended or partially suspended, may be withheld by the Council.

### **Maternity, Paternity, Adoption and Sickness Pay**

18. All Members shall continue to receive their Basic Allowance in full in the case of maternity, paternity, adoption and sickness leave.
19. Members entitled to a Special Responsibility Allowance shall continue to receive their allowance in the case of maternity, paternity, adoption and sickness leave in the same way that the Council's employees enjoy such benefits.
20. If a replacement to cover the period of absence is appointed by Council or the Mayor (or in the case of party group position, the party group) the replacement will be entitled to claim a Special Responsibility Allowance.

### **Recovery of Allowances Paid**

21. Any allowance that has been paid to a Member after he or she has ceased to be a member of the Council, or is for some other reason not entitled to receive the allowance for a specified period, may be recovered.

### **Claims and Payments**

22. Payments shall be made for basic and special responsibility allowances in instalments of one-twelfth of the amounts respectively specified in this Scheme, paid on the last working day of each month.
23. Where a payment of one-twelfth of the amount specified in this Scheme for a basic or special responsibility allowance will result in the Member receiving more than the amount to which he or she is entitled, the payment shall be restricted to such amount as will ensure that no more is paid than the amount to which he or she is entitled.
24. A claim for travelling and subsistence or dependants' carers' allowance;
  - shall be made in writing within two months from the date of the

performance of the duty for which the claim is made;

- shall be accompanied by receipts and/or any relevant evidence of the costs incurred;
- shall be subject to such validation and accounting procedures as the Council's Corporate Director, Resources may from time to time prescribe.

25. Travelling and subsistence and dependants' carers' allowance shall be paid on the last working day of each month for any claim received not less than 21 days before that date.

### **Pensions**

26. Neither members nor co-opted members of the Council are eligible to join the London Borough of Tower Hamlets Local Government Pension Scheme.

### **Records of Allowances and Publications**

27. The Council shall keep a record of payments made by it under this Scheme, including the name of the recipients of the payment and the amount and nature of each payment.
28. The record of the payments made by the Council under this Scheme shall be available at all reasonable times for inspection at no charge. A copy shall also be supplied to any person who requests it on payment of a reasonable fee.
29. As soon as reasonably practicable after the end of the year to which this Scheme relates, the Council shall make arrangements to publish the total sums paid by it to each recipient for each different allowance.
30. A copy of the Scheme shall be supplied to any person who requests it on payment of a reasonable fee.

### **Renunciation**

31. A member may at any time and for any period, by notice in writing given to the Chief Executive, elect to forego any part of their entitlement to an allowance under this Scheme.

### **Interpretation**

32. In this scheme:
- "Councillor" means an elected member of the London Borough of Tower Hamlets who is a councillor;
  - "Mayor" means the elected Mayor of Tower Hamlets Council;
  - "Member" means any person who is either the Mayor, a Councillor or a

co-opted member of Tower Hamlets Council;

- “Co-opted member” means any person who is not a Councillor but who sits on a Committee, Sub-Committee or Panel of the Council;
- “Year” means the 12 months ending on 31 March in any year.

### **Revocation**

- 33.** The London Borough of Tower Hamlets Members’ Allowance Scheme 2020 is hereby revoked and replaced with the Tower Hamlets Members’ Allowances Scheme 2021.

## SCHEDULE 1

### Special Responsibility Allowance

The following are specified as the special responsibilities for which special responsibility allowances are payable and the amounts of those allowances:

	<b>Eff. 1 April 2021</b>
Mayor	£80,176
Deputy Mayors	£32,070
Leader of the Majority Group on the Council	£12,080
Leader of the largest Opposition Group (subject to having at least 10% of the Council)	£12,080
Leader of the largest Opposition Group (if the Group has fewer than 10% of the Council)	£5,345
Leader of any Group (subject to having at least 10% of the Council)	£5,345
Cabinet Members	£21,380
Mayoral Advisors	£7,483
Chair of Overview and Scrutiny Committee	£11,759
Chair of Scrutiny Sub-Committee (Health, Housing or Grants)	£8,552
Lead Member for Scrutiny	£8,552
Chair of Development Committee	£11,759
Chair of Strategic Development Committee	£11,759
Chair of Licensing Committee	£6,414
Chair of General Purposes Committee	£8,552
Chair of Audit Committee	£6,414
Chair of Pensions Committee	£6,414
Speaker of Council	£10,690
Deputy Speaker of Council	£5,345
Chief Whip (Whip of the Majority Group)	£11,759

## SCHEDULE 2

### **Dependants' Carers' and Travelling and Subsistence Allowances**

The duties for which these allowances are payable include:

- the attendance at a meeting of the Council or of any committee or sub-committee of the Council or of any other body to which the Council makes appointments or nominations, or of any committee or sub-committee of such a body;
- the attendance at any other meeting, the holding of which is authorised by the Council, or a committee or sub-committee of the Council, or a joint committee of 270(1) of the Local Government Act 1972, or a sub-committee of such a joint committee, provided that –
  - where the Council is divided into two or more political groups it is a meeting to which members of at least two such groups have been invited; or
  - if the Council is not so divided, it is a meeting to which at least two members of the Council have been invited
- the attendance at a meeting of any association of authorities of which the Council is a member;
- the attendance at a meeting of the Cabinet or a meeting of any of its committees, where the Council is operating executive arrangements;
- the performance of any duty in pursuance of any standing order under section 135 of the Local Government Act 1972 requiring a member or members to be present while tender documents are opened;
- the performance of any duty in connection with the discharge of any function of the Council conferred by or under any enactment and empowering or requiring the Council to inspect or authorise the inspection of premises.
- the performance of any duty in connection with arrangements made by the Council for the attendance of pupils at any school approved for the purposes of section 342 of the Education Act 1996 (approval of non-maintained special schools); and
- the carrying out of any other duty approved by the Council, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the Council or any of its committees or sub-committees.