



**West Devon Borough Council**  
**Constitution 2020**

West Devon Borough Council  
Kilworthy Park  
Tavistock  
Devon PL19 0BZ

[www.westdevon.gov.uk](http://www.westdevon.gov.uk)

Contents page to be completed on adoption

### Definitions used in the Constitution

- (1) Any reference to an officer of the Council authorising an officer to do any act or thing shall, except where the law says otherwise, include the Head of Paid Service
- (2) References to the masculine gender shall include the feminine, and the singular shall include the plural and vice versa, unless the context otherwise demands.
- (3) Reference to a statute or regulation includes any subsequent amendment(s) made to it.
- (4) Unless the context otherwise demands, the following terms mean:

**'Article(s)'** - the article(s) set out in part 2 of the Constitution.

**'Borough'**- the area for which the Council is responsible.

**'Chairman'** - the Chairman of a Committee or Sub-committee or the person presiding at a Committee/Sub-committee meeting. Where a matter has been delegated in consultation with a Chairman of a Committee / Panel that no longer exists then the consultation shall be with the Chairman of the body which has replaced it or if the body no longer exists, the Leader of the Council;

**'Chief Executive'** - the Council's **Head of Paid Service** (being designated as such under section 4 of the 1989 Act) or, in his absence, an officer nominated by him or designated as such by the Council due to his incapacity (see article 9 of the Constitution).

**'Chief Officer'** – the Head of Paid Service and Deputy Chief Executive

**'Clear Day'** - a day which is neither a Saturday, Sunday nor a bank holiday.

**"Code of Conduct"** - the West Devon Borough Council Code of Councillors' Conduct set out in part 5(a) of the Constitution.

**'Committee'** - a committee of the Council, being one of the following:

- Audit Committee
- Hub Committee
- Development Management and Licensing Committee
- Overview and Scrutiny Committee
- Standards Committee

or such other committee as the Council may from time to time appoint for the discharge of its duties.

**'Constitution'** - the document adopted for the time being by the Council which sets out how the Council operates, how decisions are made and the procedures which the Council follows.

**'Contract Procedure Rules'** - the rules governing contracts entered into by the Council (see Part 4 of the Constitution).

**‘Corporate Property Officer’ – Head of Practice for Assets** who is responsible for the Council’s Capital Strategy and Asset Management Plan (see the Financial Procedure Rules in Part 4 of the Constitution).

**‘Council’** - West Devon Borough Council.

**‘The Councils’** – South Hams District Council and West Devon Borough Council

**‘Council Procedure Rules’** - the rules set out in part 4(1) of the Constitution.

**‘Councillors’** – see Members.

**‘Delegation Scheme’** - the powers and duties of the Council which have been delegated to committees or to officers in accordance with the Scheme (see Part 3 of the Constitution).

**‘Democratic Services Manager’** – shall also mean a relevant officer from Committee and Member Services

**‘Deputy Leader’** - the person currently appointed to this position by the Council.

**‘Deputy Mayor’** - the person currently appointed to this position by the Council.

**‘Extended Leadership Team (ELT)’** – Heads of Practice Leads and Managers (or as otherwise determined by SLT from time to time)

**‘Extraordinary meeting’** - an extra meeting of the Council which is not an ordinary scheduled meeting (sometimes referred to as special meetings).

**‘Financial Procedure Rules’** - the financial rules of the Council for the time being adopted by it as set out in Part 4 of the Constitution.

**‘Group Managers’** – Business Development Group Manager, Customer First and Support Services Group Manager, and Commercial Services Group Manager responsible for the Council’s service areas as set out in the Delegation Scheme.

**‘Head of Paid Service’** – means the Council’s **Chief Executive** (being designated as the Head of Paid Service under section 4 of the 1989 Act) or, in her absence, an officer nominated by her or designated as such by the Council due to her incapacity (see article 10 of the Constitution);

**‘Leader of the Council’** - shall mean the person currently appointed to this position by the Council

**‘Leader of a political group’** - the leader of a political group as defined in the Local Government (Committees, etc.) Regulations 1989.

**‘Majority’** – in relation to appointments occurs when one candidate receives more votes than the sum of the votes cast for all of the other candidates.

**‘Mayor’** - the person currently appointed to this position by the Council and who presides at Council meetings when present.

**'Meeting'** - a meeting of the Council, a Committee or other Council body.

**'Member'** - in relation to the Council a member of the Council and in relation to any Committee or Council body, a person appointed as a member of that Committee or Council body, whether or not entitled to vote. Councillors are sometimes referred to as Councillors.

**'Monitoring Officer'** – (the **Head of Legal Services**) being the person designated under section 5 of the 1989 Act or, if that person is unable to act owing to absence or illness, the person nominated as her deputy.

**'Municipal Year'** – means the Municipal Year from the May Annual Meeting in one year to the May Annual Meeting in the following year

**'Notice(s) in writing'** - includes notices sent by fax or e-mail.

**'Number of Councillors'** - in relation to the Council, the number of persons who may act at the time in question as Councillors of the Council, and in relation to a Committee or Council body, the number of persons who may act at the time in question as voting members of that body.

**'Officer'** - employee of the Council (and of South Hams District Council) or the holder of a paid office under the Council (or South Hams District Council) other than one held by a Councillor. Sometimes referred to as employees.

**'Ordinary meeting'** - a Council meeting which is scheduled for the current Council year and appears in the Council's Schedule of Meetings.

**'Person presiding'** - the person entitled, or appointed to preside at any meeting.

**'Political group'** - a political group as defined in the Local Government (Committees etc) Regulations 1989 (as amended).

**'Proper Officer'** - the person designated as such by the Council or Head of Paid Service.

**'Register of Interests'** - the register of Councillors' interests as required by the Code of Conduct (see part 5 of the Constitution)

**'Relevant officer'** - an officer appointed for a particular purpose.

**'Responsible Budget Holder'** - officers who are responsible for managing cost centres within a budget (see the Financial Procedure Rules in part 4 of the Constitution).

**"Section 151 Officer"** means the Strategic Finance Lead (being the person designated under section 151 of the 1972 Act (together with the 1988 Act and the 1989 Act), (see article 11 of the Constitution). Sometimes called the **Section 151 Officer**;

**'Senior Leadership Team (SLT)'** - the Head of Paid Service, Section 151 Officer and Group Managers.

**'Senior Officers'** –members of Senior Leadership Team, Monitoring Officer, Section 151 Officer, Heads of Practice, Lead Specialists and Level 3 Managers

**'Solicitor'** – a solicitor or lawyer employed or appointed by the Council or South Hams District Council

**'South Hams District Council'** – South Hams District Council with whom the Council operates shared service arrangements

**'Sub- committee'** – a sub-committee of one of the Council's Committees.

**'Task and Finish Groups'** - as appointed by an Overview and Scrutiny Committee.

**'Terms of reference'** - those functions delegated by the Council to its Committees (see part 3 of the Constitution).

**'the 1972 Act'** - the Local Government Act 1972.

**'the 1988 Act'** - the Local Government Finance Act 1988.

**'the 1989 Act'** - the Local Government and Housing Act 1989.

**'the 2000 Act'** - the Local Government Act 2000.

**'Vice Chairman'** - the vice chairman of a committee / Council body or the person presiding at a committee meeting where the Chairman is absent or unable to act.

**'Year'** – means (unless otherwise specified) the year from 1 April to 31 March

## Part 1

### Summary and Explanation

#### The Council's Constitution

West Devon Borough Council has a Constitution which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to decide.

The Constitution is divided into **14 Articles** which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols in Parts 3 to 6 of this Constitution.

#### What is in the Constitution?

Article 1 of the Constitution commits the Council to principles of good governance, community leadership, public involvement and efficient, effective, transparent and accountable decision-making. Articles 2 to 14 explain the rights of citizens and how the key parts of the Council operate. These are:

- Members of the Council (Article 2)
- Citizens and the Council (Article 3)
- The Council (Article 4)
- The Mayor (Article 5)
- Hub Committee (Article 6)
- Regulatory Bodies, Committees, Panels and Working Groups (Article 7)
- Overview and Scrutiny (Article 8)
- Joint Arrangements (Article 9)
- Officers (Article 10)
- Decision Making (Article 11)
- Finance, Contracts and Legal Matters (Article 12)
- Review and Revision of the Constitution (Article 13)
- Suspension, Interpretation and Publication of the Constitution (Article 14)

**Part 3** of the Constitution contains the description of the functions of the Council and how they are carried out – whether by the Council itself, a Committee, or officers.

**Part 4** contains the Rules by which the Council and its Committees work, and how information can be made available to the public.

**Part 5** contains Codes and Protocols governing the conduct of Councillors and Officers of the Council.

**Part 6** contains the scheme for Councillors' Allowances.

#### How the Council operates

The Council is composed of 31 Councillors (also called ‘Members’) elected every four years. Councillors are democratically accountable to residents of their Ward. The overriding duty and accountability of Councillors is to the whole community in the West Devon Borough, but they have a special duty to their constituents in their Ward, including those who did not vote for them.

Councillors have to agree to follow a **Code of Conduct** to ensure high standards in the way they undertake their duties. The Standards Committee is responsible for ensuring that Councillors are sufficiently trained on the Code of Conduct.

All Councillors meet together as the Council. Meetings of the Council are normally open to the public. Here, Councillors decide the Council’s overall policies and set the budget each year.

There is a list of functions that are reserved to the Council (in Article 4). Many other functions are delegated to bodies of the Council or officers (see below), but the Council may determine those matters not within the remit of any of its reporting bodies.

Council meetings may include formal decision making, wider debates and presentations. The Council may also meet informally in workshops and seminars.

**How decisions are made**

Most day-to-day and operational decisions are made by Committees or Senior Officers of the Council under delegated authority. The Council has the following Committees:

Audit Committee	Overview and Scrutiny Committee
Development Management and Licensing Committee	Standards Committee
Hub Committee	Invest to Earn Committee

Part 3 of the Constitution sets out the **terms of reference** for each of these Committees together with the **Delegation Scheme**.

Meetings of the Council’s Committees are, by law, publicised well in advance and are open to the public except where personal or confidential matters are being discussed. The **Access to Information Procedure Rules** in Part 4 of the Constitution contain details of when the public may be excluded from meetings.

**Audit Committee**

The Audit Committee has a specific role in relation to the Council’s financial affairs including the internal and external audit functions and monitors the internal workings of the Council (known broadly as ‘governance’). It is responsible for making sure that the Council operates in accordance with the law and within laid-down procedures, and is accountable to the community for the spending of public money.

**Hub Committee**

The Hub Committee has a key role in proposing the Council’s budget and policy framework and making decisions within that framework. It also provides leadership to the overall activities of the



Council and has responsibility for those matters not reserved to Council or the Overview and Scrutiny Committee, Standards, Audit or Development Management and Licensing.

### **Overview and Scrutiny Committee**

The Overview and Scrutiny Committee supports the work of the other Committees and the Council as a whole. It reports (and is accountable) to the Council. The Overview and Scrutiny Committee has an input into policy and performance and monitors the decisions of the Hub Committee. It can “call-in” a decision which has been made but not yet implemented in order to consider whether the decision is appropriate and may recommend that the Hub Committee or Council should reconsider the decision. The Overview and Scrutiny Committee may also be consulted by the Hub or other Committees on forthcoming decisions and the development of policy.

### **Development Management and Licensing Committee**

Development Management and Licensing is a ‘regulatory committee’, and deals with applying legislation and statutory regulations which have a degree of public or environmental protection. This Committee deals with:

- Development Management which deals with planning matters
- Licensing which deals with licences for alcohol, gambling, entertainment, taxis and a host of other things.

### **The Council’s Staff**

The Council employs staff (known as “Officers”) to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely (see article 10). Protocols set out in Part 5 govern the relationships between Councillors of the Council and Officers.

### **Citizens’ rights**

Citizens have a number of rights in connection with their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council’s own processes.

## **Part 2**

### **Articles of the Constitution**

#### **Article 1 - The Constitution**

##### **1.01 Powers of the Council**

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

##### **1.02 Purpose of the Constitution**

The purpose of the Constitution is to ensure the good governance of the Council in the public interest by:

- (a) describing the structures and operating systems by means of which the Council will secure that it can deliver its services efficiently and effectively;
- (b) providing the means of internal scrutiny and oversight of the delivery of Council policies and services; and
- (c) improving transparency of delivery and being accountable to the local community.

##### **1.03 Aims of the Constitution**

The provisions of the Constitution will:

- (a) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (b) support the active involvement of citizens in the process of local authority decision-making;
- (c) help Councillors represent their constituents and the Borough more effectively;
- (d) enable decisions to be taken efficiently, effectively and transparently, with due regard to probity and equity;
- (e) create a powerful and effective means of holding decision-makers to public account;
- (f) ensure that no-one will review or scrutinise a decision in which s/he was directly involved;
- (g) ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions; and

- (h) provide a means of improving the delivery of services to the community.

#### 1.04 Interpretation and review of the Constitution

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

The Council will monitor and evaluate the operation of the Constitution as set out in Article 13.

### Article 2 - Members of the Council

#### 2.01 Composition and eligibility

- (a) **Composition.** The Council comprises 31 Councillors, otherwise called Members. One or more Councillors will be elected by the voters of each Ward in accordance with a scheme drawn up by the Local Government Commission for England and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the Borough or those living or working here will be eligible to hold the office of Councillor.

#### 2.02 Election and term of Councillors

**Election:** The regular election of Councillors will be held on the first Thursday in May every four years.

**Term:** The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

#### 2.03 Roles and functions of all Councillors

- (a) **Key roles.** All Councillors will:
  - (i) collectively be the ultimate budget and policy-makers and carry out the principal strategic and corporate management functions, taking a Borough-wide view;
  - (ii) engage with and represent their communities whose views they will bring into the Council's decision-making process;
  - (iii) balance different interests identified within the Ward and represent the Ward as a whole;
  - (iv) make residents aware of the reasons for Council decisions, and make the Council aware of the particular concerns and grievances of residents and actively encourage community participation and citizen involvement in decision making;
  - (v) be involved in decision-making;

- (vi) be available to represent the Council on other bodies; and
- (vii) maintain the highest standards of conduct and ethics, and show respect for fellow Councillors, staff and the community.

(b) **Rights and duties**

- (i) Councillors have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it.

For these purposes, “confidential” and “exempt” information are defined in the Access to Information Procedure Rules in Part 4 of this Constitution.

- (iii) For the purposes of their role as community representatives, councillors will be registered as data controllers under the provisions of the Data Protection Act 1998 and will conform to its requirements in respect of the handling of personal data.
- (iv) Councillors will develop and maintain a working knowledge of the authority’s services and policies and take advantage of appropriate training and personal development opportunities to enable them to fulfil their role.

**2.04 Conduct**

Councillors will at all times observe the Councillors’ Code of Conduct and the Protocol on Councillor/Officer Relations set out in Part 5 of this Constitution.

Councillors will register, and keep up to date, their disclosable pecuniary and personal interests in the Register of Interests kept by the Monitoring Officer in accordance with the Code of Conduct set out in Part 5 of this Constitution

The Register is available for public inspection at the Council’s offices and on the Council’s website.

**2.05 Allowances**

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

**2.06 Meeting Attendance Statistics**

- (a) The Council will publish Councillors’ meeting attendance statistics on the Council’s website on a quarterly and annual basis;

- (b) Attendance at the following meetings will be included in the published statistics: Council, Hub Committee, Overview and Scrutiny Committee, Development Management and Licensing Committee, Audit Committee, Invest to Earn Committee and Standards Committee (to include any subcommittees of those bodies)
- (c) The attendance threshold is 75% of those meetings to which a Councillor has been appointed;
- (d) The following process for sanctions will apply for the 2019/20 Municipal Year (and be reviewed twelve months thereafter):

'If a Councillor fails to comply with the performance target whereby they should attend at least 75% of all public meetings of the Council and its Committees to which they have been appointed, then the matter will be considered by the Monitoring Officer, who will consult with the Chairman of the Standards Committee. Where there are no justified reasons for the performance target being missed, the Monitoring Officer will then write to the Councillor and request that they return a clearly defined proportion of their Basic Allowance.'

## 2.07 Chairmen

Chairmen of Committees will be required to have relevant experience (as determined by the Head of Paid Service) or undergo relevant Chairmanship training.

## 2.08 Use of email

Where a notice is to be given or a communication made in writing to Councillors, it shall be made by email whenever possible.

## Article 3 - Citizens and the Council

### 3.01 Citizens have the following rights:

- (a) **Voting and petitions.** Citizens on the Borough's electoral roll have the right to vote and sign a petition to request a referendum for an elected mayor, or to submit a petition on other matters (Council Procedure Rule 21).
- (b) **Information.** Citizens have the right to:
  - (i) attend meetings of the Council and its Committees (except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private);
  - (ii) see reports and background papers, and any records of decisions made by the Council;
  - (iii) access information held by the Council under the Freedom of Information Act.
- (c) **Participation.** Citizens have a right to:

- (i) submit questions to the Council in accordance with Council Procedure Rule 21 in Part 4, and submit questions to the Hub Committee and Overview and Scrutiny Committee in accordance with the Procedure Rules in Part 4.
  - (ii) be invited by the Overview and Scrutiny Committee to assist in matters of local interest; and
  - (iii) may participate in the public participation schemes of the Development Management and Licensing Committee
- (d) **Complaints.** Citizens have the right to complain to the:
- (i) Council itself under its complaints procedure;
  - (ii) Local Government Ombudsman (after using the Council's own complaints scheme);
  - (iii) The Monitoring Officer about a breach by a Councillor of the Councillors' Code of Conduct.

### 3.02 Citizens' responsibilities

Citizens must not be violent, abusing or threatening to Councillors or Officers and must not wilfully damage or harm things owned by the Council, Councillors or Officers.

#### **Article 4 - The Council**

The Council comprises 31 Councillors who meet at least 5 times a year and deal with the following matters:

### 4.01 Meanings

- (a) **Policy Framework.** The policy framework comprises the following plans and strategies:
- Corporate Strategy and underlying Themes
  - Joint Local Plan
  - Financial Strategy
  - Licensing Statements
  - Other plans and strategies which the Council may decide should be adopted by the Council
- (b) **Budget.** The budget includes:
- the allocation of financial resources to different services and projects
  - proposed contingency funds
  - setting the Council Tax and Council Tax base
  - decisions relating to the control of the Council's borrowing requirements
  - the control of the Council's capital expenditure and
  - the setting of virement limits.

#### 4.02 **Functions of the Council**

The full list of functions reserved to Council is set out in the Delegation Scheme (part 3).

#### 4.03 **Council meetings**

There are three types of Council meetings:

- (a) Annual Meeting
- (b) Ordinary Meetings
- (c) Extraordinary (or Special) Meetings

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

### **Article 5 - The Mayor and Council Leader**

#### 5.01 **Role and function of the Mayor**

The Mayor and Deputy Mayor will be elected by the Council annually. The Mayor (and in his/her absence the Deputy Mayor) will have the following roles and functions:

- (a) uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
- (c) ensure that Council meetings are a forum for the debate of matters of concern to the local community (which relate to services the Council provides, commissions, or formally contributes to);
- (d) promote public involvement in the Council's activities;
- (e) ensure that matters of conscience (where appropriate in his/her opinion) are brought to the attention of the Council;
- (f) represent the Borough and community at such civic and ceremonial functions as the Council and s/he determines are appropriate.

#### 5.02 **Role and function of Council Leader and Deputy Leader**

If, at its Annual Meeting, the Council decides to appoint both a Leader and Deputy Leader, then the Leader (and in his/her absence, the Deputy Leader) will have the following roles and functions:

To provide effective leadership by:

- (a) being the Council's principal strategic public spokesperson
- (b) giving voice to the overall direction of the Council

- (c) to sign financial and other documents but in particular:
  - (i) The Code of Corporate Governance
  - (ii) Annual Efficiency Statement
  - (iii) Statement of Internal control
- (d) representing the Council at relevant strategic County-wide and national bodies.

**Article 6 – Hub Committee**

**6.01. Composition**

- (a) The Hub Committee shall comprise 9 Councillors and shall be politically balanced
- (b) The Chairman and Vice Chairman shall be the Leader and Deputy Leader as appointed by the Council at the Annual Meeting
- (c) The remaining 7 Hub Committee members will be appointed annually by the Council at the Annual Meeting in accordance with the Hub Committee Councillor Role Profile (as determined from time to time by the Council) to the following areas of responsibility:

<b>Hub Committee Member</b>	<b>Area of Responsibility</b>
Leader	Strategic Vision Annual Budget Our Plan Democratic Services LACC Company
Deputy Leader	Policy Development Partnership Arrangements
Lead Councillor for Commercial Services	Waste and recycling Waste Contract Leisure Contract Car Parks – service delivery
Lead Councillor for Customer First	Customer contact Channel shift Localities Development Management Section 106 agreements Environmental Health including Licensing
Lead Councillor for Economy	Economic Development Business Development Capital Programme Business Voice LEP
Lead Councillor for Environment	Grounds Maintenance Toilets Cleansing Building maintenance



Hub Committee Member	Area of Responsibility
	Assets AONB Public Realm
Lead Councillor for Health and Wellbeing	Housing Advice DFGs Write-offs Homelessness Benefits Council Tax
Lead Councillor for Resources and Performance	IT HR Finance (excluding budget) Legal Policy Performance Complaints Data Protection and FOI
Lead Councillor for Strategic Planning and Housing	Strategic Housing Local Strategic Plan Neighbourhood Plans

- (d) **Substitution** (see Council Procedure Rule 10) is not permitted for the Hub Committee
- (e) The **Quorum** for the Hub Committee shall be four for the duration of the meeting.
- (f) The Hub Committee will usually have 8 meetings per year.

**6.02 Speaking and Voting**

All Councillors can attend and speak, subject to prior notification being given to the Chairman of the Hub Committee (or the Vice Chairman if s/he is chairing). Only Hub Committee Members may vote.

**6.03 Public Forum Procedures**

- (a) Members of the public may speak only to ask questions at the start of the Hub Committee meeting (during the 15 minute public question time) provided that the question(s) has been submitted and received in writing by the Democratic Services Manager by 5 pm on the Thursday before the meeting and in accordance with any guidance currently in place. The ability to ask a supplementary question based on the answer received to a question will be granted at the discretion of the Chairman.
- (b) Questions should:
  - Be related to something over which the Council has some control and is suitable to be considered (as determined by the Head of Paid Service)
  - Not normally be longer than 50 words in length
  - Not relate to specific planning, licensing or standards matters

- (c) Once presented to a meeting of the Hub Committee, questions cannot be resubmitted to the Hub Committee or to any other Council body within six months.

#### 6.04 **Forward Plan**

- (a) The Hub Committee will prepare a Forward Plan of its forthcoming business.
- (b) The Forward Plan will cover a period of four months and be updated on a monthly basis.
- (c) The Forward Plan will be circulated to all Councillors.

### **Article 7 – Regulatory Bodies, Committees and working groups**

#### 7.01 **The Council’s Committees**

The Council will appoint the following Committees and subcommittees:

**Audit Committee**

Number of Councillors: 7

**Hub Committee**

Number of Councillors: 9

**Overview and Scrutiny Committee**

Number of Councillors: 15

**Development Management and Licensing Committee**

Number of Councillors: 10

**Standards Committee**

Number of Councillors: 5

**Invest to Earn Committee**

Number of Councillors: 3

**Licensing sub-committee (Alcohol and Gambling)**

Number of Councillors: 3

**Licensing sub-committee (Taxi and misc. licences)**

Number of Councillors: 5

**Standards sub-committee**

Number of Councillors: 3

**Council Tax Setting Panel**

Number of Councillors: 4

The terms of reference for all of these Committees and sub-committees are set out in Part 3 (Delegation Scheme). Rules governing the Devon Building Control Partnership are in a

separate document which can be obtained from the Commercial Services Group Manager. Procedural Rules for these bodies are set out in Part 4 of the Constitution.

The current membership of these Committees is set out on the Council's website at [www.westdevon.gov.uk](http://www.westdevon.gov.uk)

## 7.02 Other Bodies

### **Rural Broadband Working Group**

Number of Councillors: 4

### **Car Parking Strategy Group**

Number of Councillors: 6

### **Corporate Strategy Councillor Working Group**

Number of Councillors: 6

### **Discretionary Business Rate Relief Decision Panel**

Number of Councillors: 3 (with 2 substitutes)

### **Economy Working Group**

Number of Councillors: 4

### **Financial Stability Review Group**

Number of Councillors: 6

### **Joint Front Line Services (Waste Procurement) Project Board**

Number of WD Councillors: 3

### **Joint WD/SH Leisure Board**

Number of WD Councillors: 3

### **Joint WD/SH Steering Group**

Number of WD Councillors: 4

### **Joint WD/SH/Plymouth Local Plan Steering Group**

Number of WD Councillors: 2

### **Councillor Development Steering Group**

Number of Councillors: 6

### **Political Structures Working Group**

Number of Councillors: 6

### **Rate Relief Panel**

Number of Councillors: 6

### **Waste Working Group**

Number of Councillors: 7

The Council will appoint bodies and Working Groups at the Annual Meeting (or as necessary) details of which can be found (together with the current membership) on the Council's website at [www.westdevon.gov.uk](http://www.westdevon.gov.uk).

The setting up of Working Groups is only permitted with the approval of Council.

## **Article 8 – Overview and Scrutiny Committee**

### **8.01 Composition**

- (a) The Overview and Scrutiny Committee shall comprise 15 Councillors and shall be politically balanced
- (b) Substitution (see Council Procedure Rule 10) is not permitted for the Overview and Scrutiny Committee
- (c) The Quorum for the Overview and Scrutiny Committee shall be for the duration of the meeting.
- (d) The Overview and Scrutiny Committee will usually have 8 meetings per year.

### **8.02 Speaking and Voting**

All Councillors can attend and speak, subject to prior notification being given to the Chairman of the Overview and Scrutiny Committee (or the Vice Chairman if s/he is chairing). Only Overview and Scrutiny Committee Members may vote.

### **8.03 Public Forum Procedures**

#### **(a) General**

Members of the public may raise issues and ask questions at meetings of the Overview and Scrutiny Committee. This session will last for up to fifteen minutes at the beginning of each meeting.

#### **(b) Notice of Questions**

An issue or question may only be raised by a member of the public provided that they have given written notice (which may be by electronic mail) to the Senior Specialist – Democratic Services ([Member.Services@swdevon.gov.uk](mailto:Member.Services@swdevon.gov.uk)) by 5.00pm on the Thursday, prior to the relevant meeting.

#### **(c) Scope of Questions**

An issue may be rejected by the Monitoring Officer if it:

- (i) relates to a matter within the functions of the Development Management and Licensing Committee;

- (ii) is not about a matter for which the local authority has a responsibility or which affects the borough;
- (iii) is offensive, frivolous or defamatory;
- (iv) is substantially the same as a question which has previously been put in the past six months; or
- (v) requires the disclosure of confidential or exempt information.

### 8.03 Annual report

The Overview and Scrutiny Committees shall report annually to Council on their workings and make evidence based recommendations for future work programmes and amended working methods if appropriate.

## Article 9 – Joint Arrangements and Shared Services

### Joint Arrangements

#### 9.01 Arrangements to promote Well-Being

To promote the economic, social or environmental well-being of its area, the Council may:

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

#### 9.02 Joint Arrangements for other purposes

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

#### 9.03 Access to information

- (a) The Access to Information Rules in Part 4 of this Constitution apply.
- (b) If the joint committee contains Councillors who are not on the Executive of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

**9.04 Delegation to and from other local authorities**

- (a) The Council may delegate functions to another local authority or, in certain circumstances, the executive of another local authority.
- (b) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting

**9.05 Contracting out**

The Council may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the Contractor acts as the Council’s agent under usual contracting principles, provided there is no delegation of the Council’s discretionary decision making.

**9.06 Shared Services**

- (a) The Council currently shares its services with South Hams District Council and has a Collaboration Agreement governing this arrangement. This may include further authorities as approved by the Council.
- (b) The Council may, from time to time, appoint one or more Joint Steering Groups (JSG) comprising Councillors from both West Devon Borough Council and South Hams District Council to consider cross-council issues. Any JSG will not be a formal committee arrangement and the JSG may only make recommendations to Council or other council bodies.

**Article 10 - Officers**

**10.01 Management Structure**

- (a) The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) All of these officers are shared appointments with South Hams District Council.
- (c) The Council designates the following posts as shown:

<b>Post</b>	<b>Designation</b>
Chief Executive	Head of Paid Service Returning Officer and Electoral Registration Officer
Strategic Finance Lead	Section 151 Officer
Head of Legal Services	Monitoring Officer
Group Manager - Support Services and Customer First (Deputy Chief Executive)	Electoral Registration Officer Deputy Chief Officer

Group Managers	Deputy Chief Officers
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#### 10.02 Functions of the Head of Paid Service

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

#### 10.03 Functions of the Section 151 Officer

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting the Head of Paid Service and the Monitoring Officer, the Section 151 Officer will report to the Council and the Council's external auditor if s/he considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The Section 151 Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Section 151 Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The Section 151 Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all Councillors and will support and advise Councillors and officers in their respective roles.
- (e) **Give financial information.** The Section 151 Officer will provide financial information to Councillors, the media, members of the public and the community.

#### 10.04 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure it is widely available to Councillors, Officers and the public.
- (b) **Ensuring lawfulness and fairness of decision-making.** After consulting the Head of Paid Service and Section 151 Officer, the Monitoring Officer will report to the Council if s/he considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

- (c) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee. The Monitoring Officer will make decisions on standards complaints in accordance with the 'Dealing with Complaints' procedure.
- (d) **Conducting investigations.** The Monitoring Officer (or duly appointed nominee) will conduct investigations into matters referred for investigation or the Monitoring Officer.
- (e) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all Councillors.
- (f) **Restrictions on posts.** The Monitoring Officer cannot be the Section 151 Officer or the Head of Paid Service.
- (g) **Proper officer for access to information:** The Monitoring Officer will ensure that decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (h) **Contributing to Corporate Management:** The Monitoring Officer will contribute to the corporate management of the authority in particular by acting as the Solicitor to the Council and providing professional legal advice to the Council.

#### 10.05 **Provision of sufficient resources to the Head of Paid Service, Section 151 Officer and Monitoring Officer**

The Council will provide the Head of Paid Service, the Section 151 Officer and the Monitoring Officer with such staff, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

#### 10.06 **Conduct**

Officers will comply with the Officers' Code of Conduct and the Protocol on Councillor/Officer Relations set out in Part 5 of this Constitution.

#### 10.07 **Employment**

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

#### 10.08 **Senior Leadership Team**

The responsibilities of the Senior Leadership Team (SLT) shall be:

- a) to keep under constant review the work of the Council and to accordingly advise the Council;
- b) to assist the Council in the formulation and regular review of the Policy Framework and other policies based on assessed needs and defined objectives through the project management process;



- c) to co-ordinate the efficient implementation of the programmes and policies determined by the Council;
- d) to provide the Council and its Committees (and other bodies) with the views of SLT on all matters of importance affecting the Council.
- e) to request advice as appropriate from the Monitoring Officer and Section 151 Officer
- f) The Senior Leadership Team Comprises:
  - (i) The Head of Paid Service; and
  - (ii) 4 Directors / Group Leaders

Each member of SLT shall be entitled to give or be called upon to give individual advice to the Council or its Committees on any matter involving his/her own professional knowledge or opinion and on any matter which materially affects the control or administration of any Service, employee, property or equipment under his/her jurisdiction.

#### 10.09 **Professional Indemnity to Officers**

The Council will indemnify all its employees accordance with the resolution by Council and in accordance with and subject to section 111 Local Government Act 1972 and the Local Authorities (Indemnities for Members and Officers) Order 2004 (or as amended from time to time).

### **Article 11 – Decision Making**

#### 11.01 **Responsibility for decision making**

The Council will issue and keep up to date a Delegation Scheme as set out in Part 3 of the Constitution.

#### 11.02 **Principles of decision-making**

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

- (a) the rule of law;
- (b) clarity of aims and desired outcomes;
- (c) the general principles of conduct contained in the Members' Code of Conduct;
- (d) due consultation and the taking of professional advice from officers and/or appropriately qualified consultants;
- (e) respect for human rights, equality and considerations for biodiversity, sustainability and the impact on crime and disorder;
- (f) consideration of the Council's Corporate Strategy and Themes;

- (g) reasonableness and proportionality (i.e. the action must be proportionate to the desired outcome ) and a presumption in favour of openness.

#### 11.03 Decision-making by the Council and its Committees

The Council and its Committees will follow the Council Procedure Rules as set out in Part 4 of this Constitution.

#### 11.04 Decision-making by Council bodies acting as tribunals

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

#### 11.05 The Council's Strategies and Plans

The Council will make decisions in accordance with its key strategies and plans. The Council has a number of strategic documents and plans that guide its approach to achieving its vision to serve local communities and ensure that it remains financially sustainable.

##### Corporate Strategy

The Council has a 5 year Corporate Strategy which runs from 2018-2023. The core purpose of the Strategy is to make a positive impact on the lives of local people by providing valued and easy to use services. The Strategy is guided by six strategic corporate themes:

<b>Council Communities</b>	Delivering efficient and effective services Council and residents working together to create strong and -empowered communities
<b>Homes Environment</b>	Enabling homes that meet the needs of all Protecting, conserving and enhancing our built and natural environment
<b>Enterprise Wellbeing</b>	Creating places for enterprise to thrive and business to grow Supporting positive and healthy lifestyles and helping those most in need

Achievements against these themes are monitored throughout the year through the Council's Overview and Scrutiny process.

##### Joint Local Plan

A key responsibility of the Council is to maintain an up to date development plan. The Joint Local Plan, prepared by West Devon, South Hams and Plymouth Councils sets out a strategy and detailed policies that establish a framework to steer housing and employment development to the most sustainable locations and to guide decisions on planning applications.

On 26 March 2019 the Plymouth and South West Devon Joint Local Plan was formally adopted. The Plan had been subject to examination by two independent Inspectors appointed by the Secretary of State. The adopted Plan which sets out a comprehensive 20 year strategy, meeting needs for homes, jobs, shopping and leisure needs in full. The Plan also guides development to locations in accordance with a sustainable development framework, based on a sound understanding of the precious natural resources of the Thriving Towns and Villages, including a full set of site allocation policies and development management policies.

### **Medium Term Financial Strategy**

In September 2018, Council approved the Medium Term Financial Strategy which looks at financial planning and management over a five year strategy. It sets out the strategic intention for all of the different strands of funding available to the Council.

The Council can now rely on this to inform future decisions. This also helps us to develop a sustainable budget over the medium term and will be reviewed annually. It incorporates key factors such as changes in Government funding, our spending plans, and the levels of savings we need to make to achieve a balanced budget.

### **The Asset Management Plan**

Sets out the strategic direction for the Council both as a land owner and with respect to its asset portfolio. It is essential to have a long term plan, to facilitate day to day operational decisions. The key points of the plan are to:

- Commence a limited programme of residential development
- Grow the existing commercial portfolio of small starter units
- Facilitate community use of assets if appropriate
- Dispose of underperforming and nonstrategic assets for re-investment

## **Article 12 - Finance, Contracts and Legal Matters**

### **12.01 Financial Management**

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

### **12.02 Contracts**

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

### **12.03 Legal Proceedings**

The Monitoring Officer and Deputy Monitoring Officer(s) are authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Monitoring Officer or Deputy Monitoring Officers consider that such action is necessary to protect the Council's interests, in accordance with the Delegation Scheme as set out in Part 3 of this Constitution.

#### 12.04 Authentication of Documents

Where any document is necessary for any legal procedure or proceedings on behalf of the Council, it will be signed by the Monitoring Officer or by any solicitor employed by the Council and authorised by her, unless any enactment otherwise authorises or requires (or, where urgency requires, any other officer authorised by him/her and confirmed in writing) or the Council has given requisite authority to some other person (please see the Delegation Scheme in Part 3).

#### 12.05 Common Seal of the Council

- (a) The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer.
- (b) A decision of the Council (or its Committees, Sub-committees or Officers, in accordance with the Delegation Scheme) will be sufficient authority for sealing any document necessary to give effect to the decision.
- (c) The Common Seal will be affixed to those documents which in the opinion of the Monitoring Officer should be sealed.
- (d) The affixing of the Common Seal will be attested by the Monitoring Officer. However, in the absence of the Monitoring Officer the following may attest the affixing of the Seal:
  - (i) Any lawyer employed by the Council (or South Hams District Council);
  - (ii) In the absence of any lawyer, any Senior Officer;
  - (iii) In matters of urgency, the Monitoring Officer or Deputy Monitoring Officers may authorise in writing another Officer to attest the Common Seal

### Article 13 - Review and Revision of the Constitution

#### 13.01 Duty to monitor and review the Constitution

- (a) The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect and the Council remains able to act lawfully, with probity and in accordance with the rules of natural justice.
- (b) The Monitoring Officer will be responsible for maintaining an up-to-date Constitution.

#### 13.02 Protocol for monitoring and review of Constitution by the Monitoring Officer

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

- (a) observe meetings of different parts of the Councillor and officer structure;

- (b) undertake an audit trail of a sample of decisions;
- (c) record and analyse issues raised with her by Councillors, officers, the public and other relevant stakeholders; and
- (d) compare practices in West Devon Borough Council with those in other comparable authorities or national examples of best practice.

### 13.03 Changes to the Constitution

- (a) **Approval.** The Constitution will be formally adopted by the Council at the Annual Meeting. Changes may be made to the Constitution and may be approved by the Council after consideration of a proposal from the Monitoring Officer, a recommendation from a Committee, a report to Council from the Political Structures Working Group, or by way of Councillors proposing a motion on notice in accordance with Council Procedure Rule number 15. Changes to the Constitution are effective immediately that they are approved by the Council. The Monitoring Officer may make minor amendments to the Constitution at any time.
- (b) **Changes to governance arrangements.** The Council may change the current political structure from alternative arrangements (a modified committee system) to executive arrangements under the Local Government Act 2000 and Localism Act 2011.

## Article 14 – Suspension, Interpretation and Publication of the Constitution

### 14.01 Suspension of the Constitution

The Articles of this Constitution may not be suspended. The Rules in Part 4 may be suspended by the Council or Committees to the extent permitted within those Rules and the law.

### 14.02 Interpretation

**Council:** The ruling of the Mayor as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at the meeting at which the ruling was given. Any such interpretation will have regard to the principles and purposes of this Constitution contained in Article 1.

**Committees or Other Bodies of the Council:** The ruling of the Chairman of a Committee or other body as to the construction or application of this Constitution shall not be challenged at any meeting of the Committees or other body of the Council. In making any ruling the Chairman will be guided by the principles and purposes of this Constitution set out in Article 1.

### 14.03 Publication

- (a) The Monitoring Officer will give an electronic link to the Constitution to each Member of the Council upon delivery to her of that individual's declaration of acceptance of

office on the Councillor first being elected to the Council. Updates to the Constitution will be provided in electronic format.

- (b) The Monitoring Officer will ensure that copies are available for inspection at Council offices and on its website, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Monitoring Officer will ensure that the summary of the Constitution is made widely available and updated as necessary.

## Part 3

### Delegation Scheme – to be subject to re-numbering

#### Part 3A – Delegation to Officers

##### Principles of Delegation

1. Section 101 of the Local Government Act 1972 provides that:
  - a. A Council may delegate its powers (except those incapable of delegation) to a committee or an officer
  - b. A Committee may delegate its powers to a sub-committee
  - c. A Committee may delegate its powers to an officer
  - d. Powers which have been delegated may be exercised by the delegating body or officer.
2. Under the Localism Act 2011 the Council has been given a general power of competence, enabling it to do anything that an individual might do. This is subject to certain qualifications.
3. Any delegation to a Committee or a Senior Officer shall be exercised in compliance with the Council's Constitution, any other policies or conditions imposed by the Council and with the law.
4. In making any decision regard shall be had to the Council's Corporate Strategy and Themes and principles of decision-making as set out in the Articles of the Constitution.
5. A Senior Officer may nominate another named Officer to carry out any powers and duties which have been delegated to that Senior Officer.
6. If any officer to whom a function has been delegated is for any reason unable to act, or if the post of any such officer is vacant, the Head of Paid Service, or in her absence, the Deputy Chief Executive may exercise the delegated power or nominate another named officer to carry out those duties.
7. In an emergency the Head of Paid Service is empowered to carry out any function of the Council.
8. Where officers are contemplating any action under delegated powers which is likely to have a significant impact in a particular area, they should also consult the Councillors for the appropriate Wards.
9. A delegated officer must ensure that s/he obtains appropriate advice from the Council's legal, financial and other specialist staff before action is taken.
10. The Monitoring Officer may at any time, make consequential amendments to the Delegation Scheme to reflect the re-designation of posts or reallocation of responsibilities in any service which affects the terms of the Scheme.
11. The Monitoring Officer shall settle any points requiring interpretation or clarification in the

practical application of this Delegation Scheme.

**A. Matters reserved for Council or Committee**

1. Subject to **urgent items** (see paragraph 2 below), the following matters shall be referred to the relevant Committee or Council, where appropriate. Any matter which:
  - (a) is strategic in nature (as determined by Senior Leadership Team); or
  - (b) requires a new policy; or
  - (c) requires an alteration to an existing policy (other than a minor amendment); or
  - (d) would be contrary to the Policy Framework; or
  - (e) involves expenditure, or a reduction in income, for which there is no sufficient budgetary provision; or
  - (f) is an issue of principle as determined by the Senior Leadership Team; or
  - (g) in the opinion of the Head of Paid Service or Monitoring Officer, cannot in law or in accordance with the Constitution be decided by an Officer; or
  - (h) upon which a Committee has requested a report; or
  - (i) a Councillor has requested an item to be put on an agenda under Procedure Rules 12 and 13; or
  - (j) in the opinion of the Officer concerned, should be determined by a Committee; or
  - (k) is reserved to the Development Management Committee
  - (l) Is reserved to the Council
2. Matters of urgency, as determined by the Head of Paid Service (or in her absence another Senior Officer) shall be delegated to the relevant officer in consultation with the Chairman and Vice-Chairman of the appropriate Committee subject to a report being made to the next meeting of the appropriate Committee.

**Authority for Officers to Act**

3. The term 'Senior Officers' includes the Head of Paid Service, Group Managers, s151 Officer, Heads of Practice, Lead Specialists, Managers (Level 3) and Monitoring Officer.
4. Throughout the Constitution references to:
  - Head of Paid Service shall include Chief Executive (and vice versa)
  - Section 151 Officer shall include the Strategic Finance Lead or her nominated Deputy Section 151 Officer (and vice versa)
  - The Monitoring Officer shall include her nominated Deputy Monitoring Officer(s)



- Heads of Practice/ Service and Managers shall include Community of Practice Leads and Lead Specialists (and vice versa)
5. Subject to those matters which are reserved for Council or Committee (see paragraph 1 above) **all Senior Officers** shall be responsible and shall have **delegated authority** for the **day-to-day operation and management** of his/her Group / Service Area and of the services and land for which s/he is responsible.
  6. Any matter not reserved for Council or Committee (i.e. any matter falling outside the criteria contained in paragraph 1 above) shall be regarded as falling within the day-to-day operation and management of the relevant department and shall be delegated to the appropriate Senior Officer and shall be exercised in accordance with the principles of delegation.
  7. **All Senior Officers** are appointed across both West Devon Borough Council and South Hams District Council and shall have authority to:
    - issue written authorisation to individual officers to act as the Council's authorised officers in the performance of their statutory or other duties (provided that any written authority to enter upon the land or premises shall be in pursuance of a statutory power of entry or inspection)\*\*
    - to nominate officers to deputise in their absence
    - call for and accept quotes and tenders within the Contract Procedure Rules
    - to act as Proper Officer for their service
  1.           \*\* to be recorded in a separate record held by the relevant Head of Practice or other Lead Specialist / Manager
  8. In the absence of the Monitoring Officer or Section 151 Officer, any officer duly appointed by them to act as their deputy may exercise any of the powers or duties delegated to the Monitoring Officer or Section 151 Officer.
  9. Delegations to Senior and other Officers in respect of **financial matters** are set out in the Financial Procedure Rules (Part 4 of the Constitution).
  10. Delegations to Senior and other Officers in relation to the letting of **contracts** are set out in the Contract Procedure Rules (Part 4 of the Constitution).
  11. Delegations to Senior and other Officers in respect of **land and premises** are set out in the Financial Procedure Rules.
  12. The **Council's Monitoring Officer (Head of Practice for Legal)** shall be responsible for signing or sealing all the Council's Official Documents (unless otherwise specifically delegated). In her absence, any other Lawyer employed by the Councils may carry out these functions, or in their absence a Senior Officer.
  13. All Heads of Practice are responsible for considering and issuing a formal caution in respect of any matter for which they are responsible. In the absence of the Head of Practice Lead this can be carried out by his/her nominated deputy or the relevant Group Manager.
  14. All Senior Officers are responsible for authorising, signing and issuing Notices and all other documentation (save for legal proceedings) for those matters for which they have responsibility.
  15. The Head of Paid Service shall be the Proper Officer for any function of the Council in the

absence of any other appointment (or in the absence of that Officer for any reason) as specified within this Delegation Scheme.

16. Where the Council is required to institute or defend legal proceedings, authority must be first obtained from the Monitoring Officer.
17. Officers are authorised to attend Court in relation to Revenue and Benefit proceedings, RIPA applications and sundry debts.
18. The Head of Paid Service shall determine from time to time any interim arrangements in the event of a vacancy or other long term absence of any Senior Officer.

**Delegation to Senior Officers, Lead Specialists and Managers**  
**Delegation to the Chief Executive and Head of Paid Service**

The **Head of Paid Service** is appointed as:

- Head of Paid Service
- Electoral Registration Officer and Returning Officer (South Hams District Council)
- Senior Responsible Officer (RIPA)
- Safeguarding Children and Vulnerable Adults Officer
- Senior Information Risk Officer (SIRO)

The **Head of Paid Service** shall have delegated authority for the following:

- Head of Paid Service functions
- Overarching responsibility for the services, functions and roles of the following:
  - Business Development
  - Elections
  - Commercial Services
  - Support Services
  - Customer First
  - Strategy and Commissioning
- External partnerships
- Corporate Strategy and strategic direction
- Councillor engagement

**Delegation to the Section 151 Officer**

The **Section 151 Officer** shall have delegated authority for the following:

- Strategic Finance
- Section 151 responsibilities
- Finance
- Matters set out in the Financial Procedural Rules
- To act as the Proper Officer relating to financial matters in the Local Government Acts and Finance Acts

The Strategic Finance Lead shall have overarching responsibility for:

- Strategic commissioning and contract management

#### **Delegation to the Monitoring Officer**

The **Monitoring Officer** shall have delegated authority for the following:

- Monitoring Officer responsibilities (including, but not limited to, those matters set out in the Articles above)
- Governance
- Standards
- Conduct of legal proceedings on behalf of the Council as its Solicitor
- Legal Services

#### **Delegation to the Statutory Officers' Panel**

The Statutory Officers' Panel comprises the Head of Paid Service, Section 151 Officer, and Monitoring Officer (together with other officers as required) and has authority for oversight of, and providing direction on, the following:

- the principles and elements of control and governance frameworks (including direction on the Annual Governance Statement)
- strategic risk management
- fraud and corruption
- investigations undertaken under Disciplinary Procedures
- regulatory framework (policies and strategies)

#### **Delegation to Group Managers**

##### **Delegation to the Customer First and Support Services Group Manager (Deputy Chief Executive)**

The **Customer First and Support Services Group Manager** shall have delegated authority for the following services and functions:

- **Deputy Chief Executive:** all of the powers of the Head of Paid Service and Head of Paid Service to act in her absence
- **Responsibility and management** of Customer First and Support Services service areas
- **Electoral Registration Officer and Returning Officer** (West Devon Borough Council)
- **Overarching responsibility** for the services, functions and roles of the following Heads of Practice, Lead Specialists and Managers and their respective service areas:
  - Audit
  - Case Management Managers
  - Communications and Media Lead Specialist
  - Corporate Procurement Officer (shared officer for South Hams District Council, Teignbridge District Council and West Devon Borough Council)
  - Contact Centre Manager
  - Customer First Specialist Manager
  - Democratic Services Senior Specialist

- Elections Specialists (South Hams and West Devon)
- Head of Practice for Assets
- Head of Practice for Development Management
- Head of Practice for Environmental Health
- Head of Practice for Finance
- Head of Practice for Housing, Benefits and Revenues
- Head of Practice for Human Resources
- Head of Practice for Information Technology
- Head of Practice for Legal Services
- Head of Practice for Place Making
- Information Governance
- Localities
- Performance and Intelligence
- Support Services Specialist Manager

#### **Delegation to the Business Development Group Manager**

- The **Business Development Group Manager** is appointed as the **Data Protection Officer for South Hams District Council and West Devon Borough Council**

The **Business Development Group Manager** shall have delegated authority for:

- Strategic Asset Management
- Commercial Property Acquisition and Senior Development
- Devon Building Control Partnership
- **Deputy Electoral Registration Officer** (West Devon Borough Council)

#### **Delegation to the Commercial Services Group Manager**

The **Commercial Services Group Manager** shall have delegated authority for the following services and functions:

- Responsibility and Management of the Commercial Services Group
- Overarching responsibility for the services, functions and roles of the following Leads, Managers and their respective service areas:
  - Facilities Management
  - Ferries and Harbours
  - Head of Practice for Environment
  - Head of Practice for Waste

#### **Delegation to the Senior Leadership Team**

The **Senior Leadership Team** shall be responsible for:

- approving the setting of the Council Tax base

#### **Delegation to Heads of Practice, Lead Specialists and Managers**

##### **Strategy and Commissioning**

### **Delegation to the Commissioning Manager (Waste)**

The **Commissioning Manager (Waste)** shall have delegated authority for the following:

- Strategic responsibility for recycling and waste services including:
  - Recycling
  - Waste collection
  - Commercial waste services

### **Commissioning Manager**

The **Commissioning Manager** shall have delegated authority for the following:

- Corporate Strategy
- Customer Satisfaction

### **Commercial Services**

### **Delegation to Head of Practice for Waste Services**

The **Head of Practice for Waste Services** shall have delegated authority for the following operational services and functions:

- Recycling
- Waste collection (including domestic and commercial waste services)
- Marketing and service design
- Transport and waste / recycling haulage
- Health and safety

### **Delegation to Head of Practice for Environment Services**

The **Head of Practice for Environment Services** shall have delegated authority for the following operational services and functions:

- Abandoned vehicles
- Building maintenance
- Car parking
- Cleansing services (internal and external)
- Dog fouling and stray dogs
- Environmental enforcement
- Events management
- Facilities Management
- Grounds maintenance
- Markets
- Public conveniences
- Stores

### **Delegation to the Salcombe Harbour Master (SH only)**

The **Salcombe Harbour Master** shall have delegated authority for the following:

- Salcombe and Kingsbridge estuary
- In-house management of Harbour Authority assets
- Ferry operation
- Marine byelaw enforcement
- Beach, marine and water safety
- Prevention and management of marine oil pollution

### **Customer First**

#### **Delegation to Head of Practice for Assets**

The **Head of Practice for Assets** shall have delegated authority for the following:

- To be the Council's **Corporate Property Officer**
- **Estates/Assets** - to include:
  - Asset Delivery Programme
  - Estates management
  - In-house management of operational assets
  - Strategic Asset Management
  - Valuations
- Matters set out in relation to Assets in the Council's **Financial Procedure Rules**
- **Engineering** - to include:
  - Asset Capital Programme Management
  - Civil engineering (drainage, flood, coastal and fluvial)
  - Coastal protection statutory functions
  - Engineering services – commercial
  - Flood Protection statutory functions
- **Natural Environment, Countryside and Leisure** – to include:
  - Policy and management of parks, green space, play area and outdoor sport
  - Grounds maintenance
  - Leisure Services

#### **Delegation to Head of Practice for Development Management**

The **Head of Practice for Development Management** shall have delegated authority for the following:

- **Development Management** (as set out in the Development Management Committee remit) including:
  - Development management
  - Pre-application advice
  - Enforcement and Prosecution
  - Conservation and historic buildings

- Planning Policy (Development Management)
- Land Charges

### **Delegation to Head of Practice for Environmental Health**

The **Head of Practice for Environmental Health** shall have delegated authority for the following:

- **Environmental Protection and Licensing:**
  - Emergency planning and response
  - Contaminated land
  - Nuisance
  - Private water supplies
  - Licensing (licences, enforcement, advice)
  - Community Safety
  - Antisocial behaviour
- **Environmental Health – business:**
  - Food safety and enforcement
  - Inspections
  - Approved premises
  - Infectious disease control
  - Health and safety (regulatory)
  - Fatalities /accidents
  - Health and safety (internal functions /corporate liability)
  - Inspections / enforcement
- **Housing and Health**
  - Private sector housing and enforcement
  - Houses in multiple occupation
  - Disabled facilities grants
  - Private sector renewal – loans / grants
  - Caravan sites
  - Public Health / Health and well-being
  - Fuel poverty
  - Home energy conservation
  - Empty homes
- Management of **out of hours service** (including homelessness and emergency planning)

In relation to **Licensing functions** the **Head of Practice for Environmental Health** shall have authority:

- To determine whether to refuse to grant an application for Hackney Carriage or Private Hire Vehicle Licence.
- To determine in consultation with the Chair and Vice-chair of the DM ~~Panel~~ Committee whether to revoke a Hackney Carriage or Driver licence in situations of urgency ('urgency' to be determined by the Head of Practice Lead for Environmental Health).
- To refer such applications which, in the opinion of the Head of Practice Lead for Environmental Health, should be determined by a Licensing Sub-Committee.
- To determine applications for Licences under the following areas of work not previously delegated to other committees or individuals;

- Public Health (e.g. Animal Boarding Establishments, Dangerous Wild Animals, Pet Shop, Riding Establishments, Skin Piercing and other special treatments).
  - Public Safety (e.g. Alcohol and entertainment licences, personal licences, club premises certificates, Hypnotism licences, Gambling licences etc.)
  - Housing (e.g. Selective licensing of residential accommodation, Licensing of houses in multiple occupation, Licensing of camping sites, Licensing of caravan sites)
  - Environmental (e.g. Environmental Permits, Licensing of scrap metal dealers)
- To investigate complaints relating to licensed and licensable activities with the relevant powers of entry in order to undertake these investigation.
  - To instigate informal or formal action in order to resolve complaints or unlicensed activities and take appropriate action or remedy.
  - To undertake formal consultations on amendments to policy, (or fares in accordance with the Maximum Chargeable Fare setting policy - South Hams only)
  - **to suspend licences** in situations of urgency where there are reasonable grounds to do so (where urgency is determined by the Head of Practice for Environmental Health)

The **Head of Practice for Environmental Health** shall act as the **Proper Officer** in respect of the signing of all appointments and authorisations of authorised officers or Inspectors appointed under legislation relevant to environmental health, food safety, health and safety, housing and licensing and also the signing of authorisations of other persons to accompany authorised officers or Inspectors (including Consultants or other agencies where appropriate) and to be given discretion to specify which powers under the relevant legislation are to be exercised by particular authorised officers or Inspectors.

The **Health and Safety** at Work Act 1974 and The Management of Health and Safety Regulations 1999 requires the Councils to appoint one or more competent persons to provide competent technical advice on health and safety matters. The appointed “competent person” is the Head of Environmental Health and Licensing.

#### **Delegation to Head of Practice for Housing, Benefits and Revenue**

The **Head of Practice for Housing, Benefits and Revenue** shall have delegated authority for the following:

- **Vulnerable customers – safeguarding and child protection:**
  - Identification and protection
- **Business rates:**
  - Collection and enforcement
  - Billing
  - Government submissions
  - Pool membership
  - Policy
- **Housing Benefit:**
  - Assessment of claims
  - Collection and recovery
  - Subsidy maximisation



- Discretionary housing payments
- **Housing, Options and advice**
  - Prevention and homelessness
  - Choice based letting
  - Direct lets
  - Administration and maintenance of the Housing Register for allocation of social housing
  - Refugees
- **Council tax and non-domestic rates:**
  - Collection and enforcement
  - Billing
  - Government submissions
  - Council tax reduction
  - Exceptional hardship fund and rate relief
- **Fraud:**
  - Maximising income
  - Recovery

#### **Delegation to Head of Practice for Place Making**

The **Head of Practice for Place Making** shall have delegated authority and responsibility for the following:

- Strategic Planning
  - Local Plan and Local Development Framework, SPDs
  - Infrastructure planning and delivery
  - Supporting neighbourhood planning
- Economic Development:
  - Regeneration
  - Development
  - Business engagement
- Housing enabling:
  - Affordable housing
  - Specialist housing needs
- Community Development
  - Assets of Community Value
- Neighbourhood Planning
- Natural Environment:
  - Areas of Outstanding Natural Beauty and South Devon AONB Partnership
  - Tree and Hedge protection
  - Protected landscapes and landscape character
  - Biodiversity conservation and enhancement
  - Green infrastructure and Healthy Communities Partnerships

#### **Delegation to Case Management Managers**

**Case Management Managers** shall have delegated authority and responsibility for the following:

- Case Managers
- Case Management Team Leaders
- Digital Mail Room
- Gazetteer

- Payroll
- Locality Officers who have the following responsibilities functions:
  - Site inspections from public land or where invited on to private land
  - Play Park inspections
  - Posting site notices and serving notices
  - Initial investigations and assessments, evidence gathering and preliminary interviews
  - Monitoring and compliance – contracts, repairs and assets
  - Customer visits
  - Enforcement
  - Community Liaison
- Street Naming and Numbering

#### **Delegation to Contact Centre Manager**

The **Contact Centre Manager** shall have delegated authority for:

- Contact Centre
- ICT Help Desk
- Customer Reception

#### **Delegation to Customer First Specialist Manager**

The **Customer First Specialist Manager** shall have delegated authority and overarching responsibility for the management of the Heads of Practice for:

- Assets
- Development Management
- Environmental Health
- Housing Revenues and Benefits
- Place Making

#### **Support Services**

#### **Delegation to the Support Services Specialist Manager**

The **Support Services Specialist Manager** shall have overarching responsibility and delegated authority for the management of the following Heads of Practice and Specialists:

- Business Development Team
- Communications and Media
- Corporate Procurement
- Democratic Services
- Elections
- Finance
- Human Resources
- ICT
- Internal Audit
- Legal Services
- Project Management

### **Delegation to Head of Practice for Legal (Monitoring Officer)**

The **Head of Practice for Legal** shall have delegated authority for the following:

- Democratic Services
- Elections
- Legal Services
- Monitoring Officer (see above)

### **Delegation to Head of Practice for Human Resources**

The **Head of Practice for Human Resources** shall have delegated authority for the following:

- Human Resources services
- Recruitment and resourcing
- Employee relations
- Employee Learning and Development
- Employment law

### **Delegation to Head of Practice for Finance**

The **Head of Practice for Finance** shall have delegated authority for the following:

- Strategic Finance
- Finance
- Budget setting (capital and revenue)
- Income and expenditure
- Financial Statements
- Investments, taxation and insurance
- To act as the Council's Deputy Section 151 Officer and have all of the powers of the Section 151 Officer (in her absence or as delegated by the section 151 Officer) as set out above for Delegation to the 151 Officer
- Matters set out in the Council's Financial Procedure Rules for the Section 151 Officer

### **Delegation to Head of Practice for ICT**

The **Head of Practice for ICT** shall have delegated authority for the following:

- Strategic IT
- ICT Services
- Infrastructure design and delivery
- Business systems design and delivery
- Information security management and delivery

### **Delegation to the Democratic Services Senior Specialist**

The **Democratic Services Senior Specialist** shall have delegated authority for the following:

- Democratic Support Services

- Councillor Learning and Development
- Scheme of Councillors' Allowances

#### **Delegation to Elections Senior Specialist**

The **Elections Senior Specialist** shall have delegated authority for the following:

- **Deputy Electoral Registration Officer** (South Hams District Council)
- Elections

#### **Delegation to Communications and Media Lead Specialist**

The **Communications and Media Lead Specialist** shall have delegated authority for the following:

- Communications (Internal and External)
- Communications Strategy
- Media and social media
- Website development and maintenance

#### **Delegation to the Internal Audit Service**

The Internal Audit Service is an independent appraisal function that objectively examines, evaluates and reports on the adequacy of internal control. Management of the Council's Internal Audit function is carried out by **Devon Audit Partnership** together with the Council's Internal Audit Officers. The **Internal Audit Service** shall have delegated authority and responsibility for the following:

- Review the Council's financial and management systems and must act if fraud or corruption is found. Internal Audit will also comment on how to achieve better value.
- Carrying out audits of Council functions and in the proper exercise of their duties, the Internal Audit Service have the right to:
  - Access to all records, documents and correspondence held by or on behalf of the Council;
  - Require from staff co-operation and such explanations as are necessary;
  - Require any Council employee to produce cash, stores or any other Council property under their control;
  - Investigate irregularities
  - Liaise with Police and other enforcement agencies under the Accounts and Audit Regulations 2006.

#### **Delegation to the Corporate Procurement Officer**

The **Corporate Procurement Officer** (shared officer between South Hams, Teignbridge and West Devon) shall have delegated authority for the Council's Procurement and Contract Services and advice.

#### **Delegation to the Devon Building Control Partnership and Commercial Services Group Manager**

The **Commercial Services Group Manager** has overarching responsibility for Building Control Services. The **Devon Building Control Partnership** has delegated authority to exercise on behalf of the Council such statutory duties or powers conferred on the Council by the following enactments

and any enactments amending or replacing them and also any regulations, orders, bylaws and other subsidiary legislation made under the following enactments.

For the avoidance of doubt the functions conferred by this scheme of delegation shall include:

- Appointment and/or authorisation of officers to exercise statutory functions
- Undertaking of inspections, investigations, interviews, service of notices, notifications, consultation responses, and legal proceedings under the legislation applicable thereto set out below, and to exercise all other relevant powers, including powers of entry provided under such legislation.
- Determination of applications, service of notice, exercise of powers in default and recovery of expenses.
- The institution of legal proceedings including the issuing of formal cautions.
- Exercise of powers of entry
- The production and operation of a Scale of Building Regulation Charges that will comply with the Building (Local Authority Charges) Regulations 1998.
- Setting of fees and charges which it has discretion to levy.

**List of Enactments:**

- The Building Act 1984 and regulations made under that Act, including the Building Regulations 1991 (as amended), the Building Regulations 2000 together with the Fire Precautions Act 1971
- Local Government (Miscellaneous Provisions) Act 1982
- Town Improvement Clauses Act 1847 and the Public Health Act 1925
- Town and Country Planning Act 1990
- The Fire Safety and Places of Sport Act 1987
- Licensing Act 2003
- Party Wall etc Act 1996
- The Building (Local Authority Charges) Regulations 1998
- The Building (Approved Inspectors etc) Regulations 1985 and The Building (Approved Inspectors etc) Regulations 2000

**Note:** the above list of enactments is also to include any subsequent amendments or new legislation to the acts listed that are introduced.

## **Part 3B**

### **Delegation Scheme to the Council, Committees and other bodies**

**Functions reserved to the Council**

Only the Council may exercise the following functions:

- To adopt and change the Constitution (save minor amendments as authorised in Article 11).
- To approve and adopt the Policy Framework.
- To approve and adopt the Budget.

- To determine the Council's Priorities.
- To appoint the Mayor and Deputy Mayor.
- To appoint the Council Leader and Deputy Leader
- To appoint Committee Chairmen and Vice-Chairmen.
- To agree and/or amend the terms of reference for Committees or bodies of the Council, deciding on their composition and making or revoking appointments to them.
- To appoint representatives to outside bodies (unless the appointment has been delegated by the Council)
- Amendments to the political composition to be reported to next ordinary Council meeting for noting.
- To adopt the Schedule of Meetings for the ensuing year.
- To consider and adopt as appropriate, the recommendations of the Independent Remuneration Panel in respect of the Councillors' Allowance Scheme, and the level of allowances that can be claimed by Councillors in respect of authorised or approved duties
- To make any decisions which would be contrary to the Policy Framework.
- To determine matters involving expenditure for which budget provision is not made or is exceeded.
- To determine matters which do not fall within the remit of any Committee or body.
- To determine matters affecting, or likely to affect, another Committee or other Council body or where consultation with or approval of that other Committee is required.
- To determine any matters referred to it by a Committee in accordance with Procedure Rule 14.
- To make decisions concerning district boundaries, electoral divisions, wards or polling districts.
- To appoint the Head of Paid Service, Statutory Officers and Proper Officers
- To make, revoke or amend byelaws.
- To borrow money.
- To receive statutory reports from the Head of Paid Service, the Section 151 Officer or the Monitoring Officer.
- To determine whether or not to accept delegation from another local authority.
- To maintain a system of Internal control that identifies objectives and obligations, the risk of achievement of these objectives and obligations and controls to mitigate the risks

- To approve the Annual Governance Statement and to receive an annual report on the risk management process
- To approve the Treasury Management Strategy and Investment Strategy.
- To consider any matter required by law to be considered by Council.
- To make orders for grouping or ungrouping of Parish Councils, and to make appointments to vacant seats on Parish Councils where not quorate, and to make Community Governance Orders.
- To approve joint arrangements for the discharge of the Council's functions by another local authority

## **2. Terms of Reference for Committees and Sub-committees**

**Each Committee has delegated authority to decide matters within its terms of reference (except for those matters which are reserved for Council) set out below:**

### **2.1 Audit Committee**

The Audit Committee will provide independent assurance of the adequacy of the risk management framework and the associated control environment, independent scrutiny of the Council's financial and non-financial performance to the extent that it affects the Council's exposure to risk and weakens the control environment and to oversee the financial reporting process.

#### **Responsibilities**

To carry out the Council's responsibilities for the following areas:

#### **Audit** **Internal Audit**

- To consider and approve (but not direct) the Internal Audit Terms of Reference (Charter), Strategy and Audit Plans
- To consider:
- Progress on the Internal Audit Plan and summary of internal audit activity, opinions and findings
- The Internal Audit Annual Report including an opinion on the Council's overall control environment for the purpose of the Annual Governance Statement
- Reports dealing with the management and performance of the internal audit service providers (known as the 'effectiveness of the system on internal audit')
- Reports from Internal Audit on agreed recommendations not implemented within a reasonable timescale (known as 'follow up')
- Reports on data quality to ensure that all performance information meets data quality standards
- The monitoring of the progress of Internal Audit plans including summaries of Internal Audit reports

To promote:

- internal control, including commissioning work from internal audit in association with the s. 151 Officer and monitor audit performance

and to make any necessary recommendations to the relevant Committee or Council in respect of the above.

### **External Audit**

To consider:

- The External Auditor's Annual Governance Report and other relevant external audit reports
- External Audit work to ensure that it gives value for money
- The External Audit plans
- Reports dealing with the management and performance of the external audit service providers
- Commission work (and other specific reports) from external audit as agreed with the External Auditor in association with the s151 Officer
- To liaise with the Audit Commission (or relevant government appointed body) over the appointment of the Council's External Auditor

### **Accounts**

- To review and approve the Annual Statement of Accounts and to consider whether appropriate accounting policies have been followed
- To consider the External Auditor's report on the annual audit of accounts

and to make any necessary recommendations to the relevant Committee or Council in respect of the above.

### **Regulatory Framework**

To:

- Maintain an overview of the Council's Constitution
- Recommend to Council the adoption of:
  - A Code of Corporate Governance
  - Antifraud, Corruption and Bribery Strategy
  - Anti Money Laundering Policy
  - Risk Management Policies
- Oversee the System of Internal Control and the process for producing the Annual Governance Statement (AGS) and approve the AGS on behalf of the Council with the Statement of Accounts.
- To monitor Value for Money (including benchmarking)

and to make any necessary recommendations to the relevant Committee or Council in respect of the above.

### **Review and Scrutiny of Strategies**

To monitor:

- Risk Management Strategy
- The Assurance Framework (including System of Internal Control)
- Code of Corporate Governance
- Antifraud, Corruption and Bribery Strategy



- Anti Money-Laundering Policy
- Whistle-blowing Policy
- Treasury Management

and to make any necessary recommendations to the relevant Committee or Council in respect of the above.

### **Budget**

- To have authority for spending within the allocated budget.

### **Review**

The Audit Committee will undertake an annual review of its performance as part of the system of internal audit.

## **2.2 Hub Committee**

### **1. Main responsibilities**

- To make decisions within the budget and policy framework approved by the Council
- To play a key role in proposing the budget and policy framework to Council
- To provide Leadership to the overall activities of the Council
- To be responsible for those matters not reserved to Council or to the Council's other Committees or subcommittees for the time being, but to include those listed below.

### **2. Role and Responsibilities:**

#### **Finance:**

- **Budget:** to keep under review and recommend to the Council:
  - the overall budgetary framework (to include both capital and revenue)
  - the allocation of finances to different services and projects,
  - proposed contingency funds,
  - decisions relating to the control of the Council's borrowing requirements, the control of its capital expenditure and the setting of virement limits, loans.
- **Funding:** to take such action as might appear appropriate on new funding opportunities.

#### **Commercial Services**

- **Building Regulations:** To ensure buildings are safe, healthy, hygienic and energy efficient and to oversee the Council's Building Control Enforcement Service (see details on the joint Building Control Partnership and matters delegated to that body).
- **Other Building Control Services:** To administer the provisions relating to dangerous buildings; to promote the Council's policies and any relevant legislation relating to disabled access.

- **Leisure Services:**
  - To facilitate and extend participation in sport and active recreation; to develop and manage leisure facilities.
  - To oversee the swimming pool and leisure management contracts
- **Car Parking:** Provision, management and control of car parks, including any periodic reviewing of charges; civil enforcement of off-street parking.
- **Contract Services:** To oversee the waste management and street cleaning, grounds maintenance, public toilet cleaning contracts.
- **Clean Neighbourhoods:** to be responsible for matters relating to litter, refuse and graffiti
- **Graveyard Maintenance:** The maintenance and supervision of graveyards, cemeteries and crematoria.
- **Grounds Maintenance:** The provision of a grounds maintenance service.
- **Public Conveniences:** To provide and maintain public conveniences in the Borough
- **Waste and Recycling:** To promote the Council's policy with regard to recycling and waste minimisation in association with other agencies.
- **Refuse Collection and Street Cleansing:** The provision and administration of refuse collection and street cleansing services.
- **Refuse and Vehicle Disposal:** To ensure that any vehicle and other refuse abandoned is removed and disposed of.

### **Customer First**

- **Customer First:** overall responsibility for how the Customer contacts the Council, accesses its services, and Locality working.
- **List of Assets of Community Value:** to be responsible for matters relating to the List of Assets of Community Value and the Community Right to Bid

### **Economy**

- **Economic Prosperity:** To be responsible for the following services:
  - **Business Development and Regeneration:** to create places for enterprise to thrive and business to grow; strategic working with partner agencies and the private sector as appropriate; signpost business support opportunities; provide an information service on the availability of grants and premises.
  - **Commercial Development:** To seek appropriate development on identified sites; to assist in maintaining and enhancing the viability of the main commercial centres of the

Borough; to consider and recommend to Council Commercial Development on Council owned land

### **Environment**

- **Asset Management:** to determine all acquisitions and disposals of land and/or property and to be responsible for the overall management of the Council's assets.
- **AONB Management Plans:** review and amendment
- **Commercial Estate Management:** To oversee the management of the Council's employment sites and premises.
- **Energy Efficiency:** to oversee the Council's Environmental responsibilities and take such as action as appears necessary.
- **Engineering Services:** The provision of Engineering Services
- **Land Drainage:** To exercise the Council's functions in relation to Land Drainage.
- **National Environment and Rural Communities:** to exercise the Council's functions in relation to Biodiversity
- **Property and Equipment:** to consider and decide on strategic issues.
- **Rural Development and Countryside Services:** To promote rural development and regeneration and to liaise and lobby government and its relevant agencies; and to enhance people's enjoyment of the natural environment; to encourage sustainable transport projects; to encourage local distinctiveness projects.
- **Woodlands and Open Spaces:** To manage woodlands and other open spaces in Council ownership and control.

### **Health and Wellbeing**

- **Air Quality:** to carry out the Council's duties under local air quality management arrangements
- **Antisocial behaviour:** to be responsible for co-ordination of community safety partners in relation to anti-social behaviour
- **Children and Youth:** to be responsible for the Council's duties and powers in relation to children and youth
- **Civil Contingencies:** to be responsible for the review and implementation of Civil Contingencies (to include emergency planning).
- **Community Safety and well-being:** To be responsible for functions for dealing with improving community safety, crime, disorder, fear of crime, community improvement, working towards inclusive health and support services

- **Control of Pollution and Contaminated Land:** To administer the law, and exercise the Council's functions in respect of statutory nuisances, control of pollution and contaminated land.
- **Environmental Health:** to be responsible for all matters under the Environmental Protection Acts and Clean Neighbourhood legislation (including refuse, dogs, vehicles, and statutory nuisances).
- **Food Safety:** To be responsible for promoting responsible food management and to ensure compliance with food safety laws so that food intended for human consumption is safe and risk to consumer controlled, prepared hygienically so that the risk to the consumer is controlled.
- **Health and Safety:** To promote and enforce (where relevant) Health and Safety at Work and other relevant legislation.
- **Health Education and other Health Services:** All matters relating to providing or promoting a quality environmental health service, better quality of life and health education.
- **Housing:** the discharge of Council's statutory and strategic housing role and duties including:
  - **Home Energy Conservation:** to discharge the Council's duties under Home Energy Conservation legislation
  - **Housing Advances:** to be responsible for the provision of housing advances for the purposes of house purchase or improvements.
  - **Housing Advice:** including work with other authorities and partners
  - **Housing Enabling:** To enable the provision of housing accommodation within the area; liaison with or by other agencies (including Partnership Agreements with Housing Associations, Housing Societies and Housing Trusts); assessing housing need and ensuring the availability of land to meet the Council's enabling role.
  - **Housing Policy and Strategy:** To set policy and determine a comprehensive housing strategy within the area. To produce an annual Housing Investment Programme.
  - **Homeless Persons:** To ensure that accommodation is secured for homeless persons and to meet the Council's statutory obligations under the housing legislation, together with the prevention of homelessness by an advice and assistance service, including direct action where appropriate.
  - **Housing Aid and Advice:** Provision of a comprehensive housing aid and advice service.
  - **Housing Register:** administration and maintenance of the housing register
- **Infectious Diseases:** To investigate and control of infectious diseases and food poisoning.
- **Monitoring** of Leisure Services and health and well-being outcomes
- **Pest Control:** To eradicate rodent and insect pests. To discharge the Council's responsibilities for the control of dogs and dog fouling.

- **Private Sector Housing:** To determine policy and oversee the delivery of disabled facility grants and private sector renewal grants/loans. To be responsible for the enforcement of housing standards as may be prescribed by legislation.
- **Private Sector Renewal Renovation Grants/loans:** To encourage the improvement of private housing stock to provide and administer a Private Sector Renewal Scheme.
- **Safeguarding children and vulnerable adults:** to be responsible for the Council's duties and powers in relation to safeguarding
- **Public Health:** to protect the health of the public using statutory powers and engage with other agencies in relation to public health
- **Water Quality Monitoring:** The administration of the provisions of the Water Industry Act 199 and other relevant regulations.

### **Resources and Performance**

- **Community Engagement:** to be responsible for the development and delivery of effective community engagement.
- **Community Transport:** to oversee the Council's input into the provision of transport to rural communities under agreed service level agreements
- **Corporate Complaints:** to be responsible for an overview of the Council's Complaints Policy
- **Corporate Strategy and Themes:** to keep under review and to recommend to Council:
  - The overall framework for the key strategies and plans which set out the direction for the Council.
  - The overall Themes of the Council under the Corporate Strategy
  - Adoption of key corporate planning strategies and action plans
- **Corporate Policies:** to be responsible for the review and implementation of the Council's Corporate Policies not specifically delegated elsewhere or reserved to Council, and for making recommendations to Council where appropriate.
- **Data Protection and Freedom of Information:** to be responsible for Policy and the Council's duties and powers for data protection and FOI
- **Emerging issues:** to consider emerging issues or initiatives new to the Council and take such action as appears necessary.
- **Locality Service:** to review delivery and scope of Locality Service and to make any recommendations to Council
- **Grants:** to be responsible for the allocation of community and economy grants and loans, which are not determined through the delegation process.

- **Income Generation:** to oversee the Council's Income Generation Programme
- **Procurement** – to be responsible for the Council's procurement policy
- **Section 106 Community Contributions:** to determine the allocation of community contributions over £15,000
- **Strategies:** to be responsible for the review and implementation of all countywide and regional strategies.
- **Strategic Operational Matters:** to review activity and assess new opportunities for partnership or commercialisation
- **Partnerships:** to receive reports on the partnerships that affect the Council or the Borough and (where appropriate) take a view, give guidance to our partners or make recommendations to Council.
- **Transformation Programme:** to be responsible for overseeing the Council's transformation programme and making any necessary recommendations to Council
- **Voluntary Sector Funding agreements:** to be responsible for overseeing these agreements

#### **Strategic Planning and Housing**

- **Lists of Assets of Community Value:** to be responsible for matters relating to the List of Assets of Community Value and the Community Right to Build.
- **Joint Local Plan:** The preparation, maintenance and monitoring of an up-to-date Joint Local Plan and making appropriate recommendations to Council
- **Local Plan Policy documents:** to be responsible for Supplementary Planning Documents, Policy Position Statements, Codes of Practice and Policy Guidance
  - **Neighbourhood and Community Plan Areas:** to support communities in the preparation of Neighbourhood Plans and Orders and Community Plans and agree Plan Areas.
  - **Neighbourhood Plans, Orders, and Community Right to Build:** to consider and monitor and make any necessary recommendations to Council
  - **Planning and Development Policies:** To formulate and represent the views of the Borough in relation to the formulation of National, and other planning and development policies, including a duty to co-operate and work with other local authorities.
- **Street Naming Numbering:** To ensure that adequate arrangements are made to name and number streets and to approve the Street Naming and Numbering Policy.

#### **Cross Service responsibilities**

- **Services:** to exercise general supervision for the following services not specifically referred to above:

- Communications and Media
- Democratic Services
- Human Resources
- Legal Services
- Elections: to deal with any matters relating to the electoral arrangements of the Borough, electoral registration, Borough elections, the boundaries of the Borough, and to make any necessary recommendations to Council.
- Strategic Finance
- Customer First
- Commercial Services
- Support Services

**Budget:**

- To have authority for spending within the allocated budget for matters within the Hub Committee's remit.

**Fees**

- To keep under review the fees and charges for the Committee's services where statutory authority exists for the levying of such charges and to levy the same where, in the opinion of the Section 151 Officer, the levying of such charges will not give rise to a material adverse impact on the overall budget of the Council. In all other circumstances, the Committee to recommend the levying of fees and charges to Council.

## 2.3 Invest to Earn Committee

### Composition and Membership:

**Number:** The Invest to Earn Committee will comprise **three Councillors**

**Eligibility:** The Leader cannot be a member of the Invest to Earn Committee

**Chairman:** the Chairman will be appointed at the Annual Meeting

**Quorum:** Two Councillors to be present throughout the meeting

**Casting Vote:** The Chairman of the meeting will have a casting vote

### Responsibilities

To be responsible for the following areas:

- To consider and review annually the Terms of Reference for the Invest to Earn Committee
- To consider and review the Council's Commercial Property Strategy for the Acquisition of Assets

and to make any necessary recommendations to the Hub Committee or Council.

- To ensure that Officers regularly review the Due Diligence process to be followed by Councillors, Officers and external advisors and experts when considering Acquisition of Assets
- To consider and evaluate on a case by case basis (in accordance with the Commercial Property Strategy) proposals for the Acquisition of Assets and to make any necessary recommendations to the Head of Paid Service and Section 151 Officer (who will consult the Leader of the Council and Chairman of the Invest to Earn Committee before making any decision).
- To ensure that relevant Ward Councillors are briefed on proposed acquisitions before a final decision is made to proceed with the Acquisition of an Asset.
- To report to the Hub Committee on the activities of the Invest to Earn Committee on a six monthly basis.

NB. Commercial development on Council land falls within the remit of the Hub Committee.



## 2.4 Overview and Scrutiny Committee

- Please refer to the Overview and Scrutiny Procedure Rules in Part 4 of the Constitution for details on composition, membership, eligibility, powers and duties.

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### 1. Terms of Reference – General Role

1.1. The Council will appoint an Overview and Scrutiny Committee that will:

- review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- make reports and/or recommendations to the Council and any committee or joint committee in connection with the discharge of any functions;
- consider any matter affecting the area or its inhabitants; and
- make reports and/or recommendations to the Council and/or its Committees and/or any joint committee on matters which affect the Council's area or the inhabitants of that area.
- Exercise the right to Call-in, for reconsideration, decisions made but not yet implemented by the Hub Committee

- 

### 2. Specific functions

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- The Overview and Scrutiny Committee may:

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#### 2.1. Policy development and review

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- (i) review existing policy and recommend changes to such policy or the creation of new policy;
- (ii) assist the Council in the development of its Budget and Policy Framework by in-depth analysis of policy issues;
- (iii) conduct research, involve the community and carry out other consultation in the analysis of policy issues and possible options;
- (iv) consider and implement ways to encourage and enhance community participation in the development of policy options;
- (v) question members of committees and senior officers about their views on issues and proposals affecting the area; and
- (vi) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

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- In so doing, the Overview and Scrutiny Committee will be able to:
  - (a) Select significant issues to investigate, which are both strategic and linked to the Council's Corporate Themes;
  - (b) Undertake pre-investigation project planning: drawing up terms of reference, plan for research methods to be used, timescales, officer support and reporting mechanisms;
  - (c) Involve partners, the public and outside experts: this can take the form of presenting orally or in writing evidence around the topic under investigation;
  - (d) Report findings and make evidence based recommendations to the appropriate Committee;

- (e) Follow up on action agreed to ensure that Overview and Scrutiny Committee decisions have been implemented.

## 2.2. Scrutiny

- - (i) hold the Hub Committee Members to account
  - (ii) review and scrutinise the performance of Committees and Council officers and decisions made both in relation to individual decisions and over time;
  - (iii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
  - (iii) question members of committees and senior officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects when necessary;
  - (iv) exercise the right to call-in, for re-consideration, decisions made by the Hub Committee but not yet implemented by any committee, where appropriate (see Procedure Rules in Part 4);
  - (v) make recommendations to the appropriate committee and/or Council arising from the outcome of the scrutiny process;
  - (vi) review and scrutinise, with or without others, the performance and activities of other public bodies in the area on any relevant, general or specific issue; and
  - (vii) question and gather evidence from any person (with their consent) when necessary.
  - (viii) Exercise overall responsibility for the work programme of the officers employed to support their work

## 2.3. Partnership arrangements

- The Overview and Scrutiny Committee shall be responsible for the monitoring of partnership arrangements in accordance with the Council's Partnership Policy.

## 2.4. Finance

- The Overview and Scrutiny Committee shall exercise overall responsibility for the finances made available to it.

## 2.5. Annual report

- The Overview and Scrutiny Committee shall report annually to Council on its workings and make evidence based recommendations for future work programmes and amended working methods if appropriate.

## 2.6 Officers

- The Overview and Scrutiny Panel will have administrative support and be able to call on other relevant officer support and external expertise where necessary.

## Proceedings of Overview and Scrutiny Committees

- The Overview and Scrutiny Committee will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

## **2.5 Development Management and Licensing Committee**

### **1. Responsibilities**

The Development Management and Licensing Committee is responsible for and authorised to consider and make determinations (with or without site inspection, subject to statutory and other appropriate consultation and subject to the concurrent exercise of powers by Officers under the Scheme of Delegation (set out in this Part of the Constitution) in the following areas:

#### **a) Planning**

##### **i) Development Management**

- Advertisement Control.
- Agreements regulating the development or use of land.
- Applications by Local Planning Authorities.
- Authority to determine whether planning permission required.
- Certificate of Appropriate Alternative Development. (Land Compensation Act)
- Certificates of Lawful Use or Development.
- Consultations by Crown and Duchy.
- Discontinuance of use or alteration or removal of buildings or works.
- Electricity Supply Acts Consultations.
- Enforcement Control (including Planning Contravention Notices, Requisitions, Breach of Condition Notices, Stop Notices (including temporary stop notices) etc)
- General Planning Control including the determination of planning applications (including, where appropriate, site inspections).
- Land adversely affecting the amenity of the neighbourhood.
- Authorising Prosecutions
- Provisions as to compensation and provisions enabling an owner to require the purchase of an interest.
- Responding to Dartmoor National Park, and other neighbouring authority consultations.
- Responding to Statutory and other consultees
- Revocation or modification of planning permission.
- Telecommunication Mast Applications.

- To extinguish/divert public rights of way under the Town and Country Planning Acts and to make representations to other Authorities in relation to their exercise of these powers under that or other legislation.

### ii) **Conservation and Historic Buildings**

- Building Preservation Notices.
- Conservation Areas:
- Compulsory acquisition of buildings in need of repair and related powers.
- Historic Building Grants
- Listed Building Consents and Conservation Area Consents.
- Listed Building Enforcement.
- Revocation or modification of Listed Building Consent.
- Urgent repairs or works

### iii) **Community Landscaping**

- High Hedges
- Hedgerows
- To comment on consultations by the Forestry Commission.
- To offer grant aid for tree surgery to trees of public amenity importance within the financial limits set down in the Council's estimates.
- Tree Preservation Orders and related control and enforcement.

### **Relevant Statutory Powers**

- Town and Country Planning Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning (Hazardous Substances) Act 1990
- Planning (Consequential Provisions) Act 1990
- Planning and Compensation Act 1991
- Planning Act 2008
- Planning and Energy Act 2008
- Localism Act 2011

or any new statutory enactment, statutory re-enactment, amendment or variation of any of them as from time to time determined by Parliament.

### **Planning Delegation - Development Management**

**Definitions:**

- **HoP Lead:** Community of Practice Lead Specialist Development Management
- **In writing:** shall include email
- **DM Committee:** Development Management and Licensing Committee at West Devon Borough Council
- **Working days:** days which are not weekends or bank holidays
- **Planning Application:** full, outline and reserved matters only
- **Representation:** means representations from any source excluding internal consultees
- **Immediate family:** parent, spouse, child, sibling (including 'step' and 'adopted')

**1. General Planning Delegation to Officers**

1.1 Subject to paragraph 1.2 below, the HoP Lead has delegated authority for all functions assigned to the DM Committee under the Town and Country Planning Acts, Orders, and Regulations (as set out in Part 3 of the Council's Constitution and as amended from time to time) except those:

- a. Planning Applications
- b. Listed Building Consents
- c. Advertisement Consents
- d. TPO final confirmations (excluding emergency TPOs), and
- e. Works to TPO trees

Which:

- i. relate to the Council's own land
- ii. is an application submitted by a Councillor (or an immediate family member), (including Councillor as agent or professional advisor) or an Officer (or an immediate family member)

Or which in the opinion of the HoP Lead:

1. are of sub-regional or district-wide significance
2. ought to be determined by the DM Committee

1.2 In the case of planning, listed building, advertisement applications and TPO applications and confirmations, where any written representations are received, including those from a Parish or Town Council, which are contrary to the HoP Lead's recommendations and where the representations are considered material and relevant planning issues, the HoP Lead shall have delegated authority to determine these only where:

- a. agreement to issuing a delegated decision has been sought in writing from the Ward Councillor(s) and,
- b. no written request (supported by material planning reasons) to call the application to Committee has been received from the Ward Councillor(s) within the notification period. The notification period is defined as **three working days**, unless a Ward Councillor requests an extension of time (of up to 48 hours) and giving good reason for doing so. The notification period commences when the Ward Councillor has been notified of the request that a delegated decision be made.

**2 Ward Councillors**

2.1 Councillors can call to DM Committee, with material planning reasons,

- a. any Planning Applications
- b. Listed Building Consents
- c. Advertisement Consents
- d. TPO final confirmations (excluding emergency TPOs), and
- e. Works to TPO trees

with no contrary comment, by notifying the HoP Lead prior to the expiry of the public consultation period. Non Ward Councillors will only call in an application after consultation with Ward Councillor(s).

- 2.2 For the avoidance of doubt all Councillors in a multi-Councillor ward shall be notified /consulted by the HoP Lead
- 2.3 Unless a Ward Councillor requests an extension of time of up to 48 hours for a response, s/he must advise the HoP Lead of his/her views within **three working days of being notified**.
- 2.4 In the absence of a Ward Councillor consultation response within the permitted time frames, the HoP Lead shall determine the matter in accordance with the officer recommendation, without the Councillor's views.
- 2.5 Where a Ward Councillor is unavailable for consultation (for whatever reason e.g. holiday, DPI or other interest) then s/he should nominate an alternative Councillor to carry out this role and notify Member Services accordingly in writing

### **3 Action on decisions of the DM Committee**

- 3.1 Where the Committee **approves** an application, the HoP Lead will issue the Approval Notice including such conditions as are reasonably required to give effect to the Committee's decision
- 3.2 Where the Committee **refuses** an application which the HoP Lead recommended should be approved, it shall give the reasons for the decision but the HoP Lead shall determine the precise wording of the reasons for refusal

### **4 Delegation in respect of Enforcement Action**

- 4.1 The HoP Lead has delegated authority to:
  - a. decide that no breach has been found
  - b. decide that it is not expedient to take enforcement action (in accordance with the Council's Enforcement Policy), unless notified by the Ward Councillor otherwise
  - c. invite regularising Planning Applications where appropriate
  - d. carry out all enforcement action (including but not limited to) issuing and serving Planning Contravention Notices, Untidy Site Notices, Stop Notices, Breach of Condition Notices and Building Preservation Notices, providing the relevant Ward Councillors are notified prior to such notices being issued or served
  - e. issue Enforcement Notices in respect of which Ward Councillor(s) have been notified in writing allowing 3 working days (with an extension of up to 48 hours to be granted if requested with good reason) for Councillors to request, in writing supported by material planning reasons, that the proposed action is brought to the PandL Committee for decision and no such request has been received
  - f. take Prosecutions and Injunctions in respect of which Ward Councillor(s) have been notified in writing allowing 3 working days (with an extension of up to 48 hours to be granted if

requested with good reason) for Councillors to request, in writing supported by material planning reasons, that the proposed action is brought to the PandL Committee for decision and no such request has been received

**SAVE that** the Monitoring Officer has delegated authority to take a Prosecution or Injunction where the Council's position would be compromised if action is not taken urgently

4.2 The HoP Lead may refer complex matters to the Committee at his/her discretion, or where there are relevant budgetary implications.

## **5 Section 106 Agreements**

The HoP Lead may:

- a. authorise the execution of a section 106 agreement where required in advance of the grant of planning permission
- b. in consultation with the Ward Member(s), vary the terms of a section 106 agreement (or take such other action as necessary) to secure the objectives of the Committee which agreed the 106 agreement

### **iv) Licensing**

#### **Responsibilities**

To be responsible for all of the Council's licensing functions

- To review and recommend to Council:
  - the Licensing Statement of Policy
  - the Gambling Statement of Principles
  - the Policy not to permit casinos
- To review and be responsible for all other Licensing Policies
- To determine whether to refuse to grant a licence for the following licensing functions;
  - Street Trading Licence (South Hams)
  - Zoo Licensing
  - Sex Establishments
  - Houses in Multiple Occupation
- To determine such other applications as referred to the DM Committee by the Head of Practice for Environmental Health.

#### **Licensing sub-committee (taxis and other miscellaneous licences)**

- To determine whether to revoke or suspend a Hackney Carriage / Private Hire Driver or Private Hire Operator License

### **Licensing sub-committee (alcohol and gambling)**

a) Licensing sub-committees have the following responsibilities in relation to functions under the **Licensing Act 2003**:

- Applications for personal licences - if there is a police objection
- Applications for personal licences with unspent convictions – all cases
- Review of personal licences – if there is a police objection
- Applications for premises licence/club premises certificate – if a relevant representation is made
- Applications for provisional statement – if a relevant representation is made
- Application to vary premises licence/club premises certificate - if a relevant representation is made
- Applications to vary designated premises supervisor – if police objection made
- Applications for transfer of premises licence – if police objection
- Applications for interim authorities – if a police objection
- Applications to review premises licence/club premises certificate – all cases
- Decision to object when Council is a consultee and not relevant authority - all cases
- Determination of a police or Environmental Health objection to a temporary event notice - all cases

b) Licensing sub-committees have the following responsibilities in relation to the **Gambling Act 2005**:

- Application for **premises licence**: if a relevant representation has been made and not withdrawn
- Application for a **variation** to a licence: if a representation has been made and not withdrawn
- Application for a **transfer** of a licence: where representations have been received from the Gambling Commission
- Application for a **provisional statement**: if a representation has been made and not withdrawn
- **Review** of a premises licence
- Application for **club gaming/club machine permits**: where objections have been made and not withdrawn, or where refusal proposed
- **Temporary use notice**: Decision to give a counter notice, or where objection notice received
- **Fees**

### **Head of Practice for Environmental Health**

Shall have the delegated authority:

- To determine whether to refuse to grant an application for Hackney Carriage or Private Hire Vehicle Licence.
- To determine in consultation with the Chair and Vice-chair of the PandL Committee whether to revoke a Hackney Carriage or Driver licence in situations of urgency ('urgency' to be determined by the Community of Practice Lead for Environmental Health).
- To refer such applications which, in the opinion of the Community of Practice Lead for Environmental Health, should be determined by the Licensing Committee.



- To determine applications for Licences under the following areas of work not previously delegated to other committees or individuals;
  - Public Health (e.g. Animal Boarding Establishments, Dangerous Wild Animals, Pet Shop, Riding Establishments, Skin Piercing and other special treatments).
  - Public Safety (e.g. Alcohol and entertainment licences, personal licences, club premises certificates, Hypnotism licences, Gambling licences etc.)
  - Housing (e.g. Selective licensing of residential accommodation, Licensing of houses in multiple occupation, Licensing of camping sites, Licensing of caravan sites)
  - Environmental (e.g. Environmental Permits, Licensing of scrap metal dealers)
- To investigate complaints relating to licensed and licensable activities with the relevant powers of entry in order to undertake these investigation.
- To instigate informal or formal action in order to resolve complaints or unlicensed activities and take appropriate action or remedy.
- To undertake formal consultations on amendments to policy, (or fares in accordance with the Maximum Chargeable Fare setting policy South Hams only)
- Authority **to suspend licences** in situations of urgency where there are reasonable grounds to do so (where urgency is determined by the Community of Practice Lead for Environmental Health)

#### v) Local Land Charges

- To provide and administer a comprehensive Land Charges system.

#### 2. **Budget**

To have authority for spending within the allocated budget.

#### 3. **Fees**

To keep under review the fees and charges for the Committee's services where statutory authority exists for the levying of such charges and to levy the same where, in the opinion of the Section 151 Officer, the levying of such charges will not give rise to a material adverse impact on the overall budget of the Council. In all other circumstances, the Committee to recommend the levying of fees and charges to the Hub Committee.

## **2.6 Standards Committee**

### **Composition**

#### **1. Membership of the Standards Committee**

- 1.1. The Standards Committee shall comprise five Members of the Council
- 1.2. The Chairman and Vice Chairman shall be appointed by the Council in accordance with the Council's Procedure rules in Part 4 of the Constitution.
- 1.3. The Standards Committee may co-opt up to two parish / town council representatives from a parish/town council in the Borough

#### **2. Membership of Sub-committees of the Standards Committee**

- 2.1. The Standards Committee shall appoint sub-committees of three Councillors to deal with specific standards complaints in accordance with the Dealing with (Standards) Complaints Policy and Hearing Policy
- 2.2. Sub-committees will consult (where co-opted) parish / town councillors on decisions relating to town or parish councillors

#### **3. Quorum for the Standards Committee and its sub-committees:**

- 3.1. **Three** Councillors for the duration of the meeting.

#### **4. Roles and functions of the Standards Committee**

- 4.1. To promote and maintain high standards of conduct by Councillors and co-opted Members;
- 4.2. To assist Councillors and co-opted Members to observe the Councillors' Code of Conduct;
- 4.3. To advise the Council on the adoption or revision of the Councillors' Code of Conduct, and on matters relating to the ethical conduct of the Council and its Councillors;
- 4.4. To advise and train Councillors and co-opted Members on matters relating to the Code of Conduct;
- 4.5. To grant dispensations to Borough Councillors (and where relevant, co-opted Members to the Borough Council) from requirements relating to Disclosable Pecuniary interests in the following circumstances:
  - 4.5.1. Where so many members of the decision-making body have a Disclosable Pecuniary Interest that Political Balance would be affected
  - 4.5.2. It is in the interests of the inhabitants that a dispensation be granted, or
  - 4.5.3. It is appropriate to grant a dispensation

- 4.6. The Monitoring Officer can grant dispensations where so many members have a Disclosable Pecuniary Interest that it would impede the transaction of the business of the Council
- 4.7. The Monitoring Officer (in consultation with the Chairman and Vice-Chairman) or the Standards Sub-committee can grant dispensations in cases 4.5.1 – 4.5.3 where it would not be expedient to wait until the next scheduled Standards Committee meeting
- 4.8. To consult the Independent Person(s) in accordance with the Dealing with Complaints Policy and Hearing Policy.
- 4.9. To be responsible for the Dealing with Complaints Policy and Hearing Policy.
- 4.10. To consider complaints alleging a breach of the Code of Conduct by Borough Councillors (and any co-opted members where relevant) and those members of town and parish councils in the Borough of West Devon as referred by the Monitoring Officer.
- 4.11. To receive Investigation reports and to carry out hearings (including sanctions) in respect of allegations of misconduct for Borough members (and co-opted members where relevant) and town/parish council members and to recommend sanctions or other recommendations/actions.

## **5. Roles and functions of the Standards sub-committees**

- 5.1. To consider complaints alleging Councillors' breach of the Code of Conduct as referred by the Monitoring Officer
- 5.2. To receive investigation reports and carry out Hearings (including consideration of sanctions or other actions) in respect of allegations of misconduct

## **6. Budget**

To have authority for spending within the allocated budget.

## **DELEGATION TO OTHER COUNCIL BODIES**

### **Council Tax Setting Panel**

The **Council Tax Setting Panel** shall comprise four Councillors including the Leader, Deputy Leader, Leader of the Opposition, and the Mayor (or their specifically nominated substitutes) and shall meet annually following the Council's agreement of the budget for the forthcoming year following the notifications set out below.

The **Council Tax Setting Panel** has the following functions:

- To exercise delegated authority to set the level of Council Tax in accordance with the Council's agreed budget
- To undertake the task of setting the level of Council Tax following notification from Devon County Council, Devon and Cornwall Police Authority, Devon and Somerset Fire and Rescue Authority and each Parish / Town Council of their individual precepting requirements

### **Political Structures Working Group**

To make recommendations to full Council on the decision making processes and structure of the Council's bodies.

### **Devon Building Control Partnership**

The responsibilities of the Partnership are:

- To agree the appointment of the Head of Partnership.
- To agree budgets, monitor performance, approve the statement of accounts and agree any distribution of surpluses/deficits in the Trading Account.
- To monitor the development and business plans of the Partnership
- To agree the Partnership's (Action) Improvement Plan.
- To monitor service delivery, value for money and performance of the Partnership.
- To monitor the service delivery and cost effectiveness of the Host Council.

## Part 4

### Procedure Rules

#### Part 4A - Council Procedure Rules

##### Council Procedure Rule 1

##### Amendment, revocation and addition to Council Procedure Rules

- (1) No arrangements shall be made whereby a committee or officer may exercise any power of the Council to vary revoke or add to these procedure rules.
- (2) Except where it is in accordance with a recommendation of a committee (or Officer report to Council, any motion to amend, revoke or add to these procedure rules, when moved and seconded, shall stand adjourned without further discussion to the next ordinary meeting of the Council, and shall stand referred to such committee as the Council shall direct for report to that meeting.

##### Council Procedure Rule 2

##### Suspension of Council Procedure Rules

- (1) This Procedure Rule and Council Procedure Rules 19(5) (recorded votes) 20(2) (signing of minutes) are not capable of being suspended.
- (2) Subject to Paragraph (4) any of the Council Procedure Rules may be suspended so far as regards any business at the meeting at which its suspension is moved.
- (3) The reason for the suspension shall be recorded in the minutes.
- (4) A motion to suspend any Council Procedure Rule shall not be moved without written notice set out on the agenda unless at least 10 members of the Council are present.
- (5) A suspension under Paragraph (2) shall have the effect that the procedure rule suspended is not in force during the period of suspension. A suspension under paragraph (2) shall last for the period specified in the resolution to suspend the procedure rule, which shall not extend beyond the next meeting of the Council; if no period is specified the suspension shall last only for the meeting at which it is adopted.
- (6) The ruling of the person presiding at any meeting as to the construction or application of any of the Council Procedure Rules shall be final.

##### Council Procedure Rule 3

##### Quorum of Council and committee meetings

- (1) Subject to Paragraph (2) below:
  - (a) the quorum of the Council shall be **ten**;
  - (b) the quorum for **committees** with a membership of between **nine and twelve** shall be **four**;

- (c) the quorum for the **Audit Committee** shall be **three**
  - (d) the quorum for the **Licensing sub-committees** shall be **three**;
  - (e) the quorum for a meeting of the **Standards Committee** and **Standards sub-committee** shall be **three**.
- (2) If, during any meeting of the Council or committee the person presiding, after counting the number of Councillors present, declares that there is not a quorum present, the meeting shall stand adjourned for 15 minutes or any earlier time at which the person presiding determines that the meeting is quorate.
- (3) If after 15 minutes the person presiding, after again counting the number of Councillors present, declares that there is still no quorum present, the meeting shall end.
- (4) Any remaining business will be considered at a time and date fixed by the person presiding. If he does not fix a date the remaining business will be considered at the next ordinary scheduled meeting.

#### **Council Procedure Rule 4** **Types of, and time and place of Council meetings**

- (1) The Council shall in every year hold:
- (a) an Annual Meeting; (in a year when there is an ordinary election of Councillors, the Annual Meeting will take place between 8 and 21 days following the retirement of the outgoing councillors. In any other year, the Annual Meeting will take place in May)
  - (b) a meeting at which the council tax base for the ensuing year is determined (unless otherwise delegated to the Council Tax Setting Panel)
  - (c) ordinary meetings on such days and at such hours as the Council shall determine; and
  - (d) extraordinary/special Council meetings called by the Head of Paid Service on the requisition of:
    - (i) the Council by resolution;
    - (ii) the Mayor;
    - (iii) the Monitoring Officer;
    - (iv) the Section 151 Officer; or
    - (v) any five Councillors if they have signed a requisition presented to the Mayor and the Mayor refuses or fails to call a meeting within seven days of the presentation of the requisition.

NB: the calling of **Committee** meetings is dealt with under Council Procedure Rule 8

**Council Procedure Rule 5**  
**Order of business at Council meetings**

- (1) The order of business at every meeting of the Council shall be:
- (a) in the absence (or inability to act) of the Mayor and Deputy Mayor, to choose a Councillor of the Council to preside. (The person so chosen shall relinquish the chair upon the arrival of the Mayor or Deputy Mayor or on their disability ceasing). (See also Rule 6 for appointment of Mayor and Deputy Mayor);
  - (b) at the Annual Meeting, and at any other meeting which is the first after the office of Mayor shall have become vacant, to elect a Mayor.
  - (c) at the Annual Meeting, and at any other meeting which is the first after the office of Deputy Mayor shall have become vacant, to appoint a Deputy Mayor.
  - (d) to receive apologies for absence;
  - (e) to receive declarations of interest;
  - (f) to approve as a correct record and to sign the minutes of the last ordinary meeting of the Council and any extraordinary meeting held since;
  - (g) to receive communications from the Mayor;
  - (h) to receive any business required by statute to be done before any other business;
  - (i) business brought forward by or with the consent of the Mayor;
  - (j) at the Annual Meeting, to adopt the Constitution;
  - (k) to respond to any questions submitted by the public and to receive deputations or petitions under Council Procedure Rule 21;
  - (l) to consider motions of which notice has been submitted by Councillors in accordance with Council Procedure Rule 15 in the order in which they are recorded as having been received unless such motions:
    - (i) are in reference to an item appearing in a committee report when they shall be considered at the time the report is considered, or
    - (ii) are related to any deputation or petition received at the meeting (in accordance with Rule 21) when they shall be considered with that item if the person presiding so directs;
  - (m) where the meeting has been called by Councillors under the provisions of schedule 12 of the 1972 Act to consider the business specified in the summons;
  - (n) to consider any other business required to be done by statute not otherwise referred to in this rule;

- (o) where the meeting is the last ordinary meeting before 2 April in any year, and where the Council has not set an amount for council tax for the ensuing financial year, to consider the setting of such amount;
- (p) to receive Chairmen's replies to any questions by Councillors submitted under Procedure Rule 21;
- (q) to consider items of business which were on the agenda of the previous meeting of the Council and which were not disposed of or did not lapse;
- (r) to receive and consider reports, minutes and recommendations of committees and to receive questions and answers on any of those reports, (subject to Council Procedure Rule 17(16) on debate on committee resolutions);
- (s) to approve the rule on substitution of Councillors (Council Procedure Rule 10);
- (t) to consider any other business specified in the Summons for the meeting.

**Council Procedure Rule 6**  
**Appointment of Mayor and Deputy Mayor**

- (1)
  - (a) The Mayor and the Deputy Mayor of the Council shall be elected annually by the Council from among the Councillors.
  - (b) The Mayor shall, unless s/he resigns or becomes disqualified, continue in office until his/her successor becomes entitled to act as Mayor.
  - (c) The Deputy Mayor shall, unless s/he resigns or becomes disqualified, hold office until immediately after the election of the Mayor at the next annual meeting.
  - (d) During their terms of office, the Mayor and Deputy Mayor of the Council shall continue to be Members of the Council notwithstanding the statutory provisions relating to the retirement of Councillors.
  - (e) During the election of a Mayor, if the existing Mayor is a candidate s/he shall nonetheless continue to preside, but in the case of an equality of votes s/he may not use his/her casting vote and the result shall be determined by the drawing of lots.
- (2)
  - (a) Any power of the Mayor in relation to the conduct of a meeting of the Council may be exercised by the person presiding at the meeting.
  - (b) If it is necessary to choose a Member of the Council to preside in the absence of the Mayor and Deputy Mayor, the Head of Paid Service shall call for nominations and seconders for a Member of the Council present to take the chair and normal voting procedures shall apply. (See Council Procedure Rule 19)
  - (c) If discussion arises on that motion, the Head of Paid Service shall exercise the powers of the person presiding to regulate that discussion and to maintain order at the meeting, but shall not vote.

**Council Procedure Rule 7**



### Appointment of committees

- (1) The Council at its Annual Meeting shall:
  - (a) resolve what committees shall be appointed, their terms of reference and powers of delegation (see part 3 of the Constitution), and the number of Councillors to be appointed to them;
  - (b) decide the allocation of seats to political groups in accordance with the political balance rules;
  - (c) receive nominations of Councillors to be appointed to each committee and appoint Councillors to those committees accordingly;
  - (d) elect Councillors who are not members of any political group to any vacancies then unfilled on committees;
  - (e) appoint Chairmen and Vice-Chairmen to the committees;
  - (f) receive nominations and appoint Councillors to serve on outside bodies (except where appointment to those bodies has been delegated by the Council);
  - (g) determine the Delegation Scheme and the powers and duties to be delegated to officers.
- (2) The arrangements made at the Annual Meeting under paragraph (1) shall remain in force until the next Annual Meeting unless the Council resolves otherwise at any ordinary meeting or any extraordinary meeting called for the purpose.
- (3) Whenever the Council is required to review the allocation of seats on committees between political groups the Head of Paid Service shall submit a report to the Council or Committee (as the case may be) showing what allocation of seats would, in his opinion, best meet the requirements of the 1989 Act and the Council or Committee shall determine the allocation of seats having regard to his advice.
- (4) Whenever an appointment of a member of a committee falls to be made or terminated in accordance with the wishes of a political group to whom the seat has been allocated, the Head of Paid Service shall make or terminate the appointment accordingly and shall report to the next available meeting of Council.
- (5) Each committee shall have the right to seek any variation of its terms of reference and powers of delegation such to be considered at the next ordinary meeting of the Council or at an extraordinary meeting called for that purpose.

### Council Procedure Rule 8 Time and place of Committee meetings

- (1) Subject to Council Procedure Rule 8(2) below, the Council shall at one of its ordinary meetings adopt a schedule of the date, time and place of **ordinary meetings of committees** for the ensuing year.

- (2) The date, time and place of any ordinary meeting of a committee may be altered by the Chairman of the committee.
- (3) A **special** meeting of a committee may be called:
  - (a) by the Mayor or Deputy Mayor of the Council or the Chairman or Vice-of a Committee,
  - (b) on the requisition of a quorum of a committee, such requisition to be submitted to the Head of Paid Service in writing, or
  - (c) by the Head of Paid Service who may give notice of a special meeting of any committee upon any emergency or special circumstance.
- (4) The notice for a special meeting of any committee shall set out the business to be considered, and no business other than that indicated, or any consequential matters arising, shall be considered at the meeting.
- (5) Notice of meetings will be given in accordance with the Access to Information Procedure Rules (rule 3)

**Council Procedure Rule 9**  
**Record of, and attendance at meetings**

- (1) Every Councillor present during the whole or part of a Council or Committee meeting must sign his/her name on the attendance sheets before the end of every meeting in order to assist with the record of attendance.
- (2) Any Member of the Council shall be entitled to attend (but not to speak or vote) at any meeting of any committee of which s/he is not a member.
- (3) Unless otherwise provided for in this Constitution, a Councillor who is not a Member of the committee may speak at a meeting of the committee (but not vote, move or second motions):
  - (a) during the consideration of any motion of which notice has been given which s/he has moved or seconded at a meeting of the Council and which has been referred to that meeting, or
  - (b) with the agreement of the person presiding at the meeting, or
  - (c) during the consideration of any matter specifically (wholly or partly) affecting his/her ward.
- (4) Councillors attending a meeting of a committee under this procedure rule shall not be affected by a resolution of the committee excluding Members of the public and press from the meeting.

**Council Procedure Rule 10**  
**Appointment of substitute Councillors at committee meetings**

- (1) Subject to the following rules, any Member of the Council may act as a substitute for another Councillor (provided that they are members of the same political group) at any meeting of a committee (or other body constituted by the Council or its committees) other than a meeting of the Hub Committee Overview and Scrutiny Committees, Standards Committee (or its sub-committees) or Licensing sub-committees.
- (2) A Councillor may act as a substitute at a meeting of any body to which the Council nominates or appoints Councillors (provided that the rules of that body so permit). In such a case the substitute need not be a member of the same political group as the Councillor being replaced provided the substitution is agreed and notified by the political group to which the Councillor being replaced belongs.
- (3) In the case of substitution to the Development Management and Licensing Committee the substitute must be of a Councillor agreed by the Head of Paid Service to be qualified by training or experience to take part in the Committee's work.
- (4) In the case of substitution to the Audit Committee the substitute must be of a Councillor agreed by the Section 151 Officer to be qualified by training or experience to take part in the committee's work.
- (5) A substitute may only be appointed when an appointed member of the Council, Committee or one of the bodies named in (2) or (3) above is not able to attend and the substitute appointment shall last only for that meeting.
- (6) A substitute Councillor may be selected from the whole of the membership of a political group except for substitutes to the Development Management and Licensing Committee which may only be selected from the list of substitutes agreed at the Annual Council meeting.
- (7) Before the start of any meeting for which a substitute has been appointed, the Leader of the political group concerned (or a person authorised by them in writing) shall inform the Head of Paid Service in writing of the substitution or, in case of an outside body, shall arrange to conform with that body's requirements.
- (8) At the start of any meeting for which a substitution has been arranged in accordance with these rules, the Head of Paid Service, or Senior Specialist, Democratic Services (or his/her representative), shall announce that the absent Councillor apologises for his/her absence and that the named councillor has been appointed to serve as his substitute.
- (9) If the absent Councillor is subsequently able to attend a meeting for which a substitute has been appointed and s/he is present for the start of the meeting (and before the announcement in (8) has been made) then, with the agreement of the nominated substitute, s/he can be re-instated and take part in the meeting
- (10) If the absent Councillor is subsequently able to attend a meeting for which a substitute has been appointed, but arrives after the meeting has opened and the announcement been made in paragraph (8) above, s/he shall be entitled to attend the meeting and speak in accordance with Council Procedure Rule 9, but not vote.

**Council Procedure Rule 11**  
**Arrangements for chairing committees**

- (1) At the Annual Meeting, the Council shall appoint a chairman to preside at the meetings of each committee and a vice-chairman to preside in the absence of the chairman.
- (2) If both the Chairman and the Vice Chairman are absent or unable to act, the Senior Specialist - Democratic Services (or his/her representative) shall call on a member of the committee to move that a Councillor present at the meeting shall be appointed to preside.
- (3) If discussion arises, the Senior Specialist - Democratic Services (or his/her representative) shall exercise the powers of the person presiding to regulate that discussion, and to maintain order at the meeting but shall not vote.
- (4) The motion, and any amendments, shall be put to the meeting in accordance with Council Procedure Rule 19 (voting at meetings).
- (5) The person chosen to preside shall relinquish the chair on the arrival of the Chairman or Vice-Chairman.

**Council Procedure Rule 12**  
**Committee Agenda**

- (1) The Head of Paid Service will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules (see part 4(2) of the Constitution).
- (2) At least five clear days before every meeting of a committee, or as soon as the meeting is called, the Head of Paid Service (or relevant officer) shall send to every Councillor and to every other person entitled to receive the papers of the committee a copy of the agenda for the meeting.
- (3) The agenda shall include:
  - (a) an item relating to declarations of interests;
  - (b) minutes from a previous ordinary or special meeting
  - (c) all items of business which have been referred to the committee by the Council or by another committee;
  - (d) all reports required for consideration of the agenda items tabled;
  - (e) any item required to be included on the agenda by a Councillor in accordance with Council Procedure Rule 13;
  - (f) any item of business directed to be included by the chairman of the committee.
- (4) Subject to any directions given by the chairman of the committee, the items of business shall be arranged in such order as the Head of Paid Service thinks will best ensure the effective despatch of business.

**Council Procedure Rule 13**  
**Councillors' rights to place items on a**  
**Committee Agenda**

- (1) A Councillor may require that an item be placed on a committee agenda on giving written notice to the Head of Paid Service eight clear days before the date of the meeting (except in cases of urgency determined by the Head of Paid Service in consultation with the Chairman) **provided that** the Head of Paid Service or Monitoring Officer shall determine whether or not the item can be properly considered by the committee and shall advise the chairman accordingly.
- (2) Paragraph (1) above shall not apply to the Overview and Scrutiny or the Standards Committee.

**Council Procedure Rule 14**  
**Reference up of decisions**

- (1) Notwithstanding that a matter is delegated, a committee shall refer, by way of recommendation, a matter to Council for decision:
  - (a) immediately following a decision of a committee where a quorum of that committee so require, or
  - (b) where five or more Councillors of the Council so require by written requisition delivered to the Head of Paid Service at least 24 hours prior to the commencement of the meeting.
- (2) Where the decision has been requested for referral to Council under this rule the matter is classed as "unresolved" and stands referred to the next ordinary meeting of Council for decision or to an extraordinary meeting called for that purpose.
- (3) The effect of such an action is that the power of the committee to determine the matter is cancelled. The committee will report to the Council meeting with a recommendation. The Council will receive all the papers in support of the item to be decided.

**Council Procedure Rule 15**  
**Motions requiring notice at Council**

- (1) Any member of the Council may give notice of not more than one motion for consideration at any meeting of the Council.
- (2) Except for motions which can be moved without notice under Council Procedure Rule 16, notice of every motion to be moved at a meeting of the Council shall be given in writing, signed by the Councillor(s) giving the notice. The notice shall state for which meeting of the Council the notice is given.
- (3) Unless the person presiding at the meeting is of the opinion that a motion should be considered as a matter of urgency, notice of the motion shall be delivered to the Head of Paid Service at least eight clear days before the next meeting.

- (4) If notice is given of any motion which in the opinion of the Head of Paid Service or Monitoring Officer is illegal, improper, defamatory or does not comply with Procedure Rules, the Head of Paid Service shall immediately submit such notice to the Mayor and shall not place it on the Council agenda without his sanction. In the event of non-acceptance, the Head of Paid Service shall so inform the Councillor(s) who gave notice, giving reasons for the decision.
- (5) The Head of Paid Service shall record the time and date at which every such notice is delivered to him. That record shall be open to the inspection of every Member of the Council.
- (6) Every motion shall be relevant to some matter in relation to which the Council has functions, or which affects the area of the Council, or part of it, or the inhabitants of that area, or some of them.
- (7) Each motion shall be so drafted as to deal with one principal issue only.
- (8) Motions for which notice has been given and not withdrawn will be listed on the agenda in the order in which notice was received, unless the Councillor giving notice states in writing that he proposes to move it at a later meeting.
- (9) A motion shall only be moved by a Councillor by whom notice has been given, or by a Councillor authorised by such a Councillor.
- (10) Where notice of a motion has been given for any meeting, and that motion is neither moved (for whatever reason) nor deemed to have been referred to a committee, the notice shall lapse, and the motion shall not be moved without further notice.
- (11) No paper written or prepared by a Councillor which does not constitute a motion may be circulated or put before councillors at a meeting of Council.

**Council Procedure Rule 16**  
**Motions and amendments which may be moved**  
**without notice at Council and Committees**

**Description of motions and amendments**

- (1) Subject to paragraph (17) below, the following motions and amendments may be **moved without notice**:
  - (a) to appoint a person to preside at the meeting at which the motion is made;
  - (b) in relation to the accuracy of the minutes;
  - (c) to change the order of business;
  - (d) arising out of business brought forward by the Chairman as items of urgency;
  - (e) to refer something to an appropriate committee, body or individual for consideration or reconsideration;

- (f) to appoint a committee or its members, arising from an item mentioned in the agenda;
  - (g) to receive reports or adopt minutes and recommendations of committees or officers and any resolutions following from them;
  - (h) to withdraw a motion;
  - (i) to extend the time limit for speeches at Council;
  - (j) to amend a motion;
  - (k) to proceed to the next business;
  - (l) “that the vote now be taken”;
  - (m) “that the debate be now adjourned”;
  - (n) “that the meeting do now adjourn”;
  - (o) to suspend Council Procedure Rules subject to Procedure Rule 2 (2) and 2(3)
  - (p) to exclude the public and press from a meeting in accordance with the Access to Information Rules (see part 4(2) of the Constitution);
  - (q) to give the consent of the Council, or committee where it is required by the Constitution;
  - (r) to refer a petition, which has been presented to the Council, to a committee for consideration;
  - (s) in relation to Council Procedure Rule 22 (prevention of disorderly conduct) that a named Councillor be not further heard, or do leave the meeting;
  - (t) that a motion, amendment or business of an objectionable nature be not entertained nor permitted under Council Procedure Rule 23.
- (2) On consideration of a report or recommendation from a committee or officer, the adoption of the report or recommendation and any resolutions consequential upon that adoption may be moved without notice.

### **Rules relating to amendments, alteration and withdrawal of motions**

#### **Amendments**

- (3) An amendment to a motion may be moved without notice, but shall be relevant to the motion and will either be:
- (a) to leave out words,
  - (b) to leave out words and insert or add others,
  - (c) to insert or add words,

as long as the effect of (a) to (c) is not to negate the motion.

- (4) Only one amendment can be moved, seconded and discussed at any one time.
- (5) An amendment to a motion shall be put to the meeting before the motion to which it is an amendment.
- (6) No further amendment may be moved until the amendment under discussion has been disposed of.
- (7) If an amendment is not carried other amendments to the original motion may be moved.
- (8) If an amendment is carried the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- (9) After the amendment has been carried the person presiding will read out the amended motion before accepting any further amendment.
- (10) No Councillor shall move more than one amendment of the same substance to any motion, resolution or recommendation.

#### **Alteration of motions**

- (11) With the consent of the seconder, a Councillor may propose or accept an alteration to his/her motion.

#### **Withdrawal of motions**

- (12) With the consent of the seconder (if s/he is still present) and of the meeting, the mover of a motion or an amendment may withdraw it.

#### **Time limits on motions and previous decisions**

- (13) A motion or amendment to rescind a decision made at a meeting of the Council within the preceding **six months**, or which is to the same effect as one which has been rejected within that period, cannot be moved unless:
  - (a) it is recommended to Council by a committee, or
  - (b) notice of such motion has been given by as many Councillors as would constitute a quorum of the Council.
- (14) When a notice of motion proposed in accordance with sub-paragraph 6 above has been disposed of, no similar motion shall be proposed within a period of **six months** unless, in the opinion of the Head of Paid Service or the Monitoring Officer in consultation with the Mayor, the circumstances have so changed that the matter can be properly re-considered.
- (15) The ruling of the Mayor on the application of paragraphs 6 and 7 to any notice of motion shall be final.



**Motions affecting employees of the Council**

- (16) If any question arises at a meeting of the Council, or committee, as to the appointment, promotion, dismissal, remuneration, superannuation, conditions of service, or conduct of any person employed by the Council, such question shall not be the subject of discussion until the Council has decided whether or not to exclude the public and press in accordance with the Access to Information rules.

**Motions relating to the Council's budget**

- (17) Where a Councillor intends to move a motion or amendment in relation to the budget, the text of that motion or amendment must be put in writing and submitted to the Head of Paid Service by 9.00 am on the third working day before the meeting, in order that Officers may have sufficient time to consider and advise the Council of the financial implications of any such motion or amendment.

**Council Procedure Rule 17**  
**Rules of debate at Council and Committee meetings**

**See Council Procedure Rule 18 for additional rules of debate and Councillors conduct at Council meetings**

- (1) The rules of debate in this Council procedure rule shall apply to all meetings of the Council and committees.

**No speeches until motion seconded**

- (2) A motion or amendment shall not be discussed unless it has been proposed and seconded.

**Right to require motion in writing**

- (3) Unless notice of motion has already been given (in accordance with Council Procedure Rule 15 (motions requiring notice), the person presiding may require it to be written down and handed to him/her before it is discussed or put to the meeting.

**Seconders' speech**

- (4) When seconding a motion or amendment, a Councillor may reserve his/her speech until a later period of the debate by declaring his/her intention to do so.

**When a Councillor may speak again**

- (5) A Councillor who has spoken on a motion at Council may not speak again unless in accordance with Council Procedure Rule 18(7)
- (6) A Councillor shall speak more than once on any motion or amendment at committee meetings only at the discretion of the Chairman.

**Right of reply**

- (7) (a) The mover of a motion (or committee report) shall have a right of reply at the close of the debate on the motion (or committee report) immediately before it is put to the vote.
- (b) The proposer of an amendment to a motion (or committee report) shall have a right of reply immediately before the amendment is put to the vote; the mover of the original motion (or committee report) shall have a right of reply to the debate on the amendment immediately before the right of reply of the proposer of the amendment.
- (c) A Councillor exercising a right of reply shall not introduce a new matter.

**Motions which may be moved during a debate**

- (8) When a motion is under debate, no other motion shall be moved except the following:
- (a) to withdraw a motion;
  - (b) to amend the motion;
  - (c) to adjourn the meeting;
  - (d) to adjourn the debate;
  - (e) to proceed to the next business;
  - (f) that the vote now be taken;
  - (g) that a Councillor be not further heard;
  - (h) by the Chairman under Council Procedure Rule 16(1)(s), that a Councillor be not heard further or that he leave the meeting;
  - (i) to exclude the public and the press in accordance with the Access to Information Rules;
  - (j) that the subject of debate be referred to a committee for consideration and report;

**Closure motions**

- (9) A Councillor may move without comment at the conclusion of a speech of another Councillor:
- (a) “that the vote now be taken”;
  - (b) “that the debate be now adjourned”;
  - (c) “that the meeting proceed to the next business”;

- (d) “that the meeting now adjourn”.

If any such motion is seconded, the person presiding shall (if satisfied that the question before the meeting has been sufficiently discussed or the circumstances justify such a motion, and subject to the right of reply) put that motion to the vote.

If carried, then in the case of a motion:

- (a) “that the vote now be taken” - the question before the meeting shall be put to the vote;
- (b) “that the debate be now adjourned” - the subject of debate shall not be further discussed at that meeting;
- (c) “to proceed to next business” - the subject of debate shall be deemed to be disposed of;
- (d) “that the meeting now adjourn” - the meeting shall stand adjourned as the case may be.

### **Speeches**

- (9) If two or more Councillors wish to speak at the same time, the person presiding shall call on one to speak.
- (10) A Councillor shall direct his/her speech to the question under discussion or to a point of order, a point of information or in personal explanation.

### **Points of order, information, personal explanation and questions**

#### **Point of order**

- (11) A Councillor may speak on a point of order, at any time and shall be entitled to be heard immediately. A point of order shall relate only to an alleged breach of these Procedural rules or the law. The Councillor must indicate the rule or law and the way in which s/he considers that it has been broken.

#### **Personal explanation**

- (12) A personal explanation may be made at any time. A personal explanation shall be confined to some material part of an earlier speech by the Councillor which may appear to have been misunderstood in the current debate.
- (13) The ruling of the person presiding on a point of order or on the admissibility of a personal explanation shall not be open to discussion.

#### **Relevant questions**

- (14) A Councillor may ask a question relevant to the discussion and shall be heard immediately if:

- (a) the Councillor speaking is prepared to yield to the Councillor asking the question; or
- (b) the person presiding directs that the question be asked and answered.

### **Point of information**

- (15) A Councillor may offer a point of information relevant to the discussion and shall be heard immediately if:
- (a) the Councillor speaking is prepared to yield to the point of information; or
  - (b) the person presiding directs that the point be heard.

### **Debate on committee resolutions**

- (16) (a) Committees acting under delegated powers shall report their decisions to Council by way of resolutions. Such resolutions shall not be subject to debate at Council unless:
- (i) a Councillor gives written notice to the Head of Paid Service by not later than 12 noon five clear days preceding the meeting of the Council to which the report is to be presented (or such notice to be given within three clear days of the decision concerned) of his intention to seek suspension of council procedure rules for this purpose, and
  - (ii) at the meeting the motion to suspend council procedure rule is carried by a majority of Councillors present at the meeting.
- (b) This procedure shall not be available in respect of a resolution upon which the Council has already taken executive action at the time notice is given, and nothing in this procedure rule/standing order shall prejudice the rights of Councillors under procedure rules 17(11), (12), (13) and (15) (point of order, personal explanation and point of information).

### **Council Procedure Rule 18 Councillors' conduct and additional rules of debate at Council meetings**

- (1) A Councillor shall stand when speaking (unless it would be unreasonable to require a Councillor to do so) and shall address the meeting through the Mayor.
- (2) If two or more Councillors rise, the Mayor shall decide the order in which they shall speak and the other(s) shall then sit.
- (3) Whilst a Councillor is speaking, the other Councillors shall remain seated, unless rising to a point of order, a point of information or in personal explanation.
- (4) Whenever the Mayor rises during a debate, a Councillor then standing shall resume his/her seat, and the Council shall be silent.
- (5) Except with the consent of the Council, signified without comment, the mover of a motion shall not speak for more than ten minutes and no other speaker shall speak for more than five minutes.

- (6) At the discretion of the Mayor the mover of an amendment may speak for ten minutes.

**When a Councillor may speak again**

- (7) A Councillor shall not speak more than once on any motion or amendment except:
- (a) when seconding a motion to reserve his/her speech until a later period (Council Procedure Rule 17 (4));
  - (b) when exercising the right of reply (Council Procedure Rule 17 (7));
  - (c) on a point of order or information (Council Procedure Rules 17 (11) and (15));
  - (d) by way of personal explanation (Procedure Rule 17 (12) and (13));
  - (e) to move any of the resolutions mentioned in Council Procedure rule 16 (1) (motions moved without notice);
  - (f) to ask a question (Council Procedure Rule 17 (14));
  - (g) to speak once on an amendment moved by another Councillor;
  - (h) to move a further amendment;
  - (i) If his/her first speech was on an amendment moved by another Councillor, to speak on the main issue (whether or not the amendment on which s/he spoke was carried).

**Council Procedure rule 19  
Voting at meetings of Council and Committees**

**Majority**

- (1) Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Councillors voting and seated in the room at the time the question was put.

**Chairman's second or casting vote**

- (2) If there are equal numbers of votes for and against, the person presiding will have a second or casting vote.

**Show of hands**

- (3) Unless a ballot or recorded vote is demanded under the Council Procedure Rules 19(4) and 19(5), the person presiding will take the vote by a show of hands. Except for recorded voting (see below) abstentions do not count and shall not be called for.

**Ballots**

- (4) The vote will take place by ballot if a quorum of the meeting demands it. The person presiding will announce the numerical result of the ballot immediately the result is known.

**Recorded Vote**

(5) If, before a vote is taken:

- (a) a quorum of the meeting demand it, or
- (b) there may be a legal implication on the advice of the Head of Paid Service, Monitoring Officer or their representative,

the names for and against the motion or amendment or those abstaining from voting will be taken down in writing and entered into the minutes. A demand for a recorded vote will override a demand for a ballot except when voting for appointment, when a demand for a ballot shall prevail. The process for taking Recorded Votes is as follows:

Step 1 – a ‘Recorded Vote’ is called for;  
 Step 2 – all Councillors receive a named Voting Paper;  
 Step 3 – all Councillors complete their Voting Paper;  
 Step 4 – all Voting Papers are collected;  
 Step 5 – all Votes are read to the meeting and collated; and  
 Step 6 – result of vote declared.

- (c) Decisions relating to the Budget and Council Tax Levels will be taken by a recorded vote

**Right to require individual vote to be recorded**

(6) Where any Councillor requests it immediately after the vote is taken, his/her vote will be recorded in the minutes to show whether s/he voted for or against the motion or abstained from voting.

**Voting on appointments**

(7) Where a vote is required on a motion to appoint or elect a member of the Council to a position to be filled by the Council, and there are two or more Councillors nominated for that position, the names of all those nominated shall be put to the meeting in alphabetical order of surname. Those entitled to vote shall each vote for only one person. If there is not a majority of those voting in favour of one person, the name of the person having the least votes shall be struck off the list and a fresh vote shall be taken, and so on until a majority of votes is given in favour of one person.

**Meaning of “quorum of the meeting”**

(8) “Quorum of the meeting” in this Rule means one quarter of the number of Councillors present at the meeting.

### **Council Procedure Rule 20 Minutes of Council and committees**

- (1) Minutes of every meeting of the Council, or committee shall be submitted to, and signed at, that meeting or at the next ordinary meeting of the body concerned.
- (2) Where, in relation to any meeting of the Council, the next such meeting is an extraordinary meeting the next following meeting of the Council shall be treated as a suitable meeting for signing minutes.
- (3) The person presiding or any Councillor who attended shall propose that the minutes of the previous meeting of the Council, or committee be approved and signed by the person presiding as a correct record.
- (4) No discussion shall take place upon the minutes except upon their accuracy.
- (5) When any question of accuracy has been resolved, the person presiding shall sign the minutes (amended if necessary) as a correct record.

#### **Form of Minutes**

- (6) Council minutes will contain all motions and amendments in the exact form and order the person presiding put them.
- (7) The minutes of proceedings when the meeting was not open to the public, or which disclose exempt or confidential information, may not be made available to the public but a summary of the proceedings will be made available where the minutes open to inspection do not provide a reasonably fair and coherent record - See the Access to Information Rules.

### **Council Procedure Rule 21 Public deputations, petitions, questions at Council meetings**

#### **1. Deputations**

- (1) Deputations may be received at Council meetings provided that:
  - (a) notice is received in writing by the Head of Paid Service eight clear days before the meeting giving the subject to be raised;
  - (b) the subject is not related to a specific planning, licensing or other application under consideration by the Council;
  - (c) the subject does not raise an issue of conduct by Councillors or officers. (Matters relating to the conduct of officers should be referred to the Head of Paid Service and those relating to conduct of Councillors should be referred to the Standards Committee and in accordance with the Code of Conduct (see part 5 of the Constitution));
  - (d) the subject does not raise an issue in the nature of a complaint. (Complaints should be referred to the Council's Complaints Procedure in the first instance. In a case

where the complaint involves the Head of Paid Service the matter should be referred to the Monitoring Officer in the first instance);

- (e) the subject does not relate to the appointment, promotion, dismissal, remuneration, conditions of service or conduct of officers;
  - (f) the subject relates to a power or duty exercised by the Council or seeks the support of the Council in influencing other public bodies.
- (2) The number of the deputation shall not exceed five, of whom only one shall speak for no longer than five minutes.
- (3) There shall be no discussion on any matter raised by the deputation, but any Councillor may move without notice a motion for the manner in which the Council should dispose of the item.

## 2. **Petitions**

- (1) A petition may be made to the Council provided that the petition includes:
- (a) A clear and concise statement on the subject of the petition;
  - (b) The statement should include the action that the petitioners wish the Council to take;
  - (c) Name, address and signature of any person supporting the petition (who must be persons living, working or studying in the Borough of West Devon);
  - (d) Contact details and address of the petition organiser; and
  - (e) A clear statement as to whether the petition organiser wishes to present the petition to a Council meeting and/or whether the petition organiser requests a Councillor to present the petition.
- (2) The Council will refuse to accept a petition where the petition
- (a) relates to a planning or licensing application;
  - (b) relates to a statutory petition (for example, requesting a referendum);
  - (c) A matter where there is an existing right of appeal;
  - (d) is considered vexatious, abusive, or otherwise inappropriate (as determined by the Monitoring Officer); or
  - (e) is substantially the same as a petition submitted in the previous 12 months.
- (3) The Council may respond to the petition in one of more of the following ways:
- (a) Taking the action requested in the petition;
  - (b) Considering the petition at a Council meeting;



- (c) Undertaking research into the matter;
- (d) Holding a public meeting;
- (e) Holding a consultation;
- (f) Holding a meeting with the petitioners;
- (g) Refer the matter for consideration by the Overview and Scrutiny Committee; or
- (h) Not taking any action

The Head of Paid Service has a discretion to deal with petitions differently in the period immediately before an election or referendum (the 'purdah' period)

### 3. Questions

- (1) Questions may be asked at a meeting of the Council by any person (including Councillors) provided that:
  - (a) unless the question is asked by a Councillor, the name of the questioner appears in the current register of electors for West Devon
  - (b) the question is in writing, and delivered eight clear days before the meeting to the Head of Paid Service, who shall note the date and time of receipt (but note that there is no requirement to answer questions in sequence);
  - (c) the subject does not raise an issue of conduct by Councillors or officers. (Matters relating to the conduct of officers should be referred to the Head of Paid Service and those relating to conduct of Councillors should be referred to the Standards Committee in accordance with the Code of Conduct (see part 5 of the Constitution));
  - (d) the subject does not raise an issue in the nature of a complaint. (Complaints should be referred to the Council's Complaints Procedure in the first instance. In a case where the complaint involves the Head of Paid Service the matter should be referred to the Monitoring Officer in the first instance);
  - (e) the subject does not relate to the appointment, promotion, dismissal, remuneration, conditions of service or conduct of officers;
  - (f) the subject relates to a power or duty exercised by the Council or seeks the support of the Council in influencing other public bodies.
- (2) Questions shall be directed to a Councillor nominated by the Head of Paid Service in consultation with the Mayor, who may answer in writing at the meeting, or undertake to do so within seven days, or decline to offer an answer, giving reasons.
- (3) There shall be no discussion on any question or answer but, at the discretion of the Mayor, a supplementary question may be asked by the person submitting the question. Any Councillor

may move that a matter raised by a question be referred to the appropriate committee. Once seconded, such a motion will be voted on without discussion.

- (4) After 15 minutes from the start of the first question, no further questions shall be received at that meeting from members of the public unless the person presiding decides otherwise.
- (5) Councillors of the Council may, in addition, ask the Chairman of a Committee questions without notice of a report to the Council provided the question is relevant to the report and is put before the Council's consideration of it is concluded.

### **Council Procedure Rule 22 Prevention of disorderly conduct at Council and committee meetings**

#### **Misconduct by a Councillor**

- (1) If the person presiding is of the opinion that a Councillor persistently disregards the ruling of the chair, is behaving irregularly, improperly or offensively, or is wilfully obstructing the business of the Council, the person presiding may notify the meeting of that opinion, and may take any of the following courses, either separately or in sequence:
  - (a) move that the Councillor named be not further heard for the duration of that item. This motion shall not require to be seconded, and shall be put and decided without comment and if it is carried, the Councillor named shall not speak further for the duration of that item;
  - (b) move that the Councillor named shall leave the meeting; this motion shall not require to be seconded, and shall be put and decided without comment; if it is carried, the Councillor named shall leave the meeting immediately. The Councillor may be re-admitted to the meeting at the discretion of the person presiding;
  - (c) adjourn the meeting for as long as s/he thinks necessary.

#### **Misconduct by a member of the public**

- (2) If a member of the public interrupts proceedings at any meeting, the person presiding shall warn him/her. If s/he continues to interrupt, the person presiding shall order him/her to leave the room where the meeting is being held. If s/he does not leave, the person presiding shall order him/her to be removed. If a member of the public persistently creates a disturbance the person presiding may adjourn the meeting for as long as s/he thinks necessary.

#### **Additional powers of the person presiding**

- (3) In the event of general disturbance in any part of the room where any meeting is being held which is open to the public, the person presiding shall order that part to be cleared and may adjourn the meeting for as long as s/he thinks necessary.

### **Council Procedure Rule 23 Prevention of business of objectionable nature at Council and committee meetings**

If, at any meeting, the person presiding shall be of the opinion that any motion, amendment or business proposed to be moved or transacted is of an objectionable nature, s/he may move a

motion (which shall require no seconder) without discussion that the motion, amendment or business in question be not entertained nor further permitted. If such motion is carried, such matter shall be considered as disposed of for that meeting.

**Council Procedure Rule 24**  
**Use of televised and sound recordings at Council and committee meetings**

- (1) The press and public are welcome to attend public meetings of the Council and its bodies. The press and public may take photographs, film, and audio record the proceedings and use social media to report on the meeting. This is subject to the activity not disrupting the business of the meeting. Whilst no prior permission is required to carry out this activity, it is advisable that any person wishing to record a public meeting to let officers know so that all the necessary arrangements can be made for the public meeting.
- (2) In the event that the meeting considers confidential or exempt business, all members of the public and press must leave the room with their equipment as requested for the consideration of such business.

**Council Procedure Rule 25**  
**Assistance for political groups**

- (1) This Council Procedure Rule shall apply when the Council resolves to exercise its powers under section 9 of the 1989 Act to make appointments to posts, the duties of which are to provide assistance to members of a political group in the discharge of any of their functions as Members of the Council.
- (2) No such appointment shall be made until the Council has allocated such a post to each political group which qualifies for such a post under that section.
- (3) No such appointment shall be made in respect of any political group which does not qualify for such a post under that section.
- (4) Not more than one such post shall be allocated to any political group.
- (5) Unless the political group to which the post is allocated indicates that they are content that the terms and conditions of any such post shall be less favourable than they would otherwise be, the terms and conditions of appointment to all such posts (including the terms required to be included by sub-sections (3) and (4) of section 9 and the hours to be worked and the scale of remuneration to be paid) shall be the same for all such posts.
- (6) Whenever any such post has been established and is vacant, the Head of Paid Service shall, in accordance with the wishes of the political group to which it is allocated:
  - (a) place one or more advertisements giving details of the post in such newspapers or periodicals as shall be designated by that group, provided that not more than three advertisements shall be placed without the consent of the Council;
  - (b) make arrangements for meetings of such members of that group as that group may decide for the purpose of choosing a shortlist from and interviewing the candidates; and

- (c) appoint such person as that group shall indicate on the terms and conditions approved by the Council.

**Council Procedure Rule 26**  
**Seal of the Council**

- (1) The common seal of the Council shall be kept in a safe place in the custody of the Monitoring Officer with the power to delegate to the relevant officer.
- (2) The Common Seal of the Council shall be affixed to a document only on the authority of:
  - (a) a resolution of the Council;
  - (b) a resolution of a committee which the Council has empowered to authorise the use of the seal;
  - (c) a decision by the Council or by a duly authorised committee, or officer, to do anything where a document under the seal is necessary to complete the action.
- (3) An entry of every document sealed shall be made and numbered consecutively in a record kept for the purpose.

**Council Procedure Rule 27**  
**Attestation of documents**

- (1) Any official document of the Council that requires attestation shall be signed by:
  - (a) any person who may be authorised by the Council for the purpose (see Article 10);
  - (b) any senior officer of the Council concerned with the matter to which the document relates; (article 10 / Delegation Scheme) or
  - (c) any officer authorised in writing by such senior officer (article 10 / Delegation Scheme).
- (2) The proper officer for the purpose of Section 234 of the 1972 Act (Authentication of Documents) shall be the Head of Paid Service unless specifically delegated to another officer (see Article 10 and Delegation Scheme).

**Council Procedure Rule 28**  
**Papers and advice**

- (1) A copy of every paper which is circulated to Councillors for consideration at meeting of a committee shall be sent to the Senior Officers of the Council who are concerned in the work of that committee which for avoidance of doubt, includes email).
- (2) Any question as to which Senior Officers are concerned with the work of any committee shall be determined by the Head of Paid Service.

**Council Procedure Rule 29**  
**Call-in of decisions**

- (1) A decision of a committee may, in exceptional circumstances, be called in for scrutiny by the Overview and Scrutiny Committee as set out in the Overview and Scrutiny Procedure Rules.
- (2) Where a decision has been called in by the Overview and Scrutiny Committee, the rules set out in the Overview and Scrutiny Procedure Rules shall apply.

## **Part 4B - Remote Meetings Procedure Rules (Temporary)**

### **1. INTRODUCTION**

#### **1.1 General**

These Remote Meetings Procedure Rules have been adopted by the Council and have been made under the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020.

These Remote Meetings Procedure Rules are aimed at helping the Council to redeploy its resources to deal with the Covid-19 pandemic and ensure essential business continues whilst upholding democratic principles and protecting the health and safety of Councillors, officers and the public in line with official public health guidance.

#### **1.2 Application**

The Remote Meetings Procedure Rules will apply to all meetings of the Council, the Hub and their committees and sub-committees and other bodies of the Council that are required to be held up to 7 May 2021 or such other date as may be prescribed. Accordingly, Article 11 is to be read subject to these Remote Meetings Procedure Rules and any of the following Rules of Procedure take effect as if varied or disapplied by these Remote Meetings Procedure Rules:

- (a) Access to Information Procedure Rules
- (b) Council Procedure Rules
- (c) Executive Procedure Rules
- (d) Rules for other bodies of the Council
- (e) Overview and scrutiny Procedure Rules.

Save as varied or disapplied by these Remote Meetings Procedure Rules, the above Rules of Procedure shall continue to apply to relevant meetings.

### **2. Interpretation**

In these Remote Meetings Procedure Rules references to the 2020 Regulations are to the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 and the words "remote access" and "remote attendance" have the meaning given to them by the 2020 Regulations.

### **3. Timing and business**

#### **3.1 Meetings only to be held where required**

- (a) While these Remote Meetings Procedure Rules apply, the Council will not hold an Annual Meeting and the only meetings of the Council that will be held are those that are expressly required by law or where in the opinion of the Head of Paid Service (or Deputy in his/her absence) in consultation with the Leader decides are required due to the nature and urgency of the business to be transacted being such that it cannot be dealt with under delegated powers.
- (b) Meetings of the Overview and Scrutiny Committee shall only be held where they are required by law or in the opinion of the Head of Paid Service in consultation with the Chairman of that Committee decides are required due to the nature and a meeting of the Overview and Scrutiny Committee would not overstretch the Council's resources.
- (c) Any requirement in any procedure rule or otherwise for a committee, sub-committee or other body of the Council to provide an annual report to the Council or to produce an annual work plan shall be postponed.
- (d) Any requirement in any procedure rule or otherwise for a committee, sub-committee or other body of the Council to meet a particular number of times in any year or with a particular frequency are disapplied.

### 3.2 Time and place

Meetings will be held at the time notified in the agenda but may be held in more than one place and may include electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers. Meetings may also be live-streamed.

### 3.3 Business

- (a) In keeping with the rationale for holding meetings only where they are required, agendas for any such meetings required to be held shall not include any items for questions or motions on notice from Councillors.
- (b) Where the Council Procedure Rules provide for questions from members of the public, deputations and petitions to be asked, heard or received at a meeting of the Council, the Head of Paid Service may, having regard to the nature of the question, deputation or petition, deal with any such questions, deputations and petitions without referring them to a meeting of the Council.

## 4. Notice of meetings

- 4.1 At least five clear working days before a meeting save in cases of urgency and/or where following such notice the meeting is moved or cancelled, the Head of Paid Service (or Deputy in his/her absence) (or for bodies other than Council where no other officer is required to do so, the Monitoring Officer (or Democratic Services Manager in his/her absence)) will send an agenda by electronic means to every councillor of the Council or relevant body. The agenda will give the date and time of each meeting together with the details for remote access. The agenda will also specify the business to be transacted, and be accompanied by such reports as are available.
- 4.2 At such time as sending the notice of the meeting and the agenda, the relevant officer shall arrange for the notice of the meeting and the agenda together with copies of such reports as are available to be published on the Council's website.

- 4.3 Where a report becomes available after publication of the notice and agenda, the relevant officer shall send it electronically to all Councillors and arrange for a copy to be published on the Council's website as soon as practicable.
- 4.4 Where members of the public have the right to inspect any agendas, reports, background documents or minutes of previous meetings at the Council's offices, the right shall be deemed to have been met by publication on the Council's website.

## 5. **Quorum**

The number of Councillors required to be present for a quorum for a meeting shall be as set out in the Constitution. However, for the purposes of determining whether a quorum of Councillors is present at a meeting the Mayor/Chairman shall include all those Councillors in remote attendance. If at any time during the meeting the Mayor/Chairman counts the number of Councillors present and declares that there is not a quorum present, the meeting will adjourn immediately. The remaining business will be considered on a date and time set by the Head of Paid Service in consultation with the Mayor/Chairman and the Leader.

## 6 **Voting at meetings**

### 6.1 **Majority**

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those councillors voting and in remote attendance at the time the question was put. If there are equal numbers of votes for and against, the person presiding will have a second or casting vote.

### 6.2 **Method of voting**

On a motion being put to the vote, the Mayor/Chairman or the clerk to the meeting will ask each Councillor, taking each in alphabetical order, to say if they are for or against the motion or whether they abstain. The Mayor/Chairman or the clerk to the meeting will announce the numerical result of the vote immediately the result is known. For the avoidance of doubt there shall not be any voting by ballot.

## 7. **Interests**

- 7.1 A Councillor who would ordinarily be required to leave the room during the consideration of an item of business due to the Councillor having a disclosable pecuniary interest or to having such other interest as the Council's Code of Conduct may require the Councillor to do so, shall be deemed to have done so if the Councillor disconnects their remote access and remains disconnected until such time as the Mayor/Chairman invites the Councillor to re-join the meeting.
- 7.2 Where reasonably practicable to do so, a Councillor who has an interest under Remote Meeting Procedure Rule 7.1 that would require him/her to leave the meeting, should notify the Monitoring Officer or the Democratic Services Manager, 2 days in advance of the meeting.



**8. Councillor access to meetings**

- 8.1 Where any procedure rule confers the right on a Councillor to attend a meeting, that right is to be interpreted as a right to attend by remote access only. The rights of a Councillor in remote attendance are unaffected unless disapplied by or in conflict with these Remote Meetings Procedure Rules.

**9. Remote access to meetings by the public and the Press****9.1 Right to be present at a meeting by remote access**

Members of the public and the Press have the right to hear and where practicable to do so, to see those formal meetings of the Council, the Hub Committee and other bodies of the Council by remote access except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private.

**9.2 Details of remote access to be included on agenda**

The Head of Paid Service (or for bodies other than Council where no other officer is required to do so, the Monitoring Officer (or Democratic Services Manager in his/her absence)) will include the details of how members of the public and of the Press can hear and where practicable to do so, to see the meeting on the notice of the meeting.

**9.3 Discussion of confidential business and disclosure of exempt information.**

Upon the Council, a Committee or Sub-Committee passing a motion to exclude the public and Press from the meeting due to the discussion of confidential business or exempt information, the right of the public and the Press to see or see and hear, the meeting shall cease and their electronic access will be disconnected.

**10. Conduct during meetings**

- 10.1 Councillors in remote attendance or any member of the public exercising a right to speak in remote attendance shall only speak when called upon to do so by the Mayor/Chairman and shall cease to speak when told to so by the Mayor/Chairman.
- 10.2 Subject to Remote Meetings Procedure Rule 10.1, when a Councillor is speaking no other Councillor or member of the public in remote attendance shall interrupt that Councillor or seek to speak over that Councillor.
- 10.3 If a Councillor or any member of the public interrupts or seeks to speak over a Councillor who has been called upon to speak by the Mayor/Chairman, the Mayor/Chairman will warn the person concerned. If the person concerned persists in doing so at any time during the remainder of the meeting, the Mayor/Chairman shall adjourn the meeting.

## Part 4C - Access to Information Procedure Rules

### 1. **Scope**

These rules apply to all meetings of the Council and its Committees (and sub-committees).

### 2. **Rights to attend meetings**

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

### 3. **Notices of meeting**

The Council will give at least five clear days notice of any meeting by posting details of the meeting at West Devon Borough Council offices (Kilworthy Park, Drake Road, Tavistock, Devon, PL19 0BZ) and on its website ([www.westdevon.gov.uk](http://www.westdevon.gov.uk)).

### 4 **Access to Agenda and reports before the meeting**

The Council will make copies of the agenda and reports open to the public available for inspection at the designated offices at least five clear days before the meeting. If an item is added to the agenda later, , the Monitoring Officer shall make each such report available to the public as soon as the report is completed by uploading onto the Council website and notifying Councillors.

### 5. **Supply of copies**

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any other documents (already supplied to Councillors in connection with an item), if the Head of Paid Service or Monitoring Officer thinks fit, to any member of the public, on payment of a charge for postage and any other costs.

### 6 **Access to Minutes and other documents after the meeting**

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

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

## **7. Background Papers**

### **7.1 List of Background Papers**

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

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

This list does not include published works or those which disclose exempt or confidential information (as defined in Rule 9).

### **7.2 Public Inspection of Background Papers**

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

## **8. The Constitution**

A copy of this Constitution shall be available on the Council's website at [www.westdevon.gov.uk](http://www.westdevon.gov.uk)

## **9. Exclusion of access by the public to meetings**

### **9.1 Confidential Information - Requirement to Exclude Public**

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

### **9.2 Meaning of Confidential Information**

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

### **9.3 Exempt Information - Discretion to Exclude Public**

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

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

#### 9.4 Meaning of Exempt Information

Exempt information means information falling within the following 10 categories (subject to any conditions):

**Table of the exempt categories in Schedule 12A**

Description of exempt information	Condition
1. Information relating to any individual.	Information relating to individuals is covered by the Data Protection Act 1998.
2. Information which is likely to reveal the identity of an individual.	
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	“Financial or business affairs” includes contemplated as well as past or current activities.
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under the authority.	“Labour relations matters” are as specified in paragraph (a) to (g) of section 29(1) of the trade Unions and Labour Relations Act 1974, i.e. matters which may be the subject of a trade dispute.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	
6. Information which reveals that the authority proposes: (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment	
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	
<b>Qualifications</b>	
8. Information falling within paragraph 3 is not exempt if it must be registered under the Companies Act, Friendly Societies Acts, Industrial and Provident Societies Acts, the Building Societies Act or the Charities Act.	
9. Information is not exempt if it relates to	

Description of exempt information	Condition
proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.	
<p>10. Information which: falls within paragraphs 1 to 7 and is not prevented from being exempt by virtue of paragraphs 8 and 9</p> <p>is exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p>	

**10. Exclusion of access by the public to reports**

If the Monitoring Officer fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 9, the meeting is likely not to be open to the public. Such reports will be marked “Not for Publication” together with the category of information likely to be disclosed.

## **Part 4D - Budget and Policy Framework Procedure Rules**

### **1. The framework for decision-making**

The Council will be responsible for the adoption of its Budget and Policy Framework as set out in Article 4. Once a Budget or a Policy Framework is in place, it will be the responsibility of the Committees to implement it.

## Part 4E - Overview and Scrutiny Procedure Rules

### 1. Overview and Scrutiny Committee

1.1 The Council will appoint one Overview and Scrutiny Committee.

### 2. Terms of Reference

2.1 The performance of all overview and scrutiny functions on behalf of the Council are specified in in Part 3 of this Constitution.

### 3. Membership and Composition

3.1 **Number:** The Committee shall consist of **fifteen Members** of the Council appointed in accordance with Council Procedure Rule 7.

3.2 **Eligibility:** All Members of the Council, with the **exception** of Members of the Hub Committee and Audit Committee will be members of the Overview and Scrutiny Committee. However, no Councillor shall be involved in scrutinising a decision taken by a committee of which, at the time of the decision, s/he was a voting member.

3.3 **Chairman:** The Chairman and Vice Chairman shall be appointed by Council in accordance with the Council Procedure Rules in Part 4 of the Constitution. The Chairman of the Overview and Scrutiny Committee cannot also be the Chairman of the Audit Committee.

3.4 **Co-optees:** The Committee shall be entitled to recommend to the Council the appointment of co-opted members (including members of the public).

### 4. Meetings

4.1 **Frequency:** There shall be at least **five meetings** of the Committee in each year. In addition, other meetings may be called in accordance with the Council's Procedure Rules as set out in Part 4 of this Constitution.

4.2 **Quorum:** The quorum for the Committee shall be **seven Councillors**.

4.3 **Substitution** is not permitted on the Overview and Scrutiny Committee (see Procedure Rule 10).

#### 4.4 Annual report

The Overview and Scrutiny Committee shall report annually to Council on its workings and make evidence based recommendations for future work programmes and amended working methods if appropriate.

### 5. Powers and Duties

5.1 **Sub-Committees:** The Overview and Scrutiny Committee shall have the power to appoint such sub-committees as it considers appropriate to discharge its functions. These

Procedure Rules, including those on eligibility for membership, shall apply to any such sub-committee.

- 5.2 **Task and Finish Groups:** The Committee shall have the power to appoint and discontinue Task and Finish Groups.
- 5.2.1 The Task and Finish Groups shall be appointed to undertake such work and within such time-scales as may be specified by the Committee.
- 5.2.2 All Members of the Council are eligible for membership of the Task and Finish Groups.
- 5.2.3 The Committee shall establish the membership of the Task and Finish Groups.
- 5.2.4 A Task and Finish Group shall report to the Overview and Scrutiny Committee.
- 5.3 **Work programme:** The Overview and Scrutiny Committee shall be responsible for setting its own work programme.
- 5.4 **Agenda Items:** Any member of the Committee shall be entitled to give notice to the Chairman that s/he wishes an item to be included on the next appropriate agenda and the Chairman shall arrange for this to be done.
- 5.5 **Consideration of Overview and Scrutiny Reports:** The Head of Paid Service will ensure that reports of the Overview and Scrutiny Committee are placed on the agenda for the appropriate committee or Council Summons if appropriate for consideration,
- 5.6 Councillors or Officers may propose that Overview and Scrutiny consider a particular matter by completing a Scrutiny Proposal Form (which can be obtained from [democratic.services@swdevon.gov.uk](mailto:democratic.services@swdevon.gov.uk)). See below for rules on Public Forum <https://www.westdevon.gov.uk/article/3669/Overview-Scrutiny-Committee>
- 6. Overview**
- 6.1 **Policy Review/Development:** In relation to the review or development of Council policies, the Overview and Scrutiny Committee may make proposals for consideration by the relevant committees, joint committees or Council if appropriate.
- 6.2 The Overview and Scrutiny Committee may receive requests from the Council and committees to review particular areas of Council activity. The Committee, having regard to its work programme, shall consider and respond to such requests.
- 6.3 The Overview and Scrutiny Committee may hold inquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist it in this process. It may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform its deliberations.



## 7. Scrutiny

- 7.1 **Proposed decisions:** To assist with the function of scrutiny, members of the Overview and Scrutiny Committee shall be sent links to Council Summons and agendas of all committees.
- 7.2 **Call-in of decisions:** Call-in should only be used in exceptional circumstances, e.g. where members of the Overview and Scrutiny Committee has evidence which suggests that the Hub Committee did not take the decision in accordance with the principles set out in Article 11 (Decision Making).
- 7.2.1 Call-in will **not apply** to decisions of individual applications under development management, licensing, standards, registration, consents or other permissions where there is a statutory right of appeal.
- 7.2.2 Within **two days** (where reasonably practicable) of a meeting of the Hub Committee the minutes of that meeting shall be published on the council website and Councillors advised.
- 7.2.3 The minutes (as referred to in 7.2.2) will specify that any decision will come into force (and may then be implemented) on **the expiry of three working days** after the publication of the minutes, **unless** the Overview and Scrutiny Committee calls it in.
- 7.2.4 Before **the expiry of the three working days**, the Head of Paid Service shall call-in a decision for scrutiny by the Overview and Scrutiny Committee if so requested by the Chairman or any three Members of the Overview and Scrutiny Committee. The Head of Paid Service will notify all Councillors of the call-in of the decision.
- 7.2.5 The Head of Paid Service shall call a meeting of the Overview and Scrutiny Committee on such date as she may determine (where possible after agreement with the Chairman of the Committee) and in any case within **five working days** of the decision to call-in.
- 7.2.6 If, having considered the decision, the Overview and Scrutiny Committee remains concerned about it then the Committee may set out in writing the nature of its concerns and:
- refer the decision back to the relevant committee for re-consideration, or
  - refer the matter to Council for determination.
- 7.2.8 If the matter is referred back to a Committee or Council, that body shall determine at the earliest practicable opportunity whether or not to amend the decision.
- 7.2.9 If, following a call-in of a decision, the Overview and Scrutiny Committee:
- does not meet in the period set out above, or
  - does meet but does not refer the matter back to the relevant Committee or to Council

the decision shall take effect on the date of the Overview and Scrutiny meeting or the expiry of that further five working day period, whichever is the earlier.

- 7.3 **Urgency:** The call-in procedure set out above shall not apply where the decision being taken by a committee is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interest. Where the record of the decision, and notice by which it is made public, states that in the opinion of the Head of Paid Service the decision is an urgent one, it will not be subject to the call-in process.
- 7.4 **Attendance by Others:** The Overview and Scrutiny Committee may:
- 7.4.1 require Hub Members, Councillors and Senior Officers of the Council to attend a meeting to answer questions and it is the duty of those persons to attend if so requested;
  - 7.4.2 request, but not compel, officers from partnership organisations to attend if so required; and/or
  - 7.4.3 invite any person to attend to address the Committee or to discuss issues of local concern and/or to answer questions;
- 7.5 **Party Whip:** When considering any matter in respect of which a member of the Committee is subject to a party whip, the Councillor must declare the existence of the whip and the nature of it before the commencement of the Committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.
- 7.6 **Procedure:** The Overview and Scrutiny Committee shall consider the following business:
- 7.6.1 minutes of the last meeting;
  - 7.6.2 declarations of interest (including whipping declaration);
  - 7.6.3 the Hub Committee Forward Plan;
  - 7.6.4 consideration of any matter referred to the Committee for a decision in relation to the calling in of a decision;
  - 7.6.5 responses of the committees to reports of the Overview and Scrutiny Committee; and
  - 7.6.6 the business otherwise set out on the agenda for the meeting.
- 7.7 **Reports on policy proposals or investigations**
- 7.7.1 The Committee may adopt its own procedures as it so chooses when carrying out a review or conducting an investigation.

- 7.7.2 Following any investigation or review, the Committee shall prepare a report, for submission to the relevant committee, joint committee and/or Council as appropriate.

## **8. Public Forum Procedures**

### **8.1 General**

Members of the public may raise issues and ask questions at meetings of the Overview and Scrutiny Committee. This session will last for up to fifteen minutes at the beginning of each meeting.

### **8.2 Notice of Questions**

An issue or question may only be raised by a member of the public provided that they have given written notice (which may be by electronic mail) to ([democratic.services@swdevon.gov.uk](mailto:democratic.services@swdevon.gov.uk)) by 5.00pm on the Thursday, prior to the relevant meeting.

### **8.3 Scope of Questions**

An issue may be rejected by the Monitoring Officer if it:

- 8.3.1 relates to a matter within the functions of the Development Management and Licensing and Licensing Committee;
- 8.3.2 is not about a matter for which the local authority has a responsibility or which affects the Borough
- 8.3.3 is offensive, frivolous or defamatory;
- 8.3.4 is substantially the same as a question which has previously been put in the past six months; or
- 8.3.5 requires the disclosure of confidential or exempt information.

## **Part 4F - Financial Procedure Rules**

### **A. Status of the Financial Procedure Rules**

- A.1 Financial Procedure Rules provide the framework for managing the Council's financial affairs. They apply to every Councillor and Officer of the Council and anyone acting on its behalf.
- A.2 The Financial Procedure Rules identify the financial responsibilities of the Council, all Councillor bodies, the Head of Paid Service, the Section 151 Officer and the Monitoring Officer. A written record should be maintained where decision making has been delegated to other members of staff, including seconded staff. Where decisions have been delegated to other responsible officers references to Communities of Practice, Lead Specialists and Managers in the Financial Procedure Rules should be read as referring to them.
- A.3 The Financial Procedure rules are part of a wider set of operational and managerial arrangements. If followed they protect the Council and hence the public, from poor decision making, theft, fraud and material error. They also offer significant protection to staff and Councillors from undue criticism and accusations of impropriety. All Councillors and staff have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, is properly authorised, provides value for money and achieves best value.
- A.4 The Council's detailed financial procedures, setting out how the Financial Procedure Rules will be implemented, are contained in the appendices to these Financial Procedure Rules (Sections 1 to 28).
- A.5 Communities of Practice, Lead Specialists and Managers are responsible for ensuring that all staff within their area of responsibility are aware of the existence and content of the Council's Financial Procedure Rules, Contract Procedure Rules and other internal regulatory documents and that they comply with them.
- A.6 Each Senior Officer shall consult the Section 151 Officer with respect to any matter which is liable to materially affect the finances of the Council before any provisional or other commitment is incurred or before reporting the matter to a Committee.
- A.7 The Section 151 Officer is responsible for issuing advice and guidance to underpin the Financial Procedure Rules that Councillors, officers and others acting on behalf of the Council are required to follow.

### **B. Financial Management Responsibilities**

- B.1 Financial management covers all financial accountabilities in relation to the running of the Council, including the policy framework and budget.

- B.2 The Council is responsible for approving the Policy Framework and budget. It is also responsible for approving and monitoring compliance with the Council's overall framework of accountability and control which includes these Financial Procedure Rules.
- B.3 Supporting this, many of the Council's member bodies have devolved financial responsibilities to a varying degree, the details of which are set out within their terms of reference in Part 3 of the Constitution.

## **Duties of the Statutory Officers**

### **Section 151 Officer**

- B.4 The Section 151 Officer<sup>1</sup> has statutory duties in relation to the financial administration and stewardship of the Council. This statutory responsibility cannot be overridden. The statutory duties arise from:
- \* Section 151 of the Local Government Act 1972
  - \* The Local Government Finance Act 1988
  - \* The Local Government and Housing Act 1989
  - \* Local Government Act 2003
  - \* The Accounts and Audit Regulations 1996, 2003, 2006, 2009
- B.5 The Section 151 Officer is responsible for:
- \* The proper administration of the Council's financial affairs
  - \* Setting and monitoring compliance with financial management standards
  - \* Advising on the corporate financial position and on the key financial controls necessary to secure sound financial management
  - \* Providing financial information
  - \* Preparing medium term financial planning, revenue budget and capital programme
  - \* Treasury management.
- B.6 Under Section 114 of the Local Government Finance Act 1988, the Section 151 Officer, having consulted the Head of Paid Service and the Monitoring Officer, will report to the Council and the Council's external auditor if the Council or one of its officers:
- \* Has made, or is about to make, a decision which involves incurring unlawful expenditure
  - \* Has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the Council
  - \* Is about to make an unlawful entry in the Council's accounts.
- B.7 Section 114 of the 1988 Act also requires:

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<sup>1</sup> See 'A Statement on the Role of the Chief Finance Officer in Local Government' (CIPFA)

- \* The Section 151 Officer to nominate a properly qualified member of staff to deputise should s/he be unable to perform the duties under section 114 personally;
- \* The Council to provide the Section 151 Officer with sufficient staff, accommodation and other resources – including legal advice where this is necessary – to carry out the duties under section 114.

### **Monitoring Officer**

- B.8 The Monitoring Officer is responsible for promoting and maintaining high standards of ethical conduct. The Monitoring Officer is also responsible for reporting any actual or potential breaches of the law or maladministration to the Council, and for ensuring that procedures for recording and reporting decisions are operating effectively.
- B.9 The Monitoring Officer (together with the Section 151 Officer) is responsible for advising the Council about whether a decision is likely to be considered contrary or not wholly in accordance with the budget. Actions that may be 'contrary to the budget' include:
- \* Initiating a new policy
  - \* Committing expenditure in future years to above the budget level
  - \* Incurring inter-departmental transfers above virement limits
  - \* Causing the total expenditure financed from council tax, grants and corporately held reserves to increase, or to increase by more than a specified amount.
- B.10 The Monitoring Officer shall be provided by the Council with such offices, accommodation and other resources sufficient to allow her duties to be performed.

### **Senior Officers**

- B.11 Senior Officers- are responsible for:
- \* Ensuring that relevant member bodies are advised of the financial implications of all proposals and that the financial implications have been agreed by the Section 151 Officer.
  - \* Consulting with the Section 151 Officer to seek approval on any matter likely to materially affect the Council's finances, before any commitments are incurred.
- B.12 The Index and Summary at the rear of this Introduction link to detailed Rules relating to this category.

### **C. Financial Planning**

- C.1 The Council is responsible for agreeing the Council's budget, which will be proposed by the Hub Committee for West Devon and Executive for South Hams. In terms of financial planning, the key elements are:

- \* Financial Strategy and the Capital Strategy
- \* Asset Management Plan
- \* The Budget
- \* The Capital Programme

### **Policy Framework**

- C.2 Council is responsible for approving the Policy Framework and Budget. The Policy Framework comprises all statutory plans and strategies as detailed in the Council's Constitution. Council is responsible for making any decisions which would be contrary to the Policy Framework or not keeping within the Budget.
- C.3 The Hub Committee/Executive is responsible for proposing the Policy Framework to Council, approving procedures for agreeing variations to approved budgets, and for determining the circumstances in which a decision will be deemed to be contrary to the budget.
- C.4 The Hub Committee/Executive is responsible for taking in-year decisions on resources and priorities in order to deliver the budget policy framework within the financial limits set by Council.
- C.5 The Index and Summary at the rear of this Introduction link to detailed Rules relating to this category.

### **D. Risk Management and Control of Resources**

#### **Introduction**

- D.1 It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant operational risks to the Council. This should include the proactive participation of all those associated with planning and delivering services.

#### **Risk Management**

- D.2 The Audit Committee is responsible for recommending approval of the Council's Risk Management policy statement and for reviewing the effectiveness of Risk Management.
- D.3 The Head of Paid Service is responsible for preparing the Council's Risk Management policy statement, for promoting it throughout the Council.

#### **Internal control**

- D.4 Internal control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the Council's assets and interests are safeguarded.

- D.5 The Section 151 Officer is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with the statutory and other requirements that govern their use.
- D.6 It is the responsibility of all Senior Officers to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving their financial performance targets.

### **Audit Requirements**

- D.7 The Accounts and Audit Regulations 2015 issued by the Secretary of State for the Environment require every local authority to undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards or guidance. regulation 6 of these regulations requires that each financial year, the authority must conduct a review of the effectiveness of the system of internal control and prepare an annual governance statement (ags) for publication with the council's financial statements.
- D.8 The Audit Commission ceased to function on 31 march 2015 and a transitional body called public sector audit appointments (psaa) has been established by the Local Government Association (LGA) to oversee the management of the Audit Commission's audit contracts until they end in 2017, or 2020 if they are extended. the Secretary of State for Communities and Local Government has delegated certain functions formerly exercised by the Audit Commission to psaa to enable it to deliver these functions. the national audit office (nao) is now responsible for producing and maintaining the code of audit practice for external auditors.
- D.9 The Council may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Customs and Excise and the Inland Revenue, who have statutory rights of access.
- D.10 The Index and Summary at the rear of this Introduction link to detailed Rules relating to this category.

### **E Financial Systems and Procedures**

- E.1 Sound systems and procedures are essential to an effective framework of accountability and control.

#### **General**

- E.2 The Section 151 Officer is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any changes made by the Senior Leadership Team to the existing financial systems or the establishment of new systems must be approved by the Section 151 Officer. However, Senior Officers are responsible for the proper operation of financial processes within their area of responsibility.



- E.3 Any changes to agreed procedures by Senior Officers to meet their own specific service needs should be agreed with the Section 151 Officer.
- E.4 Senior Officers should ensure that staff receive relevant financial training that has been approved by the Section 151 Officer.
- E.5 Senior Officers must ensure that, where appropriate, computer and other systems are registered in accordance with Data Protection legislation. Senior Officers must ensure that staff are aware of their responsibilities under freedom of information legislation.

#### **Income and expenditure**

- E.6 It is the responsibility of Senior Officers to ensure that a proper scheme of delegation for financial management has been established within their area and is operating effectively. The scheme of delegation for financial management should identify staff authorised to act on the Senior Officer's behalf, in respect of payments, income collection and placing orders, together with the limits of their authority and ensure that no staff are able to both order and authorise payments for goods and services. The Hub Committee/Executive is responsible for approving procedures for writing off debts as part of the overall control framework of accountability and control.
- E.7 The Index and Summary at the rear of this Introduction link to detailed Rules relating to this category.

#### **F. External Arrangements**

- F.1 The local authority provides a distinctive leadership role for the community and brings together the contributions of the various stakeholders. It must also act to achieve the promotion or improvement of the economic, social or environmental well-being of its area.
- F.2 The Index and Summary link to detailed Rules relating to this category.

## Financial Procedure Rules – Index and Summary of Limits

Appendix	Contents	Category
<b>Accounting</b> (Section 1)	<ul style="list-style-type: none"> <li>• Financial Management Standards</li> <li>• Separation of Duties</li> <li>• Other Information - Costing</li> <li>• Reports to Member Bodies</li> <li>• Accounting Records</li> <li>• Trading Accounts</li> <li>• Annual Accounts and Treatment of Year End Balances</li> </ul>	Financial Management
<b>Assets</b> (Section 2)	<ul style="list-style-type: none"> <li>• Asset Management</li> <li>• Land and Buildings</li> <li>• Vehicles, Plant and Equipment</li> <li>• Acquisition</li> <li>• Capital Programme</li> </ul>	Risk Management and Control of Resources
<b>Assets - Disposal</b> (Section 3)	<ul style="list-style-type: none"> <li>• Land and Buildings</li> <li>• Vehicles</li> <li>• Plant and Equipment</li> <li>• Computer and Computer Related Equipment</li> <li>• General - Recycling</li> </ul>	Risk Management and Control of Resources
<b>Audit</b> (Section 4)	<ul style="list-style-type: none"> <li>• Internal audit</li> <li>• External audit</li> </ul>	Risk Management and Control of Resources
<b>Banking Arrangements</b> (Section 5)	<ul style="list-style-type: none"> <li>• Bank Accounts</li> <li>• Separation of Duties</li> <li>• Bank Reconciliations</li> <li>• General - Cheques</li> </ul>	Financial Systems and Procedures
<b>Budgets and Budgetary Control</b> (Section 6)	<ul style="list-style-type: none"> <li>• Format of the Budget</li> <li>• Budget Preparation</li> <li>• Resource Allocation</li> <li>• Budget Management</li> <li>• Virement (Budget Changes)</li> <li>• Supplementary Estimate Request</li> <li>• Reserves and Funds for S.106 Agreement</li> <li>• Shared Services</li> <li>• Capital Programme</li> </ul>	Financial Planning
<b>Car Loans</b> (Section 7)	<ul style="list-style-type: none"> <li>• No longer provided by the Council</li> </ul>	
<b>Expenditure - Ordering of Goods and Services</b> (Section 8)	<ul style="list-style-type: none"> <li>• Orders</li> <li>• Ordering</li> <li>• Quotations</li> <li>• Open/Regular Supply Order</li> </ul>	Financial Systems and Procedures

## Financial Procedure Rules – Index and Summary of Limits

Appendix	Contents	Category
	<ul style="list-style-type: none"> <li>• ICT Equipment and Software</li> <li>• Orders, Delivery Notes and Invoices</li> <li>• Orders to Individuals (Self Employed)</li> </ul>	
<b>Expenditure - Payment of Accounts</b> (Section 9)	<ul style="list-style-type: none"> <li>• Invoices</li> <li>• Invoices - Self Employed Status</li> <li>• Payment Request Forms</li> <li>• Receiving/Certification</li> <li>• Authorisation</li> <li>• Separation of Duties</li> <li>• Payment</li> <li>• Returned Cheques</li> <li>• VAT</li> <li>• Credit/Purchase Cards</li> <li>• Financial Year End</li> <li>• Loans Leases and Rental Agreements</li> </ul>	Financial Systems and Procedures
<b>External Funding</b> (Section 10)	Responsibilities for: <ul style="list-style-type: none"> <li>• Senior Officers</li> <li>• Section 151 Officer</li> </ul>	External Arrangements
<b>Fraud, Corruption and Bribery - Prevention</b> (Section 11)	Responsibilities for: <ul style="list-style-type: none"> <li>• Section 151 Officer, Monitoring Officer,</li> <li>• (Internal) Audit Manager</li> <li>• Senior Officers</li> </ul>	Risk Management and Control of Resources
<b>Grants, Subsidies, Claim Forms and Statistical Returns</b> (Section 12)	<ul style="list-style-type: none"> <li>• Grant Conditions</li> <li>• Receipts and Payments</li> <li>• Audit Requirements of the Grant Paying Body</li> </ul>	Financial Systems and Procedures
<b>Income</b> (Section 13)	<ul style="list-style-type: none"> <li>• Charges for Services</li> <li>• Cash Collection and Banking</li> <li>• Personal Cheques</li> <li>• Change Floats</li> <li>• Security</li> <li>• Raising Invoices (Sundry Debtors)</li> <li>• Recovery</li> <li>• Bad and Doubtful Debtors</li> <li>• Cancellations</li> <li>• Financial Year End</li> </ul>	Financial Systems and Procedures
<b>Insurance</b> (Section 14)	<ul style="list-style-type: none"> <li>• Cover</li> <li>• Inspections</li> <li>• Claims</li> </ul>	Risk Management and Control of Resources
<b>Intellectual Property</b>	Responsibilities for:	Risk Management and Control

## Financial Procedure Rules – Index and Summary of Limits

Appendix	Contents	Category
(Section 15)	<ul style="list-style-type: none"> <li>• Senior Officers</li> <li>• Section 151 Officer</li> </ul>	of Resources
<b>Inventories</b> (Section 16)	<ul style="list-style-type: none"> <li>• Inventories</li> <li>• Council Property</li> </ul>	Risk Management and Control of Resources
<b>Partnerships including Shared Services</b> (Section 17)	Responsibilities for: <ul style="list-style-type: none"> <li>• Members</li> <li>• Senior Officers</li> <li>• Section 151 Officer Partners</li> <li>• Shared Services</li> </ul>	Risk Management and Control of Resources
<b>Payments to Employees and Members (Payroll)</b> (Section 18)	<ul style="list-style-type: none"> <li>• Appointment</li> <li>• Appointment – Self Employed Status</li> <li>• Time and Other Amendment Records</li> <li>• Payment Absence</li> <li>• Leavers</li> <li>• Pay Awards</li> <li>• Verification</li> <li>• Staffing</li> </ul>	Financial Systems and Procedures
<b>Payment of Housing and Council Tax Benefits</b> (Section 19)	<ul style="list-style-type: none"> <li>• Personal Data/Declaration of Interest</li> <li>• Payment – BACs</li> <li>• Payment – Cheques</li> </ul>	Financial Systems and Procedures
<b>Petty Cash</b> (Section 20)	<ul style="list-style-type: none"> <li>• Expenditure</li> <li>• Reimbursement</li> <li>• General</li> <li>• Centralised Imprest – Petty Cash Advances</li> </ul>	Financial Systems and Procedures
<b>Retention of Documents</b> (Section 21)	Responsibilities for: <ul style="list-style-type: none"> <li>• Section 151 Officer,</li> <li>• Monitoring Officer,</li> <li>• Senior Officers</li> </ul>	Risk Management and Control of Resources
<b>Risk Management and Internal Control</b> (Section 22)	<ul style="list-style-type: none"> <li>• Risk Management</li> <li>• Internal Control (System of)</li> <li>• System Changes</li> <li>• Corporate Governance</li> <li>• Performance Management/Data Quality</li> <li>• Business Continuity</li> </ul>	Risk Management and Control of Resources
<b>Security</b> (Section 23)	<ul style="list-style-type: none"> <li>• Security;</li> <li>• Safes</li> <li>• Postal Franking Machines</li> <li>• ICT – Software and Hardware</li> <li>• Data – Electronic/Paper</li> </ul>	Risk Management and Control of Resources
<b>Stocks and Stores</b> (Section 24)	<ul style="list-style-type: none"> <li>• Stock Control and Issues</li> <li>• Stock Takes</li> </ul>	Risk Management and Control of Resources

## Financial Procedure Rules – Index and Summary of Limits

Appendix	Contents	Category
	<ul style="list-style-type: none"> <li>• Stock Certificates</li> <li>• Surpluses, Deficiencies and Write Offs</li> </ul>	
<b>Taxation</b> (Section 25)	<ul style="list-style-type: none"> <li>• Pay as You Earn (PAYE)</li> <li>• Value Added Tax (VAT)</li> </ul>	Financial Systems and Procedures
<b>Travel and Subsistence</b> (Section 26)	<ul style="list-style-type: none"> <li>• Claim Completion and Certification</li> <li>• Receipts</li> <li>• Timeliness of Claim</li> <li>• Motor Insurance, Driving Licences and Vehicle Roadworthiness</li> <li>• Council Members</li> </ul>	Financial Systems and Procedures
<b>Treasury Management</b> (Section 27)	<ul style="list-style-type: none"> <li>• Cash Position;</li> <li>• Investments</li> <li>• Borrowing</li> <li>• General including Monitoring</li> <li>• Trust Funds</li> </ul>	Risk Management and Control of Resources
<b>Work for Third Parties</b> (Section 28)	<ul style="list-style-type: none"> <li>• Approval</li> <li>• Legality</li> <li>• Financial Matters</li> <li>• Contracts</li> <li>• Service Provision</li> </ul>	External Arrangements

The following tables summarise the limits quoted in these Rules:

Item Value ex VAT	Petty Cash – Section 20
Up to £30	Petty cash items shall be limited to minor items of expenditure. This amount may only be exceeded with the prior agreement of the <b>Section 151 Officer</b>
Above £30	Variations in reconciliation must be reported to the <b>Section 151 Officer</b> .

Item Value ex VAT	Quotations/Tendering for Goods and Services – Section 8	Requirement
Below £7,500	Most favourable prices and terms, having regard to the principles set out in the Council's Procurement Strategy.	Good Practice
£7,500 to £50,000	3 written quotations appropriately evidenced (in line with Contract Procedure Rules).	Yes
Above £50,000	Tendering in line with Contract Procedure Rules and EU Procedure as appropriate.	Yes
ICT	All system developments and purchases of computer equipment or software must be approved by the relevant <b>Group Manager</b> and <b>Community of Practice Lead for ICT</b> or her/his nominated deputy.	Yes

## Financial Procedure Rules – Index and Summary of Limits

<b>Item Value ex VAT</b>	<b>Inventories – Section 16</b>
Individual items above £100	Inventories of all property (furniture, fittings and equipment) belonging to or in the care of the Council, other than stores, shall be prepared and maintained by the <b>Senior Officer</b> concerned or a designated officer.
<b>Item Value ex VAT</b>	<b>Income: Banking – Sections 5 and 13</b>
Daily/Weekly according to Insurance Limit	All monies received on behalf of the Council shall be banked without delay.
<b>Item Value ex VAT</b>	<b>Income: Unders and Overs – Section 13</b>
Over £30	'Unders and overs' and discrepancies must be reported immediately to the <b>Section 151 Officer</b> .
<b>Item Value ex VAT</b>	<b>Write Off: Bad and Doubtful Debts – Section 12</b>
Finance Up to £5,000	The <b>Section 151 Officer</b> is empowered to write off bad and doubtful debts, after satisfying her/himself that it would be uneconomic or inappropriate for the Council to pursue them, and where appropriate a Legal representative has considered the Council's position.
<b>Item Value ex VAT</b>	<b>Write Off: Bad and Doubtful Debts – Section 12 (continued)</b>
Other Services Up to £5,000	In the case of debts due to other service groups, the <b>Section 151 Officer</b> will consider write off in accordance with the above upon the written authorisation of the Senior Officer involved or her/his deputy.
All Debts Up to £5,000	The total amounts of debt written off by the <b>Section 151 Officer</b> under delegated powers will be reported to the <b>Executive at South Hams and Hub Committee for West Devon</b> .
All Debts Above £5,000	No debts in excess of £5,000 may be written off without the prior approval of the <b>Section 151 Officer</b> and the <b>Executive at South Hams and Hub Committee for West Devon</b> .
<b>Item Value ex VAT</b>	<b>Write Off: Stock Deficiencies and Obsolete Stocks – Section 24</b>
Up to £500	Stocks or stores of less than £500 in value at date of disposal may be disposed of or exchanged at the relevant <b>Senior Officer's</b> written discretion, but a second officer shall formally witness the disposal at a local level and the appropriate financial records retained.
£500 to £1,500	Stocks or stores with a value at date of disposal between £500 and £1500 may be disposed of or exchanged at the <b>Senior Officer's</b> written discretion, but a second officer shall formally witness the disposal at a local level and the appropriate financial records retained.
£1,500 to £5,000	Where stocks or stores are valued at date of disposal above £1500 but less than £5,000 sealed bids are to be sought and it shall be the responsibility of the <b>Section 151 Officer</b> and the relevant <b>Senior Officer</b> or their nominated deputy, to obtain the best possible price.

## Financial Procedure Rules – Index and Summary of Limits

Item Value ex VAT	Write Off: Stock Deficiencies and Obsolete Stocks – Section 24
Above £5,000	The disposal or write off of any stock or stores item/s valued at more than £5,000 at date of disposal shall require the prior approval of the <b>Executive/Hub Committee</b> .

Item Value ex VAT	Use of Reserves – Section 6
Up to £30,000	The <b>Section 151 Officer</b> may approve the use of Earmarked Reserves and Unearmarked General Fund Reserves up to a limit of £30,000, and may also approve increasing or creating Earmarked Reserves up to a limit of <b>£30,000</b> .
Greater than £30,000	The use of Reserves over £30,000 requires the prior approval of the <b>Executive for South Hams or Hub Committee for West Devon</b> upon receipt of a report from the <b>Senior Officer and Section 151 Officer</b> , with a recommendation to Council (or direct Council approval). The use of reserves for <b>Salcombe Harbour</b> requires a recommendation to Council by the Salcombe Harbour Board.

Item Value ex VAT	Use of S.106 Monies – Section 6
Up to £30,000	Authorisation of expenditure using funds received from S.106 Agreements must be sought from the <b>Section 151 Officer</b> for amounts up to £30,000 by the appropriate <b>Senior Officer</b> , following consultation with the relevant <b>Ward Councillor</b> as a minimum.
Greater than £30,000	The use of funds received from S.106 Agreements for projects over £30,000 requires the prior approval of the <b>Executive for South Hams or Hub Committee for West Devon</b> upon receipt of a report from the <b>Senior Officer and Section 151 Officer</b> , following consultation with the relevant <b>Ward Councillor</b> .

Budget Changes (Virement) – Section 6	South Hams - Authorisation Required
Where the sum involved is up to £5,000	The appropriate responsible budget holder may approve the virement in consultation with the appropriate accountant. No form is required;
Where the sum involved is greater than £5,000 but is less than £30,000	A virement form is required which is to be authorised by the relevant <b>Senior Officer and Section 151 Officer</b> or nominated deputy;

Budget Changes (Virement) – Section 6	South Hams - Authorisation Required (continued)
Where the sum involved is between £30,000 and £100,000	The appropriate <b>Senior Officer</b> and the <b>Section 151 Officer</b> shall sign a virement form in consultation with the appropriate accountant and submit it to the <b>Executive</b> for approval;
Where the amount exceeds £100,000 per individual virement	The appropriate <b>Senior Officer</b> and the <b>Section 151 Officer</b> shall sign a virement form in consultation with the appropriate accountant and submit it to full Council for approval.

Budget Changes (Virement) – Section 6	West Devon - Authorisation Required
Between an RBO's own cost centres	Responsible budget holder

## Financial Procedure Rules – Index and Summary of Limits

Between cost centres within the same <b>Committee</b> but with different RBOs	The relevant <b>Senior Officer</b> in consultation with the <b>Section 151 Officer</b>
Between cost centres in different <b>Committees</b>	Approval of both relevant <b>Committees</b>

Item Value ex VAT	Disposals: Land and Buildings – Section 3
<b>South Hams</b> Up to £300,000	The <b>Community of Practice for Assets (Corporate Property Officer)</b> in consultation with the <b>Section 151 Officer, the Lead Councillor for Assets and the Leader</b> , may agree to the disposal of land or building assets, where the market value does not exceed <b>£300,000</b>
Above £300,000	The disposal of any land and buildings over <b>£300,000.00</b> in market value requires the prior approval of the <b>Executive</b> and shall be made within the context of the Council's Asset Management Plan.
<b>West Devon</b> Up to £150,000	The <b>Community of Practice for Assets (Corporate Property Officer)</b> in consultation with the <b>Section 151 Officer, and the Lead Councillor for Assets</b> , may agree to the disposal of land or building assets, where the market value does not exceed <b>£150,000</b>
Above £150,000	The disposal of any land and buildings over <b>£150,000.00</b> in market value requires the prior approval of the <b>Hub Committee</b> and shall be made within the context of the Council's Asset Management Plan.

Item Value ex VAT	Disposals: Plant and Equipment – Section 3
Up to £500	Any items of plant or equipment of up to £500 in value that are surplus to the Council's requirements may be disposed of with the written authorisation of the relevant <b>Senior Officer</b> . A second officer shall formally witness the disposal at a local level and the appropriate records retained.
£500 to £1,500	Any items of plant or equipment of between £500 and £1500 in value that are surplus to the Council's requirements may be disposed of with the written authorisation of the <b>Senior Officer</b> . A second officer shall formally witness the disposal at a local level and the appropriate records retained.
£1,500 to £5,000	Sealed bids are to be sought in respect of any items of plant and equipment that are surplus to the Council's requirements valued between £1500 and £5,000 on the prior written authority of the relevant <b>Senior Officer</b> or his/her nominated deputy. It shall be the responsibility of the <b>Section 151 Officer</b> and the relevant <b>Senior Officer</b> or their nominated deputy, to obtain the best possible price.
Above £5,000	The disposal of any item of plant and equipment valued at more than £5,000, shall be by advertised as a competitive tender unless the relevant <b>Senior Officer</b> , after consulting the <b>Section 151 Officer</b> , decides that disposal shall be by public auction or other appropriate method e.g. part exchange.

Item Value ex VAT	Acquisitions: Land and Buildings – Section 2
<b>South Hams</b> Up to £300,000	The <b>Community of Practice for Assets (Corporate Property Officer)</b> in consultation with the <b>Section 151 Officer, Lead Councillor for Assets and Leader</b> , may agree to the acquisition of land and property where the market



## Financial Procedure Rules – Index and Summary of Limits

Item Value ex VAT	Acquisitions: Land and Buildings – Section 2
	value does not <b>exceed £300,000.00</b>
Above £300,000	The acquisition of any land and buildings of a value in excess of <b>£300,000.00</b> requires the approval of the <b>Executive</b> and shall be made within the context of the Council's Asset Management Plan.
<b><u>West Devon</u></b> Up to £150,000	The <b>Community of Practice for Assets (Corporate Property Officer)</b> in consultation with the <b>Section 151 Officer, and Lead Councillor for Assets</b> may agree to the acquisition of land and property where the market value does not <b>exceed £150,000.00</b>
Above £150,000	The acquisition of any land and buildings of a value in excess of <b>£150,000.00</b> requires the approval of the <b>Hub Committee</b> and shall be made within the context of the Council's Asset Management Plan.

**Why is this important?**

Maintaining proper accounting records is one of the ways in which the Council discharges its responsibility for stewardship of public resources.

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

**Risks:**

The Council may not account for all income received and expenditure made;

Financial systems could provide inaccurate or misleading information leading to poor decision making;

Insecure accounting or financial systems could give rise to opportunities for fraud or loss; and Statutory requirements for reporting on the Council's financial affairs may not be met.

**Responsibilities****Financial Management Standards**

- 1.1 All staff and Councillors have a duty to abide by the highest standards of probity in dealing with financial issues. This is facilitated by ensuring everyone is clear about the standards to which they are working and the controls that are in place to ensure that these standards are met.
- 1.2 The **Section 151 Officer** shall:
  - Ensure the proper administration of the financial affairs of the Council.
  - Set the financial management standards and to monitor compliance with them.
  - Ensure proper professional practices are adhered to and to act as head of profession in relation to the standards, performance and development of finance staff throughout the Council.
  - Advise on the key strategic controls necessary to secure sound financial management.
  - Ensure that financial information is available to enable accurate and timely monitoring and reporting of comparisons of national and local financial performance indicators.
  - Determine the accounting procedures and keep the accounting records of the Council including cost and stores accounts for all service groups of the Council, and to select suitable accounting policies and ensure that they are applied consistently
  - Administer the Council's arrangements for underspendings to be carried forward to the following financial year.
- 1.3 Where she/he is satisfied that it is in the interest of administrative efficiency for any such records to be maintained in other service groups, the **Senior Officer** of that service group shall have a duty to maintain a standard of financial control which is to the satisfaction of the **Section 151 Officer**.
- 1.4 In all cases the **Section 151 Officer** shall be consulted and shall approve the form of new accounting records, financial stationery and systems or changes to them following consultation with the **Senior Officer** of the service group concerned.

1.5 This will include adequate records to provide a management trail leading from the source of income/expenditure through to the accounting statements. Financial and accounting systems shall incorporate appropriate controls to ensure that, where relevant:

- All input is genuine, complete, accurate, timely and not previously processed;
- All processing is carried out in an accurate, complete and timely manner; and
- Output from the system is complete, accurate and timely.

1.6 **Senior Officers** shall:

- Promote the financial management standards set by the **Section 151 Officer** to their departments and to monitor adherence to the standards and practices, liaising as necessary with the **Section 151 Officer**.
- Promote sound financial practices in relation to the standards, performance and development of staff in their departments.

### **Separation of Duties**

1.7 The following principles should be applied when allocating accounting duties, unless good reason disallows and the prior approval of the **Section 151 Officer** has been obtained normally through Internal Audit:

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

Compensating controls should be in place where the **Section 151 Officer** approves a reduced separation of duties for reasons such as low staffing levels.

### **Other Information**

1.8 **Senior Officer** shall supply requisite information to the **Section 151 Officer** for financial costing and accounting purposes.

1.9 The **Section 151 Officer** shall by arrangement with a Senior Officer provide such costing or other financial information required to facilitate the efficient conduct of their functions by officers responsible for incurring expenditure.

1.10 The **Senior Officer** will be the responsible for advising the **Section 151 Officer** of any likely overspending of their authorised budget provision.

### **Reports to Member Bodies**

1.11 Copies of all reports having financial implications shall be submitted to the **Section 151 Officer** in sufficient time prior to the meeting of the member body at which such reports are to be considered to enable the **Section 151 Officer** to make her/his observations on the financial implications to the **Senior Officer** concerned. Where the **Section 151 Officer** is not a signatory to the report, her/his observations and submissions must be reflected in the report by the author.

**Accounting Records**

- 1.12 The **Section 151 Officer** is to ensure that accounting and financial records are held securely and procedures are in place to enable accounting records to be reconstituted in the event of a system failure. A documented and tested disaster recovery plan to allow information processing to resume quickly in the event of an interruption shall be in place.
- 1.13 Working papers leading to the preparation of Final Accounts are to be kept by the officer responsible for the year of audit and for preceding years in accordance with the Document Retention Policy. Adequate records to provide a management trail leading from the source of income/expenditure through to accounting statements is to be maintained.
- 1.14 All financial systems shall be documented and users trained in their operation prior to the system being used in a live environment.

**Trading Accounts**

- 1.15 The **Section 151 Officer** shall advise on the establishment and operation of Trading Accounts. With **Senior Officers**, s/he will ensure that the same accounting principles are applied in relation to trading accounts as for other services.
- 1.16 **Senior Officers** shall observe all statutory requirements in relation to business units, including the maintenance of a separate revenue account to which all relevant income is credited and all relevant expenditure and overheads are charged. An annual report shall be prepared in support of the final accounts.

**Annual Accounts and Treatment of Year End balances**

- 1.17 The **Section 151 Officer** shall:
- Prepare annual accounts, which present fairly the financial position of the Council, in accordance with statutory and professional requirements, CIPFA best practice and in liaison with the External Auditors.
  - Make proper arrangements for the audit of the accounts;
  - A timetable for their preparation shall be drawn up and staff and the external auditors advised accordingly.
  - Prepare and sign the statutory annual statement of accounts, and produce an annual report. There is a statutory requirement for the **S.151 Officer** to sign the accounts and the Council to approve the accounts by the required date and this must be adhered to
  - Select suitable accounting policies and to ensure that they are applied consistently. The accounting policies are set out in the statement of accounts, which is prepared at 31 March each year;
- 1.18 For specific trading accounts, the year-end balance will be taken to an earmarked reserve in line with current legislation.
- 1.19 **Senior Officers** must:
- Comply with accounting guidance provided by the **Section 151 Officer** to supply the information required. This includes notification of any outstanding income and/or expenditure

relating to the previous financial year as soon as possible after the 31st March in accordance with the year end timetable

- Maintain adequate records to provide a trail leading from the source of income/expenditure to the accounts
- Consult and obtain the approval of the **Section 151 Officer** before making any changes to accounting records and procedures.

1.20 The **Section 151 Officer** is to administer the Council's arrangements for under and overspendings at year end to be carried forward to the following financial year. This will include advising the **Hub Committee** for **West Devon** and the **Executive** for **South Hams** comparisons of actual income and expenditure with that budgeted and advice on the appropriate treatment of the year end balances, having considered the reasons behind the nature of their origins.

1.21 For **West Devon** Responsible Budget Officers should seek to match overspends with underspending within the same costs centres within the same **Committees**.

For **West Devon**

Any overspending on a **Committee's** budget may be carried forward to the following year. If this course of action is taken the overspend will constitute the first call on that **Committee's** budget in the following year.

Net underspendings on a **Committee's** budgets may be carried forward subject to the approval of the **Hub Committee** following advice from the **Section 151 Officer** who shall consider the implications of the Council's overall financial position.

**Why is this important?**

The Council holds assets in the form of property, vehicles, equipment, furniture and other items worth many millions of pounds. It is important that assets are safeguarded and used efficiently in service delivery, and that there are arrangements for the security of both assets and information required for service operations. An up-to-date asset register and inventory is a prerequisite for sound asset management.

**Risks:**

Assets may be acquired without prior approval, for which there is no use and/or on financially unacceptable terms;

Assets could be lost, stolen or used for non-Council business; and

Assets are not available when required in the provision of a service.

**Responsibilities****Asset Management**

2.1. The Community of Practice Lead for Assets shall be the **Corporate Property Officer (CPO)**.

2.2. The **Corporate Property Officer** shall be the Chair of , and be responsible for the operation of the Asset Management Group whose role is set out in the Council's Asset Management Plan and includes:

- Providing advice to Councillors and Senior Leadership Team on strategic management of the Council's assets and the performance of the Council's portfolio;
- Contributing to plans dealing with maintenance, acquisitions and disposals of land and property, health and safety and risk assessment, so far as the Council's portfolio is concerned; and
- Recommending projects to be included in the Council's Capital Programme and monitoring of these projects.

2.3. The **Corporate Property Officer** shall be empowered to:

- Give consent to the assignment, sub-letting or surrender of existing leases (authority also to be exercised by a nominated deputy).
- Subject to authorisation by the Monitoring Officer, to authorise and take necessary legal proceedings towards the termination and renewal of leases, agreements and licences.
- Subject to authority from the Monitoring Officer to take legal and court action to enforce payment of rent and charges due
- To approve the revision of rents and licence fees
- To approve amendments to the terms of an existing lease, agreement or licence.
- To grant or obtain easements and wayleaves
- To grant licences, periodic tenancies and leases (not exceeding 15 years) at a fee / rental calculated.
- To approve the conveyancing of land to public utility services in connection with Council development.
- Day to day management of Council land and buildings where not delegated to other **Senior Officers**.
- Imposition or release of covenants in respect of land where the Council has an interest.

- Ensure that lessees and other prospective occupiers of Council owned land are not allowed to take possession or enter the land until a lease or agreement (in a form approved by the Council's Solicitor has been completed. The **Corporate Property Officer** shall maintain an asset register (terrier) of all properties owned by the Council (except dwellings provided under the Housing Acts) recording amongst other things service user, purpose for which held, location, nature of the Council's interest and rents payable, extent and plan references, purchase details, particulars and terms of tenancies granted together with other information as may be required by law.

2.4. The **Section 151 Officer** shall:

- Ensure that an asset register is maintained by the Finance Community of Practice in accordance with good practice for all fixed assets with a value in excess of £10,000 and all land/buildings regardless of value. This register should be compared with other registers (e.g. the property terrier) on a regular basis. An up to date asset register is a prerequisite for proper fixed asset accounting and sound asset management.
- To receive the information required for accounting, costing and financial records from each relevant **Senior Officer**.
- To ensure that arrangements are made for the assets to be valued in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice (CIPFA/LASAAC).

2.5. **Senior Officers** shall

- Ensure that the department informs the **Section 151 Officer** of the purchase/disposal of moveable assets in accordance with arrangements defined by the **Section 151 Officer**.
- Assist the **Corporate Property Officer** to provide a report on property performance and asset management to the Council.

### **Land and Buildings**

2.6. The **Council's Monitoring Officer** will have custody of all title deeds or Land Registry confirmation documents under security arrangements agreed with the **Section 151 Officer**.

### **Vehicles, Plant and Equipment**

2.7. Senior Officer shall ensure that up to date records exist for all vehicles and items of plant and equipment under her/his control. The records are to include:

- Registration or serial numbers;
- Council identification numbers;
- Description; and
- Usual storage location.

2.8. All Council vehicles and items of plant and equipment are to be kept under secure arrangements at all times. Relevant **Senior Officers** shall nominate the employees who are responsible for the security arrangements.

2.9. No private use is permitted of any vehicle (except cars leased to officers for this purpose) or item of plant or equipment in the ownership of or leased to the Council.

**Acquisition**

- 2.10. All purchases or the leasing of land, buildings, vehicles or items of plant and equipment shall be on the best financial terms that can be obtained for the Council. The purchasing or leasing arrangements are to be in accordance with the purchasing arrangements laid down elsewhere in these Rules and the Contract Procedure Rules.
- 2.11. All purchases or the leasing of land, buildings, vehicles or items of plant or equipment shall be within the budget provision and the **Section 151 Officer** must be consulted on the method of financing. This includes any simple rental agreements because of the potential implication for the accounts.

Item Value ex VAT	Acquisitions – Land and Buildings
<b><u>South Hams</u></b> Up to £300,000	The <b>Community of Practice for Assets (Corporate Property Officer)</b> in consultation with the <b>Section 151 Officer, Lead Councillor for Assets and Leader</b> , may agree to the acquisition of land and property where the market value does not <b>exceed £300,000.00</b>
Above £300,000	The acquisition of any land and buildings of a value in excess of <b>£300,000.00</b> requires the approval of the <b>Executive</b> and shall be made within the context of the Council's Asset Management Plan.
<b><u>West Devon</u></b> Up to £150,000	The <b>Community of Practice for Assets (Corporate Property Officer)</b> in consultation with the <b>Section 151 Officer, and Lead Councillor for Assets</b> may agree to the acquisition of land and property where the market value does not <b>exceed £150,000.00</b>
Above £150,000	The acquisition of any land and buildings of a value in excess of <b>£150,000.00</b> requires the approval of the <b>Hub Committee</b> and shall be made within the context of the Council's Asset Management Plan.

**Insurance**

- 2.12. All buildings, vehicles or plant or equipment shall be appropriately insured, see also FPR Insurance. The circumstances of losses of or damage to any vehicle or item of plant and equipment must be reported immediately to the relevant **Senior Officer** and the **Section 151 Officer**. Losses are to be recorded in the appropriate inventory or asset register.

**Capital Programme (Links to the Contract Procedure Rules)**

- 2.13. The **Section 151 Officer** shall:
- Issue guidance concerning capital schemes and controls, for example, on project appraisal techniques. The definition of 'capital' will be determined by, having regard to government regulations and accounting requirements.
  - Determine the most appropriate method of funding of items approved in the capital programme in subsequent financial years.



2.14. The **Section 151 Officer** and **Corporate Property Officer**, in association with other relevant **Senior Officers** shall:

- Ensure that specific approval has been obtained from the Council, or as delegated, for capital expenditure prior to any costs being incurred;
- Prepare capital estimates and jointly report them to Council for approval. Council approval is required where a **Senior Officer** proposes to bid for or exercise additional borrowing not anticipated in the capital programme. This is because the extra borrowing may create future commitments to financing costs.
- Procurement for approved capital projects must be made in line with the Contract Procedure Rules.
- Where any tender for projects under the Capital Programme exceeds the available budget by 10% or £50,000 approval to proceed may be made by the **Corporate Property Officer** and **S.151 Officer** with retrospective reporting through the monitoring process. Above these amounts the specific approval of the Hub **Committee** should be sought prior to acceptance.
- Have monitoring responsibilities to receive regular reports from Project Managers on the performance of their project; and report quarterly to the **Executive** for **South Hams** and the **Hub Committee** for **West Devon** on the overall progress of the Capital Programme. The monitoring report will outline the budget position as a whole and include, as a minimum, the financial position of each approved project.

### **Project Overspends**

2.15. In monitoring expenditure on a project, the **Officer/Project Manager** shall make all efforts to ensure that no overspend occurs. In exceptional circumstances he/she shall seek the formal approval of the **S.151 Officer**, **Corporate Property Officer** or Member body at the earliest opportunity where the approved expenditure appearing in the capital programme is likely to be exceeded.

2.16. The following table sets out the authorisation required:

#### **Authorisation of capital project overspends:**

<b>Project Total Value</b>	<b>Overspend excl. VAT</b>	<b>Authorised By</b>
Up to £500,000 excl. VAT	£25,000 to £50,000	<b>S.151 Officer and CPO</b> in consultation with the <b>Relevant Executive Member (SH)</b> ; or <b>Chairman of Hub (WD)</b> With retrospective reporting to the <b>Executive (SH)</b> or <b>Hub Committee (WD)</b> within the quarterly monitoring report.
Up to £500,000	Exceeds £50,000	<b>WD Hub Committee</b> <b>South Hams Executive</b>
Over £500,000	10%	<b>WD Hub Committee</b> <b>South Hams Executive</b>

2.17. **Senior Officers** shall:

- Comply with guidance concerning capital schemes and controls issued by the **Section 151 Officer**.

- Ensure that credit arrangements, such as leasing agreements, are not entered into without the prior approval of **Section 151 Officer** and, if applicable, approval of the scheme through the capital programme.
- Ensure that all capital proposals have undergone a project appraisal in accordance with guidance issued by the **Section 151 Officer**.
- A scheme and estimate, including project plan, progress targets and associated revenue expenditure is prepared for each capital project, for approval by the appropriate **Committee** and by Council; accountability for each proposal is accepted by a named project leader.
- To ensure that adequate records are maintained for all capital contracts.
- To consult with the **Section 151 Officer** where the **Senior Officer** proposes to bid for capital expenditure supported by an external capital grant to support expenditure that has not been included in the current year's capital programme. The capital expenditure and external capital grant should then be reported to the **Hub Committee** as part of the capital programme monitoring report.

**Why is this important?**

It would be uneconomic and inefficient for the cost of assets to outweigh their benefits. Obsolete, non-repairable or unnecessary resources should be disposed of in accordance with the law and the regulations of the Council with the objective of securing maximum residual value.

**Risks:**

Assets could be sold when there remains an operational use for them;  
 Assets could be sold for far less than the market or expected residual value;  
 Assets could be disposed of to officers, Councillors or others at no or very little cost, which could be construed as tantamount to fraud; and compliance with Government directives such as for electronic equipment.

**Responsibilities**

- 3.1. Assets no longer required may be disposed of, but only in accordance with the law and the rules of the Council as to maximise the benefit.
- 3.2. The relevant **Senior Officers** will ensure that income received from the sale of surplus assets is properly banked and coded to the Council's accounts, and the **Section 151 Officer** informed promptly.
- 3.3. The **Section 151 Officer** will ensure that the appropriate accounting entries are made to remove the value of disposed assets from the Council's records and to include the sale proceeds in the accounts as appropriate
- 3.4. The proceeds for the sale of any asset will be held corporately and may not be attributed to the service that used or disposed of the asset.

**Land and Buildings**

- 3.5. The **Corporate Property Officer**, in association with **Senior Officers**, will draft the Council's Disposal Strategy and ensure that the procedures in the Strategy are complied with.
- 3.6. The following limits apply to the disposal of land and buildings:

<b>Item Value ex VAT</b>	<b>Disposals: Land and Buildings – Section 3</b>
<b><u>South Hams</u></b> Up to £300,000	The <b>Community of Practice for Assets (Corporate Property Officer)</b> in consultation with the <b>Section 151 Officer, the Lead Councillor for Assets and the Leader</b> , may agree to the disposal of land or building assets, where the market value does not exceed <b>£300,000</b>
Above £300,000	The disposal of any land and buildings over <b>£300,000.00</b> in market value requires the prior approval of the <b>Executive</b> and shall be made within the context of the Council's Asset Management Plan.
<b><u>West Devon</u></b> Up to £150,000	The <b>Community of Practice for Assets (Corporate Property Officer)</b> in consultation with the <b>Section 151 Officer, and the Lead Councillor for Assets</b> , may agree to the disposal of land or building assets, where the market value does not exceed <b>£150,000</b>

Item Value ex VAT	Disposals: Land and Buildings – Section 3
Above £150,000	The disposal of any land and buildings over <b>£150,000.00</b> in market value requires the prior approval of the <b>Hub Committee</b> and shall be made within the context of the Council’s Asset Management Plan.

**Vehicles**

- 3.7. Any vehicles that are surplus to the Council's requirements shall only be disposed of on the prior written authority of the relevant **Senior Officer**. S/he is empowered to dispose of vehicles by way of trade-in or, following advertisement, to the highest tenderer and to hire additional vehicles where necessary. Where a vehicle has little or no sale value parts should be re-used where appropriate. The disposal of any vehicle shall either be by part-exchange or by public auction in normal circumstances. The decision on the method of disposal is the responsibility of the relevant **Senior Manager**, in consultation with the **Section 151 Officer**, who may also in exceptional circumstances use alternative methods where it is beneficial to the Council.
- 3.8. All documentation relating to the sale of any vehicle is to be retained in safe custody for a period of six years and is to be available for inspection by Internal Audit, if requested.
- 3.9. Any inventory or similar record relating to the vehicle disposed of is to be endorsed with the date of disposal and the receipt number for the income received.

**Plant and Equipment**

- 3.10. The term equipment in this section includes all equipment of the Council including engineering, building and office equipment or machinery, but excluding computer equipment.
- 3.11. Proposed disposals of plant and equipment that are surplus to the Council’s requirements shall not be separated to avoid the following approval and reporting limits:

Item Value ex VAT	Disposals – Plant and Equipment
Up to £500	Any items of plant or equipment of up to £500 in value that are surplus to the Council's requirements may be disposed of with the written authorisation of the relevant Senior Manager. A second officer shall formally witness the disposal at a local level and the appropriate records retained.
£500 to £1,500	Any items of plant or equipment of between £500 and £1500 in value that are surplus to the Council’s requirements may be disposed of with the written authorisation of the <b>Senior Officer</b> . A second officer shall formally witness the disposal at a local level and the appropriate records retained.
£1,500 to £5,000	Sealed bids are to be sought in respect of any items of plant and equipment that are surplus to the Council’s requirements valued between £1500 and £5,000 on the prior written authority of the relevant <b>Senior Officer</b> or his/her nominated deputy. It shall be the responsibility of the <b>Section 151 Officer</b> and the relevant <b>Senior Officer</b> or their nominated deputy, to obtain the best possible price.

Item Value ex VAT	Disposals – Plant and Equipment (continued)
Above £5,000	The disposal of any item of plant and equipment valued at more than £5,000, shall be by advertised as a competitive tender unless the relevant <b>Senior Officer</b> , after consulting the <b>Section 151 Officer</b> , decides that disposal shall be by public auction or other appropriate method e.g. part exchange.

- 3.12. The notice offering an item of plant and equipment for sale, regardless of value, is to state that any offer or tender is to be sent to the Finance Community of Practice in a plain sealed envelope endorsed only with the name of the goods to which the offer or tender relates. The name of the person or firm must not be stated on the envelope. (In the case of amounts estimated £30,000 the tendering process described in the Contract Procedure Rules shall apply).
- 3.13. Up to an estimated value of **£30,000**, all offers or tenders received are to be held unopened in safe custody by the Finance Community of Practice until the submission date and time has expired. Tenders must be opened and recorded in the presence of two officers.
- 3.14. No offers or tenders are to be considered after the date and time for the submission of offers or tenders has expired.
- 3.15. On acceptance of the highest offer, the purchaser must pay the Council before the item is released.
- 3.16. All documentation relating to the sale of any item of plant and equipment is to be retained in safe custody for a period of six years and is to be available for inspection by Internal Audit, if requested.
- 3.17. Any inventory or similar record relating to the item of plant and equipment disposed of is to be endorsed with the date of disposal and the receipt number for the income received.

#### **Computer and Computer Related Equipment**

- 3.18. The disposal of computers and computer related equipment on behalf of the Council is the responsibility of the **Community of Practice Lead for ICT**, although the above principles will apply.
- 3.19. In certain circumstances, where the cost of preparing an item for disposal exceeds the estimate of likely income, obsolete equipment may be destroyed on obtaining the prior written authority of the **Section 151 Officer** or her/his authorised representative.
- 3.20. Disposal of electrical and electronic equipment including household appliances, IT/ telecommunications equipment, electrical and electronic tools, leisure and sports equipment etc. should comply with any relevant government/health and safety directives. Wherever possible, items should be offered for re-use or recycling where there is little or no residual value.

**Why is this important?****Internal Audit**

The Chartered Institute of Public Finance and Accountancy (CIPFA) states that 'Internal audit is an assurance function that primarily provides an independent and objective opinion to the Council on the control environment comprising risk management, control and governance by evaluating its effectiveness in achieving the Council's objectives. Internal audit objectively examines, evaluates and reports on the adequacy and effectiveness of the control environment as a contribution to the proper, economic, efficient and effective use of resources'.

**External Audit**

External auditors are appointed by the Audit Commission (or other relevant government body), pending a move to the Council, at the end of the current contract, appointing its own external auditor using an Independent Audit Appointment Panel. External auditors are required to be satisfied that proper arrangements have been made by the Council for governance and securing value for money in its use of resources. This work includes providing a certificate on the Council's published accounts and an annual letter to Councillors outlining the auditor's key findings and recommendations.

**Risks:**

Changes in the delivery of services could lead to internal control systems failing thereby increasing the possibility of fraud, loss, extravagance, waste or embarrassment to the Council; and The Council could face legal action for failing to maintain an adequate and effective internal audit service.

**Responsibilities****Internal Audit**

- 4.1. The Accounts and Audit Regulations state that a relevant body must 'maintain an adequate and effective system of internal audit of the Council's accounting records and of its system of control in accordance with the proper internal audit practices'.
- 4.2. The Council, through the **Section 151 Officer**, shall therefore make provision for an independent internal audit in accordance with the professional standards set out in the CIPFA Code of Practice for Internal Auditors in Local Government in the United Kingdom.
- 4.3. Representatives from **Internal Audit** shall have authority to:
  - Enter at all reasonable times on to any Council premises or land;
  - Have access to all assets, records documents and correspondence relating to any transaction of the Council;
  - Require and receive such information and explanations as are necessary concerning any matter under examination;
  - Require any employee or agent of the Council to account for cash, stores or any other Council property under her/his control; and
  - Access records belonging to third parties, such as contractors, partners etc. when required. Such a requirement shall be written into all contracts and partnership agreements.

- 4.4. The **Section 151 Officer** and **Senior Officers** must ensure that the above requirements are not compromised, and that all records and systems are up to date and available for inspection.
- 4.5. The **Internal Auditor** will follow professional standards and guidelines issued by CIPFA, specifically the Code of Practice for Internal Audit in Local Government in the United Kingdom and prepare risk based strategic and annual audit plans as a basis of their work.
- 4.6. At the beginning of each financial year, the **Internal Auditor** will present to the **Audit Committee** a risk based audit plan which over a period of time will cover all aspects of the Council's control environment and be accompanied by Terms of Reference and a Strategy setting out how the plan will be achieved.
- 4.7. Internal audit will report on its activities to the **Audit Committee** quarterly. Such reports are to include details of action agreed on recommendations of a significant nature and the **Internal Auditor** shall deliver an annual opinion as to the adequacy of internal control within the authority.
- 4.8. **Senior Officers** are to consider and promptly respond to recommendations set out in Internal Audit reports and to ensure that any agreed actions arising from the recommendations are carried out in a timely and efficient fashion.

#### **Systems Changes - Direct or Indirect Financial Nature**

- 4.9. The **Section 151 Officer** shall advise the **Internal Auditor** of any changes to systems that s/he has been informed of, to allow Internal Audit to influence the controls in the new system at an early stage.

#### **Irregularities (Anti-Fraud and Corruption)**

- 4.10. The **Section 151 Officer** in conjunction with the **Monitoring Officer**, must ensure that effective procedures are in place to promptly investigate any fraud, corruption or other irregularity.
- 4.11. The Council's 'Anti-Fraud, Corruption and Bribery Policy and Strategy' is the responsibility of the **S.151 Officer, Monitoring Officer** and **Internal Auditor** and sets out the Council's anti-fraud position. A published 'Response Plan' sets out the procedures to be followed for investigations.
- 4.12. Internal Audit officers will be the normal independent investigators particularly where suspicions involve assets. The **Internal Auditor** must set aside a contingency budget within the audit plan to cover such eventualities, having regard to other pressures on the team.

#### **Direct Access to the Head of Paid Service, the Audit Committee and Executive or Hub Committee**

- 4.13. In the event of the necessity arising, the facility exists for Internal Audit to have direct access to the **Head of Paid Service, S.151 Officer** and the Chairman the **Audit Committee** and/or of the **Executive** or **Hub Committee**.

**External Audit**

- 4.14. The **Section 151 Officer** shall ensure that there is effective liaison between external and internal audit.
- 4.15. The **Section 151 Officer** will work with the external auditor and advise the Council, **Executive** or **Hub Committee**, and the **Audit Committee** on their responsibilities in relation to external audit.
- 4.16. **Senior Officers** shall ensure that external audit are given access at reasonable times to premises, personnel, documents and assets which the external auditors consider necessary for the purposes of their work.



**Why is this important?**

Banking arrangements determine who has access to the funds of the Council. All the Council's income and expenditure is managed through its bank accounts. Each day many transactions take place between the Council, its customers and the Council's bankers. Bank accounts are, therefore, exposed to risk in the form of fraud or error. As a result tight control over setting them up, maintaining them and dealing with the transactions that flow through them is required.

**Risks:**

Bank accounts could be opened in the name of the Council with the aim of perpetrating a fraud; Unauthorised persons could gain access to the Council's bank account and carry out fraudulent transactions; and Banking instruments, e.g. cheques, money orders etc. could be stolen and used to steal money from the Council's bank account.

**Responsibilities****Section 151 Officer**

- 5.1. All arrangements with the Council's bankers regarding the Council's bank accounts and the terms on which they are conducted shall be made by the **Section 151 Officer** who will advise on the establishment of suitable controls over access to the bank account including approval of signatories.
- 5.2. No account shall be opened, closed or altered with any bank or other such institution without the prior approval of the **Section 151 Officer**.
- 5.3. All the Council's bank accounts must be in the full name of the Council.
- 5.4. Cheques and related stationery shall be ordered only on the authority of the **Section 151 Officer** or nominated Deputy who shall make proper and secure arrangements for safe custody.
- 5.5. All cheques drawn on the Council's bank accounts shall be signed by the **S.151 Officer** or an officer designated in the Bank's mandate or bears the facsimile signature of the **S.151 Officer**.

**Separation of Duties**

- 5.6. The **Section 151 Officer** shall arrange such safeguards as she/he deems necessary and practicable including separation of staff duties so that as far as possible the following. The  
:
  - Receipt and banking of cash and cheques;
  - Checking of creditors'; benefits; salaries and wages;
  - Control of cheques;
  - Preparation of cheques;
  - Despatch of cheques; and
  - Reconciliation of bank balances

**Reconciliation of Bank Accounts**

- 5.7. The **Section 151 Officer** shall nominate an officer to be responsible for reconciling all bank accounts in the name of the Council with the accounting records on a regular basis, and not less frequently than monthly. The reconciliation statement is to be signed jointly by the officer responsible for its preparation and the **Section 151 Officer** or his/her nominated deputy.
- 5.8. Any discrepancy arising at the time of reconciling the accounts and records will be made known to the **Section 151 Officer** and any such discrepancy clearly stated on the reconciliation statement.

**General**

- 5.9. Crossed cheques issued by the Council shall only be opened with the express approval and countersignature of the **Section 151 Officer** or designated authorised officer.

**Why is this important?**

Budget management ensures that once the budget has been approved by the full Council, resources allocated are used for their intended purposes and are properly accounted for. Budgetary control is a continuous process, enabling the Council to review and adjust its budget targets during the financial year. It also provides the mechanism that calls to account managers responsible for defined elements of the budget.

**Risks:**

There may be inefficient use of public money and a failure to comply with the Council's objectives; The viability of the Council as a business could be undermined; and The Council's resources may be vulnerable to fraud or misuse.

**Responsibilities****Format of the Budget**

- 6.1. The format of the budget determines the level of detail to which financial control and management will be exercised.
- 6.2. The **Section 151 Officer** will advise the Council through the **Hub Committee at West Devon**, and the **Executive at South Hams**, on the format of the budget that must be approved by Council ensuring that the format complies with all legal requirements; reflects the accountabilities of service delivery.

**Budget Preparation**

- 6.3. The **S.151 Officer** is responsible for ensuring that a revenue and capital budget is prepared on an annual basis and a medium term financial strategy on a five-yearly basis for consideration by the **Executive at South Hams** and **Hub Committee at West Devon**, and in accordance with professional and statutory requirements.
- 6.4. The Council's proposed budgets must reflect service plans and identify areas of cost pressure and budget holders applications for growth in the budget. The draft budget should include allocation to different services and projects, proposed taxation levels and contingency funds in accordance with corporate priorities.
- 6.5. The full Council may amend the budget or ask the **Executive** or **Hub Committee** as appropriate to reconsider before approving it.
- 6.6. Responsible Budget Officers (RBOs) are consulted in the preparation of the budget as they are accountable for the budgets which arise from the planning process,
- 6.7. The **Section 151 Officer** will encourage the best use of resources and value for money by working with **Senior Officers** to identify opportunities to improve economy, efficiency and effectiveness, and by encouraging good practice in conducting financial appraisals of development or savings options, and in developing financial aspects of service planning.
- 6.8. **Senior Officers** must prepare estimates of future anticipated incomes and expenditures including areas of cost pressures and growth for inclusion in the five-year financial plan with a careful consideration of corporate and service priorities.

**Resource Allocation**

6.9. The **Section 151 Officer** shall:

- Advise on methods available for the funding of resources, such as grants from central government and borrowing requirements.
- Assist in the allocation of resources to Responsible Budget Officers (RBOs).
- For **West Devon**, bids to the Contingency Fund must be approved by the **Hub Committee** and bids to the Emergency Fund must be approved by the **Section 151 Officer** in consultation with the Chair and Vice Chair of the **Hub Committee**.

6.10. **Senior Officers** shall:

- Work within budget limits and to utilise resources allocated, and further allocate resources, in the most efficient, effective and economic way.
- Identify opportunities to minimise resource requirements without having a detrimental effect on service delivery.

**Budget Management**

6.11. After approval by the Council budget management must be exercised within the annual budget limits; there must be no increase in the overall budget (see Supplementary Estimate Request below). Expenditure is to be committed only against an approved budget head.

6.12. The **Section 151 Officer**:

- Is responsible for establishing an appropriate framework and providing appropriate financial information to enable budgets to be monitored effectively on an individual basis and as a whole;
- Must monitor and control expenditure against budget allocations and report to the **Executive** or **Hub Committee** as appropriate on the overall position and projected income and expenditure on a regular basis;
- To submit reports to the **Hub Committee** or **Executive** as appropriate, in consultation with the relevant **Senior Officer** where the **Senior Officer** is unable to balance expenditure and resources within existing approved budgets under his/her control.
- Must ensure that:
  - expenditure is committed only against an approved budget codes;
  - each budget has a single named RBO, determined by the relevant **Senior Officer**. As a general principle, budget responsibility should be aligned as closely as possible to the decision-making process that commits expenditure;
  - each RBO has available timely information on receipts and payments on each budget which is sufficiently detailed to enable managers to fulfil their budgetary responsibilities;
  - all officers responsible for budgets comply with relevant guidance, and the Financial Procedure Rules;
  - significant variances from approved budgets are investigated and reported by RBOs regularly.
- Will administer the Council's scheme of virement.

**Senior Officers** must:

- Ensure prior approval by Council or the **Hub Committee** or **Executive** (as appropriate) for new proposals, of whatever amount, that:
  - create financial commitments in future years
  - materially extend or reduce the Council's services.
  - involve expenditure for which budget provision is not made or is exceeded
- Maintain budgetary control within their service;
- Control income and expenditure within their area and to monitor performance, taking account of financial information provided by the **Section 151 Officer**. They should report on variances within their own areas.
- Ensure that an RBO is identified for each item of income and expenditure under the control of the **Senior Officer** (grouped together in a series of cost centres). As a general principle, budget responsibility should be aligned as closely as possible to the decision-making process that commits expenditure.
- Responsible Officers are to be accountable for the income and expenditure for the budgets that they control. Responsible Officers are to understand their financial responsibilities and comply with accounting guidance provided by the Section 151 Officer and the Council's Financial Procedure Rules
- Take any action necessary to avoid exceeding their budget allocation and alert the **Section 151 Officer** to any problems.

### **General**

6.13. No officer should code expenditure to a cost centre without the approval of the RBO for that cost centre.

### **Virement (Budget Changes)**

6.14. The full Council is responsible for agreeing the procedures for virement between budget headings, through these Financial Procedure Rules.

6.15. Virement does not create additional budget liability.

6.16. The scheme of virement is to be administered by the **Section 151 Officer**, and applies to both revenue budgets and the capital programme (but not between the two):

- Properly approved virement request forms and requests not requiring approval must be processed by the appropriate Accountant who will amend the financial management system (general ledger) budget files. Approved forms must be retained for audit purposes.
- The transfer of non salary budgets for use on salary expenditure will be permitted up to a total of £10,000 per relevant **Senior Officer** per annum (not per service);
- In addition, the **Section 151 Officer** shall have the discretion whether or not to report a virement to the **Executive** at **South Hams**, having regard to the authorisation limits below.
- For **West Devon**, to prepare jointly with the **Senior Officer** a report to the affected Committees where virements between different Committees are proposed

6.17. Responsible Budget Officers' are responsible for initiating the virement procedure if an overspend is likely to occur within the departmental budget.

6.18. A 'Virement Request' form may need to be completed where approval is required as set out in the tables below.

*The following table summarises the authorities required for virements at West Devon:*

<b>Virement</b>	<b>Authorisation required</b>
Between an RBO's own cost centres	Responsible budget holder
Between cost centres within the same <b>Committee</b> but with different RBOs	The relevant <b>Senior Officer</b>
Between cost centres in different <b>Committees</b>	Approval of both relevant <b>Committees</b>

*The following table summarises the authorities required for virements at South Hams:*

<b>Virement</b>	<b>Authorisation required</b>
Where the sum involved is up to £5,000	The appropriate responsible budget holder may approve the virement in consultation with the appropriate accountant. No form is required;
Where the sum involved is greater than £5,000 but is less than £30,000	A virement form is required which is to be authorised by the relevant <b>Senior Officer</b> and <b>Section 151 Officer</b> or nominated deputy;
Where the sum involved is between £30,000 and £100,000	The appropriate <b>Senior Officer</b> and the <b>Section 151 Officer</b> shall sign a virement form in consultation with the appropriate accountant and submit it to the <b>Executive</b> for approval;
<b>Virement (continued)</b>	<b>Authorisation required</b>
Where the amount exceeds £100,000 per individual virement	The appropriate <b>Senior Officer</b> and the <b>Section 151 Officer</b> shall sign a virement form in consultation with the appropriate accountant and submit it to full Council for approval.

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

**Supplementary Estimate Request**

6.19. If virement is not possible, for example if there is no existing budget to vire or use of reserves is inappropriate, the **Senior Officer** concerned, in consultation with the **Section 151 Officer**, shall submit a Supplementary Estimate Request to the **Executive/Hub Committee**. No such expenditure may be incurred except on resolution of the Council after considering the proposals of the **Executive/Hub**.

**Reserves**

6.20. The **Section 151 Officer** will advise Council on prudent levels of reserves for the Council, and to take account of the advice of the external auditor in this matter.

6.21. For each reserve established, the purpose, usage and basis of transactions should be clearly identified. Reserves should only be used for the purposes for which they were intended.

- 6.22. Authorisation of expenditure from reserves must be sought by the appropriate **Senior Officer** in consultation with the **Section 151 Officer**
- 6.23. The **Section 151 Officer** may approve the use of Earmarked Reserves and Unearmarked General Fund Reserves up to a limit of £30,000, and may also approve increasing or creating Earmarked Reserves up to a limit of £30,000.
- 6.24. The use of Reserves over £30,000 requires the prior approval of the **Executive** for **South Hams** or **Hub Committee for West Devon** upon receipt of a report from the **Senior Officer** and **Section 151 Officer**, with the exception of Salcombe Harbour which requires the a recommendation to Council by the Salcombe Harbour Board.
- 6.25. The rules for urgent use of reserves will follow the the requirements of the Delegation Scheme Part 3 of teh Constitution – Urgent Items.

#### **Using Funds Held Under S.106 Agreements**

- 6.26. Projects to be funded, in whole or in part, from S.106 Agreements must meet the requirments of the agreement.
- 6.27. Authorisation of expenditure using funds recieved from S.106 Agreements must be sought from the **Section 151 Officer** for amounts up to £30,000 by the appropriate **Senior Officer**, following consultation with the relevant **Ward Councillor** as a minimum.
- 6.28. The use of funds received from S.106 Agreements for projects over £30,000 requires the prior approval of the **Executive** for **South Hams** or **Hub Committee for West Devon** upon receipt of a report from the **Senior Officer** and **Section 151 Officer**, following consultation with the relevant **Ward Councillor**.

#### **Shared Services**

- 6.29. The **S.151 Officer**) will ensure that a framework exists for the recharging of costs incurred by one partner Council on behalf of the other, having regard to the:
- Moral and legal requirement that one Councils tax payers are not subsidising the costs of the others:
  - Principle accepted by Councillors that partner Council's do not incur excessive costs in establishing the value of recharge due, although the recharge must be transparent and supportable to ensure its acceptability to the Councils' external auditors.
- 6.30. **Senior Officers** must ensure that:
- Appropriate staff are aware of their responsibilities for the recharging of costs incurred and must consider budget implications of using employees of the shared Council before deciding where a shared resource is deployed. In each case focus needs to be on who will benefit from the expenditure (and therefore who should bear the cost of the work).
  - Budgets must not be used to fund another authority's costs even where they have a budget shortfall.
  - All recharges must be transparent and robust with a clear audit trail and a clear basis for recharge

- Should tasks be undertaken by an officer in one Authority on behalf of both, clear parameters need to be set to ensure that there is no duplication

6.31. The lead officer must check the VAT and insurance implications of any proposed new shared services working arrangements with the Finance CoP well before they are due to start.

6.32. Officers must always be thinking about shared services and whether any of their work needs to be recharged (on a regular or ad hoc basis).

**Capital Programme (Links to the Contract Procedure Rules)**

6.33. See Section 2 - Assets



**CAR LOANS****Section 7****No longer applicable**

The Council no longer provides car loans

**Why is this important?**

Public money should be spent with demonstrable probity and in accordance with the Council's policies. Authorities have a statutory duty to achieve best value in part through economy and efficiency. The Council's procedures should help to ensure that services obtain value for money from their purchasing arrangements..

**Risks:**

The incorrect volume, number or quality of goods, works and services may be received; Goods, works or services received may not be fit for purpose;

The Council may be committed to spending on goods, works or services for which no budgetary provision has been determined;

Officers failing to follow contract and tendering procedures may leave both themselves and the Council open to accusations of favouritism and unfair contract terms;

Goods, works or services ordered may fail to meet the Council's environmental, health and safety and other strategies and policies; and

Short-term expenditure may commit the Council to longer-term maintenance costs.

**Responsibilities**

- 8.1. These procedures should be read in conjunction with the Council's Contract Procedure Rules and the Procurement Strategy.
- 8.2. Every officer and Councillor of the Authority has a responsibility to declare to the **Monitoring Officer** any links or personal interests that they may have with purchasers, suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the authority, in accordance with appropriate codes of conduct.
- 8.3. Each relevant **Senior Officer** is authorised to incur normal recurring expenditure provided that:
  - Provision has been made by way of revenue budget or supplementary estimate, virement or the work is rechargeable. Officers must not use an incorrect expenditure code to avoid overspending;
  - The quotation or tendering procedure required by the Contract Procedure Rules has been observed unless the Council has given authority for Exemption to Contract Procedure Rules;
  - In cases not covered by Contract Procedure Rules, **Senior Officers** shall obtain competitive quotations; and
  - Each order shall conform to the directions of the Council with respect to central purchasing and the standardisation of supplies and materials.

**Orders**

- 8.4. Official orders shall be in a form agreed by the **Section 151 Officer** with the responsible **Senior Officer** which in normal circumstances will be the Council's electronic ordering system.
- 8.5. The **Section 151 Officer** may approve alternative arrangements for the ordering of goods etc. where circumstances or trading necessity make this in her/his opinion desirable. Such approval must be given in writing/email.

- 8.6. Official orders shall be serially numbered and directions shall be specified on all orders that invoices shall be sent to Kilworthy Park for West Devon, and service group or establishment issuing the orders for South Hams as soon as possible after the despatch of goods.
- 8.7. The relevant **Senior Officer** of a service area shall be responsible for all orders issued from that service group. S/he shall maintain a list of all persons authorised to raise orders on her/his behalf and a copy of the list shall be supplied to the **Section 151 Officer**.
- 8.8. Blank paper orders (where held) should be kept securely at all times.

### **Ordering**

- 8.9. **Senior Officers** should ensure that:

- All goods and services are ordered only by appropriately authorised persons;
- Officers are aware that official orders, either in whole or in part, are not to be used to obtain goods works or services for private use.
- Official orders are issued for all work, goods and services to be supplied to the Council. They are a simple form of contract between the Council and a supplier.

- 8.10. Orders are not required for:-

- Rates;
- Supply of utility services (e.g. gas, water, electricity, telephone); and
- Small cash purchases properly paid out of petty cash (see FPR Petty Cash).

- 8.11. Other exceptions must be agreed by the **Senior Officers** concerned, in consultation with the **Section 151 Officer**.

- 8.12. Oral orders shall only be given in the case of urgency by an officer authorised to sign the relevant order. Such oral orders shall be confirmed as soon as practicable within 48 hours by the issue of an official order unless exempt by the paragraph above.

- 8.13. No order shall be issued for goods, work, or services unless the cost is covered by the approved annual budgets, supplementary estimate or by virement approved under these Financial Procedure Rules. The electronic ordering system will alert the authorising officer if there is a shortfall in the cost code being used, and this should only be overridden if the officer is certain that funds are available in related cost codes.

- 8.14. All official orders shall show the relevant expenditure code and the actual or estimated cost of the goods, materials or services taking into account discounts, carriage etc. at the time of the order. The commitment against the budget will be shown when the electronic ordering system is used.

- 8.15. No supplies are to be obtained on behalf of the Council without an order number being quoted and an order despatched.

- 8.16. Orders placed internally for central purchasing contract purchases e.g. stationery, office equipment may only be signed by those authorised to sign orders by the relevant **Senior Officer**.

8.17. In cases where orders are lost in the post or by suppliers, confirmation of the order shall be given by letter quoting the original order number, except where duplicate orders issued marked as such (e.g. using the electronic ordering system).

8.18. Standard Terms and Conditions must not be varied without the prior approval of the Council's Procurement Officer and/or the **Council's Solicitor** dealing with contracts.

### **Quotations**

8.19. Best endeavours must be made by ordering officers to ensure that the most favourable prices and terms are obtained for the supply of goods, works and services in accordance with the Council's Contract Procedure Rules and Procurement Strategy.

8.20. The following table is a summary of the quotation/tendering requirements, which also apply to any sub-contractors working on behalf of the Council and to the appointment of any specialist contractors/consultants. Orders are not to be split into smaller orders solely to avoid the value limits and procedures laid down in these Rules.

### **Limits for Quotations and Tendering (from Contract Procedure Rules)**

<b>Item Value ex VAT</b>	<b>Quotations/Tendering</b>	<b>Requirement</b>
Below £7, 500	One quotation, but good practice to seek most favourable prices and terms, having regard to the Council's Procurement Strategy.	Good Practice
£7, 500 - to £50,000	3 quotations appropriately evidenced.	Yes
Above £50,000	Tendering / EU procedure in line with the Contract Procedure Rules – Part 4 of the Constitution	Yes
ICT	All system developments and purchases of computer equipment or software must be approved by the ICT CoP or her/his nominated deputy.	Yes

8.21. Where an internal supplier exists, such as printing, waste disposal, legal etc., **Senior Officers** are expected to approach these support services for a quotation before placing any external order for the service.

8.22. The use of formal corporate contracts is a requirement and individual orders from other suppliers of items within these contracts should not be made. This is because although a lower price may be found elsewhere, quality will have been tested as part of the contract letting, and the additional costs of looking for lower prices, physically placing a separate order, processing and paying the invoice and in some cases retrospective discounts (rebates), are masked.

8.23. In exceptional circumstances, where ongoing large orders are placed and individual items can be found substantially cheaper elsewhere, corporate contracts can be ignored with the written/email approval of both the **Senior Officers and Corporate Procurement Officer**.

8.24. Certain suppliers e.g. Devon Purchasing, and other formal Procurement Partnerships are deemed to have obtained sufficient quotations etc. to comply with this requirement, as a part

of their compliance with the European Union purchasing regime. The Contract Procedure Rules Section 3 refers and the advice of the **Corporate Procurement Officer** or Internal Audit should be sought.

- 8.25. Reliance upon quotations obtained by formal partners should only be used if they meet the requirements of these rules, and are current and appropriately evidenced.
- 8.26. The best value for money for the Council may not necessarily lie with the lowest quotation. Consideration needs to be given to the whole life costs of goods, works and services. In these circumstances, an order may be placed with a provider other than the cheapest. However, the written/email approval of the responsible **Senior Officer** must be obtained and the reasons appropriately recorded.
- 8.27. All **Senior Officers** shall ensure that loans, leasing or rental arrangements are not entered into without prior agreement from the **Section 151 Officer**. This is because of the potential impact on the Council's borrowing powers, to protect the Council against entering into unapproved credit arrangements and to ensure that value for money is being obtained.

#### **Open/Regular Supply Orders**

- 8.28. Normally orders must not be kept "open" for more than fourteen working days or until completed, whichever comes first.
- 8.29. However, approval will be given by **Section 151 Officer or Finance Community of Practice Senior Specialists** to keep an order open where it can be shown that specified supplies from one contractor are required on a continuing regular basis, such as rental charges, having regard to the market testing limits above. All such orders are to be closed down immediately following the approved period to a maximum of the financial year-end, and the expected payments to be recorded on it.

#### **Information Technology (ICT) Equipment and Software**

- 8.30. All system developments and purchases of computer equipment or software must be approved by the **ICT CoP Lead**, or her/his nominated deputy, in accordance with the Council's ICT Strategy and must comply with EC Legislation and Directives. For the purpose of this FPR, equipment will include any device capable of being linked physically or otherwise to the Council's computer or telephone systems (e.g. digital cameras).
- 8.31. Only the **ICT CoP Lead** in consultation with the **Group Manager for Support Services** is empowered to enter into contracts for information, communication and technology services up to a value set in the Council's Contract Procedure Rules. For contracts above this limit, the **ICT CoP Lead** must consult with the Council's Solicitor and the **Section 151 Officer**.
- 8.32. Orders in respect of ICT hardware and software should be in the form of an ICT hardware/software request. These must be submitted to the **ICT CoP Lead**, who is authorised to place the official order.

#### **Orders, Delivery Notes and Invoices**

- 8.33. All incoming invoices should be matched with the relevant order and the delivery note filed accordingly.

**Orders to Individuals (Self-employed)**

- 8.34. Special care should be taken when issuing orders or making payments to individuals. The fact that a person considers her/himself to be self-employed does not necessarily mean that they are in the view of the Inland Revenue. Where a service is provided (rather than goods), and payments are calculated by the hour or day, it is probable that payment should be through the Council's payroll.
- 8.35. The matter should be referred to the **Human Resources CoP Lead** without delay. (It should be noted that failure to treat such payments in the correct manner might result in the Council incurring significant penalties for failing to comply with tax legislation).
- 8.36. See also section 25 Taxation regarding the completion of the HMRC.
- 8.37. Using an existing Council employee, or a relative, as a self employed consultant should be avoided, even if quotations have been obtained in line with these Rules. In exceptional circumstances, the relevant **Senior Officer** with the agreement of the **Monitoring Officer** may override this Rule where such action is clearly beneficial to the Council.

**Why is this important?**

Public money should be spent with demonstrable probity and in accordance with the Council's policies. Authorities have a statutory duty to achieve best value in part through economy and efficiency. The Council's procedures should help to ensure that services obtain value for money from their purchasing arrangements.

**Risks:**

The Council could pay for goods and services that have not been received;  
The Council could pay for goods and services twice or more in error; and  
Interest could be charged to the Council by suppliers following late payment.

**Responsibilities**

- 9.1. These procedures should be read in conjunction with the previous section on ordering, and the Council's Contract Procedure Rules (Part 4 of the Constitution).
- 9.2. Apart from petty cash, the normal method of payment from the Council shall be electronic or by cheque or other approved method, drawn on the Council's bank account by the **Section 151 Officer**. The use of direct debit or standing order shall require the prior agreement of the **Section 151 Officer or Senior Finance Specialist**, although the most economical method of payment will be encouraged.

**Invoices**

- 9.3. The payment of all monies due from the Council will be made under the control of the **Section 151 Officer** with the exception of payments properly made from petty cash (FPR Petty Cash). This includes making payment specifically required under statute or court order whether or not the budget provision exists.
- 9.4. Each **Senior Officer** will arrange for invoices to be forwarded to the relevant case manager. The supplier will be asked to quote the name of the service group, the number of the order and the place where the work was done or goods delivered.
- 9.5. Invoices for payment by the Council must not be drafted by officers of the Council on behalf of others except in any case or category of cases previously agreed by the **Section 151 Officer**.
- 9.6. No amendments, changes or avoidance of the system laid down for the processing of invoices for payment must be undertaken without the approval of the **Section 151 Officer**.
- 9.7. Invoices will only be accepted on which details are written in ink, typewritten, printed or generated by computer. No payment is to be made against a faxed or photocopied invoice unless the prior approval of the **Section 151 Officer** or her/his appointed representative has first been sought.
- 9.8. All amendments to an account will be made in ink and signed or initialled in her/his own name by the officer making the amendment and the reasons if not self-evident will be briefly stated on the account. No amendments will be made to the amount of VAT payable.

**Invoices – Self Employed Status**

9.9. To comply with Inland Revenue requirements **Senior Officers** are required to formally consider the employment status of individuals employed on a 'self employed consultant or sub contract' basis. Advice should be sought from the relevant **Senior Officer** in the case of any doubt as payment via the payroll system may be required.

**Payment Request Forms**

9.10. In some circumstances a payment request form is completed to generate a payment e.g. Disabled Facility Grants at South Hams where the payment is made to a contractor from an invoice addressed to the claimant.

9.11. The principles of the certification and authorisation paragraphs below will apply to payment requests submitted to the Finance Community of Practice either electronically or manually.

**Receiving/Certification**

9.12. The **Senior Officer** issuing an order will be responsible for the examination, verification and certification of the relevant account on the original document. An attachment may be used for coding purposes.

9.13. The 'receiving' (in the electronic ordering system or creditors system) or certification of an invoice on behalf of a **Senior Officer**, by an officer authorised by her/him and who is not the 'authorising officer', will imply:

- That the goods have been received, examined and approved as to quality and quantity, or that services rendered or work done has been performed satisfactorily;
- That they conform to the order;
- That the price is in accordance with the quotation, contract or current market rate, whichever is applicable, or is otherwise reasonable;
- That all trade and cash discounts, other proper allowances and other credits due have been deducted;
- That the expenditure has been properly incurred, has been duly authorised and is within the estimates;
- That costing allocations are correct;
- That the account has not been previously passed for payment and has now been recorded as paid on the copy order or other authorisation;
- That appropriate entries have been made in any inventories, goods received or stores records which are required to be kept;
- That the invoice is arithmetically correct and that it complies with VAT regulations; and
- That any commitments pertaining to the original order have been identified and cancelled.

9.14. A list of officers authorised to receive or certify accounts will be sent by each **Senior Officer** to the **Section 151 Officer**. All amendments to the list will be notified to the **Section 151 Officer** in writing. The **Section 151 Officer** will be responsible for arranging the appropriate access to the electronic ordering system or creditors system for service officers.



9.15. Every account will be signed in manuscript in the certifying officer's own name, in situations where the electronic ordering system or creditors system has not been used.

### **Authorisation**

9.16. The authorisation of accounts will be made by the **Senior Officers** concerned, or by an officer authorised by her/him, either in writing or electronically using the electronic ordering system or creditors system, or the **Section 151 Officer**.

9.17. The names of officers with the authority to authorise invoices will be sent by each **Senior Officer** to the **Section 151 Officer**. The **Section 151 Officer** will be notified of any changes in writing/email. The **Section 151 Officer** will be responsible for arranging the appropriate access to the electronic ordering system for relevant officers.

9.18. Every invoice will be signed in manuscript in the authorising officer's own name, in situations where the electronic ordering system has not been used.

9.19. Depending whether manual or electronic ordering is used, the officer authorising the payment will be confirming the following:

- That the order or account has been properly checked and raised/certified by an officer authorised to do so;
- That the order or account relates to necessary and valid expenditure, which conform to the needs of the particular service; and
- That the items are coded to the correct financial code. The electronic ordering system will alert the authorising officer if there is a shortfall in the cost code being used, and this should only be overridden if the officer is certain that funds are available in related cost codes.

### **Separation of Duties**

9.20. The duties of ordering and receiving goods, works and services and of certifying or authorising the relevant accounts for payment will not be performed by the same officer, subject to the **Section 151 Officer** being informed if such a separation of duties in any individual instance is impracticable.

### **Payment**

9.21. All payments are to be made to the correct person, for the correct amount and properly recorded, with evidence of the transaction and payment stored for a period in accordance with statutory and Council requirements

9.22. At South Hams accounts for payment will be submitted, appropriately certified and authorised to the **Section 151 Officer** within 14 days of receipt by the relevant service and West Devon authorised on the creditors system. For both Councils, they must be paid within 30 days of receipt unless they are formally in dispute. Exceptions are where different terms are agreed with the supplier, and for small and medium businesses to be paid in line with any target set by the **Executive (SH)** or **Hub Committee (WD)**.

- 9.23. The **Section 151 Officer** will examine as far as she/he considers necessary all accounts passed to her/him for payment and she/he will be entitled to make all such enquiries and to receive such information and explanations as she/he may require to satisfy her/himself that the accounts are in order.
- 9.24. Payments are not to be made on copy or faxed invoices except where that invoice has been approved by one of the signatories to the Council's bank account following the appropriate checks.
- 9.25. The **Section 151 Officer** will be responsible for carrying out such checks of the arithmetic accuracy of accounts submitted for payment, as she/he deems necessary.
- 9.26. Creditors will be paid by BACS whenever possible with a remittance advice forwarded within 24 hours of payment. All bank details to enable payment will be held on the Creditor's individual file records and amended by Corporate Finance staff only on receipt of official notification in writing from the creditor, duly verified.
- 9.27. Cheques must only be returned to the officer requesting payment in exceptional circumstances, and an appropriate record kept by the Finance Community of Practice of the distribution.
- 9.28. Each **Senior Officer** will as soon as possible after 31st March in each year, and in any case not later than a date to be specified by the **Section 151 Officer**, notify the **Section 151 Officer** of all outstanding items of expenditure relating to and incurred in the previous financial year which have not been passed to her/him for payment. When such items of expenditure are subsequently certified for payment they shall be identified accordingly.
- 9.29. Payment for goods and services not yet received should only occur in exceptional circumstances and with the prior approval of an authorising officer. A record of the payment should be made on the order and checks should be carried out to ensure that delivery subsequently takes place.
- 9.30. All paid invoices and certificates will be retained by the **Section 151 Officer** for a minimum period of six financial years after the year to which they relate.
- 9.31. Payments must not be raised for internal transactions of the Council, even between departments without the prior approval of the **Section 151 Officer**.

### **Returned Cheques**

- 9.32. The instigating section and Finance Community of Practice are to be informed of any cheques returned in order that appropriate action may be taken to update records etc.

### **Value Added Tax (VAT)**

Links to the FPR relating to Taxation

- 9.33. It is the responsibility of all receiving ('GRN') or 'Certifying Officers' to ensure that the relevant VAT invoice is forthcoming, in accordance with the guidance issued by the Council's VAT officer on behalf of the **S.151 Officer**.
- 9.34. All invoices received from VAT registered suppliers, which contain elements of VAT must be valid tax invoices. In cases where payment is required with the order the VAT should be coded to the VAT suspense account.
- 9.35. VAT should not be added to any charge invoiced by a supplier without evidence that the supplier is registered for VAT. No amendments will be made to the amount of VAT payable. If the VAT status of the supplier is thought to be incorrect, the matter should be referred to Internal Audit for further investigation.

### **Credit/Purchase Cards**

- 9.36. Corporate credit/purchase cards may be issued for buying work related goods or services and shall only be issued to and used by officers/Councillors approved by the **Section 151 Officer**.
- 9.37. Officers/Councillors issued with a corporate credit/purchase card shall ensure that it is held securely at all times and shall immediately report its loss or theft to the **Section 151 Officer** /Internal Audit whereupon the issuing company shall immediately be notified by telephone with confirmation in writing.
- 9.38. Officers issued with a corporate credit/purchase card shall not lend or disclose the details of the card to other officers unless they have received due authority to do so from the appropriate **Senior Officers** and only in emergency cases. Great care should be taken where a purchase is made using the Internet, i.e. only reputable and secure 'https' web sites should be used.
- 9.39. Cardholders must sign the Council's Cardholder Responsibilities and Guideline for Operatives' form to confirm that they have read and understood the guidance.
- 9.40. Where an employee leaves the Council's employment, or is suspended from duty for any reason, the appropriate **Senior Officer** shall ensure that the credit card is immediately surrendered. The **Section 151 Officer** will take immediate steps to cancel the card and destroy it to prevent further use.
- 9.41. The card issuer's statement must promptly be reconciled to receipts and then be submitted to the **Section 151 Officer** before payment is due. Payment to the card issuer must be authorised by the relevant **Senior Officer** or the **Section 151 Officer**.
- 9.42. Should an unauthorised transaction be noted, the employee shall immediately notify the **Section 151 Officer** who will investigate the irregularity.

### **Financial Year End**

- 9.43. **Senior Officer** shall notify the **Section 151 Officer** of outstanding expenditure relating to the previous financial year as soon as possible after 31 March in line with the timetable determined by the **Section 151 Officer**.

**Loans, Leases and Rental Agreements**

9.44. **Senior Officers** shall ensure that loans, leasing or rental arrangements are not entered into without prior agreement from the **Section 151 Officer**. All loans, leases and rental agreements must be in a form approved by the Council's Solicitor. This is because of the potential impact on the Council's borrowing powers, to protect the Council against entering into unapproved credit arrangements and to ensure that value for money is being obtained.

**Why is this important?**

External funding is potentially a very important source of income, but funding conditions need to be carefully considered to ensure that they are compatible with the aims and objectives of the Council. Local authorities are increasingly encouraged to provide 'seamless' service delivery through working closely with other agencies and private service providers. Funds from external agencies such as the National Lottery provide additional resources to enable the authority to deliver services to the local community. However, in some instances although the scope for external funding has increased such funding is linked to tight specifications and may not be flexible enough to link to the authority's overall plan.

**Risks:**

Statutory requirements are not complied with;  
Funds are acquired in respect of policies that have not been approved by the Council;  
The Council signs up to long term agreements without securing match funding; and  
Unforeseen risks could cause additional expenditure / staff time needed to manage funded projects.

**Responsibilities**

10.1. The responsible **Senior Officer** must:

- Complete a project mandate including risk assessment and consult all stakeholders before the project commences to ensure that key conditions of funding and any statutory requirements are complied with and that the responsibilities of the accountable body are clearly understood.
- Make the **Section 151 Officer** aware of any prospective funding arrangements, prior to entering into an agreement and ensure that any match-funding requirements are given due consideration prior to entering into long-term agreements and that future revenue budgets reflect these requirements.
- The relevant **Senior Officer** must seek the relevant approvals, including from Councillors/Member bodies where appropriate, and ensure that reports provide detailed information on future costs to the Council in managing the funding.
- With the officer appointed to manage the project, ensure that the funding bodies grant conditions / requirements are met; that the project progresses in accordance with the agreed project plan; that all expenditure is properly incurred and recorded and that all claims for funds are made by the due date.
- With the **Section 151 Officer**, ensure that audit requirements are met.

10.2. The **Section 151 Officer** must:

- Review proposals in detail to ensure that they are viable and ensure all funding requirements are considered and future revenue or capital budgets reflect these requirements
- Ensure that all funding notified by external bodies is received and properly recorded in the Council's accounts, and that the audit requirements with regard to the external funding are met.

**Why is it this important?**

The Council will not tolerate fraud and corruption in the administration of its responsibilities, whether from inside or outside the Council.

The Council's expectation of propriety and accountability is that Councillors and staff at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and practices.

The Council also expects that individuals and organisations (e.g. suppliers, contractors, service providers) with whom it comes into contact will act towards the Council with integrity and without thought or actions involving fraud and corruption.

**Risks**

There may be a loss of assets and reputation if the Council allows fraud, corruption or bribery to be perpetrated against it.

**Responsibilities**

11.1. It is the responsibility of all Councillors and staff act with integrity and lead by example.

11.2. The **S.151 Officer, Monitoring Officer** and **Internal Auditor** shall:

- Develop and maintain an Anti-Fraud, Corruption and Bribery Policy and Strategy and supporting Response Plan;
- Develop and maintain an Anti-Money Laundering Policy and supporting procedures;
- Regularly update the Anti-Fraud, Corruption and Bribery Policy and Strategy Anti Money Laundering and present them to the **Audit Committee** for recommendation of approval
- Promote adequate and effective internal control arrangements (see separate FPR).

11.3. The **Monitoring Officer** shall:

- Ensure whistle blowing procedures are in place, promoted and operate effectively;
- Promote high standards of conduct amongst Councillors and officers;
- Maintain a register of interests in which any hospitality or gifts accepted must be recorded.

11.4. **Senior Officers** shall ensure that:

- All suspected irregularities are reported to the **Head of Corporate Services**, or **Section 151 Officer** or internal auditor in line with the Policy and Response Plan.
- Where financial impropriety is discovered, the **Section 151 Officer** and the **Monitoring Officer** are informed and where sufficient evidence exists to believe that a criminal offence may have been committed, the Police are called in to determine with the Crown Prosecution Service whether any prosecution will take place.
- All staff are aware of and contribute, when appropriate, to the corporate register of interests held by the **Monitoring Officer**. Managers are required to deal swiftly and firmly with those who defraud or attempt to defraud the Council or who are corrupt.

## GRANTS, SUBSIDIES, CLAIM FORMS & STATISTICAL RETURNS

### Section 12

#### **Why is this important?**

Grants and subsidies are a significant source of finance to the Council. As such it is essential that the Council receives all that is due to it and on time. Statistical returns often have a significant financial impact upon the authority in respect of the allocation of future grant funding streams.

#### **Risks:**

Potential income from grants may not be received or received late, the Council thereby having to meet any shortfall in income;

Grant claim forms may be incorrectly completed; and

The Council could be criticised by external audit for failing to claim and/or record grant income correctly.

#### **Responsibilities**

- 12.1. The **Section 151 Officer**, in association with the relevant **Senior Officers**, shall be responsible for ensuring that all forms relating to subsidies, grants and claims submitted to Government Departments or other grant paying bodies are completed on behalf of the Council.
- 12.2. The **Section 151 Officer** or relevant **Senior Officer** shall nominate specific officers to complete various subsidy, grant and claim forms and it shall be their duty to deal with the forms expeditiously using the most accurate information available.

#### **Grants Conditions**

- 12.3. The **Section 151 Officer** or relevant **Senior Officer** shall ensure that the conditions of any subsidy or grant are met, including the submission of claims on a timely basis as required by the terms of the grant paying body. Great care shall be taken in the preparation and submission of grant claims and statistical returns in order to ensure their accuracy.

#### **Receipts and Payments**

- 12.4. Any payment by or income due to the Council arising from a submitted subsidy, grant or claim form shall be made known to the **Section 151 Officer** and amounts recorded for accounting purposes to the financial codes set up for the purpose.

#### **Audit Requirements of the Grant Paying Body**

- 12.5. The **Section 151 Officer** or relevant **Senior Officers** shall give early consideration to the audit requirements of the grant paying body and make the necessary arrangements for auditing to ensure that relevant deadlines are met.
- 12.6. Copies of subsidy, grant and claim forms, together with adequate supporting working papers shall be prepared and retained and are to be made available for inspection by internal or external auditors.

**Why is this important?**

Income can be a vulnerable asset and effective income collection systems are necessary to ensure that all income due is identified, collected, receipted and banked properly, and all VAT correctly accounted for. Receivable income should be collected at the earliest opportunity and in advance of any consequential supply of goods or services, as this improves the Council's cashflow and also avoids the time and cost of administering debts.

**Risks**

Income collected could be lost or stolen;  
Income may not be collected or may be incorrect, i.e. the incorrect rate or tariff is charged;  
Money owed to the Council may not be adequately pursued; and  
Financial and accounting records may not be correctly updated.

**Responsibilities**

13.1. The **Section 151 Officer** must:

- Agree arrangements for the collection of all income due to the Council and to approve the procedures, systems and documentation for its collection.
- Approve the form of all books of accounts, and all official receipt forms or books, licences, tickets and all documents or vouchers representing receipts for money or money's worth. They shall be ordered, controlled and issued by her/him, and all new stock and issues will be properly recorded by the **Section 151 Officer** and acknowledged by the recipient (unless by prior arrangement and approval e.g. car parking tickets).
- Ensure officers collecting income shall not be the only officer involved in the reconciliation of that income to the amounts due.
- Review and update a Money Laundering Avoidance Policy for the Council.

**Charges for Services**

13.2. **Senior Officers** must establish an appropriately approved charging policy for the supply of goods or services, with the appropriate Councillor approval if required, including the appropriate charging of VAT, with advice from the **Section 151 Officer**.

13.3. They must ensure that the **Section 151 Officer** is notified promptly of all monies due to the Council under contracts, leases, tenancy agreements, agreements for the sale of property and any other agreements involving the receipt of money by the Council, and the **Section 151 Officer** will have the right to inspect any documents or other evidence in this connection as she/he may decide.

13.4. With the exception of those fixed nationally or delegated to officers, no new charges for services, or a revision of charges, will be made except upon a report prepared jointly by the relevant **Senior Officer** concerned and the **Section 151 Officer** to the appropriate member body.

**Cash Collection and Banking**

13.5. **Senior Officers** must ensure that all monies received on behalf of the Council shall without delay (within one working day unless circumstances prevent) are banked in the Council's name in compliance with the Accounts and Audit Regulations. The



responsibility for identifying amounts due and the responsibility for collection, should be separated as far as is practicable.

- 13.6. Where possible income shall be collected in advance of providing goods or services having due regard to accounting and VAT implications as advised by the **Section 151 Officer**.
- 13.7. Cash collected or held on behalf of the Council is to be fully accounted for and an official receipt issued. The official receipt number or other appropriate reference number is to be recorded on all cheques and postal orders received on behalf of the Council. Copy receipts, tickets and other records of income for the appropriate period to hold securely.
- 13.8. No deduction may be made from income save to the extent that the **Section 151 Officer** may specifically authorise
- 13.9. Every department or establishment which receives cash and cheques through the post must arrange for the post to be opened by at least two officers who will record and witness all remittances received.
- 13.10. Third party cheques will not be accepted in payment of accounts due to the Council. No change shall be given for any cheque payments.
- 13.11. Income shall be recorded and banked daily following reconciliation or at such intervals as the **Section 151 Officer** may decide. In any event banking shall be made at least once per week or before the relevant insurance limit is exceeded. This rule also applies to any rent and other cash collectors.
- 13.12. All officers paying in must complete a paying in slip in duplicate in a form approved by the **Section 151 Officer**.
- 13.13. Where a cheque is accepted, together with cash, in settlement of a debt, the detail must be noted on the copy of the cheque list which accompanies the paying in slip.
- 13.14. All collecting officers must maintain an "unders and overs" record for any discrepancies and discrepancies over £30 must be reported immediately to Finance Community of Practice.

#### **Personal Cheques**

- 13.15. Personal cheques shall not be cashed nor money loaned out of cash held on behalf of the Council, including income or change floats.

#### **Change Floats**

- 13.16. The **Section 151 Officer** may advance a fixed imprest to an officer of the Council for use as a change float. Each imprest shall be of such amount as the **Section 151 Officer** may determine in consultation with the relevant **Senior Officer**.

- 13.17. Following certification of receipt, officers holding change floats take personal responsibility for the custody of cash until such time as another authorised officer certifies take over of responsibility.
- 13.18. No income is to be used as a change float. Cash income or change floats are not to be used as petty cash in any circumstances (see also FPR Petty Cash (Imprest Accounts)).
- 13.19. Every officer holding a change float shall certify to the Finance Community of Practice the amount of the float held at 31st March each year.
- 13.20. Change floats shall be available for inspection by internal audit officers at any time.

### **Security**

- 13.21. It is the responsibility of the receiving officers and their managers to ensure that all income and floats are locked away to safeguard against loss or theft, and to ensure the security of cash handling, in line with the requirements of the Council's insurers.
- 13.22. When remittances are passed to a second officer or cashier, a receipt must be obtained from the person to whom they are handed. At least two employees shall be present when post is opened to ensure that money received by post is properly identified recorded and witnessed.

### **Raising Invoices (Sundry Debtors)**

- 13.23. The control and recovery of debts is the responsibility of the **Section 151 Officer**.
- 13.24. The relevant **Senior Officers** will furnish such particulars of charges for work done, goods supplied or services rendered on behalf of the Council and of other amounts accruing due, as the **Section 151 Officer** may require and so ensure prompt recording of all funds receivable by the Council.
- 13.25. The responsible officer must ensure that invoices are raised in respect of work done, goods supplied or services rendered on behalf of the Council within 10 working days of the work having been done/ goods supplied or services rendered.
- 13.26. It is the responsibility of all officers raising invoices to ensure that the VAT is appropriately accounted for in an invoice, in accordance with the guidance issued by the Council's VAT officer on behalf of the **S.151 Officer**.
- 13.27. Invoices must not be raised for internal transactions of the Council, even between departments without the prior approval of the **Section 151 Officer**.

### **Recovery**

- 13.28. Accounts raised are to be pursued by the designated officer within defined timescales including referral to collection agencies, the Council's Solicitor or Court as appropriate and depending on the type of debt.

- 13.29. The Council's Corporate Debt Policy applies to the collection and enforcement of debts.
- 13.30. **Senior Officers** will ensure that all necessary documentation required to support legal action in pursuit of debt, will be provided promptly and in the form required.

#### **Bad and Doubtful Debts**

- 13.31. The **Section 151 Officer** is empowered to write off bad and doubtful debts up to £5,000, after satisfying her/himself that it would be uneconomic or inappropriate for the Council to pursue them, and where appropriate a Legal representative has considered the Council's position and also takes the view that the debt is unlikely to be recovered without expenditure disproportionate to the amount involved.
- 13.32. In the case of debts due to other service groups, the **Section 151 Officer** will consider writing off the debt having first consulted with and obtained the written authorisation of the relevant **Senior Officer** or her/his deputy.
- 13.33. No debts in excess of £5,000 may be written off without the approval of the **Executive at South Hams** or **Hub Committee at West Devon**
- 13.34. The total amounts of debt written off by the **Section 151 Officer** under delegated powers will be reported to these bodies annually or more frequently if appropriate,
- 13.35. Appropriate accounting entries shall be made only following the receipt of write-off approval, with the charge made to the budget to cost centre.

#### **Cancellations**

- 13.36. Invoices should only be cancelled in circumstances where the income no longer falls due, such as an error or change in circumstances on the original.
- 13.37. Invoices that have been raised cannot be cancelled without the authorisation of the relevant **Senior Officer** or her/his appointed deputy and the **Section 151 Officer** or her/his appointed deputy.

#### **Financial Year End**

- 13.38. The **Section 151 Officer** is to be informed of any outstanding income relating to the previous financial year as soon as possible after the 31st March, and not later than 30th April.. This includes outstanding income data recorded on independent billing and collection systems (both manual and computerised) held within and outside the finance function.

**Why is this important?**

Many services and activities of the Council are not without inherent risk of death, injury or financial loss to staff, Members of the public or external organisations. The Council needs to assess and log these risks and then decide how to cover them, i.e. take out insurance with an external provider or cover the risk itself by making payments from Council funds as and when claims are made. These procedures should be read in conjunction with the Council's Risk Management Strategy.

**Risks:**

The Council may be unable to meet large claims made against it, i.e. death or injury;  
The Council may be over insured, i.e. paying out higher premiums than it needs to; and  
The Council may not be aware of all risks and has not, therefore, taken steps to reduce them or their effect.

**Responsibilities**

14.1. The **Section 151 Officer** shall

- Effect all insurance cover and negotiate all claims in consultation with other officers where necessary
- Ensure that all appropriate employees of the Council shall be included in appropriate fidelity guarantee insurance whilst carrying out duties directly connected with their employment as a Council officer.
- **Senior Officers** shall consult the **Section 151 Officer** and the **Monitoring Officer** regarding the terms of any indemnity that the Council is requested to give.
- Annually, or at such period as she/he may consider necessary, review all insurances in consultation with other **Senior Officers** as appropriate.

14.2. **Senior Officers** shall:

- Give prompt notification of all new risks, property, equipment or vehicles that require to be insured and of any alterations affecting existing insurances either to the **Section 151 Officer** or using a process approved by him/her to inform the Council's insurers;
- Ensure that all conditions of the Council's insurance policies that relate to their area of responsibility are adhered to.
- Immediately notify the **Section 151 Officer** or his/her nominated officer in writing of any loss, liability or damage or any event likely to lead to a claim in connection with their service groups together with full supporting details, papers or subsequent explanation as required.
- To ensure that employees, or anyone covered by the Council's insurances, do not admit liability or make any offer to pay compensation that may prejudice the assessment of liability in respect of any insurance claim.
- Consult the **Section 151 Officer** and the **Monitoring Officer** regarding the terms of any indemnity that the Council is requested to give.

**Inspections**

14.3. Each **Senior Officer** shall keep suitable records to ensure that the inspection of engineering plant under her/his control normally carried out by an insurance company is carried out by that company or nominated contractor within the periods prescribed by the Health and Safety at Work or other legislation.

14.4. In the event of failure by the Insurance Company or nominated contractor to carry out inspections within the prescribed periods the **Section 151 Officer** shall be notified immediately.

#### **Claims**

14.5. Any claim made against the Council for expenses or damages incurred, which may reasonably be expected to be covered by insurance should immediately be referred to the **Section 151 Officer**.

14.6. Policy premiums and any excess required to be paid in the claims process will be charged to the relevant service, as such premiums and excesses fall due.

14.7. Council employees or anyone covered by the Council's insurances must not admit liability or make any offer to pay compensation which may prejudice the assessment of liability in respect of any insurance claim.

14.8. It is the responsibility of the relevant **Senior Officer** to ensure that appropriate insurance arrangements are made when undertaking work for third parties, in conjunction with the **Section 151 Officer** or her/his nominated representative.

**Why is this important?**

Intellectual property is a generic term that includes inventions and writing. If these are created by the employee during the course of employment then, as a general rule, they belong to the employer not to the employee. Various Acts of Parliament cover different types of intellectual property.

**Risk**

The Council may not benefit from activities undertaken within the Council which may give rise to items that may be patentable e.g. software development

**Responsibilities**

15.1. In the event that the Council decides to become involved in the commercial exploitation of inventions, the matter should proceed in accordance with the Council's approved intellectual property procedures.

**Section 151 Officer**

15.2. To develop and disseminate good practice and work with **Senior Officer** to ensure that maximum benefit for the Council is derived from development of intellectual property.

**Heads of Service**

15.3. To ensure that controls are in place to ensure that staff do not carry out private work in Council time and that staff are aware of an employer's rights with regard to intellectual property.

**Why is this important?**

The Council holds assets in the form of property, vehicles, equipment, furniture and other items worth many millions of pounds. It is important that assets are safeguarded and used efficiently in service delivery, and that there are arrangements for the security of both assets and information required for service operations. An inventory is a prerequisite for sound asset management.

**Risks:**

Holders of equipment and furniture may be unaware that items have been lost or stolen without a record of all such items being on hand; and

The Council's insurers may reject claims to replace lost or stolen items if the Council cannot demonstrate that it maintains adequate inventory records.

**Responsibilities**

- 16.1. Inventories shall be kept in a form approved by the **Section 151 Officer**. These rules do not override any other statutory or regulatory reasons for maintaining an inventory.
- 16.2. Inventories of all property with a replacement value of greater than £100 (furniture, fittings, equipment, vehicles and plant) belonging to or in the care of the Council, other than stores, shall be prepared and maintained by the **Senior Officers** concerned or an officer designated by her/him.
- 16.3. An inventory of all ICT equipment will be held by the ICT Section.
- 16.4. Each **Senior Officer** shall:
  - Nominate the officers who are responsible for compiling and maintaining the inventories of assets.
  - Arrange for the inventory to be checked at least annually with the physical assets and shall certify the inventory to that effect. The **Section 151 Officer** shall be advised of deficiencies revealed by these checks.
- 16.5. The original copy of an inventory that is to be re-written, for whatever reason, is to be retained until Internal Audit advise otherwise. Similarly, any input documents used for amending entries held in a computerised inventory system are to be held for inspection by Internal Audit, if requested.

**Council Property**

- 16.6. The **Section 151 Officer** or her/his representatives may at all reasonable times have access to the property of the Council and may make such checks and tests as she/he deems reasonable and necessary.
- 16.7. The Council's property shall not be removed unless in accordance with the ordinary course of the Council's business or as directed by the **Senior Officers** concerned. All property belonging to the Council and recorded on an inventory shall be marked as Council property.

**Why is this important?**

Partnerships will play a key role in delivering services and community strategies and in helping to promote and improve the well-being of the area.

The Council is working in partnership with other Councils, public agencies, private companies, community groups and voluntary organisations, to bring together the contributions of the various stakeholders to deliver a shared vision of services based on user wishes.

The Council will mobilise investment, bid for funds, champion the needs of their areas and harness the energies of local people and community organisations.

**Risks:**

The objective of a proposed partnership may not be achieved;

A partnership arrangement may cost the Council more than an existing or singularly administered equivalent, or the quality of service may decline, or both; and

Important issues and problems are not addressed as roles and responsibilities were not clearly defined at the outset.

**Responsibilities**

17.1. The main reasons for entering into a partnership are:

- To generate efficiencies and cost savings;
- The desire to find new ways to share risk;
- The ability to access new resources;
- To provide new and better ways of delivering services;
- To forge new relationships.

17.2. A partner is defined as either:

- An organisation (private or public) undertaking, part funding or participating as a beneficiary in a project, or
- A body whose nature or status gives it a right or obligation to support the project.

**Councillors:**

17.3. The Articles of the Council's Constitution confirm that the Council may enter into any joint arrangements including with one or more other local authority.

17.4. The **Hub Committee** for **West Devon** and the **Executive** for **South Hams** is responsible for approving frameworks for partnerships within the scope of their functions.

17.5. For **West Devon**, the **Overview and Scrutiny Committee** shall be responsible for the monitoring of partnership arrangements in accordance with the Council's Partnership Policy.

17.6. The **Section 151 Officer** shall:

- Give advice on effective controls and ensure that accounting arrangements are satisfactory.
- With the relevant **Senior Officer** be guided by the checklist in the Council's approved Partnership Policy and Guidance, and the key elements of funding a project. This will include:



- A scheme appraisal for financial viability in both the current and future years;
- Risk appraisal and management;
- Resourcing, including taxation issues;
- Audit, security and control requirements; and
- Carry-forward arrangements.
- With the **Monitoring Officer** must seek to ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory. The overall corporate governance arrangements and legal issues must also be considered when arranging contracts with external bodies. All the risks should have been fully appraised before agreements are entered into with external bodies.

17.7. The **Senior Officer** shall:

- Ensure that any partnership that the Council enters into represents value for money i.e. the benefits outweigh the costs including officer time. The value for money should be continuously monitored on an ongoing basis.
- Ensure that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies;
- Adhere to the Council's approved Partnership Policy and Guidance, having regard to governance, risk management, information sharing, the Council's partnership register, and an annual evaluation of achievements and value for money.
- Maintain a register of all contracts entered into with external bodies in accordance with procedures specified by the **Section 151 Officer**;
- Ensure that such agreements and arrangements do not impact adversely upon the services provided by the authority;
- Ensure that an agreement exists in respect of each partnership and arrangements are properly documented and reviewed by the Council's Solicitor; and
- Provide appropriate information to the **Section 151 Officer** to enable a note to be entered into the Council's statement of accounts concerning material items.

17.8. **Partners** must:

- If appropriate, and especially where this Council takes the lead, be aware of their responsibilities under the authority's Financial Procedure Rules, Contract Procedure Rules, and Partnership Policy unless separate governance arrangements, including the administration of financial matters, are adopted by each partner;
- Ensure that risk management processes are in place to identify, assess and monitor all known risks;
- Ensure that project appraisal processes are in place to assess the viability of the project in terms of resources, staffing and expertise;
  - Agree and accept formally the roles and responsibilities of each of the partners involved in the project before the project commences; and
  - Communicate regularly with other partners throughout the project so that problems can be identified and shared to achieve their successful resolution.

### **Shared Services**

17.9. The **Section 151 Officer** will ensure that a framework exists for the recharging of costs incurred by one partner Council on behalf of the other, having regard to the:

- Moral and legal requirement that one Council's tax payers are not subsidising the costs of the others:
- Principle accepted by Councillors that partner Council's do not incur excessive costs in establishing the value of recharge due, although the recharge must be transparent and supportable to ensure its acceptability to the Councils' external auditors.

17.10. **Senior Officers** must ensure that:

- Their managers are aware that they are responsible for the recharging of costs incurred and must consider budget implications of using employees of the shared Council before deciding where a shared resource is deployed. In each case focus needs to be on who will benefit from the expenditure (and therefore who should bear the cost of the work).
- Budgets must not be used to fund another authority's costs even where they have a budget shortfall.
- All recharges must be transparent and robust with a clear audit trail and a clear basis for recharge
- Should tasks be undertaken by an officer in one Authority on behalf of both, clear parameters need to be set to ensure that there is no duplication

17.11. The lead officer must check the VAT and insurance implications of any proposed new shared services working arrangements with Finance Community of Practice well before they are due to start.

17.12. Officers must always be thinking about shared services and whether any of their work needs to be recharged (on a regular or ad hoc basis).

## **PAYMENTS to EMPLOYEES and MEMBERS (PAYROLL) Section 18**

### **Why is this important?**

Staff costs are the largest item of expenditure for most Council services. It is therefore important that payments are accurate, timely, made only where they are due for services to the Council and that payments accord with individuals' conditions of employment. It is also important that all payments are accurately and completely recorded and accounted for and that Councillors' allowances are authorised in accordance with the scheme adopted by the full Council.

### **Risks:**

Employees may be paid incorrectly;  
Payments may be made to fictitious employees; and  
Action could be taken against the Council by external agencies for failing to abide by statutory requirements in the employment and remuneration of employees.

### **Responsibilities**

18.1. The payment of all salaries, wages, gratuities, compensation and other emoluments to employees or to former employees shall be made by the **Head of Paid Service through the HR Community of Practice Lead**, including those powers set out in the Scheme of Delegation. These officers are responsible for advising on areas such as income tax, national insurance and pension contributions.

18.2. The **HR Community of Practice Lead** will:

- Ensure that adequate and effective systems and procedures are operated, so that:
  - payments are only authorised to bona fide employees;
  - payments are only made where there is a valid entitlement;
  - conditions and contracts of employment are correctly applied;
  - employees' names listed on the payroll are checked at regular intervals;
  - to verify accuracy and completeness with **Senior Officers**.
- Control, make accurate and timely payment and account for national insurance, income tax and pension and the maintenance of related records;
- With the **Section 151 Officer**, frequently reconcile payroll expenditure against approved budgets.
- Ensure that checks are undertaken prior to employing new staff to ensure that they are appropriately qualified, experienced and trustworthy.
- Notify the **Head of Paid Service** and the **Section 151 Officer** as soon as possible of changes in remuneration, other than normal increments and pay awards and agreements of general application.

### **Senior Officers**

18.3. Each **Senior Officers** shall:

- Ensure appointments are made in accordance with the rules of the Council and approved establishments, grades and scale of pay and that adequate budget provision is available.
- Notify the **HR Community of Practice Lead** as soon as possible and in such form as the HR Community of Practice Lead may prescribe of:
  - appointments, resignations, dismissals, suspensions from duties and transfers;
  - absences from duty for sickness or other reasons apart from approved leave;
  - changes in rate of remuneration (other than normal increments); and

## **PAYMENTS to EMPLOYEES and MEMBERS (PAYROLL) Section 18**

- information necessary to maintain records of service for superannuation, income tax, national insurance and the like.
- such other information as may be required by the **HR Community of Practice Lead** in connection with the calculation and payment of salaries, wages, compensation and other emoluments to the employee.
- Ensure the payment of salaries and wages at the proper time such documents as are required for data processing are to be submitted in accordance with a timetable.
- To ensure that the **HR Community of Practice Lead** and **Section 151 Officer** are notified of the details of any employee benefits in kind, to enable full and complete reporting within the income tax self-assessment system.

### **Appointment**

- 18.4. Appointment of employees will be made in accordance with the establishment and rates of remuneration approved by the Council.
- 18.5. The **HR Community of Practice Lead** (and any officer who may be appointed to carry out duties in connection with remuneration or establishment) will be consulted in connection with any proposal to seek approval from the Senior Leadership Team /HR Panel for any appointment outside the approved establishment and rates of remuneration.
- 18.6. In applying scales of salaries and wages, and in relation to other remunerations the **Senior Officers** will consult with the **HR Community of Practice Lead**.
- 18.7. Upon the appointment of any member of staff, each **Senior Officer** will provide the **HR Community of Practice Lead** with the relevant payroll starter letters and forms, plus information necessary to maintain records of service, pensions, income tax and national insurance liability etc may prescribe on a timely basis.
- 18.8. The **HR Community of Practice Lead** will maintain personal files for all new and existing employees and will complete pension documentation as required, in accordance with the Local Government Pension Scheme.

### **Appointment – Self Employed Status**

- 18.9. To ensure that payroll transactions are processed only through the payroll system, **Senior Officers** should give formal consideration to the employment status of individuals employed on a self-employed consultant or subcontract basis by completing the HMRC employment status checklist.
- 18.10. The Inland Revenue applies a tight definition for employee status, and the **Section 151 Officer** and the **HR Community of Practice Lead must be advised of all appointments**.

### **Time and Other Amendment Records**

- 18.11. All time records and other amendments to payroll data shall be in a form approved by the **HR Community of Practice Lead**.
- 18.12. All time records and other amendments will be certified by or on behalf of the **Senior Officer** concerned. A list of officers authorised to sign such documents will be sent to the **HR Community of Practice Lead** together with specimen signatures.

## **PAYMENTS to EMPLOYEES and MEMBERS (PAYROLL) Section 18**

- 18.13. All amendments to the authorised signatory list will be notified to the **HR Community of Practice Lead**. Documents will be signed in manuscript in the authorised officer's own name.
- 18.14. All time records and other amendment pay sheets will be signed by the employee making the claim.
- 18.15. Electronic mailing or facsimiles are not a suitable media to notify the Head of Corporate Services of time or other amendments that result in payment or deductions from pay, other than in urgent cases when followed up with a signed original document.
- 18.16. Retention of documents must comply with statutory Inland Revenue, DwP and Pension requirements.
- 18.17. Each **Senior Officer** will be responsible for keeping adequate records of annual leave, sickness or other absences of employees within her/his service group.

### **Payment**

- 18.18. Payments will be calculated by the **HR Community of Practice Lead** in accordance with the information provided, the relevant Conditions of Service, and statutory payroll legislation.
- 18.19. Payment will be by BACS for all employees. Bank details must be provided by employees in writing.
- 18.20. Pay advices will be despatched to the relevant department where a designated officer will be responsible for their distribution. Any undelivered pay advices must be returned to the **HR Community of Practice Lead** not payroll officers (contributes to separation of duties in a small team).
- 18.21. Payment of salaries and wages in advance will not be made except in the case of persons leaving the service of the Council before the day on which their salary or wage would normally be paid or at the discretion of the **HR Community of Practice Lead**.

### **Absence**

- 18.22. Managers or their authorised officers are responsible for ensuring records of all absences including holidays, sickness, unpaid and other leave are maintained and monitored, and for notifying the **HR Community of Practice Lead** of the same.

In addition, for periods of unpaid and unauthorised leave, immediate written notification to the relevant **Senior Officer** is required.

### **Leavers**

- 18.23. The relevant **Senior Officer** will notify the **HR Community of Practice Lead** immediately by completion of a Leaver's Form, of all resignations, dismissals, redundancies or retirements. On receipt of the Leaver's Form the **HR Community of Practice Lead** will calculate and initiate the final payment, and where applicable, forward the necessary pension documentation, to the administering Authority.

**Pay Awards**

18.24. The **HR Community of Practice Lead** will be authorised to implement any nationally agreed salary or wage award and will report to the appropriate member body on the financial implications of any pay award affecting employees of the Council.

**Verification**

18.25. The names and grades of all employees listed on the payroll shall be annually checked and signed as correct by the appropriate **Senior Officer** to verify the accuracy of the payroll records.

**Councillors Allowances**

18.26. The **Monitoring Officer** will advise the **Section 151 Officer** promptly of the Councillors' allowances agreed by the Council in the Scheme of Councillor Allowances. Payments made to Councillors will be through the payroll and will be subject to the same financial control requirements as those made to officers.

**Staffing**

18.27. The **Head of Paid Service** is responsible for providing overall management to staff. He/she is also responsible for ensuring that there is proper use of the evaluation or other agreed systems for determining the remuneration of a job.

18.28. The **Head of Paid Service and Section 151 Officer** shall ensure:

- That the budget provision exists for all existing and new employees.
- The staffing budget is an accurate forecast of staffing levels and is equated to an appropriate revenue budget provision (including on-costs and overheads).

18.29. **Senior Officers** shall:

- Monitor staff activity to ensure adequate control over such costs as sickness, overtime, training and temporary staff.
- Ensure that the staffing budget is not exceeded without due authority and that it is managed to enable the agreed level of service to be provided.
- Ensure that the **Section 151 Officer** is immediately informed if the staffing budget is likely to be materially over- or under-spent.

**Why is this important?**

The Council grants thousands of people millions of pounds in benefits to assist them in paying their rent and/or Council Tax bills. The Housing Benefit scheme is complex, requires people to declare both personal and financial details and is, as a result, open to error and abuse. This being the case the assessment, calculation and payment of claimants needs to be carefully controlled.

**Risks:**

Benefit could be paid to fraudulent claimants;

Personal domestic and financial details relating to a claimant could be disclosed without authority to do so; and

Benefit entitlement could be incorrectly calculated.

**Responsibilities**

19.1. The **Community of Practice Lead for Housing, Benefits and Revenues** shall be responsible for the procedures, assessment and payment of benefit. S/he shall ensure that periodic checks on the calculations and the entitlement for benefit in selected cases are carried out.

**Personal Data/Declaration of Interest**

19.2. All records and files of personal information relating to claims and the calculation of entitlement to benefit are to be held under arrangements that will prevent access by unauthorised persons.

19.3. Any information gained in the assessment and payment of benefit shall not be divulged by any member of staff to persons not authorised to receive that information. Any person seeking information on behalf of another must provide satisfactory evidence that they are authorised to do so within the confines of the Data Protection Act.

19.4. Any members of staff with a personal interest in a benefit claim shall notify their manager in writing and have no part in the assessment or payment of that claim.

**Payment – BACs**

19.5. Benefit payment will be made by BACS whenever possible. All bank details to enable payment will be amended by benefits staff only on receipt of official notification in writing from the claimant. For landlord payment to companies, written details of bank account changes will be subsequently verified direct with the company.

**Payment - Cheques**

19.6. All cheques in payment of benefit shall be crossed and opening of those cheques will not be permitted. Alternative arrangements will be made by the relevant Senior Officer to allow claimants to cash cheques with the appropriate identification.  
All benefit cheques returned to the Council, whether by hand or by post, shall be passed immediately to the Cashier and cancelled. The Benefits team and accountants are, however, to be promptly notified that any such cheques have been returned.

**Why is this important?**

Public money should be spent with demonstrable probity and in accordance with the Council's policies, even in respect of low value purchases. Authorities have a statutory duty to achieve best value in part through economy and efficiency. The Council's procedures should help to ensure that services obtain value for money from their purchasing arrangements.

**Risks:**

Cash may be stolen, lost or borrowed without due authority; and  
Expenditure may be poorly controlled with little comparison of costs.

**Responsibilities**

- 20.1. The **Section 151 Officer** may advance a fixed imprest to an officer of the Council for petty cash expenditure. Each imprest shall be of such amount as the **Section 151 Officer** may determine in consultation with the **Senior Officer**. A centralised imprest should be used wherever this is practical, and the principles of these rules apply equally to it.
- 20.2. Following certification of receipt, officers holding petty cash take personal responsibility for the custody of cash until such time as another authorised officer formally takes over responsibility for the money.

**Expenditure**

- 20.3. Petty cash items shall be limited to minor non-recurring items of expenditure and shall not exceed in the case of each individual item, the sum prescribed by the **Section 151 Officer** of £30. This amount may only be exceeded with the prior agreement of the **Section 151 Officer** or his/her nominated Deputy.
- 20.4. None of the following items of expenditure shall be paid out of petty cash:
- Travelling and subsistence expenses of officers, including car park and ferry/bridge crossings;
  - Postages, except where a small supply of stamps is held for a specific purpose agreed by the **Section 151 Officer**; and
  - Stationery.
- 20.5. No personal cheques are to be encashed via petty cash, nor personal loans made.
- 20.6. Where petty cash disbursements are made for goods that include VAT, a VAT invoice or receipt must be obtained.
- 20.7. Any claim for petty cash shall be recorded on an official petty cash voucher. The voucher is to be signed by the officer making the claim and attached to a suppliers payment receipt.
- 20.8. The holder of the petty cash imprest shall check the claim to ensure that the item is for work use, the amount claimed matches the receipt and that it is correctly coded for both financial management and VAT purposes.



**Reimbursement**

- 20.9. Petty cash imprests shall be reconciled and balanced (vouchers to cash balances) on a regular basis (monthly is recommended) or when handed to another officer to administer. Every officer holding a petty cash imprest shall certify to the Finance Community of Practice the amount of the imprest as at 31 March each year.
- 20.10. Receipts and vouchers for petty cash disbursements shall be forwarded to the Finance Community of Practice with the claim for reimbursement. A claim for reimbursement must also be made as close to the 31st March annually as is practical.
- 20.11. The claim shall be certified as correct by the **Senior Officer** or such person nominated by her/him for that purpose.

**General**

- 20.12. No income is to be paid into petty cash.
- 20.13. Cash income or change floats are not to be used as petty cash in any circumstances.
- 20.14. Floats and vouchers shall be held securely and access restricted to authorised officers.
- 20.15. The Finance team must be advised of any significant variances, above £30, identified by the reconciliation of the petty cash float.
- 20.16. On leaving the Council's employment or otherwise ceasing to hold an imprest advance, an employee shall account to Corporate Finance for the amount advanced to her/him. Under no circumstances should the petty cash be banked as income, instead it should be coded to the relevant petty cash code supplied by Corporate Finance. On change of custody of the float it should be counted by both officers and a signed record of the balance held.
- 20.17. Cash balances and vouchers shall be available for inspection by internal audit officers at any time.
- 20.18. The officer responsible will provide the **Section 151 Officer** with a certificate of the value of the account held at 31st March each year.

**Centralised Imprest - Petty Cash Advances**

- 20.19. Advances of cash up to £30 may be made with the prior authorisation of an authorised signatory upon completion of a 'Cash Advances' form. The name of the person to whom the advance is to be issued and that of the issuing officer together with the date of issue and the amount shall be recorded on the form.
- 20.20. Receipts shall be kept in respect of purchases made using the cash advance. These, together with any residual balance shall be paid back within 2 working days of the original advance being issued. The balance of any residual cash plus the value of the receipts shall agree to the amount originally issued.

**20.21.** The Cashier shall check the receipts and ensure that a coding slip is completed to ensure that the FMS system is updated with the expenditure incurred.

**Why is this important?**

Maintaining proper accounting records is one of the ways in which the authority discharges its responsibility for stewardship of public resources.

A complete and accurate audit trail is the key mechanism underpinning the control environment.

**Risks:**

The External Auditor may not be able to provide an adequate assurance that the Councils accounts present a true and fair view;

Statutory obligations concerning the retention of key documents may not be met, e.g. VAT, PAYE;

Court action could fail due to the loss of prime documents; and

Performance statistics cannot be verified.

**Responsibilities**

- 21.1. In conjunction with the **Section 151 Officer**, the **Monitoring Officer** shall create, maintain and make available a Records Management Policy and Records Retention Policy to all staff.
- 21.2. **Senior Officers** shall ensure that their staff retain adequate records in line with statutory requirements and internal policies to provide a management and audit trail. This shall include making staff aware of and follow guidance set out in the Records Management Policy and Records Retention Policy.
- 21.3. It is the responsibility of all officers and Councillors to ensure the security of any retained documents in line with the Data Protection Act and these Rules

## RISK MANAGEMENT, INTERNAL CONTROL, GOVERNANCE Section 22

### Why is this important?

All organisations, whether private or public sector, face risks to people, property and continued operations. Risk is the chance or possibility of loss, damage, injury or failure to achieve objectives caused by an unwanted or uncertain action or event. Risk management is the planned and systematic approach to the identification, evaluation and control of risk. Its objectives are to secure the assets of the organisation and to ensure the continued financial and organisational well-being of the organisation. In essence it is, therefore, an integral part of good business practice. Risk management is concerned with evaluating the measures an organisation already has in place to manage identified risks and then recommending the action the organisation needs to take to control these risks effectively.

### Risks:

The Council may be unable to meet large claims made against it, i.e. death or injury;  
The Council may be over insured, i.e. paying out higher premiums than it needs to; and  
The Council may not be aware of all risks.

### Responsibilities

#### Risk Management

- 22.1. It is the overall responsibility of the Council to oversee the Council's Risk Management Policy, and to promote a culture of risk management awareness throughout the Council.
- 22.2. The Council will be assisted in this by the **Audit Committee** who will monitor the effectiveness of the Council's risk management process on a regular basis.
- 22.3. On a six monthly basis the **Head of Paid Service** will provide update reports to the **Audit Committee**.
- 22.4. The Senior Leadership Team will comprehensively review the Corporate Risks on a quarterly basis.
- 22.5. As part of the System of Internal Control **Senior Officers** will set the operational objectives for their service each year linked to corporate objectives; identify the risks to achieving those objectives and the controls to mitigate these risks. In addition, the risks deriving from the 'Blueprint' objectives must also be established and recorded in the Council's risk registers.
- 22.6. **Senior Officers** shall:
- Identify and quantify risks and potential liabilities;
  - Ensure awareness among all levels of staff with regards to the control of risk;
  - Ensure that all significant risks and potential liabilities are addressed;
  - Ensure that the appropriate decisions are taken on the acceptable level of retained risk; and
  - Regularly review the effectiveness of risk reduction strategies and the operation of these controls. The risk management process should be conducted on a continuing basis.
- 22.7. Managers are responsible for managing the day to day risks.

## RISK MANAGEMENT, INTERNAL CONTROL, GOVERNANCE Section 22

### Statutory Officers Group

- 22.8. An **Head of Paid Service** will co-ordinate a quarterly meeting of a Statutory Officers Group. The Group will include the **Head of Paid Service, Section 151 Officer, Monitoring Officer** with other officers invited as appropriate.
- 22.9. The Statutory Officers Group will ensure that the Council's risk register reflects the risks identified by **Senior Officers**.
- 22.10. **Senior Officers** are also responsible for identifying significant changes in risk for their service and must ensure that the Statutory Officers Group is advised on a timely basis.
- 22.11. The Statutory Officers Group will drive the implementation and embedding of risk management, and contribute to the maintaining of the Council's risk registers.
- 22.12. Internal Audit will review the risk management process on an annual basis and report the results to the Statutory Officers Group in addition to normal reporting lines.
- 22.13. The risk management framework links with the Council's System of Internal Control and Code of Corporate Governance, all of which form part of the assurance streams that enable the Council to publish an annual governance statement as required by the Accounts and Audit Regulations (backed by Statutory Instrument)

### Internal Control (System of)

- 22.14. The Council is responsible for maintaining a System of Internal Control – setting of objectives, identification of risk and controls to mitigate the risks.
- 22.15. The Council will also be responsible for conducting a review at least once a year of the effectiveness of internal control and shall prepare a statement (the Annual Governance Statement), in accordance with proper practices, for publication with the Council's published annual accounts.
- 22.16. The **Audit Committee** will act as the nominated member body to examine the draft statement and supporting evidence and approve the Annual Governance Statement on behalf of the Council with the Statement of Accounts.
- 22.17. **Senior Officers** are to manage system processes to ensure that established controls are being adhered to and to evaluate their effectiveness in order to be confident in the proper use of resources, achievement of objectives and management of risks.
- 22.18. The **S.151 Officer** will advise on the systems of control devised by managers and co-ordinate the management group with responsibility for drafting the statement, evaluating assurances and supporting evidence in respect of:
- Performance Management;
  - Internal Audit;
  - External Audit;
  - Senior Officers;
  - Monitoring Officer;
  - Statutory Officers Group; and

## **RISK MANAGEMENT, INTERNAL CONTROL, GOVERNANCE Section 22**

- Corporate Governance.

### **Systems Changes - Direct or Indirect Financial Nature**

22.19. The **Section 151 Officer** shall be informed of the creation, amendment or removal of systems of a financial nature or where decisions arising from the use any system have a financial consequence.

22.20. The requirements set out in the Council's Data Quality Strategy shall also be adhered

### **Corporate Governance**

22.21. The Council is responsible for approving the Council's Code of Corporate Governance.

22.22. The principle of the Code will be openness, integrity and accountability and will cover the areas required by CIPFA/Solace, which at the date of these Financial Procedure Rules include:

- Purpose of the Council and outcomes for the community;
- Councillors and officers with clearly defined functions and roles;
- Upholding high standards of conduct and behaviour;
- Informed decision making, effective scrutiny, and risk management;
- Developing the capability of Councillors and officers; and
- Engaging with local people and other stakeholders.

22.23. Direct responsibility for the monitoring of compliance with the principles and elements of corporate governance and the requirements of the Code are placed with the Council's **S.151 Officer, Monitoring Officer and Internal Audit**.

22.24. These officers, through Internal Audit, will therefore:

- Test the code annually and the results of the monitoring and testing will be reported to both the **Audit Committee** as required by the Constitution.
- Prepare a statement, in accordance with proper practices, for publication with the Council's published annual accounts.

### **Performance Management/Data Quality**

22.25. The **Section 151 Officer** shall:

- Advise and supply the financial information that needs to be included in performance plans in accordance with statutory requirements and agreed timetables.
- Contribute to the development of corporate and service targets and objectives and performance information.
- Ensure that systems are in place to measure activity and collect accurate financial information for use in performance indicators.

22.26. **Senior Officers** shall:

- Contribute to the development of performance plans and the Financial Strategy in line with statutory requirements.

## **RISK MANAGEMENT, INTERNAL CONTROL, GOVERNANCE Section 22**

- Contribute to the development of corporate and service targets and objectives and performance information.
- Ensure that robust systems exist for the collection and monitoring of performance information.

### **Business Continuity**

22.27. The Civil Contingencies Act 2004 requires the Council as a Category 1 responder to put in place business continuity arrangements to ensure that in the event of an emergency it can continue to exercise both its civil protection functions and perform its ordinary functions.

22.28. The Council has identified business continuity as a strategic risk.

22.29. In addition business continuity will require a separate but similar risk management strategy and process. A separate Business Continuity Planning Group must meet with operational links between it and the Statutory Officers Group.

**Why is this important?**

The Council holds assets in the form of property, vehicles, equipment, furniture and other items worth many millions of pounds. It is important that assets are safeguarded and used efficiently in service delivery, and that there are arrangements for the security of both assets and information required for service operations.

**Risks:**

Cash and other assets could be lost, stolen or misused; and Claims against the Council's insurers may be invalidated.

**Responsibilities****23.1. Each Senior Officer:**

- Is responsible for maintaining proper security at all times for all buildings, stocks, stores, furniture, equipment, cash, etc. under her/his control;
- Shall consult the **Section 151 Officer** in any case where security is thought to be defective or where it is considered that special security arrangements may be needed;
- Must ensure that attractive and portable items are to be identified with security markings as belonging to the Council and recorded.
- Must ensure that cash holdings shall be kept to a minimum and at a level agreed with the **Section 151 Officer**. They shall not exceed insurance cover.
- To ensure that no Council asset is subject to personal use by an employee without proper authority;
- Or the designated deputies shall ensure that staff leaving the authority hand back any keys or assets held by them prior to their departure. Door entry systems combinations and safe combinations etc. shall be changed on the day of departure.

23.2. All staff are to ensure that all windows, cabinets, safes and drawers are locked in any location wherever cash or keys are held out of hours.

23.3. Employees of the Council responsible for collecting, holding and the paying-in of official cash are to ensure that it is held under secure arrangements at all times.

**Safes**

23.4. Members of staff who are authorised to gain access to any Council safe must not allow the keys or combination access codes to pass from their control or to be available to unauthorised persons at any time.

23.5. The loss of any such keys must be reported to the **Section 151 Officer** immediately. The combination of any Council safe must not be disclosed to another person without the express authorisation of the **Senior Officer** or relevant manager. The combination of a safe must be changed immediately when a member of staff, who is authorised to open that safe, leaves the employment of the Council.

23.6. All keys held for any official purpose by an authorised member of staff shall be held under proper and secure arrangements and not passed or be available to any unauthorised person. (This regulation includes card keys and door entry codes issued to members of staff).



**Postal Franking Machines**

23.7. Postal franking machines must also be securely held, and officers responsible will keep proper records of usage and certify the balance of impressions held in the machine at the 31st March each year. The certificate is to be forwarded to the **Section 151 Officer** promptly. Stocks of postage stamps shall also be held securely.

**ICT Software and Hardware**

23.8. Security of computer software, hardware and related vulnerable equipment are covered by a separate Council ICT Security Policy which is the responsibility of the **ICT Community of Practice Lead**, and all staff should make themselves aware of the requirements on them with regard to safeguarding the Council's computer systems.

**Data – Electronic/Paper Based**

23.9. All **Senior Officers** shall ensure that their employees are aware that they have a personal responsibility with regard to the protection and confidentiality of information, including the requirements of the Data Protection Act, whether held in manual or computerised records.

**Why is this important?**

The Council holds assets in the form of property, vehicles, equipment, furniture and other items worth many millions of pounds. It is important that assets are safeguarded and used efficiently in service delivery, and that there are arrangements for the security of both assets and information required for service operations. An up-to-date stock record, assets register and inventory is a prerequisite for sound asset management.

**Risks:**

Stocks and stores could be lost or stolen; and  
Stocks and stores may be held at unreasonably high and uneconomic levels.

**Responsibilities**

- 24.1. Each **Senior Officer** shall make arrangements for the care and custody of stocks and stores in their service. She/he shall ensure that stocks are maintained at reasonable levels and are subject to a regular independent physical check (being a minimum of once a year). All discrepancies should be investigated and pursued to a satisfactory conclusion.
- 24.2. Designated officers are to maintain accurate records of all receipts and issues in a form agreed by the **Section 151 Officer**. All requests for stores and materials must be made to the officer responsible for the control and issuing of those stores and materials.
- 24.3. The relevant **Senior Officers** will arrange to investigate and remove from the Council's records (i.e. write-off) discrepancies as necessary, and to obtain the relevant approvals for write off and disposal of redundant stocks and equipment in line with the limits below

**Stock Control and Issues**

- 24.4. All stocks will be recorded in a stock control record in a format agreed by **Senior Officers** in association with the **Section 151 Officer**.
- 24.5. Stock items are only to be issued to persons authorised to receive those materials. Requisition notes or equivalent documents approved by the **Section 151 Officer** are to be used bearing the signature of the appropriate authorised receiving officer.

**Stock Takes**

- 24.6. **Senior Officers** shall arrange for stock takes to be carried out at a frequency agreed with the **Section 151 Officer** but at least once in every financial year, at financial year end. Where continuous stocktaking arrangements are operating, this will not apply.
- 24.7. All discrepancies should be investigated and pursued to a satisfactory conclusion. Stock taking sheets must clearly show surpluses and deficiencies and should be retained with all related system documentation.
- 24.8. Random stock checks may also be carried out by Internal Audit.
- 24.9. Whenever a storekeeper or person in charge of stores hands over, leaves or ceases to have custody of the stores, **Senior Officers** shall ensure that a prior check is made of the stores concerned and that a handing over certificate is signed by the outgoing and incoming officers, i.e. agreement of volumes, numbers etc. as at the handover date.

**Stock Certificates**

- 24.10. **Senior Officers** or their nominated Deputy shall certify the quantities and values of stocks at cost price held by her/him at 31st March each year and forward this with a summary of the stock control system to the **Section 151 Officer**.
- 24.11. Where appropriate, the **Section 151 Officer** shall arrange for stock control systems to be reconciled to the Council's accounts regularly at an appropriate frequency, and annually at 31st March as a minimum.

**Surpluses, Deficiencies and Write Offs**

- 24.12. Any significant surpluses or deficiencies revealed in any items of stock at any stocktaking shall be reported immediately to the **Senior Officer** or her/his Deputy and write offs arranged with the **Section 151 Officer**.
- 24.13. Items that are surplus to the Council's requirements shall only be disposed of as follows:

<b>Item Value ex VAT</b>	<b>Stock Deficiencies and Obsolete Stock</b>
Up to £500	Stocks or stores of <b>less than £500</b> in value at date of disposal may be disposed of or exchanged at the relevant Senior Officer's written discretion, but a second officer shall formally witness the disposal at a local level and the appropriate financial records retained.
£500 to £1,500	Stocks or stores with a <b>value at date of disposal between £500 and £1500</b> may be disposed of or exchanged at the <b>Senior Officer's</b> written discretion, but a second officer shall formally witness the disposal at a local level and the appropriate financial records retained.
£1,500 to £5,000	Where stocks or stores are valued at date of disposal above £1500 but less than £5,000 sealed bids are to be sought and it shall be the responsibility of the <b>Section 151 Officer</b> and the relevant <b>Senior Officer</b> or their nominated deputy, to obtain the best possible price.
Above £5,000	The disposal or write off of any stock or stores item/s valued at more than £5,000 at date of disposal shall require the prior approval of the <b>Executive/Relevant Committee</b> .

**Why is this important?**

Like all organisations, the Council is responsible for ensuring its tax affairs are in order. Tax issues are often very complex and the penalties for incorrectly accounting for tax are severe. It is, therefore, very important for all officers to be aware of their role.

**Risk**

Risk that the statutory rules on taxation are broken, with the potential for the Council to incur penalties in addition to the amounts due.

**Responsibilities**

25.1. The **HR Community of Practice Lead** will ensure:

- Completion of all HMRC returns regarding PAYE in line with the statutory deadlines;
- That all payroll related taxable transactions are identified properly carried out and accounted for within stipulated timescales;
- Records are maintained in accordance with instructions
- Up-to-date guidance on PAYE issues is made available to the Council's managers and employees.

25.2. The **Section 151 Officer** will arrange for:

- A monthly return of VAT inputs and outputs to Her Majesty's Revenue and Customs (HMRC) in line with statutory deadlines;
- A regular calculation to establish the Council's position against the HMRC's VAT de minimis requirements;
- Details regarding the construction industry tax deduction scheme to be sent to the HMRC as required by the guidelines.
- Up-to-date guidance on VAT issues to be made available to managers and relevant Council employees.

25.3. **Senior Officers** will ensure that:

- The correct VAT liability is attached to all income due and that all VAT recoverable on purchases complies with HM Customs and Excise regulations.
- Where construction and maintenance works are undertaken, the contractor fulfils the necessary construction industry tax deduction requirements.
- All persons employed by the Council are added to the Council's payroll and tax deducted from any payments, except where the individuals are employed by a recognised staff agency.

If, in exceptional circumstances, a **Senior Officer** considers it beneficial to recruit a self employed individual, checks must be carried out on their employment status using the Council's or HMRC's checklist. The completed checklist must be sent to the **HR Community of Practice Lead** before any payment of an invoice is generated. Under no circumstances should a payment be generated through a payment request form i.e. not supported by an invoice.

### **Why is this important?**

In the course of their duties officers and Councillors may be required to work away from their normal place of work, attend seminars, training days, etc. The officer/Councillor should be reimbursed for their travel and associated costs at agreed rates and in accordance with agreed procedures. In so doing the officer receives what is due to them and the Council has an acceptable record of what is claimed and by whom.

### **Risks:**

Fraudulent claims may be made, i.e. fictitious journeys, embellished claims, incorrect rates etc. Claims could be paid twice or at the wrong rates; and Financial and accounting records are not correctly updated.

## **Responsibilities**

### **HR Community of Practice Lead:**

26.1. All claims for payment of travelling and subsistence shall be in a form approved by the **HR Community of Practice Lead**, and will in normal circumstances be made through salaries in accordance with the Council's approved **Travel and Subsistence Policy** (available on the Council's Intranet)

### **Claim Completion and Certification**

26.2. Claims for travel and subsistence shall only be made where journeys were authorised and expenses were properly and necessarily incurred. All claims shall be completed fully to the satisfaction of the **HR Community of Practice Lead** and in accordance with the Council's approved Travel and Subsistence Policy.

26.3. All claims for travelling and subsistence shall be signed by the claimant and authorised by or on behalf of the appropriate **Senior Officer**.

26.4. A list of officers authorised to sign claims shall be sent to the **HR Community of Practice Lead**. All amendments to the list shall be notified to the **HR Community of Practice Lead** in writing. The claims shall be signed in manuscript in the authorised officer's own name. Claimants may not authorise their own claim.

26.5. The certificate by or on behalf of the **Senior Officer** shall mean that the journeys were authorised and that the manager is satisfied that expenditure was necessarily incurred on travel and subsistence for which the proper allowances have been claimed, ensuring that cost-effective use of travel arrangements is achieved.

26.6. Petty cash must not be used for any travel or subsistence related expenses by officers or Councillors.

### **Receipts**

26.7. If a receipt is not attached an explanation of the circumstances may be called for by Internal Audit. In any event, where no receipt is supplied, the expense claimed must be treated as a taxable item.

26.8. In addition, a VAT receipt for petrol must be attached to cover the VAT element claimed for car mileage. This is a requirement of HM Revenue and Customs, if the Council is to reclaim

the VAT paid to the employee. As a result, if no VAT receipt is supplied, the Council cannot pay the VAT element to employees.

26.9. Credit card slips are not acceptable in lieu of other forms of receipt.

#### **Timeliness of Claim**

26.10. All claims for payment to employees of car allowances (including leased cars), subsistence allowances, travel and incidental expenses must be submitted with all relevant receipts on a monthly basis in accordance with the Council's approved Travel and Subsistence Policy.

#### **Motor Insurance, Driving Licences and Vehicle Roadworthiness**

26.11. In accordance with the Travel and Subsistence Policy, all employees undertaking official business travel shall ensure they hold an appropriate driving licence for the class of vehicle being used and that the vehicle is taxed, has a valid MOT certificate where appropriate and is covered by an adequate Motor Insurance Policy which includes clauses covering Business Usage. Payroll will annually request officers to provide their driving licence, MOT certificate and insurance certificate for inspection by their line manager.

#### **Council Members**

26.12. Councillors' signed travel claims will be certified by the **Democratic Services Manager** or a duly authorised officer on her/his behalf and must be submitted on a monthly basis to the **HR Community of Practice Lead** in line with the approved Scheme of Councillors' Allowances.

**Why is this important?**

Many millions of pounds pass through the Council's accounts each year. This led to the establishment of Codes of Practice for Treasury Management. These aim to provide assurances that the Council's money is properly managed in a way that balances risk with return, but with the overriding consideration being given to the security of the Council's financial position.

**Risks:**

Money invested by the Council could be lost giving rise to the Council facing serious financial difficulty and/or failure to achieve its objectives;

Funds could be misused by a member of staff for their own ends, resulting in a loss to the Council; Money could be borrowed or lent by the Council at less than advantageous interest rates thereby incurring higher than necessary expenditure or foregoing investment income; and

The Council could fail to repay money borrowed on time thereby having penalties invoked against it

**Responsibilities**

- 27.1. The Council has adopted the Revised Code of Practice for Treasury Management in Local Authorities (published by CIPFA) and these rules should be adhered to as a matter of principle.
- 27.2. This will be the responsibility of the **Section 151 Officer** and include presentation to Councillors of a strategy and related policies setting out the approach to managing the risk of the Treasury Management activities.
- 27.3. The **Section 151 Officer** will also ensure that the borrowing and investments of the Council in such a manner as to comply with the CIPFA Code of Practice on Treasury Management and the Council's Treasury Management Policy Statement and Strategy and the Council's Investment Strategy. The Strategy would take account of any proposed borrowing under the Prudential Code.

**Cash Position**

- 27.4. The **Section 151 Officer** shall arrange for a nominated officer to assess the cash position each working day to determine the funds to be invested, recalled or borrowed as necessary. The nominated officer shall prepare a Daily Cash Position Statement which is to be signed by an authorised officer on the day of preparation.
- 27.5. The **Section 151 Officer** shall be authorised to invest or utilise such surplus monies of the Council as may seem to her/him proper and in the Council's interest, within the approved Council Policy.

**Investments**

- 27.6. All investments of money under its control shall be made in the name of the Council, or in the name of nominees approved by the Council.
- 27.7. All securities in the name of the Council and the title deeds of all property in its ownership shall be held in the custody of the Council's Solicitor. The **Section 151 Officer** will act as registrar of stocks, bonds and mortgages and maintain records of all borrowing by the Council.

## **Borrowing**

27.8. All borrowing shall be made in the name of the Council.

27.9. The **Section 151 Officer** shall:

- Negotiate all loans of money to the Council (including overdrafts) within the Council's overall borrowing powers;
- Be the Council's registrar of stocks, bonds and mortgages;
- Maintain a record of all borrowing of money by the Council;
- Borrow at the most advantageous rates and terms possible; and
- Ensure that the Council's aggregate credit limit is monitored and at no time exceeded.

27.10. The **Section 151 Officer** shall prepare a report prior to the commencement of each financial year for the Council to consider and then set the borrowing limits for the ensuing year.

## **General including Monitoring**

27.11. **Senior Officers** must ensure that interests are not acquired in companies, joint ventures or other enterprises without the approval of the Council, following consultation with the **Section 151 Officer**.

27.12. It is the responsibility of relevant **Senior Officer** to ensure that loans are only made to third parties where specific Councillor approval is obtained, such as loans to social, cultural and sporting organisations etc.

27.13. A detailed weekly statement of lending (or borrowing) transactions including the closing balances lent (borrowed) shall be prepared by a nominated officer and presented to the **Section 151 Officer** or Senior Finance Specialist.

27.14. The **Section 151 Officer** shall report at least three times a year on treasury management activities to the **Executive** at **South Hams** (Strategy, Monitoring and Annual Reports), and the function may be scrutinised by the **Audit Committee**.

27.15. For **West Devon**, the Strategy and mid year Monitoring Report will be taken to the **Hub Committee** and an annual report to the **Audit Committee** and Council

27.16. Interests must not be acquired in companies, joint ventures or other enterprises without the approval of the full Council, following consultation with the **Section 151 Officer**

## **Trust Funds**

27.17. All trust funds shall wherever possible be in the name of the Council.

27.18. All officers acting as trustees by virtue of their official position shall deposit all securities, etc. relating to the trust with the **Section 151 Officer**, or **Monitoring Officer** as appropriate, unless the deed otherwise provides.

27.19. It is the responsibility of **Senior Officers** to arrange, where funds are held on behalf of third parties, for their secure administration, and to maintain written records of all transactions as approved by the **Section 151 Officer**.



27.20. **Senior Officers** must also ensure that trust funds are operated within any relevant legislation including the expectations of the Charity Commission, and the specific requirements for each trust.

### **Why is this important?**

Current legislation enables the Council to provide a range of services to other bodies, but within certain parameters. Such work may enable a unit to maintain economies of scale and existing expertise. Arrangements should be put in place to ensure that any risks associated with this work is minimised and that such work is within the Council's legal powers.

### **Risks:**

Internal resources are tied up in providing external users a service with a resulting detrimental effect on the internal service provision; and  
The Council could be held liable for uninsured actions of its staff.

## **Responsibilities**

### **Approval**

28.1. The **Executive** at **South Hams** and relevant **Committee** at **West Devon** are responsible for approving the contractual arrangements for any work for third parties or external bodies.

### **Legality**

28.2. The relevant **Senior Officer** must ensure that any work carried out for third parties is not outside the Council's powers by formally seeking the opinion of the Council's **Monitoring Officer** before such an arrangement is entered into.

### **Financial Matters**

28.3. The **Section 151 Officer** shall issue guidance on the financial aspects of providing third parties with services and in the maintenance of a contracts register.

28.4. The relevant **Senior Officer** must ensure that:

- Proposals are costed properly in accordance with the guidance provided by the **Section 151 Officer**;
- No contract is subsidised by the Council;
- Appropriate insurance arrangements are made;
- The Council is not put at risk from any bad debts;
- Wherever possible, payment is received in advance of the provision of the service;
- The **Section 151 Officer** is provided with the appropriate information to enable a note to be entered into the statement of accounts; and
- Information held or assets owned by the Council is/are not used to the detriment of the Council.

### **Contracts**

28.5. The relevant **Senior Officer** must ensure that:

- Contracts are drawn up using guidance and advice provided by the Council's Solicitor and **Section 151 Officer** and that the formal approvals process is adhered to;
- All contracts are properly documented and that the documentation is kept up to date; and
- A register is maintained of all contracts entered into with third parties in accordance with the procedures specified in the Contract procedure Rules, including providing the **Monitoring Officer** with the original..

### **Service Provision**

28.6. The relevant **Senior Officer** shall also ensure that:

- The service has the appropriate expertise to undertake the contract; and
- The delivery of the contract will not adversely impact upon the services provided for the Council.

## Part 4H - Contract Procedure Rules

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## Definitions appendix

<b>Term</b>	<b>Definition</b>
<b>Agent</b>	A person or organisation acting on behalf of the Council or on behalf of another organisation.
<b>Award Criteria</b>	The criteria by which the <i>Contract</i> is to be awarded to the successful Tenderer (see further Rules 10 and 11.2e).
<b>Award Procedure</b>	Awarding a contract as specified in Rules 8, 10 and 15.
<b>Bid</b>	A <i>Supplier's</i> proposal submitted in response to the <i>Procurement Documentation</i>
<b>Bond</b>	An insurance policy: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the Contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.
<b>Code of Conduct (Councillors)</b>	As set out in the Constitution – part 5
<b>Code of Conduct (Officers)</b>	The code regulating conduct of Officers, available on the Council's Intranet.
<b>Concession Contracts</b>	Shall mean a public contract under which <i>Supplier/s</i> are given the (exclusive) right to exploit the works or services provided for their own gain and where the <i>Supplier's</i> income is generated solely from third parties or as a combination of revenue streams from both third parties and the Council.
<b>Constitution</b>	The <b>Constitution</b> document approved by the Council which: <ul style="list-style-type: none"> <li>• allocates powers and responsibility within the Council and between it and others</li> <li>• delegates authority to act to the officers and Executive / Committees;</li> <li>• regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.</li> <li>• available on the Internet</li> </ul>
<b>Consultant/Consultancy</b>	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.
<b>Contract</b>	Is a legally binding agreement concluded in writing for consideration (whatever the nature of the consideration, whether by payment or some other form of reward) under which a contracting authority engages a person or organisation to provide goods, works or services.
<b>Contracting Decision</b>	Any of the following decisions: <ul style="list-style-type: none"> <li>• withdrawal of Invitation to Tender</li> <li>• whom to invite to submit a Quotation or Tender</li> <li>• Short listing</li> <li>• award of contract</li> <li>• any decision to terminate a contract</li> <li>• any decision to extend or vary a <i>Contract</i>.</li> </ul>

<b>Contract Notice</b>	An advertisement placed in the Official Journal of the European Union, which is a legal requirement for all procurements that exceed the <i>EU Threshold</i> .
<b>Corporate Contract</b>	A Contract let by the Corporate Procurement Officer to support the Council's aim of achieving Value for Money to include Contracts let by the Council and/or Contracts or Framework Agreements let by other organisations to which the Council has access.
<b>Corporate Procurement Officer</b>	The Council's Procurement Officer charged with providing strategic direction and advice to secure Value for Money in the Council's procurement activities.
<b>Dynamic Purchasing System</b>	A completely electronic system of limited duration which is: (a) established by a contracting authority to purchase commonly used goods, work, works or services; and (b) open throughout its duration for the admission of economic operators which satisfy the selection criteria specified by the contracting authority; and (c) submit an indicative <i>Tender</i> to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person.
<b>Electronic Auction</b>	Is a means of seeking the <i>Supplier's</i> pricing in an electronic format in a live competitive environment, the aim of which is to achieve greater <i>Value for Money</i> than traditional tendering
<b>Executive/Committees</b>	The Council's Executive/Committees as defined in the <i>Constitution</i> .
<b>EU Procedure</b>	The procedure required by the EU where the Total Value exceeds the EU Threshold.
<b>EU Threshold</b>	The contract value at which the EU public procurement directives apply.
<b>European Economic Area</b>	The members of the European Union, and Norway, Iceland and Liechtenstein.
<b>Financial Procedure Rules</b>	The Financial Procedure Rules set out in Part 5 of the Constitution outlining Officer responsibilities for financial matters issued by the S.151 Officer.
<b>Framework Agreement</b>	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
<b>Government Procurement Agreement</b>	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.
<b>Senior Officer / Head of Paid Service</b>	The officers defined as such in the Constitution.
<b>High Profile</b>	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go

	wrong.
<b>High Risk</b>	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
<b>High Value</b>	A high-value purchase is where the value exceeds the EU Threshold values.
<b>Interests</b>	Is a connection to another person or organisation that meets any of the following criteria: (a) Ownership of shares in a Supplier or any other financial interest in a Supplier whether held by the relevant individual or by a close relative of the Individual or by any corporate entity in which the individual has an interest; and/or (b) Employment by a Supplier of the individual or a close relative of the Individual; and/or (c) Provision of services to a Supplier by the Individual or by the firm the individual is associated with, and/or (d) Connection with, whether prejudicial or otherwise, any person/s said to be affected by the outcome of a procurement process.
<b>Invitation to Tender (ITT)</b>	<i>Invitation to Tender</i> documents in the form required by these Contract Procedure Rules
<b>Key Decision</b>	Decisions that are defined as key decisions in the <i>Constitution</i>
<b>Monitoring Officer</b>	As identified in the Constitution. The Monitoring Officer or the Monitoring Officer's formally nominated deputy
<b>Nominated Suppliers</b>	Those persons specified in a main contract for the discharge of any part of that contract.
<b>Non-commercial Considerations</b>	(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters'). (b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only. (c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy. (d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes'). (e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors. (f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees. (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support. (h) Use or non-use by contractors of technical or professional

	services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply. Officer.
<b>Officer</b>	designated by a Senior Officer to deal with the contract in question.
<b>Parent Company Guarantee</b>	A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.
<b>Pre-Qualification Questionnaire (PQQ)</b>	The <i>PQQ</i> is a questionnaire issued to ascertain the suitability of potential suppliers to provide goods, services or works as identified in the tender advertisement / contract notice.
<b>Priority Services</b>	Those services required to be tendered as defined in the EU public procurement directives.
<b>Procurement Documentation</b>	Shall mean the documents dispatched to <i>Suppliers</i> as part of procurement process; comprised of the instructions and information to applicants, contract information, specification, pricing schedule and certificates for signature.
<b>Procurement Strategy</b>	The document setting out the Council's approach to procurement and key priorities for a specified period of time.
<b>Purchasing Guidance</b>	The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these contract procedure rules. The guidance is available on the Council's Intranet and Procurement Tool.
<b>Quotation</b>	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender). Definition - a formal statement of promise (submitted usually in response to a request for quotation) by a potential supplier to supply the goods or services required by a buyer (the Council), at specified prices, and within a specified period. A quotation may also contain terms of sale and payment, and warranties. Acceptance of quotation by the buyer constitutes an agreement binding on both parties.
<b>Relevant Contract</b>	Contracts to which these contract procedure rules apply (see Rule 4).
<b>S.151 Officer</b>	The officer as may be designated S.151 Officer by the Council in line with the Constitution, including the appointed Deputy S.151 Officer.
<b>Selection Criteria</b>	The Authority's minimum requirements by which the Tenderer is to be assessed as being suitable to proceed with the <i>Tender</i> process
<b>Service Manager</b>	The Officer's immediate superior or the Officer designated by a Senior Officer to exercise the role reserved to the Service Manager by these contract procedure rules.



<b>Shortlisting</b>	The process of selecting Suppliers who are to be invited to quote or bid or to proceed to final evaluation.
<b>Standstill</b>	Shall mean the period between notification of the intention to award a <i>Contract</i> in accordance with the <i>EU Procedure</i> and the formal award of said <i>Contract</i>
<b>Supplier</b>	Any person who asks or is invited to submit a Quotation or Tender.
<b>Teckal</b>	An exception to the Public Contracts Regulations 2006 that means a <i>Contract</i> let by a public body will not be deemed to be a <i>Contract</i> for the purposes of the public procurement regime, provided that certain criteria are met
<b>Tender</b>	A Supplier's proposal submitted in response to the Invitation to Tender.
<b>Tender Register Pro Forma</b>	The log kept by the Monitoring Officer to record details of Tenders (see Rule 13.5).
<b>Total Value</b>	<p>The whole of the value or estimated value (in money or equivalent value) for a single purchase contract or disposal calculated as follows:</p> <p>a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period including any permitted extensions.</p> <p>(b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months.</p> <p>(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48</p> <p>(d) Where a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfil that requirement</p> <p>(e) Where the <i>Contract</i> is to be executed over a period for goods or services and</p> <ul style="list-style-type: none"> <li>• a series of contracts; or</li> <li>• a <i>Contract</i> which under its terms is renewable</li> </ul> <p>is entered into</p> <p>(f) Where there are a number of requirements over a given period for contracts that have similar requirements or are for the same type of goods and service</p> <p>(g) for feasibility studies, the value of the scheme or contracts which may be awarded as a result</p> <p>(h) for Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.</p> <p>(i) The <i>Total Value</i> of all contracts expected to be placed under a <i>Framework Agreement</i></p> <p>(j) The <i>Total Value</i> of all contracts expected to be placed under a <i>Dynamic Purchasing System</i></p> <p>(k) The <i>Total Value</i> of the requirement where more than one (1) organisation will purchase under the same <i>Contract</i></p>

<p><b>TUPE Transfer of Undertakings (Protection Employment) Regulations 2006 (SI 2006 No.246)</b></p>	<p>Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business</p>
<p><b>Value for Money</b></p>	<p>Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.</p>

## **A Brief Guide to Contract Procedure Rules**

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good procurement practice and public accountability and deter corruption.

Adherence to consistent and comprehensive Rules helps to protect the Council against challenges that it has acted incorrectly, unlawfully or fraudulently.

Officers responsible for purchasing or disposal must comply with these Contract Procedure Rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract.

For the purposes of these Rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail (or other e-communication systems e.g. e-tendering) fax transmissions as well as hard copy.

- Follow the Rules whenever you purchase goods or services or order building work.
- Take all necessary procurement, legal, financial and professional advice.
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- Conduct any Value for Money review and appraise the purchasing need.
- Check whether there is an existing contract or framework agreement in place open to the Council that you can make use of before undergoing a competitive process.
- Normally allow at least four weeks for submission of bids (not to be submitted by hard copy, fax or e-mail).
- Keep bids confidential.
- Complete a written contract or Council order before the supply or works begin.
- Identify a contract manager with responsibility for ensuring the contract delivers as intended.
- Keep records of dealings with suppliers.
- Assess each contract afterwards to see how well it met the quality of delivery and Value for Money requirements.

The Monitoring Officer shall have the power to make minor and legal amendments from time to time to these Contract Procedure Rules after consultation with the Council's S.151 Officer, Internal Auditor and the Corporate Procurement Officer. Significant amendments must be agreed by the full Council.

### **1. BASIC PRINCIPLES**

All purchasing and disposal procedures and the letting of concession contracts must:

- Comply with these Contract Procedure Rules and Financial Procedure Rules (both at Part 4 of the Constitution)
- Achieve Value for Money for public money spent
- Be consistent with the highest standards of integrity, having regard to the Council's Anti Fraud, Corruption and Bribery Policy and Strategy, and the Office of Fair Trading guidance on Anti Competitive Behaviour.
- Ensure fairness in allocating public contracts
- Comply with all legal and financial requirements

- Ensure that **Non-commercial Considerations** do not influence any Contracting Decision
- Support the Council's corporate and departmental aims and policies
- Comply with the Council's Procurement Strategies
- Be followed by *Officers* of the Council in all procurement activities including circumstances where there has been any challenge by the community.

## 2. **OFFICER RESPONSIBILITIES**

### 2.1 **Officers**

2.1.1 Officers responsible for purchasing or disposal must comply with these Contract Procedure Rules, Financial Procedure Rules, the Officers' Code of Conduct and with all UK and European Union binding legal requirements. Officers must ensure that any Agents, Consultants and contractual partners acting on their behalf also comply.

#### 2.1.2 **Officers must:**

- Comply with the basic principles above
- Have regard to the Council's purchasing and contract guidance
- Ensure that the appropriate approved budgetary provision is in place
- Check whether a suitable Corporate Contract exists before seeking to let another contract; where a suitable Corporate Contract exists, this must be used unless there is an auditable reason not to
- For contracts with a **Total Value above £50,000, take a report to Executive / Committee at least 6 months before the Contract is due to end to consider whether it is appropriate to tender on the same basis as the existing arrangement**
- Keep the records required by Rule 6.

2.1.3 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

### 2.2 **Senior Officers**

#### 2.2.1 Senior Officers:

- Comply with the Basic Principles above
- Ensure that their staff comply with Rule 2.1
- Ensure that Exemptions are recorded under Rule 3.2 detailing the nature and value of the contract, parties to the contract, and the circumstances justifying the Exemption and send original exemption to Monitoring Officer
- Ensure that the originals of all contracts are given to the Monitoring Officer who shall maintain the Contracts Register lodge all documentation securely in the Legal safe.

## 3. **EXEMPTIONS TO THESE RULES**

### **Principles**

- 3.1 The Council and its Executive / Committees have power to authorise exemptions from the requirement to seek quotations or invite tenders for specific circumstances.
- 3.2 Where necessary because of exceptional circumstances the Officer or Senior Officer may seek an **Exemption** with the approval of the officers and in consultation with members set out in the table below. **The Exemption process must not be used as a method of avoiding the use of these Contract Procedure Rules.**
- 3.3 The circumstances where an exemption may be sought are:
- **Life or Death** – Is there a significant chance that the life or health of officers, Councillors or the public will be put at real risk?
  - **Increased Costs/Loss of Income** – Will the Council incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council)?
  - **Limited Markets** – Would the Council be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or a few businesses? (Evidence that the market has been tested must be available)
  - **Risk to Reputation** – Would the Council be criticised for failing to act promptly?

3.4 **No Exemption can be used if the EU Procurement Rules apply.** The latest EU procurement limits are available from either the Corporate Procurement Officer or Internal Audit.

### Process

- 3.5 Pro-formas must be used and are available on the Council's Intranet or from the Monitoring Officer or Internal Audit.
- 3.6 Exemptions from compliance with the Contract Procedure Rules may be granted with the original signatures of:

Total Value (excl. VAT)	Exemption Authorised By
£7,500 – £50,000	<ul style="list-style-type: none"> <li>• Internal Audit</li> <li>• Monitoring Officer</li> <li>• S151 Officer</li> </ul>
£50,001 – EU threshold	<ul style="list-style-type: none"> <li>• <i>Corporate Procurement Officer (Internal Audit in his/her absence)</i></li> <li>• Monitoring Officer</li> <li>• S151 Officer</li> <li>• In consultation with the Chairman or Vice Chairman of the relevant Committee.</li> </ul>
<b>Above EU Threshold</b>	No exemption permitted

- 3.7 **Total Value** is discussed at Paragraph 8 and the **Definitions Appendix**, which says that to obtain the estimated value of the contract, the Officer must calculate the **Total**

**Value** (excluding VAT) for the **period of the contract**. For example, a contract let for 5 years at an estimated £20,000 per year, excluding VAT, has a Total Value of £100,000. The procurement must be based on £100,000 **not** the annual amount.

- 3.8 **Exemption Applications** supported by the evidence that the exemption criteria have been met, must be sent to the Monitoring Officer or Internal Audit *and the Corporate Procurement Officer*, in the first instance.
- 3.9 The original copy of the fully completed Exemption form must be sent to the Monitoring Officer, with a copy to Internal Audit.
- 3.10 The number of approved Exemptions will be reported to the Audit Committee by Internal Audit.
- 3.11 In exceptional circumstances an Exemption may be deemed necessary that is outside of the four criteria at 3.3. Any such Exemption can only be granted by the relevant member body on receipt of a joint report of the applicant and the *Corporate Procurement Officer*.

#### **In-House or ‘Quasi’ In-House Arrangements**

- 3.12 Where the Council seeks to provide goods, works or services through its own internal resources it may do so without triggering a procurement exercise (links to Financial Procedure Rules).
- 3.13 Where the Council seeks to provide goods, works or services by entering in to a formal arrangement with another public sector body over which it has some ownership or control it may do so without triggering a procurement exercise where it can be demonstrated that two limited conditions are met, that:
- The Council must exercise over the body to be awarded the *Contract* ‘a control which is similar to that which it exercises over its own departments’; meaning that the Council must have a power of decisive influence over both strategic objectives and significant decisions of the body awarded the *Contract*; and
  - The body awarded the *Contract* carries out “the essential part” of its activities for the Council; meaning that the body must do little or no other work besides fulfilling the *Contract* on behalf of the Council.

This is known as the ‘**Teckal**’ exception.

- 3.14 *Officers* must proceed with caution when invoking **Teckal exception**, and advice must be sought from the *Corporate Procurement Officer*, as a number of factors are capable of eroding the exception, including:
- Any private sector funding and/or involvement in the body awarded the *Contract*, whether at the inception or during its life;
  - Any market participating by the body awarded the *Contract* to include

trading its goods, works or services elsewhere;

- Where joint ownership of the body awarded the *Contract* reduces the amount of control exercised by the Council.

### **COLLABORATIVE and E-PROCUREMENT ARRANGEMENTS**

- 3.15 The Corporate Procurement Officer must be consulted prior to commencing a procurement process using any consortia contracts e.g. Crown Commercial Services (CCS). The terms and conditions of contract applicable to any consortia arrangement, including the requirement to undertake competition between providers, must be fully complied with.
- 3.16 In order to secure Value for Money, the authority may enter into collaborative procurement arrangements. The Officer must consult the Corporate Procurement Officer where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
- 3.17 All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these contract procedure rules and no exemption is required.
- 3.18 However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has demonstrated that it has satisfied this requirement already by letting their contract in accordance with the EU Procedures on behalf of the authority and other consortium members.
- 3.19 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, will be deemed to comply with these contract procedure rules and no exemption is required. However, **advice must be sought from the Corporate Procurement Officer.**
- 3.20 The use of e-procurement technology enhances the administrative process for tendering (audit trails etc.) but does not negate the requirement to comply with all elements of these contract procedure rules, particularly those relating to competition and Value for Money.

### **4. RELEVANT CONTRACTS**

- 4.1 All **Relevant Contracts** must comply with these contract procedure rules. A Relevant Contract is any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:
- The supply of goods (for disposal of goods and assets see the Financial Procedure Rules)
  - The hire, rental or lease of goods or equipment
  - The delivery of services, including (but not limited to) those related to:
    - the recruitment of staff

- financial, legal and *Consultancy* services
- Development Agreements under certain circumstances (see Section 24 for further details)
- *Concession Contracts*

and where the *Supplier* is:

- Another public sector organisation, to include a town and/or parish council
- A third sector organisation, to include social enterprises, not-for-profit organisations or charities.

#### 4.2 Relevant Contracts **do not include**:

- Contracts of employment which make an individual a direct employee of the authority; or
- Agreements regarding the acquisition, disposal, or transfer of land and buildings (for which Financial Procedure Rules shall apply) subject to the detail provided at section 24; or
- S.151 Officer dealing in the money market or obtaining finance for the Council; or
- Contracts made by the Monitoring Officer for the appointment of counsel.

## 5. **STEPS PRIOR TO PURCHASE**

### 5.1 The Officer must appraise the purchase, in a manner commensurate with its complexity and value and taking into account any purchasing guidance, by:

- Ensuring the Social Value (Public Services) Act 2012 is complied with for all service contracts where the Total Value exceeds the EU Threshold
- Taking into account the requirements from any relevant Value for Money review and the views of the community where appropriate and in line with related Council guidance
- Appraising the need for the expenditure and its priority, including the position of any existing contract or Framework Agreement in terms of end date/required notice
- Defining the objectives of the purchase and consider whether it is appropriate to tender on the same basis as the existing arrangement (see Rule 2.1.2)
- Assessing the risks associated with the purchase and how to manage them
- Considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium
- Consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring
- Ensuring that the appropriate terms and conditions are used to apply to the proposed contract (if other than the Council's standard terms and conditions, the advice of the Corporate Procurement Officer, the Council's Solicitor and/or Monitoring Officer must be sought)
- Setting out these matters in writing if the Total Value of the purchase exceeds **£7,500**.



5.2 The officer must also confirm that:

- There is Councillor or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution.
- In the case of expenditure on an asset (particularly property), that the asset is the Council's responsibility.

## 6. RECORDS

6.1 Where the **Total Value is less than £50,000**, the following records must be kept:

- Invitations to Quote and Quotations
- A record:
  - of any Exemptions and the reasons for them
  - of the reason if the lowest price is not accepted (to accept a *Quotation* other than the lowest, the *Officer* must be satisfied that the *Tender* represents the most economically advantageous bid and best value for money. The *Award Criteria* for this should have been set out in advance and evaluation records must be retained. See 10.4 Award Criteria).
- Written (which includes electronic) records of communications with the successful contractor.

6.2 Where the Total Value **exceeds £50,000** the following records must be kept:

- Pre-tender market research
- Any exemption under Rule 3 together with the reasons for it
- The method for obtaining bids (see Rule 8.1)
- The *Selection Criteria* in descending order of importance
- The *Award Criteria* in descending order of importance
- *Invitation to Tender* documents sent to and received from *Suppliers*
- Clarification and post-tender negotiation (to include minutes of meetings)
- Any Contracting Decision and the reasons for it
- Legal advice
- The *Contract* documents and any variations or extensions
- Post-contract evaluation and monitoring
- Communications with *Suppliers* and with the successful contractor throughout the period of the *Contract*;
- Ongoing checking of the financial position of the successful contractor throughout the period of the *Contract* (see also Section 5 Contract Management).

6.3 Records required by this rule must be kept for **six years** after the end of the contract if made under hand and **twelve years** if made under seal.

6.4 Documents which relate to unsuccessful Suppliers must be destroyed after **12 months** has elapsed from the date of the award of successful contract, provided there is no dispute about the award.

## 7. **ADVERTISING AND FRAMEWORK AGREEMENTS**

### 7.1 **Identifying and Assessing Potential Suppliers**

#### **Identifying**

- 7.1.1 Wherever practicable *Officers* shall ensure that where the *Total Value* of the proposed *Contract* does not exceed £50,000 they shall invite a minimum of three suppliers, one of whom must have a head office which is registered within the Council's boundaries. *Officers* shall be seen to alternate the Suppliers to whom quotation documentation is sent so as to ensure fair competition within the market.
- 7.1.2 *Officers* shall ensure that, where proposed contracts, irrespective of their Total Value, might be of interest to potential Suppliers located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:
- The Council's website
  - Portal websites specifically created for contract advertisements
  - National official journals, or
  - The Official Journal of the European Union (OJEU) / E Notices / Tenders Electronic Daily (TED) (even if there is no requirement within the EU Procedure).
- 7.1.3 For proposed contracts that are expected to exceed £50,000, assessment and selection will be in conjunction with the *Corporate Procurement Officer*.

#### **Assessing**

- 7.1.4 *Officers* are responsible for ensuring that all Suppliers for a Relevant Contract are suitably assessed. The assessment process shall establish that the potential Suppliers have sound:
- Economic and financial standing
  - Technical ability and capacity
- to fulfil the requirements of the authority.
- 7.1.5 This shall be achieved in respect of proposed contracts that are **expected to exceed £50,000** by selecting firms from shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement.

### 7.2 **Approved Lists**

- 7.2.1 Approved Lists will **not** be maintained. This is because of the cost of proper administration and the need to ensure that competition is maximised.

7.2.2 Suppliers interested in doing business with the Council must register on the Council's electronic tendering system, which is available at available at [www.supplyingthesouthwest.org.uk](http://www.supplyingthesouthwest.org.uk)

7.2.3 A register of pre-qualified contractors and Consultants maintained by or on behalf of central government (e.g. Constructionline, Accredited) will not be deemed to be an Approved List for the purpose of these contract procedure rules and therefore can be used after having sought the advice of the Corporate Procurement Officer.

### 7.3 Framework Agreements

7.3.1 A *Framework Agreement* is an arrangement of one or more contracting authorities with one or more suppliers in order to establish the terms governing the contracts awarded during a given period.

In setting up a *Framework Agreement* the term of must not exceed four years. There must be one (a single-provider framework), or more than two (2) (multiprovider framework) *Suppliers* within an agreement under EU procurement law. The Council's *Corporate Procurement Officer* must always be consulted before any action is taken.

New framework suppliers may not be added during the life of a *Framework Agreement*.

The *Total Value* of the *Framework Agreement* must be the total of all contracts that are anticipated to be awarded under the agreement and as such it is recommended that a realistic range be provided within the Contract Notice or tender advertisement.

7.3.2 Contracts based on **Framework Agreements** may be awarded by either:

- Applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
- Where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call off by holding a mini competition in accordance with the following procedure:
  - inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders
  - fixing a time limit which is sufficiently long to allow Tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract
  - awarding the contract to the tenderer who has submitted the best Tender on the basis of the Award Criteria set out in the specifications of the Framework Agreement.

When a *Framework Agreement* has been selected for use only the *Suppliers* that appear on the agreement may be approached to provide the Contract. Multiple *Framework Agreements* may not be selected for use to procure one single *Contract*.

Contracts may be awarded beyond the life of a *Framework Agreement* provided that such contracts are not awarded improperly or in a way that seeks to distort competition. As an example it would serve to distort competition to award a *Contract* that

significantly exceeded the life of the *Framework Agreement* where it was not common practice or expected by the market to do so.

A *Contract* procured under a *Framework Agreement* by another user may not be used by way of avoiding running a further competition, unless expressly permitted by the terms of the *Framework Agreement* or resultant call-off contract. The *Standstill* obligations need only be applied to contracts awarded against a *Framework Agreement* that will exceed the *EU Threshold*.

The standstill obligations need only be applied to Contracts awarded against a Framework Agreement that will exceed the EU threshold.

## 7.4 Dynamic Purchasing System

7.4.1 A *Dynamic Purchasing System* is similar to a *Framework Agreement* insofar as it is an arrangement of one or more contracting authorities with one or more suppliers in order to establish the terms governing the contracts awarded during a given period, the term must not exceed four years and its *Total Value* must be the total of all contracts that are anticipated to be awarded under it.

The way in which the *Dynamic Purchasing System* is different to a *Framework Agreement* is that additional *Suppliers* can be added throughout the life of the arrangement.

7.4.2 In opening up access to *Suppliers* to the *Dynamic Purchasing System* the *Officer* must:

- Offer unrestricted, direct and full access to the procurement documents by electronic means at all times throughout the life of the Dynamic Purchasing System;
- Allow new applications to be submitted throughout the life of the Dynamic Purchasing System;
- Complete the evaluation of a newly submitted application within fifteen days of its receipt;
- Admit to the Dynamic Purchasing System all new Suppliers that satisfy the Selection criteria; and
- Notify Suppliers of their admission to the Dynamic Purchasing System or rejection of their application.

7.4.3 In awarding a *Contract* under the *Dynamic Purchasing System* the *Officer* must:

- Place an advertisement against the *Dynamic Purchasing System* to notify Suppliers of the requirement to award a *Contract*. Where the Dynamic Purchasing System has been established in accordance with the EU procurement rules, i.e. where the *Total Value* exceeds the EU Threshold, this must take the form of a simplified Contract Notice;
- Evaluate any new applications in response to the advertisement prior to issuing Invitations to Tender under the Dynamic Purchasing System;

All Suppliers admitted to the Dynamic Purchasing System must be given an opportunity to respond to the Invitation to Tender;  
The Contract shall be awarded to the Supplier that submits the best bid in accordance with the Award criteria set out in the original advertisement or Contract Notice.

7.4.4 The Council's *Corporate Procurement Officer* must always be consulted before any action is taken to establish a *Dynamic Purchasing System*.

## **8. COMPETITION REQUIREMENTS FOR PURCHASE OR DISPOSAL AND PARTNERSHIP ARRANGEMENTS**

### **8.1 Purchasing: Competition Requirements to Obtain Quotations or Tenders**

8.1.1 The **Total Value** of a *Contract* is the whole of the value or estimated value (in money or equivalent value) for a single purchase in the following circumstances:

- (a) Where the *Contract* is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period, including any permitted extensions.
- (b) Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months.
- (c) Where the *Contract* is for an uncertain duration, by multiplying the monthly payment by 48 (four years).
- (d) Where a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfil that requirement.
- (e) Where the *Contract* for goods or services is to be carried out over a period of time:
  - as a series of contracts (which might otherwise be disaggregated); or
  - as a *Contract* which under its own terms and conditions is renewable.
- (f) The value of the scheme or contracts which may be awarded as a result of a feasibility study.
- (g) The **Total Value** of all contracts expected to be placed under a *Framework Agreement*.
- (h) The **Total Value** of all contracts expected to be placed under a *Dynamic Purchasing System*.

The **Total Value** shall be that part of the main *Contract* to be fulfilled by the *Nominated Supplier or Sub-contractor*.

In addition to the above, *Officers* need to be aware that there is a wider corporate procurement interest where there are a number of requirements over a given period for purchases that have similar characteristics or are for the same type of goods and services e.g. consultants carrying out similar activities in the same or different service areas. See also paragraph 2.1.2 on the required use of corporate contracts where they exist.

The following procedures apply where there are no other procedures which take precedence (such as agency agreements with government). If in doubt, *Officers* must seek the advice of the *Corporate Procurement Officer*.

Where the *Total Value* for a purchase is within the values in the first column below, the Award Procedure in the second column must be followed. Short listing shall be done by the persons specified in the third column.

<b>Total Value (excl. VAT)</b>	<b>Award Procedure</b>	<b>Short listing</b>
<b>Up to £7,500</b>	A minimum of one quotation, but good practice to seek most favourable prices and terms, having regard to the Council's Procurement Strategy.	<ul style="list-style-type: none"> <li>• Officer</li> <li>• (see also Financial Procedure Rules)</li> </ul>
<b>£7,500 – £50,000</b>	A minimum of three written Quotations	<ul style="list-style-type: none"> <li>• Officer</li> <li>• Service Manager</li> </ul>
<b>£50,001–EU Threshold</b>	Invitation to Tender by advertisement/list	<ul style="list-style-type: none"> <li>• Officer</li> <li>• Senior Officer in consultation with the Corporate Procurement Officer</li> </ul>
<b>Above EU Threshold</b>	EU Procedure, or where this does not apply, invitation to tender by advertisement	<ul style="list-style-type: none"> <li>• Officer</li> <li>• Service Manager</li> <li>• Senior Officer</li> <li>• in consultation with the Corporate Procurement Officer</li> </ul>
<b>Up to EU Threshold</b>	All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these Contract Procedure Rules and no waiver is required e.g. Devon Procurement Services. However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has satisfied this requirement already.	<ul style="list-style-type: none"> <li>• See paragraph 3.7.</li> </ul>
<b>All values: Collaborative Contracts</b>	The Corporate Procurement Officer must be consulted prior to commencing any procurement process using Collaborative Contracts. The terms and conditions applicable to any Collaborative Contract arrangement, including the	See paragraphs 3.6

	requirement to undertake competition between providers, must be fully complied with.	
<b>All values: ICT</b>	All system developments and purchases of computer equipment or software must be approved by the ICT Team and awarded in line with these Rules.	<ul style="list-style-type: none"> <li>• Officer</li> <li>• Business Manager</li> <li>• Senior Officer (responsible for ICT)</li> <li>• in consultation with the Corporate Procurement Officer</li> </ul>

8.1.2 Where it can be demonstrated that there are insufficient suitably qualified Suppliers to meet the competition requirement, all suitably qualified Suppliers must be invited to quote and Tender and the Corporate Procurement Officer informed. If it can be clearly demonstrated that less than the required quotations are available, then an Exemption form in line with paragraph 3.3 must be completed.

8.1.3 An Officer must not enter into separate contracts nor select a method of calculating the Total Value in order to minimise the application of these Contract Procedure Rules or EU Procurement Rules.

8.1.4 Where the EU Procedure is required, the Officer shall also consult the Corporate Procurement Officer, as appropriate, to determine the method of conducting the purchase. See table at Rule 8.1.

8.1.5 Where the Council procures on behalf of itself and other partners (acting as lead authority, the *Total Value* will be the overall value of the *Contract* and not the element of cost that applies to the Council itself.

8.1.6 Where procurement is for a service to be shared between authorities, it must be stated in advance both how the costs are to be apportioned between the partners and where the ownership of any assets falls.

## **8.2 Collaborative and Partnership Arrangements**

8.2.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these contract procedure rules (Rule 3). If in doubt, Officers must seek the advice of the Monitoring Officer and the Corporate Procurement Officer. See table at Rule 8.1.1.

## **8.3 The Appointment of Consultants to Provide Services**

8.3.1 Construction *Consultants*, to include architects, engineers and surveyors, financial and management *Consultants*, legal advisors and *Consultants* and any other professional persons considered *Consultants* as per the definition provided shall be selected and commissions awarded in accordance with the limits and procedures detailed within these Contract Procedure Rules and as outlined at Rule 8.1.1.

- 8.3.2 The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment to be in the form agreed by the Monitoring Officer.
- 8.3.3 Records of consultancy appointments shall be maintained in accordance with Rule 6.
- 8.3.4 Consultants shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the Council's Insurance Officer for the periods specified in the respective agreement.
- 8.3.5 *Officers* must be aware of the Council's duty to assess the employment status of individuals and to assess whether they will be working for the Council in an "employed capacity" or "self employed". **The HM Revenue and Customs checklist** must be used in the assessment of status and if the individual could be deemed as employed, the Council's recruitment and payroll procedures must be followed (Guidance is on the Intranet which also links to Financial Procedure Rules).

#### **8.4 Assets for Disposal**

- 8.4.1 The disposal of assets must be made in line with the requirements of *Financial Procedure Rules* and the Delegation Scheme.

#### **8.5 Contracts to Provide Services to External Purchasers**

- 8.5.1 The Monitoring Officer, Corporate Procurement Officer and Financial Procedure Rules must be consulted where contracts to work for organisations other than the authority are contemplated.

### **9. PRE-TENDER MARKET RESEARCH AND CONSULTATION**

- 9.1 The Officer responsible for the purchase: may, prior to the issue of the Invitation to Tender / Quotation, consult potential suppliers in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential Supplier.
- 9.2 The Officer must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential Suppliers or distort competition, and should seek advice from the Monitoring Officer and the Corporate Procurement Officer.
- 9.3 For service contracts where the *Total Value* will exceed the *EU Threshold* the *Officer* must give due consideration to the Social Value (Public Services) Act 2012 prior to the commencement of the procurement process.

### **10. STANDARDS AND SELECTION and AWARD CRITERIA**

- 10.1 The *Officer* must define the *Selection Criteria* that are related and proportionate to the subject matter of the *Contract*. These shall form a stage one assessment of whether a



Tenderer may progress with a tender process, whether from the *Pre-Qualification Questionnaire (PQQ)* to *Tender* stage or from the *Selection* stage evaluation to the *Award* stage evaluation in an open *Tender*. The criteria to be assessed against may be chosen from the following:

- Criteria for the rejection of the *Supplier*, such as prior criminal convictions, evidence of corruption, bribery, fraud, bankruptcy, grave professional misconduct, tax evasion, etc. (this list is not exhaustive)
- Information as to economic and financial standing; such as banker's statements, insurances, statements of accounts, statements of turnover, etc. (this list is not exhaustive)
- Information as to technical or professional ability; such as
  - the *Supplier's* technical ability, taking into account in particular that economic operator's skills, efficiency, experience and reliability;
  - a list of works carried out over the past 5 years;
  - a statement of the goods sold or services provided by the supplier or the services provider in the past 3 years;
  - a statement of the resources available to complete the *Contract*;
  - a statement of the *Supplier's* technical capacity to provide the *Contract*;
  - environmental management measures;
  - average annual number of staff and managerial staff over the previous 3 years;
  - any samples, descriptions and photographs of the goods to be purchased or hired; and
  - certification by official quality control institutes. (this list is not exhaustive)

**The *Corporate Procurement Officer* must be consulted where the *Total Value of the Contract* is likely to exceed the *EU Threshold*.**

10.2 *Selection Criteria* must not include:

- *Award Criteria*;
- *Non-commercial Considerations* (See Definitions Appendix);
- Criteria that is not related and proportionate to the subject matter of the *Contract*.

10.3 The *Officer* must ascertain what are the relevant British or equivalent European or international standards which apply to the subject matter of the *Contract*. The *Officer* must include those standards which are necessary properly to describe the required quality. This includes sustainability, environmental and health and safety standards. The *Monitoring Officer and Corporate Procurement Officer* must be consulted if it is proposed to use standards other than European standards.

10.4 The *Officer* must define *Award Criteria* that are appropriate to the purchase and designed to secure an outcome giving Value for Money for the authority. The basic criteria shall be:

- **'Most economically advantageous'**, where considerations in addition to price also apply.

- **'Lowest price'** where payment is to be made by the authority when the Award Criteria is price alone; or
- **'Highest price'** if payment is to be received (See Financial Procedure Rules on disposal of assets)

If the former criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. *Award Criteria* must be accompanied by the relative weightings ranked in order of importance to the Council in the context of the specific procurement.

10.5 Award Criteria must not include:

- Selection Criteria
- Non-commercial Considerations (See Definitions Appendix);
- Matters which discriminate against suppliers, irrespective of size, from the European Economic Area or signatories to the Government Procurement Agreement.
- Criteria that is not related and proportionate to the subject matter of the *Contract*.

## **11. PROCUREMENT DOCUMENTATION**

11.1 Council *Officers* must prepare their *Procurement Documentation* using the Council's standard templates, which are available on the Council's Intranet site or via the *Corporate Procurement Officer*.

11.2 The *Procurement Documentation* shall state that no *Bid* will be considered unless it is received by the date and time stipulated. No *Bid* delivered in contravention of this clause shall be considered under any circumstances.

11.3 The *Procurement Documentation* shall include the following:

- (a) A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- (b) A requirement for Suppliers to declare that the Bid content, price or any other figure or particulars concerning the Bid have not been disclosed by the Supplier to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- (c) A requirement for Suppliers to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion.
- (d) Notification that Bids are submitted to the Council on the basis that they are compiled at the Suppliers expense.

- (e) A description of the Award Procedure and a definition of the Award Criteria (including any scoring mechanism or sub criteria) or in objective terms and if possible in descending order of importance.
- (f) Notification that no Bid will be considered unless it is submitted via the Council's electronic tendering system.
- (g) A stipulation that any Tenders submitted by fax or e-mail shall not be considered, see Rule 13.3 re electronic tendering.
- (h) The method by which any arithmetical errors discovered in the submitted Bids is to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.
- (i) Instructions to *Suppliers* concerning the procurement process and *Procurement Documentation* and information concerning the contract opportunity.
- (j) The pricing schedule, schedule of rates, whole life costing schedule or other such appropriate pro-forma for gathering the *Supplier's* pricing.

11.4 All Suppliers invited to Bid or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

11.4 All Procurement Documentation must specify the goods, service or works that are required, together with the terms and conditions of Contract that will apply (see Rule 16).

11.5 The Procurement Documentation must state that the Council is not bound to accept any Quotation or Tender, either as a whole or in part.

## **12. SHORTLISTING**

12.1 Any *Shortlisting* must be done in accordance with the permitted *Selection Criteria*. Where the *Total Value* of the *Contract* will exceed the *EU Threshold*, the *Officer* must contact the *Corporate Procurement Officer* for advice.

12.2 **Evaluation criteria** must be transparent and sub-criteria specified. Shortlisting records must be kept and held for the period specified in the Council's Document Retention Policy and Rule 6.

12.3 The officers responsible for Shortlisting are specified in Rule 8.1.1.

## **13. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS**

13.1 Suppliers must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of Tenders. The EU

Procedure lays down specific time periods (see the Council's purchasing guidance on the Council's Intranet).

- 13.2 All *Tenders* must be submitted through the Council's approved and secure electronic tendering system.
- 13.3 Tenders received by fax or other electronic means (e.g. email) must be rejected.
- 13.4 Each *Tender* must be:
- Suitably recorded so as to subsequently verify the date and precise time it was received
  - Adequately protected immediately on receipt to guard against amendment of its contents
  - Recorded immediately on receipt in the Tender Register Pro-Forma.
- 13.5 *Tenders* received after the set date and time must not be accepted and the *Corporate Procurement Officer* informed of late submissions. For the purposes of these rules the time will be deemed to be at the first stroke e.g. noon will be 12.00.00.

## Tender Opening

### South Hams

- 13.6 The Member Services department will ensure that all *Tenders* are opened at the same time when the period for their submission has ended. The *Officer* or his or her representative must be present. *Tenders* must be opened in the presence of an officer representing the relevant Senior Officer and a Council Member. Where the *Total Value* is more than the *EU Threshold*, the *Corporate Procurement Officer* shall also attend.
- 13.7 Upon opening, a summary of the main terms of each *Tender* (i.e. significant issues that are unique to each *Tender* submission and were not stated in the *Tender* invitation documents such as *Tender* sum) must be recorded in the *Tender Register Pro-Forma*. The summary must be signed by all present. Where an electronic tendering process is used, those involved must verify the results to the screen.

### West Devon

- 13.8 The Legal department will ensure that all *Tenders* are opened at the same time when the period for their submission has ended. A legal officer will be present for the following:

All *Tenders* with an **estimated value of more than £50,000** shall be opened and recorded by the *Officer*, relevant Senior Officer in the presence of two Councillors from the relevant Committee

Where the *Total Value* is more than the *EU Threshold*, the *Corporate Procurement Officer* shall also attend.

- 13.9 Upon opening, a summary of the main terms of each *Tender* must be recorded in the *Tender Register Pro-Forma*. The summary must be signed by all present. Where an electronic tendering process is used, those involved must verify the results to the screen.
- 13.10 All tenders with an estimated value of **less than £50,000** shall be opened and recorded by the Officer and relevant Senior Officer.

#### **14. CLARIFICATION PROCEDURES and POST-TENDER NEGOTIATION**

- 14.1 Providing clarification to potential or actual Suppliers of an Invitation to Tender or Tender is permitted:

- Via the Council's electronic tendering system
- In writing
- At a meeting provided that a written record is made of the meeting
- In a way that is fair, transparent and equal to all participants

- 14.2 Discussions with tenderers after submission of a Tender and before the award of a Contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) **must be the exception** rather than the rule. In particular, such discussions must not be conducted in an EU Procedure where this might distort competition, especially with regard to price. If in doubt seek professional advice from the Corporate Procurement Officer or Monitoring Officer.

- 14.2 If post-tender negotiations are necessary after a single-stage Tender or after the second stage of a two-stage Tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best Tender and after all unsuccessful Suppliers have been informed.

Officers appointed by the Senior Officer to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

- 14.3 Post-tender negotiation must only be conducted in accordance with the guidance issued by the Corporate Procurement Officer who must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two Officers, one of whom must be from a division independent to that leading the negotiations.
- 14.4 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

#### **15. EVALUATION, AWARD OF CONTRACT, and DEBRIEFING SUPPLIERS**

- 15.1 Apart from the debriefing required or permitted by these contract procedure rules, the confidentiality of Quotations, Tenders and the identity of Suppliers must be preserved at all times and information about one Supplier's response must not be given to another Supplier.

- 15.2 Tenders and Quotations must be evaluated and awarded in accordance with the Selection and Award Criteria. During this process, Officers shall ensure that submitted Tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 15.3 The arithmetic in compliant Tenders must be checked.

**If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm the price or withdraw their Tender.**

- 15.4 *Officers* may use *Electronic Auctions* as means of driving additional *Value for Money* and as part of the *Award Criteria*, where this process is completed using the Council's electronic tendering portal.

Where the *Officer* wishes to use such a tool, the *Corporate Procurement Officer* must be contacted to offer assistance.

*Electronic Auctions* may also be used as a tool for seeking bids in sale transactions, such as land, where the highest possible price is sought from an applicant. (Links to 'Disposals' in Financial Procedure Rules).

- 15.5 *Officers* may accept *Quotations* and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Contract Procedure Rules. Awarding of contracts that are expected to exceed the approved budget sum shall be referred back to the *S.151 Officer*.
- 15.6 Where the **Total Value is over £50,000**, the *Officer* must notify all *Suppliers* in writing simultaneously and as soon as possible of the intention to award the *Contract* to the successful *Supplier*, and include the reasons why for the unsuccessful bidders. Where an unsuccessful *Supplier* requests debrief information the *Officer* may use their discretion in deciding whether or not to comply with the request; there is no legal obligation imperative on the *Officer* to do so.
- 15.7 Where the **Total Value will exceed the EU Threshold** the *Officer* must notify all *Suppliers* in writing simultaneously and as soon as possible of the intention to award the *Contract* to the successful *Supplier*, unless it is known sooner in the procurement process that a *Supplier* has been unsuccessful, in which case the *Officer* must notify the *Supplier* soonest with as much of the information required at 15.8 below as possible. (See 15.9 for further details). The latter applies most particularly, but not exclusively, in the case of a Restricted Procedure whereby the *Officer* must communicate the list of shortlisted *Suppliers* to those that have not been shortlisted.
- 15.8 The letters to the unsuccessful *Suppliers* must contain:

- The criteria for the award of the *Contract*;
- The reasons for the decision, including the characteristics and relative advantages of the successful *Tender*, the score (if any) obtained by:
  - the *Supplier* which is to receive the notice; and

- the Supplier to be awarded the *Contract*; or to become a party to a *Framework Agreement* or *Dynamic Purchasing System*,
- The name of the Supplier to be awarded the *Contract*; or to become a party to a Framework Agreement or Dynamic Purchasing System; and
- A precise statement of either—
  - when the *Standstill Period* is expected to end and, if relevant, how the timing of its ending might be affected by any and, if so what, contingencies; or
  - the date before which the Council will not enter into the *Contract* or conclude the *Framework Agreement* or *Dynamic Purchasing System*.

15.9 The *Officer* must provide a *Standstill Period* of at least ten working days, where the communication is made electronically (fifteen days if not) to allow unsuccessful *Suppliers* the opportunity of challenging the decision before the *Officer* awards the *Contract*. The *Standstill Period* shall end at midnight on the final day of *Standstill* and no sooner. Where the last day of the *Standstill Period* is not a working day, the *Standstill Period* is extended to midnight at the end of the next working day. If the decision is challenged by an unsuccessful *Supplier* then the *Officer* shall not award the *Contract* and shall immediately seek the advice of the *Monitoring Officer and Corporate Procurement Officer*.

15.10 Where the *Supplier* has been informed of the fact that they have not been successful at an early stage in the procurement process, they must be provided within fifteen days of any request in writing from said *Supplier*, with the reasons that they were unsuccessful.

## 16. **CONTRACT DOCUMENTS**

### 16.1 **Relevant Contracts**

16.1.1 **All Contracts above £7,500 shall be in writing** in a form approved by the Monitoring Officer.

16.1.2 All Relevant Contracts, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
- The provisions for payment (i.e. the price to be paid and when)
- The time, or times, within which the contract is to be performed
- The provisions for the Council to terminate the contract.

16.1.3 The Council's order form or standard terms and conditions must be used for simple purchases of goods. In any circumstances that require special terms and conditions, the advice of the Monitoring Officer and Corporate Procurement Officer must be sought.

16.1.4 In addition, every **Relevant Contract of purchase over £50,000** must also state clearly as a minimum:

- Health and safety requirements (where applicable and proportionate)

- Sustainability and environmental management requirements (where applicable and proportionate)
- Social Value Act requirements (where applicable, i.e. for service *Contracts* with a *Total Value* in excess of the *EU Threshold*)
- Equality Act 2010 requirements (where applicable and proportionate)
- Any insurance requirements
- Data protection requirements, if relevant
- Charter standards to be met, if relevant
- Bribery Act 2010 requirements
- Freedom of Information Act requirements
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant
- Prevention of Corruption and Anti Competitive Behaviour (see paragraphs 18.1 and 18.2) and
- A transparency clause that allows the Council to comply with the government's transparency agenda
- Any confidentiality requirements
- Tax evasion and avoidance requirements

Where Agents are used to let contracts, Agents must comply with the Council's Contract Procedure Rules.

16.1.5 The **formal advice of the Monitoring Officer** on the form of documentation to be used must be sought for contracts where any of the following apply:

- Where the Total Value **exceeds £50,000**; or
- Below £30,000 **if other than the Council's standard terms and conditions** are to be used; or
- Those involving **leasing arrangements** (when the S.151 Officer should also be advised); or
- Where it is proposed to use a **supplier's own terms**; or
- Those involving the purchase of application software with a Total Value **of more than £50,000**; or
- Those that are **complex** in any other way.

## 16.2 Contract Formalities

16.2.1 Agreements shall be completed as follows:

Total Value	Method of Completion	By
Purchase orders - up to £50,000	Electronic Order or Signature	Authorised officer (see Rule 16.2.3)
Contracts and licences up to £50,000. Council's	Signature	<ul style="list-style-type: none"> <li>• Senior Officer</li> <li>• Nominated Deputy (Rule 16.2.3) or</li> <li>• Monitoring Officer</li> </ul>



Standard Terms and Conditions		
Contracts and licences up to £50,000 Non Standard Terms and Conditions	Signature	<ul style="list-style-type: none"> <li>• Senior Officer, on the advice of the Monitoring Officer (Rule 16.2.3)</li> <li>• Monitoring Officer</li> </ul>
Above £50,000, or if any of para 16.1.5 applies (except ICT software).	Sealing (unless advised by the Monitoring Officer that sealing is not necessary)	Monitoring Officer (See also Rule 16.2.3 and 16.3), on the instruction of Senior Officer
ICT - system developments and purchases of computer equipment or software	Method of completion in line with limits above	As above, except that in all cases to be the ICT CoP Lead

16.2.2 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Monitoring Officer or S.151 Officer.

16.2.3 The Officer responsible for securing a signature on the contract must ensure that the person signing for the other contracting party has authority to bind it. An award letter is insufficient. The use of Letters of Intent (which are binding for the Council) should be avoided, but in exceptional circumstances they may be used with the approval of and review by the *Monitoring Officer* before issue. The same rules relating to signatures apply.

16.2.4 Any new contract should not be signed until the contract it replaces is either ended or under notice.

Depending on the circumstances an officer of the Council may be subject to disciplinary action if he/she signs a contract without being specifically authorised to do so.

16.2.5 All contracts, (save straight forward purchase orders, must be given to the Monitoring Officer for secure storage and recording in **Legal's Contract Register** . **It is the responsibility of the Officer to ensure that this happens, only copies of contracts should be held within services.** An electronic copy must be copied to the Corporate Procurement Officer for all contracts with value over £50,000.

### 16.3 Sealing

16.3.1 A *Contract* must be sealed where:

- The Council may wish to enforce the *Contract* more than six years after its end
- The price paid or received under the *Contract* is a nominal price and does not reflect the value of the goods or services, or
- There is any doubt about the authority of the person signing for the other contracting party.

### **South Hams**

- 16.3.2 Where appropriate contracts are completed by each side adding their formal seal. The fixing of the Council's seal must be witnessed by a further officer on behalf of the *Monitoring Officer*.
- 16.3.3 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed except in accordance with the Council's *Constitution*.

### **West Devon**

- 16.3.4 Contracts must be sealed in accordance with Council Procedure Rules and will be overseen by the Council's Solicitor or as otherwise delegated.

## **17. BONDS AND PARENT COMPANY GUARANTEES**

- 17.1 The Officer must consult the S.151 Officer about whether a Parent Company Guarantee is necessary when a Supplier is a subsidiary of a parent company and:
- The Total Value **exceeds £50,000**, or
  - Award is based on evaluation of the parent company, or there is some concern about the stability of the Supplier.
- 17.2 The Officer must consult the S.151 Officer about whether a Bond is needed:
- Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the Supplier i.e. following a formal risk assessment, or
  - Where the Total Value exceeds £500,000.

## **18. PREVENTION OF CORRUPTION and ANTI COMPETITIVE BEHAVIOUR**

### **18.1 Prevention of Corruption**

- 18.1.1 The Officer needs to be aware of the Bribery Act 2010, which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official and the new corporate offence of failing to prevent bribery, as well as the Council's Anti Fraud, Corruption and Bribery Policy and Strategy.
- 18.1.2 The Officer must comply with the Officers' Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Officer to prove that anything received was not received corruptly. High

standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 18.1.3 below.

18.1.3 The following clause must be put in every written Council contract:

“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or
- (b) commit an offence under the Bribery Act 2010, or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees. Any clause limiting the Contractor’s liability shall not apply to this clause.”

## **18.2 Anti Competitive Behaviour**

18.2.1 In their guidance for public sector procurers, the Office of Fair Trading has highlighted practical steps to take to reduce the risks of anti-competitive behaviour, and this should be followed where it is practical to do so:

- (a) Use non-collusion clauses, certificates of independent bids and requests;
- (b) Ensure sufficient credible bidders;
- (c) Look for suspicious bidding patterns (further guidance available);
- (d) Keep good notes of all discussions and potential bidders and systematically scrutinise them for suspicious patterns e.g. geographical prevalence of certain suppliers’ areas.

18.2.2 If there is any doubt during a procurement exercise, or for further guidance, the Officer should contact the Corporate Procurement Officer or Internal Audit.

## **19. DECLARATION OF INTERESTS**

19.1 If it comes to the knowledge of a Councillor or an employee of the authority that a contract in which s/he has an Interest has been or is proposed to be entered into by the Council, s/he shall immediately give written notice to the Monitoring Officer.

19.2 Officers must comply with the Officers’ Code of Conduct, as discussed at paragraph 18.1.2.

19.3 All Councillors must comply with the Councillors’ Code of Conduct and register all contracts for goods, services or works made with the Council as required by the Rules on Disclosable Pecuniary Interests.

19.4 The Monitoring Officer shall maintain a record of all declarations of interests in contracts notified by Councillors and Officers.

## **20. MANAGING CONTRACTS**

20.1 **Senior Officers must appoint Contract Managers for all new contracts and for the entirety of the contract.**

20.2 Contract managers must follow best practice in the area of supplier relationship and contract management.

20.3 **Variations or extensions** should not be made unless this is provided for in the Invitation to Tender and the Contract itself. Senior Officer must contact the Monitoring Officer and the Corporate Procurement Officer before any variation is actioned (excludes on site variations for construction projects).

Any variations to contracts are to be in writing in the form approved by the Monitoring Officer, sequentially numbered and stored with the original contract.

Variations or extensions proposed by the *Officer* that are likely to be considered as 'materially different' from the original *Contract*, on the following grounds:

- When the amendment introduces conditions which, had they been part of the original procurement process, would have allowed for the admission of different *Tenders* or the acceptance of a *Tender* other than the one accepted
- When the amendment "extends the scope of the *Contract* considerably to encompass goods, works or services not initially covered"
- When the amendment changes the economic balance of the *Contract* in favour of the contractor; or
- When there is a change of main contractor, change of ownership of the main contractor, a transfer of shares in the main contractor or a change of sub-contractor where the inclusion of a sub-contractor is inherent to the decision to award the *Contract*

Variations or extensions are unlikely to be permitted on the basis that the proposed *Contract* will be fundamentally different from the old and therefore will a re-tender will be required.

20.4 **Payments** to contractors will only be made on certification by the designated contract manager in line with the Financial Procedure Rules.

20.5 Ongoing checking of the financial position of the successful contractor throughout the period of the *Contract*. The level of any review will vary depending on the type of *Contract* and contractor involved, so the advice of the S.151 Officer or Internal Audit must be sought. The Contractor's insurance should also be checked annually through the life of the *Contract* and details passed to the Council's insurance officer for comment.

20.6 **Liquidated and ascertained damages** must be deducted for all periods of delay in line with the terms of the contract.

If the Contract Manager does not consider that such damages should be deducted s/he must seek and follow the advice of the Monitoring Officer and 151 Officer.

20.7 The Contract Manager must notify the Monitoring Officer, the responsible Senior Officer, and the S.151 Officer promptly on becoming aware of any **significant dispute**, or **claim for additional payment** in connection with a contract.

No liability shall be accepted without the approval of the Executive / Committee in such cases.

## **21. RISK ASSESSMENT AND CONTINGENCY PLANNING**

21.1 A business case must be prepared for all procurements with a potential value over the EU Threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

21.2 For all contracts with a **value of over £75,000**, Contract Managers must:

- Maintain a risk register during the contract period in accordance with the Council's Risk Management Strategy
- Undertake appropriate risk assessments and for identified risks (in consultation with the Council's Lead Officer – Risk Management and Risk Management Strategy as appropriate)
- Ensure contingency measures are in place
- Monitor the financial performance of the contractor or any parent company and alert the S.151 Officer if there is any concerns

## **22. CONTRACT MONITORING, EVALUATION AND REVIEW**

### **Contracts Financed from Revenue**

22.1 All contracts which have a value higher than the EU Threshold limits, or which are High Risk, are to be subject to formal review(s) by the contract manager with the contractor. The review may be conducted at a frequency that is determined by the risk value and profile of the contract.

22.2 As a minimum, for all contracts with a value higher than the EU Threshold limits, or which are High Risk, an annual report must be submitted to the Senior Management Team detailing the financial and service performance.

22.3 A contract review process must be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages of major procurements.

22.4 During the life of the contract, the Contract Manager must monitor and take any necessary corrective action in respect of:

- Performance
- Compliance with specification and contract
- Cost
- Any Value for Money requirements
- User satisfaction and risk management.

22.5 When the contract is completed the Contract Manager must submit a report to the Senior Leadership Team. The report must evaluate the extent to which the purchasing need and the contract objectives (as determined in accordance with Rule 5.2) were met by the contract. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

### Contracts Financed from the Capital Programme

22.6 Procurement for approved capital projects must be made in line with these Rules. Having regard to Rule 15.4, where any Tender for projects under the Capital Programme exceeds the available budget by 10% or £50,000 approval to proceed may be made by the CoP Lead for Assets and S.151 Officer with retrospective reporting through the monitoring process. Above these amounts the specific approval of the Executive / Committee should be sought prior to acceptance.

22.7 The Section 151 Officer assisted by the CoP Lead for Assets, has monitoring responsibilities to receive regular reports from Project Managers on the performance of their project; and report quarterly to the Executive / Committee on the overall progress of the Capital Programme.

22.8 The monitoring report will outline the budget position as a whole and include, as a minimum, the financial position of each approved project.

### Project Overspends - authorisation

22.9 In monitoring expenditure on a project, the Officer/Project Manager should seek the formal approval of the Section 151 Officer, CoP Lead for Assets or Councillors at the earliest opportunity where the approved expenditure appearing in the capital programme is likely to be exceeded.

The following table sets out the **authorisation** required:

Project Total Value excl. VAT	Overspend excl. VAT	Authorised By
Up to £500,000	£25,000 to £50,000	<ul style="list-style-type: none"> <li>• 151 Officer</li> <li>• CoP Lead for Assets</li> <li>• retrospective reporting to Executive / Hub Committee within the</li> </ul>

		quarterly monitoring report.
Up to £500,000	Exceeds £50,000	Hub Committee
Over £500,000	10%	Hub Committee

## **23. STATE AID**

### **Definition**

- 23.1 State aid can be defined any assistance offered by a public sector body in any form whatsoever that distorts or threatens to distort competition by favouring certain organisations and/or *Suppliers* or the production of certain goods. Such aid may take the form of a grant (capital injection), business tax relief, a reduction in rent or preferential finance (this is not an exhaustive list).
- 23.2 Where the Council wishes to administer aid in this manner careful consideration must be given prior to such a grant so as to ensure that it is compatible with EU law. Aid that is not compatible with EU law may be recovered from the beneficiary with interest.
- 23.3 For a grant to be considered as State Aid the following cumulative criteria must be met:
- The beneficiary receives a grant of a benefit or advantage; and
  - The aid is give by a Member State or through state resources; and
  - The beneficiary receives the aid on a selective basis; and
  - The aid granted distorts or threatens to distort competition; and
  - The aid is capable of affecting trade between Member States

Granted aid must fulfil all of these criteria in order to be deemed as a State Aid for the purposes of EU law.

- 23.4 Where a grant is defined as State Aid it must be notified in sufficient time to the European Commission. Aid will not be permitted to be bestowed upon the beneficiary until the Commission has reached a decision as to whether it can be deemed as compatible with EU law or not. Where Aid is incompatible the Council will not be permitted to grant it.

### **Exemptions for State Aid**

- 23.5 Besides seeking approval from the European Commission, State Aid can be said to be compatible with EU law and can therefore be granted legally if:
- For the most part the total de minimis Aid given to a single recipient is less than €200,000 over a 3-year fiscal period
  - Aid in favour of SMEs, research, innovation, regional development, training, employment of disabled and disadvantaged workers, risk capital and environmental protection.
  - Aid measures promoting female entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses in assisted regions, and measures tackling problems like difficulties in access to finance faced by female entrepreneurs.

- 23.6 Such Aid must still be notified to the European Commission and as a result Council Officers are advised to seek the advice and guidance of the *Council's Solicitor* and/or *Monitoring Officer* and *Corporate Procurement Officer* where State Aid may be said to exist on a particular project or procurement.

## **24. DEVELOPMENT AGREEMENTS - Applies South Hams Only.**

### **Definition**

- 24.1 A development agreement can be defined as an arrangement between a public sector body and a third party about the use or development of land or property, the nature of which invariably involves the transfer of land that would be otherwise be considered commercially undesirable, which becomes commercial desirable as a result of incentivisation by the public sector body.
- 24.2 Where the Council wishes to establish a development agreement that meets the definition above again careful consideration must be given prior to such an agreement being established so as to ensure that it is compatible with EU law. A development agreement that is not compatible with EU law may be said to be a public works or *Concession Contract* and may therefore be subject to the legislation on public procurement.
- 24.3 For a development agreement to be considered as not triggering the public procurement legislation some or all the following characteristics must be met:
- The proposed development (or a significant part) is to be undertaken at the initiative and autonomous intention of the developer. (This may be particularly likely if the developer already owns or has control of land to be developed);
  - The development agreement is ancillary or incidental to a transfer or lease of land or property from the Council to the developer, and is intended to protect the interests of the Council which is the lesser or otherwise retains an interest in the land or property;
  - The development agreement is based on proposals put forward by the developer, rather than requirements specified by the Council, albeit that these proposals may be sought, and the "winner" chosen by the Council;
  - There is no pecuniary interest passing from the Council to the developer as consideration for undertaking the development, either through direct payment or indirectly, for example by the assumption of obligations such as contributions towards project finance or guarantees against possible losses by the developer;
  - The development agreement does not include specific contractually enforceable obligations on the developer to realise a work or works (even if that work or works is recognised as being the general intent of the parties to the agreement);
  - The development does not consist of or contain works for the direct economic benefit of the Council. The involvement of the Council consists only in the exercise of statutory land-use planning powers.



24.4 Where a development agreement cannot be said to meet the criteria defined above a public works or *Concession Contract* must be awarded in accordance with the public procurement legislation.

## **Part 4I - Officer Employment Procedure Rules**

### **1. Recruitment and Appointment**

#### **(a) Declarations.**

- (i) 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, spouse or partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or of the spouse or partner of such persons;
- (ii) No candidate so related to a Councillor or an officer will be appointed without the authority of the relevant Senior Officer or an officer nominated by him/her.

#### **(b) Seeking support for appointment.**

- (i) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information;
- (ii) No Councillor will seek support for any person for any appointment with the Council.

### **2. Recruitment of Head of Paid Service and Directors**

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 paragraph (a) to be sent to any person on request.**

### **3. Appointment of Head of Paid Service**

The Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by a Councillor Panel.

#### 4. **Appointment of Chief Officers**

The Head of Paid Service will appoint Chief Officers with input from the relevant Chairman and Vice Chairman.

#### 5. **Other Appointments**

- (a) Officers below Chief Officers: Appointments, dismissals of and taking disciplinary action against officers below Chief Officers and Section 151 Officer (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors.
- (b) Assistants to Political Groups: Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

#### 6. **Disciplinary Action**

- (a) No dismissal of the Council's statutory officers, namely Head of Paid Service, Section 151 Officer and Monitoring Officer is permitted except in accordance with the procedures set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 881/2015)
- (b) Suspension: The Head of Paid Service, Section 151 Officer and Monitoring Officer may be suspended by a Panel whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.
- (c) Councillors will not be involved in the disciplinary action against any officer below Chief Officer or Statutory Officer save as in accordance with 6 above and except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to Councillors in respect of disciplinary action.

#### 7. **Dismissal**

Councillors will not be involved in the dismissal of any officer below Chief Officer or Statutory Officer save as in accordance with 6 above and except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Councillors in respect of dismissals.

## **Part 4J - Hub Committee Procedure Rules**

### **1. HOW DOES THE HUB COMMITTEE OPERATE?**

#### **1.1 Who may make Hub Committee decisions?**

- 1.1.1 The role, form, and composition of the Hub Committee are as laid out in Article 6 of the Council's Constitution.
- 1.1.2 Hub Committee functions may be discharged, in accordance with the Scheme of Delegation by:
  - i) the Hub Committee as a whole;
  - ii) an officer; or
  - iii) another local authority, whether under joint arrangements or otherwise.

#### **1.2 Conflicts of Interest**

- 1.2.1 Where the Leader of the Council has a conflict of interest this should be dealt with as set out in the Council's Councillors' Code of Conduct in Part 5 of this Constitution. If every Member of the Hub Committee has a conflict of interest then an application for a Dispensation may be applied for (see the Delegation to the Standards Committee in Part 3 of this Constitution).
- 1.2.2 If the exercise of an Hub Committee function has been delegated to a committee of the Hub Committee, an individual Councillor or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the Hub Committee and otherwise as set out in the Council's Councillors' Code of Conduct in Part 5 of this Constitution.

#### **1.3 Hub Committee meetings**

- 1.3.1 The Hub Committee will meet at least 8 times per year.
- 1.3.2 The Head of Paid Service may also call for additional meetings at his or her discretion.
- 1.3.3 The Monitoring Officer and/or the Section 151 Officer may call an additional meeting if either believes it is necessary so to do in order to fulfil their statutory duties.
- 1.3.4 In other circumstances where any of the Head of Paid Service, Section 151 Officer and Monitoring Officer are of the opinion that a meeting of the Hub Committee needs to be called to consider a matter that requires a decision he/she will have the right to call such a meeting.

1.3.5 The Hub Committee shall meet at the Council's main offices or another location to be agreed by the Leader of the Council.

#### **1.4 Public or private meetings of the Hub Committee?**

1.4.1 The Hub Committee and any sub Committee of the Hub Committee will normally meet in public in line with the principles set out in Article 11. The exception will be when considering exempt or confidential items.

1.4.2 It may also choose to meet on occasion in informal sessions and those sessions may be in private.

#### **1.5 Quorum**

1.5.1 The number of Members of the Hub Committee shall be nine including the Leader of the Council and Deputy Leader of the Council.

1.5.2 The quorum for a meeting of the Hub Committee shall be four.

1.5.3 The quorum at a meeting of a sub-committee of the Hub Committee shall be two Councillors.

#### **1.6 How are decisions to be taken by the Hub Committee?**

1.6.1 Decisions which are to be taken by the Hub Committee as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Part 4 of the Constitution.

1.6.2 Where decisions are taken by a Sub Committee of the Hub Committee, the rules applying to Hub Committee decisions taken by them, shall be the same as those applying to those taken by the Hub Committee as a whole.

## **2. HOW ARE HUB COMMITTEE MEETINGS CONDUCTED?**

### **2.1 Who presides?**

If the Leader of the Council is present he/she will preside. In his/her absence, then the Deputy Leader of the Council shall preside. In the exceptional circumstances contemplated in paragraph 1.5 (Quorum) then a person appointed to do so by those present at the meeting will preside.

### **2.2 Who may attend?**

2.2.1 All Councillors can attend meetings of the Hub Committee or a committee of the Hub Committee.

- 2.2.2 The press and public can attend meetings of the Hub Committee or a committee of the Hub Committee subject to the Access to Information Procedure Rules.
- 2.2.3 On occasion the Hub Committee may wish to meet informally for discussion purposes only and those informal sessions may be held in private. Informal sessions will not constitute meetings of the Hub Committee.
- 2.2.4 The Hub Committee will actively encourage wherever possible the involvement of the specific expertise or knowledge of other borough councillors as part of the deliberations of the Hub Committee whether those deliberations are at meetings of the Hub Committee or a committee of the Hub Committee or at informal sessions.

### 2.3 Who may speak and vote?

- 2.3.1 All Borough Councillors can attend and speak, subject to adhere to the Council Rules of Debate. Only Hub Committee Members may vote.
- 2.3.2 Members of the public may speak only to ask questions at the start of the meeting in accordance with Article 3 of the Council's Constitution and the guidance currently in place.

### 2.4 What business?

At each meeting of the Hub Committee, the following business will be conducted:

- i) consideration of the minutes of the last meeting;
- ii) declarations of interest, if any;
- iii) public questions;
- iv) the Hub Committee Forward Plan
- v) matters referred to the Hub Committee (whether by Overview and Scrutiny or by the Council) for reconsideration by the Hub Committee in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;
- vi) consideration of reports from any non-Hub Committee body of the Council; and
- vii) matters set out in the agenda for the meeting.

### 2.5 Consultation

- 2.5.1 All reports to the Hub Committee from any Member of the Hub Committee or an officer on proposals relating to the budget and policy framework must contain details of the nature and extent of consultation with stakeholders and relevant non-Hub Committee bodies of the Council, and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.



## Part 4K - Rules for Other Bodies of the Council

### 1. AUDIT COMMITTEE

#### 1.1 Membership

The Audit Committee shall have **seven** Councillors.

#### 1.2 Quorum

The Quorum shall be **three** Councillors.

#### 1.3 Meetings

The Committee shall normally meet at least four times per year.

#### 1.4 Training

All Members of the Committee will be expected to attend Audit training and refresher sessions as and when they are provided;

### 2. DEVELOPMENT MANAGEMENT AND LICENSING COMMITTEE

#### DEVELOPMENT MANAGEMENT

#### 2.1 Membership

The Development Management and Licensing Committee shall have ten Councillors.

#### 2.2 Training

- a). All Members will be expected to attend Development Management and Licensing training refresher sessions as and when they are provided;
- b). Newly elected Members will have to attend appropriate induction Planning and Licensing Training before they can take part in the decision making process;
- c). Repeat sessions will be held in conjunction with South Hams District Council to provide additional opportunities for Councillors to meet the requirement to attend the induction training;
- d). re-elected Councillors will be expected to attend the induction sessions.



### 2.3 **Quorum**

The Quorum shall be four councillors adjusted annually if necessary.

### 2.4 **Rules of Debate**

The Rules of Debate, as outlined under Council Procedure Rule 17, apply with one exception. The exception is as follows:-

- In the event of a Councillor wishing to propose a motion which is contrary to the case officer recommendation, the Councillor must give their reasons for this proposal at the time of making it.

### 2.5 **Voting**

In view of the quasi – judicial nature of much of the business of the Committee there is a general obligation for Councillors to remain for the whole of the debate or to have participated in any previous consideration on any particular application and certainly to refrain from voting if either of these essential requirements have not been achieved. Councillors should refer to the Planning Code of Good Practice.

### 2.6 **Meetings**

The Development Management and Licensing Committee shall normally meet every four weeks.

### 2.7 **Eligibility**

Every Member of Council is eligible to be a Member of the Development Management and Licensing Committee. The Leader of Council cannot be Chairman of Development Management and Licensing Committee.

## 3 **LICENSING SUB-COMMITTEES**

Licensing Sub Committees will be convened to hear licensing applications in accordance with the Delegation Scheme and the Rules as set out below. Members of the Development Management and Licensing Committee will include substitute Councillors of that committee who will have undertaken the same training as full Committee Members.

3.1 Licensing Sub-Committees shall be established to hear applications under the Licensing Act 2003.

#### 3.1.1 **Membership**

Each Licensing Sub-Committee shall have three councillors, drawn from the Development Management and Licensing Committee. Local Councillors will not be appointed onto a sub- committee to consider any applications which are located within their local ward.

### 3.1.2 **Quorum**

The Quorum shall be three councillors.

### 3.1.3 **Meetings**

The Licensing Sub-Committees meet as required.

- 3.2 Licensing Sub-Committees shall be established to hear applications under the Gambling Act 2005.

### 3.2.1 **Membership**

Each Licensing Sub-Committee shall have three councillors, drawn from the Development Management and Licensing Committee. Local Councillors will not be appointed onto a sub-committee to consider any applications which are located within their local ward.

### 3.2.2 **Quorum**

The Quorum shall be three councillors.

### 3.2.3 **Meetings**

The Licensing Sub-Committees meet as required.

- 3.3 Licensing Sub-Committees shall be established to hear applications under the Taxi Licensing Legislation.

### 3.3.1 **Membership**

Each Licensing Sub-Committee shall have three councillors, drawn from the Development Management and Licensing Committee.

### 3.3.2 **Quorum**

The Quorum shall be three councillors.

### 3.3.3 **Meetings**

The Licensing Sub-Committees meet as required.

## 4. **COUNCIL TAX SETTING PANEL**

### 4.1 **Membership**

The Council Tax Setting Panel shall consist of four Councillors and comprises:-  
Leader of Council  
Deputy Leader of the Council  
Mayor of Council

Leader of the Opposition Group

#### **4.2 Meetings**

The Council Tax Setting Panel shall meet annually, following the Council's agreement of the budget for the forthcoming municipal year and notification from Devon County Council, the Devon and Cornwall Police Authority, Devon and Somerset Fire and Rescue Service, the Dartmoor National Park Authority and each Parish/Town Council of their individual precepting requirements.

#### **5.0 STANDARDS COMMITTEE**

The Standards Committee will have a specific role in the determination of Member Code of Conduct Complaints (including Town and Parish Council Councillors) in accordance with the Council's adopted procedure for dealing with Code of Conduct complaints.

##### **5.1. Membership of the Standards Committee**

- 5.1.1. The Standards Committee shall comprise five Members of the Council
- 5.1.2. The Chairman and Vice Chairman shall be appointed by the Council in accordance with the Council's Procedure rules in Part 4 of the Constitution.
- 5.1.3. The Standards Committee may co-opt up to two parish / town council representatives from a parish/town council in the Borough

##### **5.2. Membership of Sub-committees of the Standards Committee**

- 5.2.1. The Standards Committee shall appoint sub-committees of three Councillors to deal with specific standards complaints in accordance with the Dealing with (Standards) Complaints Policy and Hearing Policy
- 5.2.2. Sub-committees will consult (where co-opted) parish / town councillors on decisions relating to town or parish councillors

##### **5.3. Quorum for the Standards Committee and its sub-committees:**

- 5.3.1. Three Councillors for the duration of the meeting.

## **Part 5**

### **Codes and Protocols**

#### **Part 5A - Councillors' Code of Conduct**

“The role of councillor across all tiers of local government is a vital part of our country’s system of democracy. It is important that as councillors we can be held accountable and all adopt the behaviours and responsibilities associated with the role. Our conduct as an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to. We also want individuals from a range of backgrounds and circumstances to be putting themselves forward to become councillors.

As councillors, we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our local area; taking decisions fairly, openly, and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.

Importantly, we should be able to undertake our role as a councillor without being intimidated, abused, bullied or threatened by anyone, including the general public.

This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public’s trust in local government.”

Extract from the Local Government Association Model Councillor Code of Conduct

## Introduction

All councils are required to have a local Councillor Code of Conduct. This code of conduct has been adopted by West Devon Borough Council (**the Council**) as its Code of Conduct and is based on the Local Government Association (LGA) Model Councillor Code of Conduct.

### Definitions

For the purposes of this Code of Conduct:

**“councillor”** means a member or co-opted member of a local authority or a directly elected mayor.

**“co-opted member”** is “a person who is not a member of the authority but who:

- a) is a member of any committee or sub-committee of the authority, or;
- b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority; and

who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

**‘director’** includes a member of the committee of management of an industrial and provident society.

**“Disclosable pecuniary interest”** means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 in Appendix B.

**“Other Registerable Interest”** means an interest of yourself within the descriptions set out in Table 2 in Appendix B.

**“Partner”** means a spouse or civil partner, or 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.

**“local authority”** includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

**‘securities’** means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

A **‘sensitive interest’** is as an interest which, if disclosed, could lead to you, or a person connected with you, being subject to violence or intimidation.

### Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

## **General principles of councillor conduct**

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles (Appendix A).

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community;
- I do not improperly seek to confer an advantage, or disadvantage, on any person;
- I avoid conflicts of interest;
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my Council's requirements and in the public interest.

## **Application of the Code of Conduct**

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor;
- your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings;
- at online or telephone meetings;
- in written communication;
- in verbal communication;
- in non-verbal communication; and
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

The Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from the Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

### **Standards of councillor conduct**

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

#### **General Conduct**

##### **1. Respect**

###### **As a councillor:**

- 1.1 I treat other councillors and members of the public with respect.**
- 1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

**Respect** means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack. In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the Council's councillor-officer protocol.

##### **2. Bullying, harassment and discrimination**

###### **As a councillor:**

- 2.1 I do not bully any person.**
- 2.2 I do not harass any person.**
- 2.3 I promote equalities and do not discriminate unlawfully against any person.**

The Advisory, Conciliation and Arbitration Service characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the Council's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

### **3. Impartiality of officers of the Council**

**As a councillor:**

#### **3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.**

Officers work for the Council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

### **4. Confidentiality and access to information**

**As a councillor:**

#### **4.1 I do not disclose information:**

**4.1.1 given to me in confidence by anyone; or**

**4.1.2 acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless:**

**(a) I have received the consent of a person authorised to give it;**

**(b) I am required by law to do so;**



- (c) **the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
- (d) **the disclosure is:**
  - (da) **reasonable and in the public interest; and**
  - (db) **made in good faith and in compliance with the reasonable requirements of the Council; and**
  - (dc) **I have consulted the Monitoring Officer prior to its release.**

**4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.**

**4.3 I do not prevent anyone from getting information that they are entitled to by law.**

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the Council must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

## **5. Disrepute**

**As a councillor:**

**5.1 I do not bring my role or local authority into disrepute.**

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or the Council and may lower the public's confidence in you or the Council's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring the Council into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

## **6. Use of position**

**As a councillor:**

**6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

Your position as a member of the Council provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

## **7. Use of local authority resources and facilities**

**As a councillor:**

**7.1 I do not misuse council resources.**

**7.2 I will, when using the Council's resources or authorising their use by others:**

**7.2.1 act in accordance with the Council's requirements; and**

**7.2.2 ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed**

You may be provided with resources and facilities by the Council to assist you in carrying out your duties as a councillor. Examples might include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of Council buildings and rooms. These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the Council's own policies regarding their use.

## **8. Complying with the Code of Conduct**

**As a Councillor:**

**8.1 I undertake Code of Conduct training provided by the Council.**

**8.2 I cooperate with any Code of Conduct investigation and/or determination.**

**8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**

**8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the Council's processes in handling a complaint you should raise this with your Monitoring Officer.

**Protecting your reputation and the reputation of the local authority**

## 9. Interests

### As a councillor:

#### 9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the Council.

You need to register your interests so that the public, Council employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

## 10. Gifts and hospitality

### As a councillor:

**10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**

**10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**

**10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

To protect your position and the reputation of the Council, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and

hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

## **Appendix A**

### **The Seven Principles of Public Life**

The principles are:

#### **Selflessness**

Holders of public office should act solely in terms of the public interest.

#### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

#### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

#### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

#### **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

#### **Honesty**

Holders of public office should be truthful.

#### **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## **Appendix B**

### **Registering interests**

- 1 Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1**. You should also register details of your other personal interests which fall within the categories set out in **Table 2**.

- 2 You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
- 3 Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

#### **Non participation in case of disclosable pecuniary interest**

4. Where a matter arises at a meeting which ***directly relates*** to one of your Disclosable Pecuniary Interests, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

#### **Disclosure of Other Registerable Interests**

5. Where a matter arises at a meeting which ***directly relates*** to one of your Other Registerable Interests, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

#### **Disclosure of Non-Registerable Interests**

6. Where a matter arises at a meeting which ***directly relates*** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

7. Where a matter arises at a meeting which ***affects***:

- 7.1. your own financial interest or well-being;
- 7.2. a financial interest or well-being of a friend, relative, close associate; or
- 7.3. a body included in those you need to disclose under Disclosable Pecuniary Interests

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

8. Where a matter ***affects*** your financial interest or well-being:

- 8.1. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;

8.2 a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest,

you may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

9. Where you have a personal interest in any business of the Council and you have made an executive decision in relation to that business, you must make sure that any written statement of that decision records the existence and nature of your interest.

**Table 1: Disclosable Pecuniary Interests**

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

<b>Subject</b>	<b>Description</b>
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain.  Any unpaid directorship.
<b>Sponsorship</b>	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses.  This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
<b>Contracts</b>	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director or a body that such person has a beneficial interest in the securities of) and the Council —  (a) under which goods or services are to be provided or works are to be executed; and  (b) which has not been fully discharged
<b>Land and Property</b>	Any beneficial interest in land which is within the area of the council.  'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to

Subject	Description
	receive income
<b>Licenses</b>	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer
<b>Corporate tenancies</b>	Any tenancy where (to the councillor's knowledge)— (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director of or has a beneficial interest in the securities of.
<b>Securities</b>	Any beneficial interest in securities* of a body where— (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and (b) either— (i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

**Table 2 – Other Registerable Interests**

You have a personal interest in any business of your authority where it relates to or is likely to affect:

- a) any body of which you are in general control or management and to which you are nominated or appointed by the Council: or
- b) any body:
  - (i) exercising functions of a public nature;
  - (ii) any body directed to charitable purposes; or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

## **Part 5B**

### **Officers' Code of Conduct**

#### **Conduct in Local Government**

This is intended to assist and guide officers in their dealings with the public and is in no way intended to reflect any lack of confidence in their honesty or integrity.

#### **1. General**

The public are entitled to demand of Local Government Officers conduct of the highest standard and public confidence in their integrity would be shaken were the least suspicion, however ill-formed, to arise that they could in any way be influenced by improper motives.

The off-duty hours of employees are their personal concern but they should not subordinate their duty to position where their duty and their private interest conflict. The Council should not attempt to preclude employment from undertaking additional employment, but any such employment must not, in the view of the Council conflict with, or react detrimentally to, the Council's interest, or in any way weaken public confidence in the conduct of the Council's business.

Employees should not be called upon to advise any political group of the employing Council either as to the work of the group or as to the work of the Council neither shall they be required to attend any meeting of any political group.

It is expected that employees of the Council fulfil the duties specified in their Contract of Employment and Job Description.

As breaches of these rules and standards of conduct may result in various forms of disciplinary action which can, in extreme cases, result in termination of employment, it is necessary that guidance should be given regarding such matters. It is not possible in this document to define all acts of misconduct or incapability which could lead to disciplinary action.

#### **2. Business gifts and hospitality**

As a general policy the Authority does not believe that giving and receiving gifts is appropriate to the efficient conduct of its business. There are, however, limited exceptions to this policy.

#### **3. Receipt of gifts**

Any employee who is given a gift of any sort by a business contact, e.g. customer, supplier, etc (actual or potential) must disclose the fact of the gift and its nature to his or her immediate superior, and the Monitoring Officer.



If the Council decides that the gift might constitute a bribe or other inducement the employee will be required to give the gift to their Line Manager who will return it to the donor with a suitable covering letter.

In other instances the employee will be required to return the gift to the donor with a polite note explaining the Council's policy.

In exceptional cases, for example, where the Council decides that the gift was made as a token of the donor's gratitude for a service carried out to a very high standard, the recipient will be allowed to retain the gift.

Promotional gifts such as stationery which are not of significant value (eg calendars, diaries, tape measures and similar articles of use in the office) are exempt from this policy and need not be disclosed. However, employees are reminded that since such gifts are sent only to a limited number of employees they should be distributed to other employees where appropriate.

Small gifts are acceptable where the officer concerned and also, perhaps, the officer's spouse, are personal friends of the donor and where refusal would be regarded as churlish. In such cases, however, whilst the gift might be accepted, a letter should be sent by the officer concerned to the donor explaining the problems of accepting such a gift.

Failure to disclose gifts will constitute a disciplinary offence which will be handled in accordance with the Council's formal disciplinary procedure. If the gift in question was of significant value and, for example, the recipient is in a position to influence business dealings with the donor, the offence may be treated as gross misconduct.

If there is any doubt about whether a gift may be accepted, the gift should be politely and tactfully refused.

#### **4. Giving gifts**

While it is not the Council's policy to offer gifts to suppliers, customers, etc, the Council recognises that on occasions this may be necessary; for example when someone carries out work on a voluntary basis or for a nominal fee. Equally it may be decided that a gift would be appropriate if a service has been carried out in an exceptional manner.

In such a case employees should put the request in writing to their Line Manager stating:

who the gift is for  
why it should be given  
the nature of the gift  
its approximate value

Employees who send gifts which have not been approved in accordance with this procedure will not be reimbursed with the cost of the gift. Further, such action may, depending on the circumstances, be treated as a disciplinary offence which will be dealt with under the formal disciplinary procedure.

## 5. **Hospitality**

There can be little doubt that the acceptance of gifts or hospitality by officers from persons who have, or may seek to have, dealings with the Council would be viewed by the public with grave suspicion and would make the officer concerned and the Council extremely vulnerable to criticism.

Employees should only accept offers of hospitality, including invitations to functions, meals and site visits, if there is a genuine need to impart information or represent the local authority.

Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the Council should be seen to be represented. It should be properly authorised and recorded.

The following are examples of hospitality which are acceptable and those which are not; this list is not exhaustive or exclusive.

## 6. **Acceptable**

Invitations to attend functions where the person represents the Council or to functions attended by virtue of a professional position.

Some hospitality offered by other non-commercial bodies, eg other councils.

A working lunch of a modest standard provided to enable the parties to continue to discuss business, eg sandwiches/buffet lunch.

## 7. **Unacceptable**

### **Holidays**

**Personal invitations to evenings out** with representatives of a company or a firm which has dealings with the Council.

**Offers of hotels and theatre tickets.**

Officers would be well advised to keep a note of any gift or hospitality given or accepted, and the occasion relating thereto. Any hospitality given by officers should be justified as in the public interest. It should be on a scale appropriate to the occasion; extravagance should be avoided.

**In all cases, reference should be made to a Senior Officer, who will in turn, if necessary, discuss the matter with the Head of Paid Service or Monitoring Officer. Any hospitality must be disclosed to the Monitoring Officer.**

## **8. Other employment**

Officers should be aware of the undesirability of undertaking outside work for payment and any matter within the scope of their official duties, or within the scope of the activity of their Department, or a related Department. Thus, for example, Planners/Environmental Health Officers should not prepare for payment plans or other documents in connection with applications for Planning Permission, Building Consent, or in connection with an application for an Improvement Grant for a third party.

Similarly, officers should not normally engage in any business transactions at preferential rates with any business or organisation with whom they are required to have official dealings in similar activities.

Officers at all levels are required to avoid getting into a position of conflict by undertaking outside work, whether paid or unpaid. It is considered that a conflict arises where an employee is to be paid by a member of the public or any outside organisation or body for work which is in any way directly or indirectly connected with the scope of his/her official duties or those of his/her Department. This must be construed widely because the important feature should be whether or not the public could gain the impression that some benefit could accrue to the applicant by reason of the member of staff's involvement in the transaction.

This should not prevent staff from undertaking work occasionally for a friend or relative but in those circumstances the Senior Officer should be informed, and the person concerned should take no part in discussions of or activity related to any approval or disapproval required or issued.

Again, in cases of doubt staff should discuss the matter with a Group Manager who will, if necessary, consult the Head of Paid Service.

## **9. Use of confidential information**

There is comparatively little confidential information of a general nature because in general most matters are discussed in open Committee. Nevertheless, staff should be extremely careful in case of a conflict of interest arising over the use of information prior to its being made generally available.

Information which is of a kind which employees could use to their own profit could arise anywhere in the wide range of functions performed by local authorities, but the risks are especially great in land use, planning and in the award of contracts. The basic safeguards against misuse of information are the general ones of honesty of the individual and the maximum openness in the conduct of business.

When in doubt staff should err on the side of caution, and not disclose or use any information, but should ask a relevant Senior Officer as to the extent to which the information enquired about may be disclosed.

Nothing is more damaging to the relationship between staff and Members of the Council and between the Council and the public, than ill-considered gossip outside the office about the Council's business.

Some Departments deal extensively in matters of a confidential and a personal kind. Such information should never be disclosed except to somebody who has a right to or duty to receive that information, or who has written authority of the person about whom the information relates. In this connection staff are reminded of the standing instruction to be extremely circumspect in dealing with any enquiries about personal information relating to members of the staff, Councillors or members of the public.

The enquirer's right or duty to have the information should be checked and special care should be taken about telephone calls where the inquirer claims to have a right to the information. It is usually wise, unless the caller is known to you, to note the enquiry and to telephone back to the official address or the organisation with the necessary information, or ask for the request to be put in writing.

People who have access to personal information about individual staff must not disclose this to anyone outside the Authority (including Trade Unions) without the consent of the person concerned. This applies to information held on paper files and on computer.

#### 10. **In conclusion**

In all cases of doubt, staff should err on the side of caution and junior staff are especially advised to take the advice of their supervisor or their Senior Officer before taking any action or making any statement which could be capable of being misconstrued.

Staff should conduct themselves with honesty and integrity at all times, using public funds to the best advantage of the Council and the community they serve. They must not use public money corruptly or fraudulently.

## **Part 5C - A Protocol for Councillor/Officer Relations**

### **1. Introduction**

- 1.1 The purpose of this Protocol is to guide Councillors and Officers in their relations with one another.
- 1.2 This Protocol is primarily based on the model prepared by Birmingham City Council and which was referred to in the Nolan Committee report\*\* as an example of good practice.
- 1.3 Given the variety and complexity of such relationships, this Protocol does not seek to cover everything or be prescriptive in its application. Guidance is offered on some of the issues that most commonly arise.
- 1.4 This protocol seeks to reflect the principles underlying the respective codes of conduct which apply to Councillors (including co-opted members) and Officers. The shared objective of these codes is to maintain and enhance the integrity (real and perceived) of Local Government and they therefore demand very high standards of personal conduct by all parties.
- 1.5 The Protocol seeks to encourage best practice and to promote greater clarity and certainty between the various relationships.
- 1.6 If a Councillor is unsure about any matter s/he should contact the relevant Group Leader and/or the Monitoring Officer for appropriate advice and assistance.
- 1.7 If an Officer is unsure about any matter s/he should contact the Senior Officer and/or the Monitoring Officer.
- 1.8 If there is any disagreement in the interpretation of this Protocol the opinion of the Monitoring Officer will prevail.

### **2. Legal and Audit Considerations**

- 2.1 Councillors do not (as elected members) have any special immunity from civil or criminal wrongs that they may commit against fellow Councillors, Officers or members of the public. Councillors must abide by the Council's Councillors' Code of Conduct. During the course of their normal council duties, Councillors will only have a qualified (and not absolute) privilege against prosecution or civil action.
- 2.2 Councillors must not pressurise any Officer to change his/her professional opinion on any Council business or do anything that compromises the impartiality of Officers. It is also very important that Councillors are very clear about their roles and the roles of Officers so as to avoid (for example) becoming involved in internal office management, discipline and or other employment related issues.

### **3. Roles of Councillors and Officers**

3.1 The “National Code of Local Government Conduct” for Councillors stated:

- “Both Councillors and Officers are servants of the public and they are indispensable to one another but their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Councillors and the Council, and to carry out the Council’s work under the direction and control of the Council, their Committees and sub-committees.
- Mutual respect between Councillors and Officers is essential to good local government. Close personal relationships between individual Councillors and Officers can damage this relationship and prove embarrassing to other Councillors and Officers.”

3.2 The Council’s Constitution sets out the clear distinction between the roles of Councillors and Officers:

3.2.1 Councillors are responsible to the electorate and are responsible for setting policy, ensuring that services and policies are delivered.

3.2.2 Officers are accountable to the Council and their job is to give advice to the Councillors and the Council, and to carry out the Council’s work under the direction and control of the Council, and its Committees.

3.2.3 Officers implement the policy and deliver the services set by the Council. Councillors should not get involved in the day to day management of services. Officers should not get involved in politics.

3.2.4 Councillors must respect the impartiality and integrity of all the Council’s Officers. Similarly, Officers must respect the role of the Councillors as elected representatives. It is important that any dealings between Councillors and Officers should observe proper standard of courtesy and that neither party should seek to take unfair advantage of their position.

### **4. Officer conduct or capability issues**

4.1 On occasions, Councillors may have reason to complain about the conduct or performance of an Officer. All such complaints should be made personally to the Monitoring Officer, Group Manager or Head of Paid Service as appropriate. It is particularly important that complaints are made in this way and are not raised at any other occasion, such as at a public meeting of the Council or Committee, as an Officer has no means of responding to criticisms made in public. To do so (and seeking to change an Officer’s professional opinion) is contrary to the Councillors’ Code of Conduct (see Part 5 of the Constitution).

4.2 Similarly, if an Officer has concerns about the conduct or performance of a Councillor, such concerns should be expressed personally to the Head of Paid Service or the

Monitoring Officer. The facts of the matter will be looked into and discussed with the Mayor, Leader, relevant Chairman or Group Leader.

- 4.3 Exceptions to the above are where complaints express concern about possible discriminatory attitudes when the Corporate Equality Scheme shall apply. Copies of the Equality Scheme are available on the Council's intranet.
- 4.4 If a relationship exists between Councillors and Officers which could give the appearance of bias, advice should be sought from the Head of Paid Service or from the Monitoring Officer.
- 4.5 Although relationships should be declared on application forms, a situation may arise where a relative or close friend becomes a Councillor of the Council after the appointment of the Officer. In such cases the Councillor and Officer should make the circumstances known to the Head of Paid Service and the Monitoring Officer. Specific rules apply to the recruitment and appointment of Officers which are set out in Part 4 of the Constitution.

## **5. Officer/Mayor/Leader/Chairmen Relationships**

- 5.1 It is important that there should be close working relationship between Senior Officers and the Mayor/Deputy Mayor, Leader/Deputy Leader, Portfolio holders and Chairmen/Vice Chairmen (Leading Councillors). However, such relationships should never be allowed to become so close (or appear to be so close) as to bring into question the Officers ability to deal impartially with other Councillors.
- 5.2 Whilst Leading Councillors should be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a senior Officer will be under a duty to submit a report on a particular matter. Similarly, an Officer will always be fully responsible for the contents of any report submitted in his/her name. Any issues arising between a Leading Councillor and an Officer on such matters should be referred to the Head of Paid Service or the Monitoring Officer for resolution.
- 5.3 It is important to remember that individual Councillors cannot make decisions. Decisions must be made by the Council, Committees or Officers in accordance with the delegation scheme (part 3 of the Constitution). Officers may make decisions in consultation with the relevant Councillors but it must be the Officer who makes the decision.
- 5.4 In relation to action between meetings, it is also important to remember that the law allows decisions relating to the discharge of any of the Council's functions to be taken only by the Council, Committees, or an authorised Officer. The law does not allow for such decisions to be made by an individual Councillor. The Delegation Scheme (Part 3 of the Constitution) contains the procedure for the relevant Officer to make urgent decisions in consultation with the relevant Chairman and Vice Chairman or ward councillor (please check with the relevant Constitution or the Monitoring Officer).
- 5.5 The Council gives delegated powers to Senior Officers to act on the Council's behalf (see Part 3 of the Constitution). The terms of that authority may require Officers to consult certain Councillors (e.g. the Chairman of a Committee). In other cases, the Officer should decide whether to consult as a matter of courtesy. If a matter relates solely to a particular ward the appropriate Ward Councillor(s) will be consulted.

- 5.6 Officers are accountable to their Line Managers and whilst Officers should always try and assist a Councillor they must not go beyond the bounds of whatever authority they have been given by their Line Manager. In the case of uncertainty, the Officer should always check with his/her Line Manager.

## **6. Political Groups and Officer advice**

- 6.1 Councillors must at all times respect the political impartiality of Officers and not expect or encourage Officers to give a political view on any matter.
- 6.2 In discharging their duties, Officers serve the Council as a whole and not any particular political group or individual Councillors.

## **7. Use of Council resources**

- 7.1 The only basis upon which the Council can lawfully provide facilities and support services (e.g. computers stationery, typing, printing, photocopying, transport etc) to Councillors is to assist them in discharging their role as members of the Council. Such support services must, therefore, only be used on Council business. They should never be used in connection with party, political or campaigning activity or for private use.

## **7.2 Access to Information – “need to know”**

- 7.2.1 The Council believes in open government and wishes to conduct its affairs as openly as possible and to give Councillors maximum access to information and documents to enable them to discharge their role as Councillors.
- 7.2.2 Councillors are free to approach any Council department for information, explanation, and advice as they may reasonably need in order to help them to discharge their role as Councillors. Requests may be for general information about some aspect of the Council’s work, or specific requests for information on behalf of a member of the public. Such requests for information or advice should normally be made to the relevant Senior Officer or, if in relation to a planning matter, to the Case Officer.

## **7.3 Legal rights**

- 7.3.1 The **legal rights** of Councillors to inspect Council documents are partly set out in statute (the Local Government Acts, Data Protection Act, and Freedom of Information Act) and partly by common law.
- 7.3.2 Councillors have a **statutory right** to inspect any Council document and have access to other Council information that contains material in relation to any business that is to be transacted at a Council, Committee or sub-committee meeting. This right applies irrespective of whether the Councillor is a member of the committee concerned and extends not only to reports which are to be submitted to the meeting but to all relevant background papers.



- 7.3.3 This right does not, however, extend to documents relating to items that may appear in Part II (or the “exempt” part) of the Agenda for meetings. The items in question are those which contain “exempt information” as contained in Schedule 12A to the Local Government Act 1972 (see ‘Access to Information’ in Part 4(2) of the Constitution).
- 7.3.4 Information considered to be exempt under these provisions may also be exempt from disclosure under the Freedom of Information Act 2000.

## 7.4 Common Law

- 7.4.1 The **common law right** of Councillors is much broader. It is based on the principle that any Councillor has a right to inspect Council documents so far as his/her access to the document/information is reasonably necessary to enable the Councillor to properly perform his/her duties as a member of the Council. This is commonly referred to as the “need to know” principle.
- 7.4.2 The proper exercise of this common law right depends upon an individual Councillor being able to show that s/he has the necessary “need to know”. The Courts have held that Councillors have no right to a “roving commission” to go and examine documents. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This right will be considered on a case by case basis and will not last indefinitely. Where a question on the “need to know” arises the following procedure will apply:
- 7.4.3 The question will be initially determined by the relevant Senior Officer (in consultation with the Monitoring Officer). A Councillor will normally be expected to give reasons for seeking the information;
- 7.4.4 If it is considered that the request is reasonably in furtherance of the Councillor’s need to know, then the document/information will be produced for the Councillor’s inspection. Where the documents contain personal information about third parties, the Councillor will be expected to justify the request in specific terms.
- 7.4.5 A Councillor may be refused the right to inspect a document or have access to other information if the Monitoring Officer believes that there is a good reason why inspection or access to the document/information should be refused. She may refuse if:
- The cost of providing the access is unreasonably high; or
  - Giving access would unreasonably disrupt the work of the Council
- 7.4.6 In the event of a dispute, the matter will be determined by the Monitoring Officer.
- 7.4.7 Whilst the term ‘Council document’ is very broad, it is accepted by convention that a Councillor will not have a “need to know” (and therefore a right to inspect) the contents of a document which forms part of the internal workings of a political group of which s/he is not a member.

## **8. Confidentiality**

A Councillor must only use any Council information provided to him/her for the purposes for which it was provided i.e. in connection with the proper performance of the Councillor's duties as a Member of the Council. Care should be taken with an early draft Committee report/briefing paper as this will not normally be suitable for public disclosure and should not be used other than for the purpose for which it was supplied. A Councillor should never disclose or use confidential information for the personal advantage of himself/herself or of anyone known to him/her or to the disadvantage or discredit of the Council or anyone else.

## **9. Confidentiality of Reports**

- 9.1 All Officers have a duty to satisfy themselves that Committee reports are only classified as "exempt information" when the statutory criteria for confidentiality are met, and when the consequences of publication justify taking advantage of the exemption (Please see "Access to Meetings in Part 4(2) of the Constitution) . The Head of Paid Service and the Monitoring Officer have overriding responsibility to determine this compliance.
- 9.2 Once a report has been issued within Part II of the Agenda for a meeting, especially once it has been resolved that it is exempt from public disclosure, Councillors and Officers must respect the confidentiality of the report and not disclose it to a third party.
- 9.3 It does not follow that all the contents of the report must be regarded as confidential. It may be only certain items of information or terms of negotiations which justify the inclusion of that report in Part II. Other aspects of the report may already be within the public domain or otherwise outside the definition of "exempt". A Councillor may accordingly refer to these aspects in discussion with third parties but must exercise proper care and judgement not to reveal those elements of the document which are protected, and it will always be prudent to consult the Monitoring Officer before doing so.
- 9.4 Any unauthorised disclosure of confidential information by Councillors may constitute a breach of the Councillors' Code of Conduct (See Part 5A of the Constitution).

## **10. Correspondence**

- 10.1 Correspondence between an individual Councillor and an Officer should not normally be copied by the Officer to another Councillor unless there is a 'need to know'.
- 10.2 Where correspondence is justifiably copied to another Councillor or Officer, this should be made clear to the original Councillor/Officer. 'Silent' or 'blind' copies should not normally be used.
- 10.3 Where an e-mail is initially sent to a large group of people outside the Council, blind copies should be used to avoid publishing e-mail addresses. (Please also see the Council's E-mail Policy which is available on the Intranet).
- 10.4 Official letters on behalf of the Council should normally be sent out in the name of the appropriate Officer rather than in the name of a Councillor. It may be appropriate in certain limited circumstances (e.g. representations to a Government Minister) for a letter

to be sent out in the name of a Councillor, but this should be the exception rather than the rule. Letters that, for example, create obligations or give instructions on behalf of the Council should never be sent in the name of a Councillor, because an executive act cannot be delegated to an individual Councillor.

## **11. Involvement of Ward Councillors**

### **11.1 Public meetings**

Wherever a public meeting is organised by the Council to consider a local issue, all relevant Ward Councillors should be invited to attend the meeting as a matter of course. Where a Councillor arranges a public meeting s/he shall advise the responsible Officer who should and invite him/her to attend.

### **11.2 Consultation on Local Issues**

11.2.1 Whenever the Council undertakes any form of consultation exercise on a local issue, the Ward Councillor(s) should be notified at the outset of the exercise. Where such consultation exercise encompasses the whole Borough or District, all Councillors will be advised.

11.2.2 Where a member of the Executive is considering something in another Councillor's ward, s/he should liaise with the local Ward Councillor(s)

### **11.3 Attendance at meetings arranged by Officers**

11.3.1 Within the Council, Councillors are free at any time to meet Officers to discuss aspects of the Council's business and to ask Officers to set up local meetings to resolve specific issues.

11.3.2 Officers will arrange many meetings with colleagues or third parties to discharge the routine business of the Council or to action its decisions. Councillors will not be present at these meetings but will be advised either informally or through reports to Committees of any relevant discussions and/or outcomes.

11.3.3 Officers have a duty to keep Councillors informed about issues which may be of particular interest to their ward. It is important to ensure that ward Councillors, chairmen and vice-chairmen are given early notice of something which is likely to be reported in the media and in which they will probably have an interest.

## **12. Public Relations issues**

12.1 The Council's Communications and Media Officer is responsible for dealing with press and other media organisations on behalf of the Council. It is important therefore that all official communications relating to the Council (but not party political or private matters) are dealt with via the Communications and Media Officer so as to ensure proactive and effective management of the Council's public relations.

- 12.2 Further guidance (which takes into account the Government's Code of Recommended Practice on Local Authority Publicity) is set out in the Council's Media and Communications Protocol which is available on the Council's Intranet.

### **13. Publicity during Elections**

- 13.1 During elections, special rules apply with regard to local authority publicity. These rules are set out in the Government's "Code of Recommended Practice on Local Authority Publicity" which is available from the Council's Communications and Media Officer.

### **14. Breaches of the Code of Conduct and this Protocol**

#### **14.1 Code**

Many of the points covered in this Protocol are dealt with under the Councillors' Code of Conduct. Any member of the public (including Officers and Councillors) can complain to the Council's Monitoring Officer that a Councillor has broken the Code of Conduct. This could lead to an investigation and ultimately sanctions being made against the Councillor.

#### **14.2 Protocol**

14.2.1. More general concerns about the relationships between Councillors and Officers (or perceived breaches of the principles embodied in this Protocol) can be discussed with the Head of Paid Service or Monitoring Officer

14.2.2 A complaint that this Protocol has been broken by a Councillor may be referred to the Monitoring Officer, Senior Officer, and/or relevant Group Leader.

14.2.3. Complaints that this Protocol has been broken by an Officer may be referred to the relevant Senior Officer, the Head of Paid Service or the Monitoring Officer. Specific breaches of this Protocol may ultimately be the subject of either grievance or disciplinary procedures.

### **15. Review**

- 15.1 The Protocol will be reviewed by the Audit Committee every three years, or earlier if necessary.

## Part 5D - Councillors' Code of Good Practice - Planning

### Introduction

**The aim of this Code is to promote good practice:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way, and to set out the standards of conduct required of **all** Councillors in dealing with planning matters including applications, policy development and enforcement.

**Your role as a member of the Local Planning Authority:** to make planning decisions openly, impartially, with a sound judgement and for justifiable reasons. You are also a democratically accountable decision taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions provided that you have considered all material considerations and have given fair consideration to relevant points raised.

**When the Code of Good Practice applies:** this Code applies to Councillors at all times when involving themselves in the planning process. (This includes, 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.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.**

### 1. Relationship to the Councillors' Code of Conduct

- 1.1 **You should** apply the rules in the adopted Councillors' Code of Conduct first, which must always be complied with.
- 1.2 **You should** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Councillors' Code of Conduct for the purposes of planning. If you do not abide by this Code of Good Practice, you may put:
  - the Council at risk of legal challenge ; and
  - yourself at risk of either being named in a Code of Conduct Complaint and report made to the Standards Committee or Council, or if the failure is also likely to be a breach of the interest provisions of Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

### 2. Development Proposals and Interests under the Councillors' Code

- 2.1 **You should** disclose the existence and nature of your interest as required by the Authority's Code of Conduct, at any relevant meeting, including in informal meetings or discussions with officers and other Councillors, so that everyone taking part in the

meeting, whether it is formal or informal, is aware of your interest. Disclose your interest at the beginning of the meeting.

- 2.2 **You should not** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think that you are receiving preferential treatment, because of your position as an elected Councillor. (This would include, where you have a personal or Disclosable Pecuniary Interest (DPI) in a proposal, using your position to discuss that proposal with officers or fellow Councillors when other members of the public would not have the same opportunity to do so).
- 2.3 **You should** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal or DP Interest to an appropriate officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. (For example, where you have a DPI in a proposal to be put before a meeting, you will have to withdraw from the room or Chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to make use of the Council's public participation scheme to address the meeting in either objection or support of the proposal and observe the meeting's consideration of it from the public gallery).
- 2.4 **You should** notify the Monitoring Officer in writing where it is clear to you that you have a DPI or personal conflict of interest, by application or objection, or for any other reason, and note that:
  - You should send the notification no later than submission of that application where you can
  - **On** your own applications note that:
    - Any proposal made by or on behalf of any Member of Council will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
    - you must not get involved in the processing of the application; and
    - it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee.

### 3. Fettering Discretion in the Planning Process

- 3.1 Fettering your discretion is a specific term that means you are not approaching the decision with an open mind. You should participate in planning decision making at this Council with an open mind, and should not appear to have already made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides.
- 3.2 You should be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.

- 3.3 You should keep at the front of your mind that when you come to make the decision, you:
- Have a duty, under planning legislation, to apply the policies of the Development Plan unless material considerations indicate otherwise;
  - Are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
  - Must keep an open mind and hear all of the evidence before you, both the officers presentation of the facts and their advice as well as the arguments from all sides;
  - Are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Councillors, in giving fair consideration to points raised; and
  - Are to come to a decision after giving what you feel is the right weight to the Development Plan and relevant material considerations
- 3.4 **You should** be aware that you are likely to have ‘fettered your discretion’ where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief or major advocate for the proposal. (NB: This is more than a matter of membership of both the proposing committee and the Development Management and Licensing committee, but that through your significant personal involvement in preparing or advocating the proposal you 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)
- 3.5 You will be able to take part in the debate at a meeting of the Council on a proposal when acting as part of a consultee body (where you are also a member of the town or parish council, for example) provided:
- the proposal does not substantially affect the well being or financial standing of the consultee body;
  - you make it clear to the consultee body that:
    - your views are expressed only on the limited information before you at that time;
    - you can reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before a Committee and you hear all of the relevant information; and
    - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the meeting; and
  - you disclose the personal interest regarding your membership or role when the meeting comes to consider the proposal.

- 3.6 **You should not** speak and vote on a proposal where you do not have an open mind. You do not also have to withdraw, but you may prefer to do so for the sake of appearances or abstain from voting
- 3.7 **You should** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- 3.8 **You should** take the opportunity to exercise your separate speaking rights as a Ward/Local Councillor (*where this has granted by the authority's standing orders or by the consent of the Chairman and Committee*) where you have represented your views or those of local electors and 'fettered your discretion', but do not have a personal and disclosable pecuniary interest. Where you do have a disclosable pecuniary interest:
- advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item; and
  - remove yourself from the room for the duration of that item; and ensure that your actions are recorded in the published minutes of that meeting.

#### **4. Contact with Applicants, Developers and Objectors**

- 4.1 **You should** refer those who approach you for planning, procedural or technical advice to officers.
- 4.2 **You should** not agree to any formal meeting with applicants, developers or groups of objectors without first discussing with the planning case officer and agreeing a course of action in writing.

Where you feel that a formal meeting would be useful in clarifying the issues, unless agreed otherwise with the officer, you should not seek to arrange that meeting yourself but should request the **Planning Case Officer** to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

- 4.3 You should otherwise:
- follow the rules on lobbying (section 5);
  - always make notes when contacted; and
  - report in writing to the Head of Development Management Practice any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.
- 4.4 **In addition in respect of presentations by applicants/developers:**  
You are able to attend a planning presentation at a town or parish council meeting, or a public meeting. When attending public meetings, including town and parish



council meetings, Councillors should take great care to maintain their impartial role as a Councillor, listen to all the points of view expressed by the speaker and public and not state a conclusive decision on any pre-application proposals and submitted planning applications.

- 4.5 **You should** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 4.6 **You should** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee.
- 4.7 **You should** be aware that a presentation is a form of lobbying and you must not express any strong view or indicate how you or other Councillors might vote.

## 5. Lobbying of Councillors

- 5.1 **You should** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, to express an intention to vote one way or another, or such a firm point of view that it amounts to the same thing, prejudices your impartiality and therefore your ability to participate in the Committee's decision making.
- 5.2 **You should** remember that your overriding duty is to the whole community not just to the people in your ward/local area and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 5.3 **You should** not accept gifts or hospitality from any person involved in or affected by a planning proposal.
- 5.4 **You should** copy or pass on any lobbying correspondence you receive to the **Planning Case Officer** at the earliest opportunity
- 5.5 **You should** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up
- 5.6 **You should** note that, unless you have a DPI, you will not have breached this Planning Code of Good Practice 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 pre-judging the issue and you make clear you 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/Local Councillor, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## 6. Lobbying by Councillors

- 6.1 **You should not** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and disclosable pecuniary interest and have to withdraw.
- 6.2 **You can** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 6.3 **You should not** lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken
- 6.4 **You should not** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Councillor to do so. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

## 7. Site Visits

- 7.1 Do try to attend site visits organised by the Council where possible. The Site Inspection Protocol is attached at Appendix A.
- 7.2 **You should not** enter a site which is subject to a proposal other than as part of an official site visit (either a Borough council site visit or a town/parish council site visit), even in response to an invitation, as this may give the impression of bias unless:
- you feel it is essential for you to visit the site other than through attending the official site visit,
  - you have first spoken to the **Head of Development Management Practice** about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.
- 7.3 **You should not** request a site visit unless you feel it is strictly necessary because:
- particular site factors are significant in terms of the weight attached to them relative to other factors, or the difficulty of their assessment in the absence of a site inspection; or
  - there are significant policy or precedent implications and specific site factors need to be carefully addressed.

## 8. Public Speaking at Meetings

- 8.1 **You should not** allow members of the public to communicate with Committee Members during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 8.2 **You should** ensure that you comply with the Council's procedures in respect of public speaking at the Development Management and Licensing Committee.

## 9. Officers

- 9.1 **You should not** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the **Head of Development Management Practice**, which may be incorporated into any committee report).
- 9.2 **You should** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the **Head of Development Management Practice** or those officers who are authorised to deal with the proposal at a Councillor level, ie. the appropriate **Planning Case Officer**.
- 9.3 **You should** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

## 10. Decision Making

- 10.1 **You should** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded, and repeated in the report to Committee.
- 10.2 In the event of a Councillor referring an application to Committee, there will be an expectation for that Councillor (unless in exceptional circumstances) to attend the relevant Committee meeting and explain the **material planning reasons** behind their referral. This requirement applies to all Councillors irrespective of whether or not they are Members of the Committee.
- 10.3 **You should** come to meetings with an open mind and demonstrate that you are open-minded.
- 10.4 **You should** comply with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise
- 10.5 **You should** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer.

- 10.6 **You should not** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 10.7 **You should** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the **material planning reasons** leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that the Council may have to justify the resulting decision in the event of any challenge.
- 10.8 When taking part as a substitute at the DMandL Committee, you are entitled to come to your own view on an application, and are not bound to reflect the views of the Committee Member that you are replacing.

## 11. Training

- 11.1 **You will not be able to** participate in decision making at meetings dealing with planning matters if you have not attended all mandatory planning training sessions prescribed by the Council.
- 11.2 **You should** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- 11.3 **You should** participate in annual refresher training and periodic reviews of samples of planning decisions and appeals to ensure that judgements have been based on proper planning considerations and sound decision making.

## APPENDIX A

### SITE INSPECTION PROTOCOL

DECEMBER 2016

#### **Purpose:**

The purpose of site visits is to enable Members to view particular aspects of an application in context. No decision is reached on site and there is no debate as to outcome at the site meeting.

#### **Attendees:**

In addition to the Council's officers and advisors (eg. County Highways), those who are entitled to attend and take part and who make up the Site Inspection Panel are:

- a. All Development Management and Licensing Committee Members, and

b. The WDBC Member(s) representing the Ward in which the site is located

**The applicant/agent may attend the site meeting but not participate, however, they will be expected to 'peg out' the proposed development.**

**Representatives of the respective Parish/Town Council may attend the site meeting but not participate.**

**At the discretion of the Chairman, the applicant or agent, and one representative from the Parish/Town Council, may be allowed to answer questions of clarity.** Specific requests to view the proposal from a particular place (e.g. objector's home) may be accommodated at the Chairman's discretion.

#### **Procedure on Site:**

The site inspection will be chaired by the Chairman (or in his absence, the Vice Chairman) who will formally open the site inspection with introductions and then invite the Planning Officer to describe the application

The Planning Officer then describes the proposal and relevant site specific considerations, and guides the Councillors to appropriate vantage points which may be within and/or outside the site

The Chairman will invite questions from Councillors to seek clarification but not opinion from the Planning Officer and advisors. At the Chairman's discretion, and in exceptional circumstances, questions may be asked of the applicant/agent or one of the representatives of the Parish/Town Council

Any questions that the Case Officer is unable to answer will be listed and a full response given by the Case Officer at the Committee meeting the following week

Chairman formally closes the meeting

#### **To request a site inspection:**

The Scheme of Delegation sets out the circumstances when a Councillor can call an application to Committee. At that point, if the Councillor feels a site inspection should take place, the request should be made in writing to Head of Development Management Practice giving material planning reasons

At the DMandL Briefing meeting held the week prior to the publication of the agenda, which is attended by the Chairman, Vice Chairman, Head of Development Management Practice and Specialist Democratic Services, the Chairman and Vice Chairman will discuss with the Head of Development Management Practice which applications should be referred for site inspection

The site inspection itinerary will be prepared by the Specialist Democratic Services and circulated one week prior to the site inspections taking place. The itinerary will be included as part of the agenda

The site inspection will take place on the Thursday prior to the Committee date, and will receive their agenda papers prior to the site inspection taking place.

## Part 6

### Councillors' Allowances Scheme

**This Scheme has been made in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003.**

#### 1. **Basic Allowance**

- 1.1 The Basic Allowance is payable to every Member of the Council at the rate specified in Schedule A below, and will be paid by equal monthly instalments in arrears. The allowance is intended to recognise the time devoted by Councillors to their work as well as to cover incidental costs such as the use of their homes and private telephones.

#### 2. **Special Responsibility Allowances (SRAs)**

- 2.1 An SRA is paid to those Councillors who have significant responsibilities such as committee chairmen or political group leaders etc. Each 'post of responsibility' is identified by the Independent Remuneration Panel and attracts an appropriate level of payment as shown in Schedule A, which is paid monthly in arrears.
- 2.2 Payment to any Councillor who did not hold the position for which the allowance is paid for the whole year will be adjusted pro rata according to the number of months for which it was held.
- 2.3 A Councillor holding the office of Chairman will normally be expected to agree to the re-allocation of the relevant proportion of the SRA to their Vice-Chairman in circumstances where the latter has to provide cover for a continuous period of absence of their Chairman of at least one month.
- 2.4 No Councillor shall receive more than one SRA.

#### 3. **Travelling Allowances**

- 3.1 Councillors may claim mileage allowances at the rates specified in Schedule B.
- 3.2 Travelling Allowances will normally be payable in respect of attendance at any Approved Duty, except that they may not be claimed where the Body attended pays them.
- 3.3 Approved Duties in respect of which Travelling Allowances may be paid are set out in Appendix D.

#### 4. **Subsistence Allowances**

- 4.1 Subsistence allowances will be paid on the scales and under the conditions set out in Schedule C below. The allowance is for actual expenditure, and payment will normally only be made where receipts are supplied.
- 4.2 Approved Duties in respect of which Subsistence Allowances may be paid are set out in Appendix D.

#### 5. **Carer's Allowance**

- 5.1 Carer's Allowance will be paid in accordance with the conditions set out in Schedule C below.

#### 6. **Service on Outside Bodies**

- 6.1 Councillors are appointed to represent the Council on specific outside bodies by the appropriate committee or by Council. In these specific instances, Councillors are entitled to claim travel and subsistence **unless** the outside body already provides reimbursement.
- 6.2 If a Councillor is unable to attend a meeting as a representative of the Council, they are able to make arrangements for another Councillor to attend in their place. This arrangement is irrespective of any political or party allegiances. The Councillor attending as a substitute must clearly show this on their claim form.
- 6.3 Representatives appointed to serve on outside bodies are conditional upon them remaining Councillors of the Council during that period. The Council approves from time to time a list of Outside Bodies to which Councillors have been appointed.

#### 7. **Withholding Allowances**

- 7.1 Where the Standards Committee determine at a Hearing that a Councillor should be fully suspended from his/her duties, then the Councillor's Allowances (save for Dependant Carers' allowance) will be withheld for the period of suspension.

#### 8. **Official Civic Duties**

- 8.1 The Mayor and Deputy Mayor and any other Councillor deputising for them or invited by them to attend, shall be entitled to receive travelling and subsistence allowance for the performance of official duties and courtesy visits.
- 8.2 The Mayor and Deputy Mayor both receive an annual lump sum allowance as set out in the table in Schedule A.

#### 9. **Renunciation**

- 9.1 Any Councillor may (by giving notice in writing to the Head of Paid Service) choose to forgo any part of the allowances paid under this Scheme.

## 10. **Administrative Rules**

- 10.1 No payment can be made of any travel and subsistence claim made more than three months after the meeting for which the claim is made, without the authority of Council in every case.
- 10.2 The responsibility for the correctness of claims is that of the Councillor concerned. Where in the opinion of administrative staff, a claim cannot for some reason be met within the rules of this Scheme, the travel and subsistence claim will not be paid, and the Councillor will be informed in writing of the reason.
- 10.3 All claims for expenses should, as far as possible, be submitted according to the timetable (provided by the Finance Community of Practice) and passed to Democratic Services for verification. All claims will be checked against the relevant attendance sheets, list of approved duties and approved appointments to outside bodies, prior to payment being made. Councillors may be contacted if some claims require further clarification. Any unresolved problems arising out of claims for expenses will be referred to the Standards Committee for determination.
- 10.4 Subsistence allowance rates are all maximum amounts and reimbursement will be for actual expenditure (up to these limits), wherever possible supported by a receipt. This will enable the Council to reclaim the VAT element. Claims should not be made if a meal is provided free of charge.
- 10.5 Every Councillor will be issued with a copy of this Scheme on its approval by Council and the Scheme will be an element of the Constitution. As part of the Constitution the Scheme will be available on the Council's website.
- 10.6 Claims must be made on the claim forms provided, fully completed in accordance with the guidance notes on the form, signed and dated by the Councillor.
- 10.7 It is the responsibility of the Councillor to notify the Council of any material changes to the information held on file, e.g. change of vehicle or address etc.

## 11. **Records and Publication**

- 11.1 Records will be kept as necessary to satisfy the requirement for public access.
- 11.2 This Scheme and any amendment subsequently made to it will be published in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003.
- 11.3 As soon as practical after the end of each year the amounts paid to each Councillor in respect of each of Basic Allowances and SRA's will be published as required by the 2003 Regulations.

## 12. **Review**



The Independent Remuneration Panel reviewed the Councillors' Allowance Scheme in November 2016. A further review will have to take place before November 2020 (unless any significant issues which may necessitate a review arise before this date).

13. **Definitions**

13.1 Member

An elected Member or co-opted Member of West Devon Borough Council.

13.2 Year

The 12 months ending 31 March.

**Schedule A**  
**Basic and Special Responsibility Allowances**

<b>Role</b>	<b>Multiple of Basic Allowance</b>	<b>Basic Allowance per annum</b>	<b>Special Responsibility Allowance per annum</b>	<b>Total</b>
<b>Basic Allowance</b> (all elected Councillors)		£4,580		<b>£4,580</b>
<b>Special Responsibility Allowances:</b>				
Leader of the Council (Chairman of the Hub Committee)	<b>Basic x 200%</b>	£4,580	£9,160	<b>£13,740</b>
Deputy Leader (Vice Chairman of the Hub Committee)	<b>Basic x 150%</b>	£4,850	£6,870	<b>£11,450</b>
Hub Committee Members (x 7)	<b>Basic x 90%</b>	£4,580	£4,122	<b>£8,702 (each)</b>
Leaders of other political groups (NB. subject to minimum group size threshold of 3 Members)	<b>2 x Basic / 31 x No. of Group Members</b>			
Chairman of Audit Committee	<b>Basic x 90%</b>	£4,580	£4,122	<b>£8,702</b>
Chairman of Development Management and Licensing Committee	<b>Basic x 120%</b>	£4,580	£5,496	<b>£10,076</b>
Chairman of Overview and Scrutiny Committee	<b>Basic x 90%</b>	£4,580	£4,122	<b>£8,702</b>

**Civic allowances (see paragraph 7 of the Scheme)**

<b>Civic Duty</b>	<b>£ Allowance</b>
Mayor	3,000
Deputy Mayor	825

## Schedule B Travelling Allowances

The scheme to allow Councillors to claim for car travel is as follows:

**SCHEME:**

The rates are set by the Inland Revenue and are such that no taxable element is included.

<b>Mileage allowance</b>	
Per mile for the first 10,000 miles	45.0p
Per mile after 10,000 miles	25.0p

There are additional allowances available for transporting passengers, bicycles and motorcycles as follows:

For each passenger	5p per mile
Bicycle rate	20p per mile
Motorcycle rate	24p per mile

**Longer journey rate** – in the case of any one return journey exceeding 150 miles, excess mileage will be paid at a rate of 11.7p per mile (however, second class rail travel – if cheaper – is the preferred method for long distance travel).

**EXPLANATORY NOTE:**

It is the responsibility of each Councillor to notify any material change in the details of the car used to the Officer responsible for the payment of Councillors' allowances.

**SCHEDULE C**  
**Subsistence and Carers' Allowances**

**Carer's Allowance:**

<b>Subsistence Allowances</b> (from 1 April 2018)		
<b>Breakfast allowance</b>	A rate of up to £5.00 may be paid where a Councillor has been away from home on Council business for a period of at least five hours and has incurred the cost of a meal	
<b>One meal rate (five-hour rate)</b>	A rate of up to £5.00 may be paid where a Councillor has been away from home on Council business for a period of at least five hours and has incurred the cost of a meal	
<b>Two meal rate (ten-hour rate)</b>	A rate of up to £10.00 may be paid where a Councillor has been away from home on Council business for a period of at least ten hours and has incurred the cost of a meal or meals	
<b>Late evening meal rate</b>	A rate of up to £15.00 may be paid where a Councillor has to work later than 8.00pm having been on Council business during the day and has to buy a meal which they would usually have at home.	
<b>Overnight/Conference subsistence allowances</b>	London	£91.04 per night.
	Other locations	£79.82 per night

- 5.1 Carer's Allowance will be paid for the reimbursement of actual expenditure incurred by Councillors up to a maximum equivalent to the national minimum wage current at that time for the care of dependents whilst the Councillor is on Council business. For this purpose, "dependents" include children, elderly people or people with disabilities.
- 5.2 The allowance will not be paid to a member of a claimant's own household, except where that person would otherwise be in existing paid employment during the hours of caring.
- 5.3 The allowance will not be paid to a Councillor who is already in receipt of an allowance or other assistance from any other source for the same purpose on the occasion for which the allowance is being claimed.

**Explanatory notes**

These allowances may be claimed only where incurred, and supported wherever possible with a receipt, so that where appropriate the Council may reclaim any VAT included.

## **SCHEDULE D**

### **Approved duties for Travelling and Subsistence (Local Authorities (Members' Allowances)(England) Regulations 2003)**

**Allowances for travelling and subsistence may be paid to the Council's members (including co-opted members) for the following approved duties:**

- Attendance at meetings of the Council
- Attendance at meetings of the Council's committees or sub-committees
- Attendance at meetings of some other body (including that body's core committees or sub-committees discharging that body's core functions) to which the Council makes appointments or nominations by the Council's appointed nominee(s)
- Attendance at any other meeting which has both been authorised by the Council, and to which representatives of more than one political group have been invited (including training sessions and briefings)
- Attendance at meetings of a local authority association of which the Council is a member by the Council's appointed nominee
- Duties undertaken 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
- Duties undertaken on behalf of the Council in accordance with any procedural rule requiring a member or members to be present while tender documents are opened
- Any other duty approved by the Council, or any duty of a class so approved by the Council or by the Head of Paid Service (or in his absence his nominee) (in consultation with the Group Leaders) for the purpose of, or in connection with, discharging the duties of the Council, its committees or sub-committees (for example (but not limited to) Task and Finish Groups, working groups and Group Leaders' meetings).
- Attendance at a meeting at which it is necessary for Group Leaders or Chairmen to attend to represent or protect the Council's interests.
- Mileage for attendance at Parish and Town Council meetings within a Member's local ward of which they are not already a member and which is within the West Devon Boundary.

**The above Approved Duties (where appropriate) shall also be Approved Duties for the purpose of any Town or Parish Council within the Borough of West Devon where the Town/Parish Council has resolved to pay travel and subsistence allowances.**