

**DERBYSHIRE COUNTY COUNCIL****STANDARDS COMMITTEE****12<sup>th</sup> April 2019****Report of the Director of Legal and Democratic Services****Refresh of the Constitution – Updating Report****1. Purpose of the Report**

To consider and approve final amendments to the Council's Constitution in accordance with the recommendations from the Standards Committee meetings held on 25<sup>th</sup> February 2019.

**2. Information and Analysis**

Attached for the Committee's consideration at Appendix 1 is a copy of the final draft of the proposed Constitution. It is proposed that this will come into effect following consideration of the Constitution and the recommendations from this Panel at the next meeting of the Council and the proposed implementation date is 27<sup>th</sup> May 2019.

This version of the Constitution reflects the final amendments discussed at the meeting of the Committee on 25<sup>th</sup> February and concludes the work programme. In particular, the Committee is asked to consider the following which were outstanding at the time of last meeting:

1. The amended terms of reference for the proposed new Governance, Ethics and Standards Committee
2. The proposed terms of reference for the Regulatory – Planning Committee. These are due to be considered at the next meeting of the Regulatory – Planning Committee on 9<sup>th</sup> April.
3. A new Article 24 setting out the terms of reference for the proposed new Appointments and Conditions of Service Committee, together with a revised Appendix 9 – Officer Employment Procedure Rules
4. The role profile for the Chairman, Civic Chairman and Vice-Civic Chairman of the Council
5. A revised Appendix 6 – Access to Information Procedure rules which properly outlines the legislative requirements regarding access to information for meetings.

The Committee is also asked to note that references to 'Strategic Directors' throughout the document have been amended to 'Executive Directors' to

reflect the new role title which will be adopted from 15<sup>th</sup> May 2019. Consequently, references to 'the Executive' have been amended to become 'the Cabinet' for clarity.

Finally, the Committee is asked to consider the order of the Articles and whether the current listing reflects the preferred sequential order.

### **3. Considerations**

In preparing this report the relevance of the following factors has been considered: financial, legal, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

### **4. Background Papers**

Derbyshire County Council's Constitution

### **5. Officer recommendation**

To be appraised of and to consider the final amendments to the Council's Constitution and to recommend the adoption of the new Constitution to the Council to be effective from 27<sup>th</sup> May 2019.

**Janie Berry**  
**Director of Legal and Democratic Services**

# Article 1 – The Constitution

## 1.1 The Constitution

(a) The Articles, and all appendices, comprise the Constitution of Derbyshire County Council.

(b) The Council has adopted cabinet arrangements as the basis for its Constitution. The Constitution and particularly the following parts of it set out the cabinet arrangements:

(i) Article 6 (The Leader of the Council and the Cabinet) and Appendix 4 (Cabinet Procedure Rules).

(ii) Article 7 (Decision-Making) and Appendix 6 (Access to Information Rules).

(iii) Article 8 (Improvement and Scrutiny Arrangements) and Appendix 5 (Improvement and Scrutiny Procedure Rules).

(iv) Appendix 1 (Scheme of Delegation of Responsibility for Functions).

## 1.2 Powers of the Council

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

## 1.3 Purpose of the Constitution

The purpose of the Constitution is to:

1. enable the County Council (in partnership with citizens, businesses and other organisations as appropriate) to provide broad leadership to and support for the communities of Derbyshire to improve their economic social and environmental well-being;
2. support the active involvement of citizens in the process of local authority decision-making;
3. help Councillors represent their constituents more effectively;
4. make clear how the Council is to operate, and enable decisions to be taken efficiently and effectively;

5. create a rigorous means by which decision-makers can be held to public account;
6. ensure that no one will review or scrutinise a decision in which they are directly involved;
7. ensure that those responsible for the decision-making are clearly identifiable to local people and that they explain the reasons for the decisions; and
8. provide a means of improving the delivery of services to the community to meet the County Council's vision, as expressed in the policy themes in the Council's Corporate Plan.

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

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

The Council will monitor and evaluate the operation of the Constitution as set out in Article 20.

#### **1.5 Previous Policies/Decisions**

Unless negated by a provision of the Constitution, any decision made by or on behalf of the County Council and any plan, budget, policy or strategy approved by or on behalf of the County Council prior to the coming into effect of the Constitution shall have effect and apply as if it had been made in accordance with the requirements of the Constitution, and shall remain in force as a decision or plan or budget or policy or strategy under the Constitution unless and until and to the extent that it is amended varied or replaced.

#### **1.6 Interpretation**

Throughout this Constitution, references to the masculine gender shall be taken to mean both the masculine and the feminine gender and expressions in the singular shall include, where appropriate, the plural.

# Article 2 – Members of the Council

## 2.1 Composition and eligibility

(a) **Composition.** The Council will comprise 64 members, otherwise called Councillors. Councillors will be elected by the voters of 61 electoral divisions in accordance with a scheme drawn up by the Local Government Commission and approved implemented by Statutory Order.

(b) **Eligibility** - Legislation governs the eligibility of candidates to be elected, but in summary, only registered voters of the county area or those living, working or occupying land there will be eligible to be elected to the office of Councillor.

## 2.2 Election and terms of councillors

The regular election of Councillors is held on the first Thursday in May every four years. 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. A by-election may be held if a vacancy occurs in a division between each regular election, except if such vacancy occurs within 6 months of the date of the next regular election.

## 2.3 Roles and functions of all councillors

(a) **Key roles.** All Councillors will:

(i) collectively be the ultimate policy-makers as set out in the Constitution and carry out strategic and corporate management functions;

(ii) contribute to the good governance of the area and encourage community participation and citizen involvement in decision-making;

(iii) effectively represent the interests of their electoral divisions and of individual constituents and bring their views into the Council's decision-making process;

(iv) respond to constituents' enquiries and representations fairly and impartially;

(v) participate in the governance and management of the Council, including scrutiny arrangements as appropriate;

(vi) be available to represent the Council on other bodies; and

(vii) maintain the highest standards of conduct and ethics in the conduct of the business of the Council or their office and comply with their Code of Conduct.

**(b) Rights and duties**

(i) Councillors will have such rights of access to such documents and information 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.

(iii) For these purposes, “confidential” and “exempt” information are defined in legislation and the Access to Information Rules in Appendix 6 of this Constitution.

**(c) Role Profiles**

The County Council has agreed role profiles for Councillors and the various office holders in the County Council and will keep these under review. These are contained in Appendix 17 of this Constitution.

**2.4 Conduct**

Councillors will at all times observe the Members’ Code of Conduct as adopted from time to time and the Protocol on Member/Officer Relations as adopted and as set out respectively in Appendices 11 and 13 and the conduct provisions of the Procedural Standing Orders (set out in Appendix 3) at meetings to which they apply.

**2.5 Allowances**

Councillors will be entitled to receive allowances in accordance with the Members’ Allowances Scheme set out in Appendix 15 of this Constitution.

# Article 3 – Citizens and the Council

## 3.1 Citizens' Rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Appendix 6 of this Constitution:

- (a) **Voting and petitions.** Citizens on the electoral roll for the County area have the right to vote. Citizens may also sign a petition to request a referendum for an elected mayor form of Constitution. The Council's Petition Scheme is set out at Appendix 2 to the Constitution.
- (b) **Information.** Citizens have the right in accordance with the Access to Information Rules and the law to:
  - (i) attend, record and report on meetings of the County Council and Committees except where confidential or exempt information is likely to be disclosed and the meeting is therefore closed to the press and public;
  - (ii) attend, record and report on meetings of the Cabinet, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
  - (iii) find out from the Forward Plan what key decisions will be taken by the Executive and when;
  - (iv) see reports and background papers and any records of decisions made by the Council and the Cabinet which are open to the public; and
  - (v) inspect and object to the Council's accounts and make their views known to the External Auditor.
- (c) **Participation.** Citizens have the right to participate at meetings of the Council and Committees of the Council (unless different arrangements are made in particular cases) by the presentation of a petition in line with the provisions of the Council's Petition Scheme (Appendix 2), or submission of a question or the making of comments in accordance with the procedure set out in the Council's Procedural Standing Orders (Appendix 3). Separate arrangements exist for addressing the Regulatory Planning Committee in respect of planning applications.

The Council encourages Citizens and any other non-Councillors with relevant expertise and knowledge to be involved and participate as part of its overview and scrutiny arrangements.

(d) **Complaints.** Citizens have the right to complain to:

- (i) the Council itself under its complaints scheme
- (ii) the Local Government Ombudsman after using the Council's own complaints scheme;
- (iii) the Monitoring Officer/Governance, Ethics and Standards Committee of the Council about a breach of the Members' Code of Conduct.

### 3.2 **Citizens' responsibilities**

Citizens must not be violent, abusive or threatening to Councillors or officers and must not willfully harm things owned by the Council, Councillors or officers.

### 3.3 **Equal Opportunities**

The County Council values the rich diversity of Derbyshire's local community and is committed, through effective dialogue with key interest groups, to promoting equal opportunities for all, regardless of social, ethnic or economic background and to ensure effective compliance with equal opportunity employment practices within the Council.



# Article 4 – The Full Council

## 4.1 Functions

(a) There are certain functions the responsibility for which and/or the exercise of which the Council must, by law, reserve to itself or has chosen to do so. These are contained in Appendix 1 which sets out the assignment of responsibility for the functions not only of the Council itself, but also for cabinet functions, overview and scrutiny functions and other non-cabinet functions.

(b) In summary, the main functions which the Council itself carries out are:

- (i) adopting and changing the Constitution;
- (ii) approving or adopting the policy framework and the budget;
- (iii) subject to the urgency procedure contained in the Access to Information Procedure Rules in Appendix 6 of this Constitution, making decisions about any matter in the discharge of a Cabinet function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to, or not wholly in accordance with, the budget;
- (iv) appointing the Leader;
- (v) agreeing or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- (vi) appointing representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council;
- (vii) adopting a members' allowances scheme under Appendix 15;
- (viii) changing the name of the area;
- (ix) confirming the appointment of the Head of Paid Service;
- (x) making, amending, revoking, re-enacting or adopting bye-laws and promoting or opposing the making of local legislation or personal Bills;

- (xi) all other matters which, by law, must be reserved to Council.

NB: The functions of full Council are set out in more detail in Appendix 1. As a result of the adoption of cabinet arrangements under the Local Government Act 2000 as amended, full Council or its committees cannot deal with matters which are the responsibility of the Cabinet (i.e. Leader and Cabinet) referred to as cabinet functions. Non-cabinet functions are those which by law must not be the responsibility of the Cabinet. Local Choice functions are those where there is a choice as to whether the Cabinet or another part of the Council exercise them.

#### **4.2 Council Meetings**

There are three types of Council meeting:-

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings;

and they will be conducted in accordance with the Council Procedure Rules attached at Appendix 3 to the Constitution.

#### **4.3 Responsibility for Functions**

The Council will keep up to date Appendix 1 of this Constitution setting out the allocation of responsibilities for the Council's functions.

# Article 5 – The Chairman of the County Council

## 5.1 Role and Function of the Chairman of the Council

(a) The Chairman of the County Council will be elected by the Council annually.

(b) The Chairman of the County Council, and in his/her absence, the Civic Chairman of Derbyshire County Council, will have the following roles and functions to:

- Preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Elected Members and the interests of the community;
- Uphold and promote the Council's Constitution, and to interpret the Council Procedure Rules when necessary;
- Have the discretion to exercise a casting vote in the case of an equality of votes at the Council meeting;
- Ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Elected members who are not on the Cabinet can hold the Leader and Cabinet Members to account;
- Promote public involvement in the Council's activities and to be the conscience of the Council;
- Be consulted on any matter in relation to which consultation with the Chairman of the Council is required under the Constitution;
- Request such additional meetings of the Council as may be considered necessary or appropriate;
- Be responsible for personal development and undergo appropriate development and continuous improvement for any role undertaken; and
- In the absence of the Civic Chairman of Derbyshire County Council this postholder may be invited to attend a civic or ceremonial event on behalf of the County Council if the need is required/deemed appropriate.

The Chairman of the County Council may not be appointed to the Cabinet.

# **Article 6 – The Leader of the Council and Cabinet**

## **6.1 Role**

The Council has adopted the Leader and Cabinet Executive (England) governance model for its cabinet (decision-making) arrangements. The Leader of the Council is responsible for the discharge of such functions as are the responsibility of the Cabinet of the Council i.e. all functions which, by law, must be the responsibility of the Cabinet, or which are not the responsibility of any other part of the Council, whether by law or under this Constitution ('cabinet functions'). The Leader may make such arrangements as the Leader thinks fit from time to time for the delegation and discharge of cabinet functions.

## **6.2 Form and Composition of Cabinet**

(a) The Leader of the Council is responsible for the appointment of the Cabinet which will consist of the Leader and not less than 2 nor more than 9 other Councillors, as the Leader shall determine. (The current Derbyshire County Council Cabinet consists of 7 Councillors). The Leader will allocate areas of political responsibility to members of the Cabinet as the Leader shall determine from time to time. The Leader may change the size of Cabinet (within the above parameters) and appointments to it at any time. Cabinet Member portfolios are set out in Appendix 1.

(b) One of the members of the Cabinet will be designated by the Leader as Deputy Leader, to hold office until the end of the Leader's term of office, unless the Deputy Leader resigns, ceases to be a member, is disqualified, or is removed by the Leader at any time.

(c) If for any reason the Leader is unable to act, or the office of Leader is vacant, the Deputy Leader must act in the Leader's place. If the Deputy Leader is unable to act or the office is vacant, the Cabinet must act in the Leader's place or arrange for a member of the Cabinet to do so.

(d) The Cabinet is not a Committee of the Council. Its composition is not required to be in accordance with the political balance of the Council.

(e) The Cabinet collectively, or individual members of the Cabinet, or officers, or in accordance with joint arrangements, will be responsible for the discharge of such functions of the executive as are allocated by the Leader of the Council from time to time (set out in Appendix 1).

### **6.3 Leader**

The Leader of the Council will be a Councillor elected to that position by the County Council. The Leader will hold office until the first meeting of the Council following the next regular election unless he or she:

- (a) resigns from the office of Leader; or
- (b) is disqualified from being or remaining a Councillor; or
- (c) is no longer a Councillor of the Council for any reason; or
- (d) is removed from office by an ordinary resolution on notice by the County Council at any time during the Leader's term of office (and in which case Council will elect a new Leader at that or a subsequent meeting).

The role of the Leader is set out in the Leader of the Council Role Profile set out in Annex 2 to Appendix 17.

### **6.4 Other Cabinet Members**

- (a) Only Councillors may be appointed to the Cabinet by the Leader as above and there may be no co-optees and no Deputies nor Substitutes for Cabinet Members upon the Cabinet.
- (b) Neither the Chairman of the County Council nor the Civic Chairman of Derbyshire County Council will be appointed to the Cabinet. Members of the Cabinet will not serve on the Improvement and Scrutiny Committees or exercise scrutiny functions.
- (c) A Cabinet Member shall hold office in the Cabinet until he/she:
  - (i) resigns from office;
  - (ii) is disqualified from being or remaining a member or is no longer a Councillor for any reason; or
  - (iii) is removed from office by the Leader of the Council.
- (d) If any Cabinet Member, including the Leader, fails for 6 months to attend any meeting of the Cabinet, or any committee of it, then unless the failure was due to some reason approved by or on behalf of the Council, he/she shall cease to be a member of the Council in accordance with the provisions of the Local Government Act 1972.

[Note – any Councillor becomes disqualified if he or she fails for 6 months to attend any meeting of the Authority without prior approval as above].

## **6.5 Cabinet Members with Responsibility**

- (a) The Leader will decide on the number, and extent of areas of responsibility of Cabinet Members and will decide to which members of the Cabinet such areas of responsibility shall be allocated; and
- (b) The Leader will decide the extent to which responsibility for formal decision-making for functions of the cabinet is held collectively by the Cabinet, by individual members of the Cabinet or officers.

## **6.6 Role Profiles**

Role profiles governing how Cabinet Members should carry out their responsibilities are contained in Annex 4 to Appendix 17.

## **6.7 Proceedings of the Cabinet**

Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out in Appendix 4 of this Constitution.

## **6.8 Responsibility for functions**

- (a) Appendix 1 sets out the functions assigned to the Cabinet and officers;
- (b) Unless delegated to an individual officer or Cabinet member, the Leader may determine that the responsibility of the Cabinet for the exercise of a cabinet function and decision-making is collective;
- (c) The Leader may at any time delegate any responsibility of the Leader or the Cabinet for the exercise of a cabinet function to any Cabinet Member with responsibility or any other individual member of the Cabinet, or officer;
- (d) The Leader or Cabinet, in relation to a cabinet function, may specify that a particular decision which would otherwise fall within a power delegated to an officer in accordance with the Scheme of Delegation to Officers shall not be exercised by that officer but shall be reserved or referred to the Leader, Cabinet or an individual Cabinet member for that decision to be made.

(e) An officer may decide not to exercise any cabinet function delegated to him/her and invite the Leader or Cabinet to take a particular decision in relation to that function.

# **Article 7 – Decision-Making**

## **7.1 Responsibility for decision-making**

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions which are not the responsibility of the executive. The Leader will do the same with respect to executive functions. These records are collectively set out in Appendix 1 of this Constitution (Scheme of Delegation for Functions) and may change from time to time.

## **7.2 Principles of decision-making**

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

- (a) due regard to all relevant and material considerations and without regard to any irrelevant considerations;
- (b) where appropriate, the realistic evaluation of alternatives;
- (c) proportionality (i.e. the action must be proportionate to the desired outcome);
- (d) due consultation and the taking of professional advice from officers;
- (e) respect for human rights and equalities;
- (f) a presumption in favour of openness;
- (g) clarity of aims and desired outcomes; and
- (h) reasons being given for the decision, as appropriate.

## **7.3 Key decisions**

- (a) A 'key decision' is one made in the exercise of an executive function which is likely to:
  - (i) result in the County Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates. The County Council has set this level at £500k; or



(ii) be significant in terms of its effects on communities living or working in an area comprising two or more electoral divisions in the county area.

(b) The Leader, Cabinet Member or Cabinet may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules set out in Appendix 3 of this Constitution, the Financial Regulations set out at Appendix 8(a) to this Constitution and the provisions of the Access to Information Rules set out in Appendix 6 of this Constitution.

(c) An officer may be specifically delegated authority to take a key decision but in general a key decision shall not constitute an action or decision taken by a Chief Officer under delegated powers which is in the furtherance of the day to day administration of the service for which the Strategic Director is responsible.

#### **7.4 Decision-making by the Full Council**

Subject to Article 7, the County Council meeting will follow the Procedural Standing Orders set out in Appendix 3 of this Constitution when considering any matter.

#### **7.5 Decision-making by the Executive**

Subject to Article 7, the Cabinet will follow those parts of the Procedural Standing Orders set out in Appendix 3 which may apply to it and the Cabinet Procedure Rules set out in Appendix 4 of the Constitution when considering any matter. The procedures relating to the taking of key decisions are set out in Appendix 6 of the Constitution (Access to Information Rules).

#### **7.6 Decision-making by Improvement and Scrutiny Committees**

(a) Improvement and Scrutiny Committees will follow the Improvement and Scrutiny Procedures Rules set out in Appendix 5 of the Constitution when considering any matter.

(b) Improvement and Scrutiny Committees have no executive decision-making powers in relation to the functions within their scope, nor does any Improvement and Scrutiny Working Group.

(c) Scrutiny Task Groups will follow those parts of the Improvement and Scrutiny Procedure Rules set out in Appendix 5 as apply to them.

### **7.7 Decision-making by other committees and sub-committees established by the Council**

Subject to Article 7, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Appendix 3 of the Constitution as apply to them.

### **7.8 Decision-making by Officers**

Subject to Article 7, certain officers are empowered to take decisions on behalf of the County Council in accordance with the provisions of the Constitution and Scheme of Delegation to Officers in Appendix 1 of this Constitution. These provisions relate to both executive and non-executive functions.

### **7.9 Decision-making by Council bodies acting in a quasi-judicial or appellate capacity**

The Council, Councillors, a Councillor or an officer acting as a tribunal or as an appellate body 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 proceed in accordance with the requirements of natural justice and the Human Rights Act 1998.

# Article 8 – Improvement and Scrutiny Arrangements

## 8.1 Terms of Reference

The Council will appoint the four Improvement and Scrutiny Committees, listed below, to discharge the functions conferred by section 21 of the Local Government Act 2000 in relation to the matters set out in the right hand column of the following table:

Committee	Scope
Resources	Budget Strategy; Financial Management; Asset Management; Efficiency/Value For Money Programme (Service Redesign, Property Rationalisation, Council Transport Coordination); Procurement; Personnel (Including Single Status); Legal Services; Member Services; Council Strategic Policy; Community Strategy and Council Plan; Derbyshire Partnership Forum; External Relations; Regional/Leadership Group; (East Midlands Leaders Board/East Midlands Councils) Public Relations, Policy and Research; Strategic Planning; Local Planning Frameworks; Minerals and Waste Planning; Local Economic Assessment; HCA Single Conversation; Community Infrastructure Levy; Economic Development; DDEP Single Programme; Creative Industries Programme; Markham Vale; Credit Crunch Programme; Related External Funding.
Places	Libraries, Museums, Arts and Heritage; Archives and Modern Records; Sports Development; Tourism; Historic Buildings; Voluntary Sector; Highways and Bridges; Street Lighting; Public Footpaths; Road Safety; Public Transport; Community Transport; Schools and Special Needs Transport; The Countryside; Community Leadership; Community Consultation; Crime and Disorder Partnerships; Youth Offending; Domestic Violence; Action on Drugs; Trading Standards; Emergency Planning; Travellers; Community Cohesion; Social Inclusion; Parish Council Liaison; Core Systems; IT Services; Climate Change; Carbon Management; Waste Management; Land Reclamation; Minerals and Waste Planning; Local Planning Frameworks
People	School Capital Planning; School Capital Programme; Surplus Places; School Support (Personnel, Finance and IT); School Admissions; School Improvement; Governor Support; Home to School Transport; Special Educational Needs; Adult Education; Connexions; FE Colleges; Links to Faith Schools; Improving

	<p>Outcomes for Young People; Children's Services Planning; Multi-Agency Partnerships; Safeguarding; Children's Disabilities; Engagement with Young People; Engagement with Parents and Carers in Service Design; Youth Service; Early Years and Childcare; Children's Centres; Links to Communities Portfolio – Young People's Safety, Youth Offending, Domestic Violence.</p> <p>Home Care; Residential Care; Day Care; Supporting People; Safeguarding; Adults with Learning Difficulties; Adults with Physical Disabilities; Adults with Mental Ill-Health; Multi-Agency Partnerships; Personalisation; Reducing Health Inequalities; Welfare Rights; Links with Health And Voluntary Sector</p>
Health	To review and scrutinise any matter relating to the planning, provision and of health services in its area.

## 8.2 General Role

Within their terms of reference, the Improvement and Scrutiny Committees will:

- (i) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (ii) make reports and/or recommendations to the full Council and/or the Executive and/or any policy, joint or area committee in connection with the discharge of any functions;
- (iii) consider any matter affecting the area or its inhabitants; and
- (iv) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive.

## 8.3 Specific Functions

- (a) **Policy development and review.** The Improvement and Scrutiny Committees may:
  - (i) assist the Council and the Executive in the development of its budget and policy framework by in-depth analysis of policy issues;
  - (ii) conduct research, community and other consultation in the analysis of policy issues and possible options;
  - (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;

- (iv) question members of the Executive and committees and chief officers about their views on the issues and proposals affecting the area; and
  - (v) 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.
- (b) **Scrutiny.** The Improvement and Scrutiny Committees may:
- (i) review and scrutinise the decisions made by and performance of the Executive and/or committees and Council officers both in relation to individual decisions and over time;
  - (ii) 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 the Executive and or committees and chief 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;
  - (iv) make recommendations to the Executive and/or appropriate committee and/or Council arising from the outcome of the scrutiny process;
  - (v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address an Improvement and Scrutiny Committee and local people about their activities and performance; and
  - (vi) question and gather evidence from any person (with their consent).
- (c) **Best Value.** To oversee specific Best Value reviews undertaken on the Council's functions; receive progress reports; and make recommendations for consideration by the Executive on measures to be implemented.
- (d) **Annual Report.** The Improvement and Scrutiny Committee must report annually to full Council on their working and make recommendations for future work programmes and amended working methods if appropriate.

- (e) **Officers.** The Improvement and Scrutiny Committees may exercise overall responsibility for the work programme of the officers employed to support their work.

#### 8.4 **Proceedings of Improvement and Scrutiny Committees**

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

# **Article 9 – Regulatory Planning Committee**

## **Regulatory - Planning Committee – Terms of Reference**

The Council will establish a Regulatory - Planning Committee

### **Composition**

The Regulatory - Planning Committee will comprise at least 10 Councillors, but shall not include in its membership any member of the Executive.

The Chairman and Vice Chairman will be appointed by the Council.

Every member who serves on the Committee will undertake to abide by the Planning Code of Good Planning Practice (Appendix 20 in the Constitution)

No member may serve on the Regulatory Planning Committee unless they have undertaken training in accordance with the Code of Good Planning Practice (Appendix 20 in the Constitution) and as may otherwise be required by the Director of Legal & Democratic Services.

### **Role and Function**

The Committee will be responsible for the functions set out below:

- a) To carry out all non-executive functions relating to town and country planning and development control as set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended (the Functions Regulations);
- b) To exercise the Council's non-executive functions relating to public rights of way and commons and village greens as set out in Schedule 1 to the Functions Regulations;
- c) To carry out any other licensing and registration or regulatory functions not assigned to any other body, including any which are not to be executive functions as defined in the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007 and associated regulations or other relevant legislation.

# **Article 10 – Audit Committee**

The Council will establish the Audit Committee.

## **Composition**

The Audit Committee will comprise at least six Councillors, but shall not include in its membership any member of the Executive.

## **Role and Function**

The Committee is a key component of the Council's corporate governance arrangements. It provides independent assurance on the Council's arrangements for governance, risk management and internal control and oversees the financial reporting and annual governance processes.

The Committee oversees the Council's arrangements for internal and external audit and assists in ensuring that efficient and effective assurance arrangements are in place.

The Committee will be responsible for functions set out below:

- Approving the Annual Audit Plan of the Council
- Monitoring progress against the Annual Audit Plan
- Considering the Assistant Director of Finance (Audit)'s annual report and opinion
- Contributing to the Quality Assurance and Improvement Programme, including the external assessment of internal audit
- Approving the Annual Statement of Accounts
- Considering the Annual Governance Statement and monitoring any necessary actions
- Reviewing the Strategic Risk Register and considering risk management arrangements
- Monitoring the Council's expenditure against Budget
- Considering the Council's Treasury Management activities
- Considering the Annual Review of the Council's Regulatory Framework
- Receiving the Report of the Monitoring Officer
- Considering the external auditor's reports and letters addressed to those charged with governance
- Oversight of activity and compliance in respect of the Regulation of Investigatory Powers Act



# **Article 11 – Pensions and Investments Committee**

The Council will establish a Pensions and Investment Committee.

## **Composition**

The Pensions and Investment Committee will be comprised of eight Councillors representing Derbyshire County Council and two Councillors representing Derby City Council.

The Chairman and Vice-Chairman of the Committee will be appointed by the Council.

## **Role and Function**

The Pensions and Investment Committee will be responsible for discharging the Council's statutory function as an employing authority and as the administering authority for the Derbyshire Pension Fund under the Superannuation Act 1972, the Local Government Pension Scheme Regulations and associated pensions legislation.

In discharging these statutory functions the Committee's responsibilities will include:-

- i. Considering applications for admission body status to the Derbyshire Pension Scheme.
- ii. Management of the resolution of pension disputes in accordance with the Internal Dispute Resolutions Procedure, including the appointment of adjudicators.
- iii. Formulating and reviewing policies under the discretionary payments legislation.
- iv. Appointing and reviewing the performance of the Pension Fund's actuary, additional voluntary contributions providers, external fund managers and independent investment advisers.
- v. Formulation of the Fund's investment strategy in line with the Statement of Investment Principles, Funding Strategy Statement and Risk Strategy. Approval of a Treasury Management Policy.

- vi. Ensuring effective communications with Pension Scheme members and pensioners.
- vii. Approving and monitoring performance targets for the Pension Fund

### **The Local Pension Board**

In accordance with legislation the Pensions and Investments Committee is supported by the Local Pension Board.

# Article 12 – Health and Wellbeing Board

The Council will establish a Health and Well-Being Board as a statutory committee which will carry out the functions set out below:

## **Core strategic functions of the Derbyshire HWB**

Provide strategic leadership and direction for the health and wellbeing agenda in Derbyshire by:

- Determining and outlining priorities for improving the health and wellbeing of the population of Derbyshire, with a particular focus on tackling health inequalities and preventing ill-health through consideration of issues linked to the wider determinants of health.
- Holding organisations and partners to account for delivering against the priorities outlined in the Health and Wellbeing Strategy.
- Working as part of the wider system to address strategic challenges for health and care, with a particular focus where appropriate of working collaboratively with Derby City Health and Wellbeing Board in relation to identified joint priorities.
- Exploring opportunities to improve health and wellbeing in Derbyshire, building on the shared assets and leveraging additional investment where possible from the public, voluntary and private sectors.
- Championing prevention and population health as important strategic issues and
- influencing organisations and partnerships to reflect this in their work.

## **The strategic function will be supported by the following actions:**

Identify and develop a shared understanding of the needs and priorities for population health and wellbeing in Derbyshire through the development of a Joint Strategic Needs Assessment (JSNA) and utilising other locally available evidence regarding the health needs of the population. The Board will:

- Ensure the Derbyshire JSNA is reviewed, refreshed and further developed to reflect the latest qualitative and quantitative evidence.
- Ensure the JSNA drives the development of a Health and Wellbeing Strategy (HWBS) which is outcomes focused.
- Prepare, publish and oversee the HWBS to ensure that the needs identified in the JSNA are delivered in a planned, coordinated and measured way.
- Ensure the HWBS priorities shape and influence decision making and commissioning activity and where appropriate the HWB hold organisations

or partnership groups to account to ensure the effective delivery of the priorities outlined.

- Ensure that where appropriate system wide delivery plans are in place to support the HWBS strategic priorities and outcomes.
- Challenge performance against the outcomes outlined in the HWBS via the HWB dashboard indicators which make links to performance frameworks for the NHS, public health and local authorities.
- Develop mechanisms to measure, monitor and report improvements in health and wellbeing outcomes for Derbyshire.

Ensure there are effective and appropriate mechanisms to communicate, engage and involve local people and stakeholders in Derbyshire in relation to health and wellbeing. The Board will:

- Champion public engagement involvement and co-production in strategies and documents that impact on population health.
- Ensure that appropriate structures and arrangements are in place to ensure the effective engagement and influence of local people and stakeholders in decision-making.
- Represent Derbyshire in relation to health and wellbeing issues at a regional and national level where appropriate.
- Work closely with the Derbyshire Healthwatch to ensure that appropriate engagement and involvement with patients and service users.

## **Membership**

The HWB will involve NHS Provider organisations and have a CCG Vice-Chair in line with national best practice guidance. The Cabinet Member for Health and Communities, Derbyshire County Council will Chair the Board and Vice-Chairs are indicated in the membership list below should the Chair be unable to attend a meeting. The full HWB membership will comprise:

- Cabinet Member for Health and Communities (Chair) (Statutory)
- Accountable Officer for Derbyshire Clinical Commissioning Groups (Statutory) (Vice-Chair)
- One CCG Governing Body Chair representative on behalf of all Derbyshire Clinical Commissioning Groups (Statutory)
- Strategic Director Adult Care, Derbyshire County Council (Statutory)
- Strategic Director Children's Services, Derbyshire County Council (Statutory)
- Director of Public Health, Derbyshire County Council (Statutory)
- One representative from Healthwatch Derbyshire (Statutory)
- Cabinet Member for Adult Care
- Cabinet Member for Young People
- Chair of 3D to represent the voluntary sector

- One officer rep from Provider Alliance Group to represent officers from Derbyshire NHS Providers
- Chair of Clinical Professional Reference Group to provide clinical view from NHS Providers
- The Chair of Tameside and Glossop Single Commission
- Two District Council elected members on behalf of all district councils in Derbyshire
- A District Council Chief Executive to champion wellbeing on behalf of all district councils in Derbyshire
- A District Council Chief Executive to champion housing on behalf of all district councils in Derbyshire
- Police and Crime Commissioner for Derbyshire
- One senior officer representative from Derbyshire Constabulary
- One senior officer representative from Derbyshire Fire and Rescue Service
- One senior officer from East Midlands Ambulance Service NHS Trust
- STP Senior Responsible Officer (if not already represented on the Board)

The Board can co-opt additional members as it considers appropriate in relation to HWBS priorities.

Both NHS England and Public Health England can attend the Board meetings as required, but in relation to a specific issues or area of interest.

Specific officers may be asked to attend one or a series of HWB meetings to provide detailed insight and input to particular topics or issues, such as one of the HWB priorities.

## **Governance**

### **Agenda Planning**

The Chair and Vice-Chairs in conjunction with the Strategic Director Adult Care at Derbyshire County Council, will set the agenda for future Health and Wellbeing Boards. All Board members will be asked to put forward reports for consideration prior to agendas being finalised.

### **Reporting**

Reports tabled to the HWB will need to make a clear recommendation to the Health and Wellbeing Board and also demonstrate how they are delivering against HWBS priorities. Reports for information and noting will be circulated electronically to the Board between meetings to ensure that information is shared in a timely manner.

## **Delivery of pieces of work**

Work will be delivered by established system groups and HWB will direct and commission specific pieces of work via Board members who will need to action, coordinate and feedback to the Board within agreed timescales.

## **Task and Finish Groups**

Task and Finish Groups will be established by exception to take forward key pieces of work for the HWB. They will be chaired by HWB members and include representatives from HWB partners and wider stakeholders.

## **Relationship with other Boards**

The governance diagram at the end of this document sets out the relationship between the HWB and other key Boards and programmes of work in Derbyshire. A separate protocol will be developed setting out the relationship between the HWB and STP to ensure that the HWB can provide appropriate challenge to the STP Board and associated delivery groups.

## **Meetings of the Board**

### **Frequency**

The HWB will meet on quarterly basis. The date, time and venue of meetings will be fixed in advance by the Board and an annual schedule of meetings will be agreed.

Meetings will normally take place at County Hall, Matlock unless the Health and Wellbeing Board is required to visit another venue or participate in a joint session with Derby City Health and Wellbeing Board. Additional meetings may be convened at the request of the Chair or Vice-Chair.

### **Voting**

At this stage of its development the HWB will operate on a consensus basis.

## **Declaration of Interests**

Any interests held by members or co-opted members should be declared on any item of business at meeting in accordance with the Council's Code of Conduct for Members and the Localism Act 2011.

## **Quorum**

A quorum of five will apply for meetings of the HWB including at least one representative from the County Council and one representative of the CCGs.

## **Access to Information/Freedom of information**

The Board shall be regarded as a County Council committee for access to information purposes and meetings will normally be open to the press/public.

## **Public questions**

Public questions must be tabled in advance and in line with the procedures for Full Council and will be considered at the Chair's discretion to ensure they are relevant to the work of the Health and Wellbeing Board. Questions must be asked exactly as submitted, and no supplementary questions are allowed.

## **Board papers**

The agenda and supporting papers shall be circulated at least five clear working days in advance meetings and published on the County Council website. Minutes will be published on the County Council web site.

## **Scrutiny**

Decisions of the HWB will be subject to scrutiny, but will not be subject to the "call-in powers" of the Improvement and Scrutiny Committee.

## **Review**

These terms of reference will be reviewed annually or earlier if required.

# Article 13 – Derbyshire Police and Crime Panel

The Council will establish a Police and Crime Panel as a statutory joint committee which will carry out the functions set out below:

## **POLICE AND CRIME PANEL**

- a) To review the draft police and crime plan, or draft variation, given to the Panel by the Police and Crime Commissioner. The Panel must make a report or recommendations on the draft plan or variation to the Commissioner.
- b) To review the annual report and make a report or recommendations on the report to the Commissioner. The Panel is to arrange a public meeting at which they ask the Commissioner questions, as appropriate, on the annual report.
- c) To hold a confirmation hearing and review, make a report, and recommendation in respect of proposed senior appointments made by the Police and Crime Commissioner. This includes:-
  - I. the Commissioner's Chief Executive;
  - II. the Commissioner's Chief Finance Officer;
  - III. a Deputy Police and Crime Commissioner; and
  - IV. the Chief Constable.
- d) The Panel has the power to veto the appointment of the Chief Constable.
- e) To review and make a report and recommendations (as necessary) on the proposed precept. The Panel has the power to veto the proposed precept.
- f) To review or scrutinise decisions made, or other action taken, by the Police and Crime Commissioner in connection with the discharge of the Commissioner's functions.
- g) To make reports or recommendations to the Police and Crime Commissioner with respect to the discharge of the Commissioner's functions.
- h) To support the effective exercise of the functions of the Police and Crime Commissioner.



- i) To fulfil functions in relation to complaints about conduct matters, in accordance with the responsibilities accorded to the Panel by the Police Reform and Social Responsibility Act 2011 (the Act).
- j) To appoint an Acting Police and Crime Commissioner if necessary.
- k) To suspend the Police and Crime Commissioner if it appears to the Panel that the Commissioner has been charged with a relevant offence (as defined by the Act).
- l) To exercise any other functions delegated to the Police and Crime Panel under the Act, as required.

## Article 14 – Corporate Parenting Board

The Council will establish a Corporate Parenting Committee as a statutory joint committee which will carry out the functions set out below:

(3 Cabinet Members with voting rights, 5 Support members without voting rights. Substitute members only for Support members)

The Committee will be charged with ensuring that the Council discharges its responsibilities as corporate parent appropriately and that it and its partners have the highest possible commitment to improving outcomes for children in care.

In particular it will:

- Develop and agree a “Corporate Parenting Pledge” that will set out the County Council’s commitment and set a regular cycle of review.
- Receive regular reports on the level and quality of services, (including complaints) provided to the children in care population in Derbyshire including care leavers.
- Ensure, with health partners, that health outcomes continue to improve and that all children in care have access to an appropriate range of medical, dental and mental health services.
- Continue the programme of visits, both planned, and unplanned, to children’s homes, and receive appropriate associated reports.
- Receive reports on educational attainment and school attendance of children in care.
- Promote access to Council based work experience, apprenticeships and permanent employment for young people in care and young people leaving care.
- Promote the achievement and acknowledge the aspirations of children and young people by continuing to support events of celebration.
- Commission reports as necessary to ensure that members of the Authority have the information that will enable them to fulfil their role as corporate parents.
- Take into account the equal opportunities and diversity needs of children in the care of the Council.
- Participate in meetings with external inspectors where appropriate.
- Report to Cabinet and other appropriate bodies on the work of the Committee at regular intervals.
- Contribute to the Council’s current and future business and service plans and to monitor service delivery and effectiveness against the plans.

Whilst it is proposed that the Committee would be comprised of three Cabinet

Members and five Support Members, in strict legal terms the delegation of powers from Cabinet to the Committee would be confined to the three Cabinet Members. In other words, in the event of a vote, voting would be restricted to the Cabinet Members. It also follows that although it is proposed that the five Support Members would be politically mixed, the legal rules of political balance would not be applicable. Finally, although it would be open to the Committee to permit the appointment of substitute members by the Support Members, this facility would not be available to the Cabinet Members on the Committee.

# Article 15 – Standing Advisory Council on Religious Education (SACRE)

*SACRE is a statutory body established to advise the County Council on matters relating to collective worship and religious educations and performs its functions in accordance with statutory requirements.*

## Membership

- 1 The SACRE shall consist of 4 groups of persons (“representatives groups”) appointed by Derbyshire County Council (“the Authority”) as representative members.
- 2 The representative groups shall be named Group A, Group B, Group C and Group D, and the composition of each group shall be as set out in paragraphs 5 to 8 below.
- 3 Subject to paragraph 29, each representative group may regulate its own proceedings.
- 4 Each person appointed to be a member of the SACRE shall provide such information as Derbyshire County Council may require, in order for Derbyshire County Council to take all reasonable steps to assure themselves that the individual is representative of the religion, denomination or association they represent.

## Group A

- 5 Group A shall comprise of 8 persons who represent Christian denominations, other than the Church of England, and 7 persons who represent such other religions and denominations of such religions as, in the opinion of the Authority, will appropriately reflect the principal religious traditions in the area.

## Group B

- 6 Group B shall comprise of 5 persons who represent the Church of

England.

### **Group C**

- 7 Group C shall comprise of 5 persons who represent such associations representing teachers as, in the opinion of the Authority, ought to be represented, having regard to the circumstances of the area.

### **Group D**

- 8 Group D shall comprise of 5 persons who represent Derbyshire County Council.

### **Term of Office**

- 9 Each member of Groups A, B and C shall be appointed for a period of 4 years, and shall thereafter be eligible for renomination by their nominating body. Members of Group D shall be appointed annually by the Authority.

### **Co-option**

- 10 The SACRE may include additional persons proposed as members of SACRE by members who have not themselves been co-opted. A person co-opted as a member shall hold office on such terms as may be determined by the SACRE. The SACRE will determine whether to co-opt a particular person, and the terms on which a person is to be co-opted, by following the normal voting procedures as set out in paragraphs 38 and 39.

### **Substitutes**

- 11 A member who is unable to attend a meeting of the SACRE may arrange for a substitute to attend to represent the same organisation as that member. The substitute shall have the same voting powers as the member whose place they attend. Such arrangements shall be notified to the Clerk to SACRE in advance of the meeting by the member to be substituted.

### **Removal of Members**

- 12 The Authority may remove a member of the SACRE if, in the opinion of the Authority, that member ceases to be a representative of the denomination or association which that member was appointed to represent or (as the case may be) he ceases to be a representative of

Derbyshire County Council.

- 13 A member shall notify the Clerk to the SACRE immediately if there is a change of circumstances which may require reconsideration of their membership in accordance with paragraph 12.
- 14 Any member who fails to attend for 3 consecutive meetings of the SACRE without nominating a substitute in accordance with paragraph 11 above shall be disqualified from membership, and shall not be eligible for re-appointment for a further period of 3 meetings. Where a member is removed in consequence of these provisions, the nominating body shall propose a new person for appointment to replace the disqualified member for the remainder of the disqualified member's term of office.
- 15 The Authority may remove a member of the SACRE if, in the opinion of the Authority, that member has failed to comply with the standards set out in the Authority's Code of Conduct for Members, and a member of SACRE who is so removed shall not be eligible for re-appointment.

#### **Resignations**

- 16 A member of the SACRE may at any time resign his or her office by giving written notice to the Clerk. In the event of resignation of a member, the nominating body shall propose a new person to replace the resigning member for the remainder of the resigning member's term of office.

#### **Access to Meetings**

- 17 A meeting of the SACRE shall be open to members of the public, and while a meeting is open to members of the public the SACRE shall not have power to exclude from the meeting members of the public or duly accredited representatives of news media attending the meeting for the purpose of reporting proceedings.
- 18 A member of the public shall not speak to members or address the SACRE during the course of a meeting without the consent of the Chair of the SACRE.
- 19 The SACRE may exclude any person from a meeting for the purpose of suppressing or preventing disorderly conduct or other misbehaviour

at that meeting.

- 20 The SACRE may exclude the public from a meeting during an item of business whenever it is likely that, if members of the public were present, confidential information would be disclosed. "Confidential information" means:

(a) any information furnished to the SACRE or the Agreed Syllabus Conference, or to any committee, sub-committee or representative group thereof, by a government department or public authority or body upon terms (however expressed) which forbid the disclosure of the information to the public;

(b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court;

(c) information relating to any person which appears to the SACRE ought not to be disclosed to the public;

(d) information relating to any legal advice sought or received by the SACRE;

and "information" shall be taken to include any expression of opinion, any recommendation and any decision taken.

### **Notice of Meetings**

- 21 Public notice of the time and place of a meeting of the SACRE shall be given by posting it at the offices of the Authority at least 3 clear days before the meeting or, if the meeting is convened at shorter notice, than at the time it is convened.

### **Access to Documents**

- 22 Copies of the agenda for the meeting and, subject to paragraph 24 below, copies of any report for the meeting shall be available for inspection by members of the public at the offices of the Authority at least 3 clear days before the meeting, except that where the meeting is convened at shorter notice, any such documents shall be available for inspection from the time the meeting is convened, and where an item is added to the agenda copies of which are available for inspection,

copies of the item (or of the revised agenda) and the copies of any report for the meeting relating to the item shall be available for inspection from the time the item is added to the agenda.

- 23 Nothing in paragraph 20 above shall require any copy of an agenda or report to be available for inspection until copies are available to members of the SACRE.
- 24 An item of business may not be considered at any meeting unless either:
  - (a) a copy of the agenda including the item (or a copy of the item) has been available for inspection from the time required by paragraph 20 above; or
  - (b) by reason of special circumstances (which shall be specified in the minutes) the Chair of the meeting is of the opinion that the item should be considered as a matter of urgency.

#### **The Chair and Vice-Chair**

- 25 Each of Groups A, B, C and D shall, at the first meeting of the SACRE to take place following the Annual Meeting of the Authority at which members of Group D are appointed, elect a Chair of that group to hold office for 1 year.
- 26 The Chair of Group D shall be the Chair of the SACRE.
- 27 The Chairs of Groups A, B and C shall in rotation hold office as Vice-Chair for 1 year.
- 28 If the Chair is absent from a meeting of the SACRE the Vice-Chair shall act as Chair for the meeting.

#### **Frequency of Meetings**

- 29 The SACRE shall meet 3 times annually. Additional meetings may be summoned at the instance of the Chair or full SACRE. In addition, each group may convene its own group meetings at any time.



## Quorum

- 30 The presence of eight members of the SACRE including at least one member of each representative group shall constitute a quorum of the SACRE.
- 31 The existence of a vacancy in the office of any member of the SACRE required to be appointed shall not invalidate the proceedings of the SACRE of any representative group.
- 32 The validity of proceedings of the SACRE or of any particular representative group shall not be affected on the ground that a member does not, at the time of the proceedings, represent the religion, denomination or association which that member is appointed to represent.

## Adjournments

- 33 Any of the groups by a majority of its own members present and voting may request an adjournment of the debate or discussion on a particular item. An adjournment will last for 15 minutes unless otherwise requested, and agreed by the SACRE.

## Voting

- 34 On any question which must be decided by the SACRE in accordance with statutory law, only the representative groups on the SACRE shall be entitled to vote and each sub group shall have a single vote.
- 35 Co-opted members shall not vote on any question which must be decided by the SACRE in accordance with statutory law.
- 36 Prior to formal votes being cast the 4 representative groups may meet separately to determine how their single collective vote should be cast. Decisions within a group about how its vote is to be cast do not require unanimity.
- 37 The SACRE may determine matters relating to its own procedure. Matters which are not required by statute to be determined by formal voting shall be determined by a simple majority of individual members of the representative groups present and voting.

## **Recommendations**

- 38 Where the SACRE has determined that advice should be given to the Authority upon a matter connected with collective worship in maintained schools in Derbyshire, and the religious education to be given in accordance with an agreed syllabus, this advice shall be submitted to the Derbyshire County Council Cabinet Member for Education.

## **Review of Agreed Syllabus**

- 39 Representative Groups A, B or C may at any time require a review of any agreed syllabus for the time being adopted by the Authority. Each representative group concerned shall have a single vote on the question of whether to require such a review. On receiving written notification of any such requirement, the Authority must convene an Agreed Syllabus Conference constituted in accordance with Schedule 31 of the Education Act 1996, for the purpose of reconsidering any agreed syllabus to which the requirement relates.

Clerk

- 40 The Director of Legal Services shall be the Clerk to the SACRE and shall summon meetings, prepare Minutes and arrange for the submission of advice to the Derbyshire County Council Cabinet Member for Education.

## **Sub-groups**

- 41 A SACRE sub-group shall comprise 2 members of each representative group, but if a larger working party is required all the representative groups shall be represented in proportion to the size of the membership of each group.
- 42 A sub-group may be constituted if members of the SACRE are of the view that one is required to consider a particular issue. Membership of sub-groups shall be reviewed annually at the first meeting of the SACRE to take place following the Annual Meeting of the Authority at which members of Group D are appointed.
- 43 A co-opted member of the SACRE may be invited, or may request, to be a member of a SACRE sub-group. Any question regarding the membership of a co-opted member on a sub-group shall be determined by a single majority of individual members of the representative groups

present and voting.

- 44 SACRE may from time to time refer issues raised at a SACRE meeting to a sub-group. The sub-group will report its findings to the SACRE.

### **Annual Report**

- 45 The SACRE shall in each year publish a report as to the exercise of their functions and any action taken to require a review of the agreed syllabus adopted by the Authority, as set out in paragraph 41 above, during the last preceding year. The report shall:
- (a) specify any matters in respect of which the SACRE have given advice to the Authority; and
  - (b) broadly describe the nature of the advice given; and
  - (c) where the SACRE offers advice on a matter that has not been referred to the SACRE by the Authority, give reasons.
- 46 The Annual Report will be distributed to all relevant persons within the Authority, and a hard copy will also be sent to:
- (a) the Head Teachers of all schools for whom the Authority has statutory responsibility with regard to Religious Education, together with a copy of any advice which the SACRE gives to the Authority upon matters connected with Collective Worship and the Religious Education to be given in accordance with an agreed syllabus; and
  - (b) the Qualifications and Curriculum Authority.

## Article 16 – Other Joint Committees

*In accordance with Article 17, the following Joint Committees with other local authorities have been established.*

- (a) D2N2 Infrastructure and Investment Board**
- (b) D2 Economic Prosperity Board**

The functions of these Committees are set out below:

### **(1) Infrastructure and Investment Board**

#### Introduction

The D2N2 LEP Board is responsible for determining the economic strategy for the region and setting the priorities for funding within its remit through the collective work of private sector representatives, the current D2 (Derby and Derbyshire) and N2 (Nottingham and Nottinghamshire) Joint Committees and other public sector bodies.

The D2N2 LEP has a small Executive Team supported by resources and officers of the constituent local authorities, primarily through financial contributions to the staffing establishment and undertaking work in advisory or task and finish groups. Support from the private sector primarily comes through the provision of expertise and time, for example in attendance at board and group meetings. The Executive Team is organised to support the Board structure, with the Director of Place responsible for each sub board reporting to the Chief Executive.

Each project and programme funded through the LEP is managed by the Chief Executive of D2N2 and the Director of Place within the Executive team.

This document sets out the governance arrangements for the D2N2 Local Enterprise Partnership's Infrastructure and Investment Board. The Board is responsible for overseeing the administration of the LEP's Local Growth Fund on behalf of the D2N2 LEP Board.

The D2N2 Infrastructure and Investment Board is a public-private partnership formed by the voting members specified in clause 3.

## Terms of reference

### 1. Board Name

D2N2 Infrastructure and Investment Board (“the Board”)

### 2. Purpose

To oversee on behalf of the D2N2 LEP Board (“the LEP Board”) the administration of the Local Growth Fund for schemes to delivery bodies across the administrative areas of Derby, Derbyshire, Nottingham and Nottinghamshire.

### 3. Membership

Voting members	Observers
<ul style="list-style-type: none"><li>• Derby City Council (two members)</li><li>• Derbyshire County Council (two members)</li><li>• Nottingham City Council (two members)</li><li>• Nottinghamshire County Council (two members)</li><li>• Derbyshire district and borough councils (two members)</li><li>• Nottinghamshire district and borough councils (two members)</li><li>• Derby, Derbyshire, Nottingham and Nottinghamshire Local Enterprise Partnership (Chair plus nominated private sector representative)</li><li>• Further Education (one member)</li></ul>	<p>Nominees of:</p> <ul style="list-style-type: none"><li>• Sheffield City Region Local Enterprise Partnership</li></ul>
	<p>Occasional invitations to contribute:</p> <ul style="list-style-type: none"><li>• Highways England</li><li>• Network Rail</li><li>• Homes and Communities Agency</li><li>• DFT</li><li>• BEIS</li></ul>
<b>Principal Advisors to the Board (non-voting): TBC</b>	

The Board, as set out above, comprises fifteen voting members. The Board may co-opt additional members to represent other sectors; such co-opted members will not have voting rights. Conditions of appointment are:

- i. Local Authorities (upper tier/unitary): membership rests with the position which the member holds within the authority rather than with the individual, so councillors will be replaced if they change office. It is for each authority to determine which post holders are to act as its representatives.
- ii. Local Planning Authorities (district/borough) within Derbyshire and Nottinghamshire: it is for the constituency of planning authorities within each County to determine its own arrangements for selecting a representative, who is expected to sit for a minimum term of one year and a maximum of three years. It is also for the constituent authorities to determine how their joint interests should be represented and how those districts and boroughs not directly
- iii. represented should be engaged in the decision-making process.
- iv. D2N2 LEP: representatives are expected to sit for a minimum term of one year and a maximum of three years.
- v. Any co-opted member - would be reviewed annually by the Board with a maximum term of three years.
- vi. In each case, substitutes may attend meetings where the nominated member is unable to do so, but should be able to provide written confirmation that they do so with the approval of the organisation represented.
- vii. Each member will be required to participate in decision-making in the best interests of the Board whether or not these are consistent with those of their own organisation.

The Board will review its constitution after six meetings of the Board or every two years, whichever is the sooner.

#### **4. Conflicts of Interest**

Members of the Board are required to declare, on appointment, that they will act in the best interests of the LEP area, not for their organisational or geographic interests.

The rules for declaring personal interests will be those that apply to the council to which the councillor has been elected. A register of Board

Members' interests will be maintained and will be available for public inspection.

## **5. Gifts and Hospitality**

Officers shall, whether engaged in promotion of their own authority's interests or those of the Board, be bound by the relevant code of conduct of their own employing organisation.

## **6. Accountable Body**

Derbyshire County Council shall be the Accountable Body to the LEP's Local Growth Fund, which will be responsible for the following:

- Ensuring that decisions are made in line with the LEP Assurance Framework.
- Ensuring that promoters confirm their projects conform with any requirements with regard to equalities, social value, environment, State Aid, procurement etc.;
- Ensuring (through the Section 151 Officer) that the funds are used appropriately;
- Maintaining the official record of IIB's proceedings and holding copies of all relevant IIB documents relating to any funding streams the Accountable Body is responsible for;
- Ensuring IIB decisions at formal meetings are recorded.
- Responsibility for the decisions of the IIB in approving projects (for example if subject to challenge);
- Ensuring there are arrangements for local audit of funding allocated by the IIB at least equivalent to those in place for Local Authority expenditure.

The Director of Finance, Derbyshire County Council (S151 officer) will ensure that all funds are administered in accordance with the Assurance Framework.

## **7. Audit and Scrutiny**

The Board undertakes to seek and to act upon the findings of an internal audit of its activity on at least an annual basis. The findings of each audit will be considered by a Board meeting, and any remedial action required recorded within the minutes of that meeting.

The aim of each audit will be to verify that the Board is operating effectively within the terms of its agreed Assurance Framework.

## **8. Strategic Objectives and Purpose (Terms of Reference)**

The Board is responsible for:

- approving investment of the Local Growth Funding on behalf of the D2N2 LEP Board that will provide significant investment in innovation, business, skills, and employment in a common agenda for training, education, economic growth and jobs that will integrate effectively within the LEP's wider strategic plans;

The Board shall:

- take decisions on behalf of the D2N2 LEP Board for:
  - individual scheme approval
  - release of funding, including scrutiny of individual scheme business cases.
- Monitor progress of scheme delivery and spend.
- Recommend to the LEP Board a programme to respond to changed circumstance (scheme slippage, scheme alteration, cost increases etc).

## **9. Approvals process for project applications:**

The Board has adopted an approvals process in respect of project applications as set out in Appendix 1.

## **10. Support and Administration**

Derbyshire County Council will provide support arrangements for secretariat and administrative services, specified in its Service Level Agreement with the LEP.

The four authorities (Derbyshire, Nottinghamshire, Derby and Nottingham) will provide sufficient support to undertake the workload of the Board, taking into account any opinions of the Accountable Body or the Auditor. There will be named people who have specific roles with respect to the Board. These roles will usually be part of their other duties, except when the workloads are such that some full-time or single purpose part-time roles are appropriate.

The Board will form task and finish groups when required, which may comprise Board members and/or supporting officers.

## **11. Working Arrangements, Transparency and Local Engagement**



Meetings will be convened in accordance with the provisions of the Local Government Act 1972, the Local Government and Housing Act 1989 and other relevant legislation.

There will be at least two meetings each year and thereafter to meet the business needs. Specifically the Board will meet:

- (a) to determine the initial decision on the composition of the scheme programme;
- (b) to make individual scheme investment decisions.

A chair and vice-chair for the Board will be elected on an annual basis.

Meetings will be deemed quorate when a minimum of five voting members or their substitutes are in attendance. Each voting member carries a vote of equal weight. Where the voting members present are equally divided the chair will carry a casting vote. Where the elected chair is not present the vice-chair will exercise this function. No business requiring voting shall take place without either the chair or vice-chair being present.

The Board will publish agendas and minutes. Materials will be hosted on the Derbyshire County Council website but each member organisation will provide a direct link to this from its own.

It is for individual member organisations to ensure that any schemes submitted to the Board for funding have been subject to the appropriate procedures to provide the public and stakeholders with the opportunity for input before decisions are made. The Board will not take responsibility for dealing with correspondence, petitions, lobbying, consultation etc, all of which are to be handled by the promoter of the scheme in accordance with its own procedures.

FOI and EIR requests will be dealt with in accordance with the relevant legislation.

The Board will use Derbyshire County Council's complaints procedure.

## **12. Expenses and Allowances**

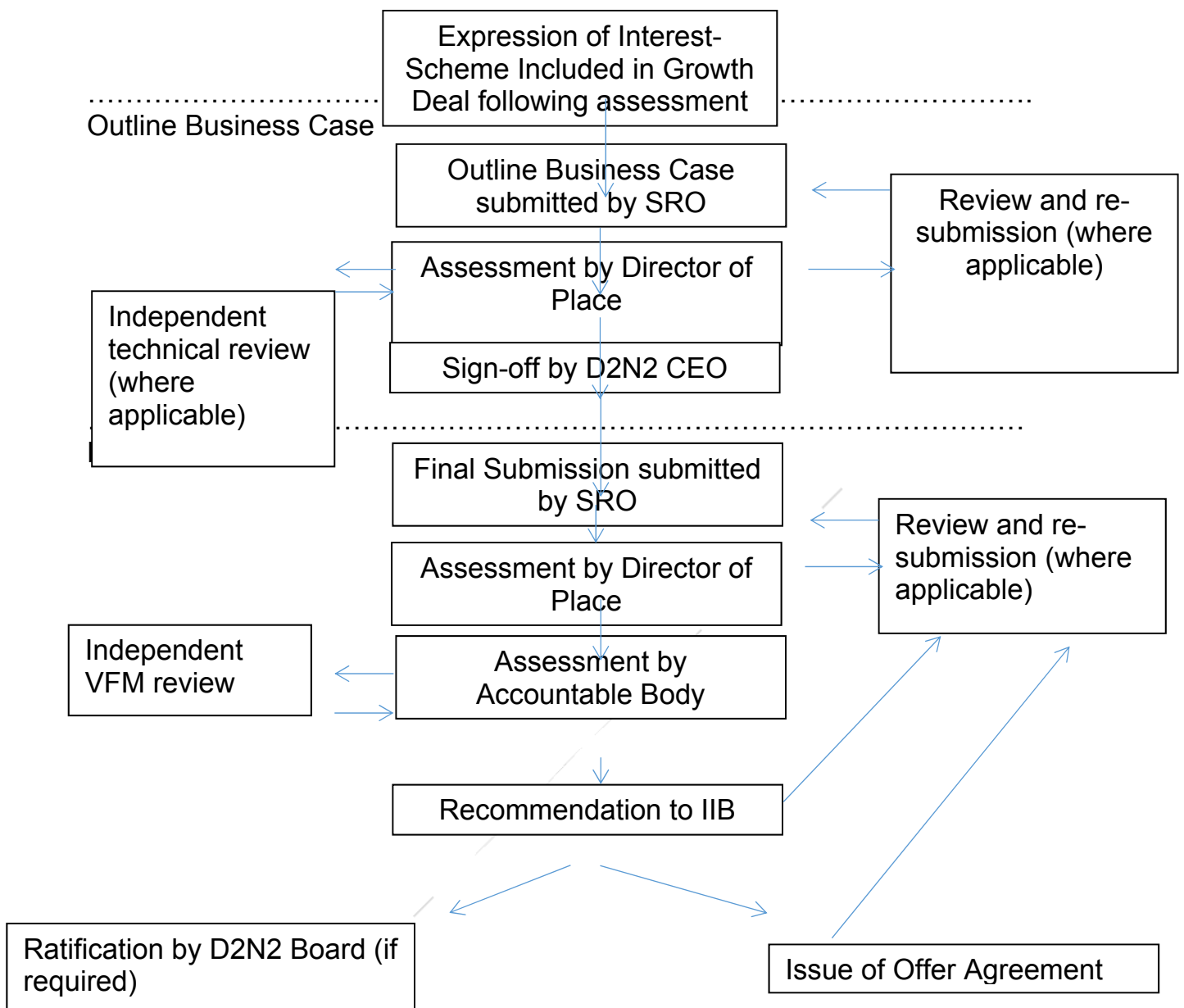
The Board will not under normal circumstances make any payments to cover the costs of attendance, which must be borne by the parent organisation of the attendee. Where it does choose to do so this will be for reasons, and within financial limits, agreed by the Board.

### **Appendix 1**

## **Approval process in respect of project applications:**

1. Promoters are requested to provide and agree with the LEP the date on when an Outline Business Case and Final Submission will be submitted for approval prior to the start of the financial year.
2. Promoters are requested to submit a valid Outline Business Case application no later than July of the financial year in which funding is to be released. Failure to submit will render a project High Risk
3. A Final Submission application (business case) is to be submitted in line with the programmed date agreed with the LEP; however this is to be no later than November 30<sup>th</sup> of the year in which funding is to be released. Failure to submit a business case in line with the programme will render the project High Risk.
4. Where a project is seen as High Risk the IIB will write to the promoter setting out the risks and requesting a written response outlining how the risks will be mitigated. If the IIB are not satisfied with the response then the IIB can remove the project from the programme.
5. In the event that a project has, in the opinion of the IIB or the LEP Board, significantly changed (by 10% or more) from what was originally proposed (i.e.: spend profile, outputs and outcomes, or delivery) the IIB will write to the promoter requesting a written response detailing why the project has changed.  
Following receipt of the response the IIB may decide to proceed with the amended project, may request that the project revert back to what was originally approved, release only part of the funding or delete the project from the programme.
6. If a project has not commenced within 3 months of the IIB meeting at which the project was approved, the project will be reported as a High Risk project. In this instance the IIB will write to the promoter requesting a written response detailing why the project has been delayed. If the IIB are not satisfied with the response, the IIB can remove the project from the programme.
7. The IIB will be provided with quarterly performance reports by the project monitoring officer. If it is reported that a project is delayed (commencement/completion/outputs/outcomes) by 3 months or more then the project will be reported as a High Risk project. In this instance the IIB will write to the promoter requesting a written response detailing why the project was delayed.  
If the IIB are not satisfied with the response then the IIB can request that the funds already paid are repaid to the LEP or decide not release any future years funding.

## **Appendix 2: Scheme Approval Process**



## **(2) D2 Economic Prosperity Committee**

### **PURPOSE**

To bring together the City Council, County Council and all District and Borough Councils in Derbyshire into a robust, formally constituted arrangement to deliver regeneration and economic prosperity across the whole geographical county of Derbyshire.

This falls within the broader governance structure associated with the Derby, Derbyshire, Nottingham and Nottinghamshire Local Enterprise Partnership (D2N2 LEP) and is intended to lead as soon as possible to the establishment of an Economic Prosperity Board. The Joint Committee will work closely in partnership with its Nottinghamshire counterpart and with neighbouring bodies including the Greater Manchester and Sheffield City Region Combined Authorities.

The Joint Committee intends to pursue an economic regeneration strategy through a balanced approach, with economic, social and environmental sustainability at its heart. This has to reflect the needs of a diverse area, the City of Derby and its hinterland, the spheres and influences of Manchester, Sheffield and Nottingham, local communities which have lost their former economic bases and rural areas of high environmental and social value.

The Joint Committee accepts and embraces managed and sustainable economic growth as a policy instrument to help deliver jobs and growth to communities and households to provide a foundation for the long term security of the quality of life of all the people of the area.

### **REMIT**

1. To conduct a governance review to determine whether the existing governance arrangements for economic development, regeneration and transport in the area are effective or whether the area would benefit from changes, including establishing a new Economic Prosperity Board.
2. In anticipation that the governance review will recommend the establishment of an EPB for the whole of Derby and Derbyshire area, the Joint Committee will act as a shadow EPB and carry out the following activities whilst an EPB is being established.
  - a. To act as the local public sector decision making body for strategic economic development at the D2 level (Derbyshire and Derby City)
  - b. To develop and subsequently monitor investment plans utilising Government and EU funds for Derby and Derbyshire
  - c. To be the accountable body for decision making on Single Local Growth Fund and EU funding streams allocated to the Committee by the D2N2 LEP

- d. To own, monitor and review the Derby and Derbyshire Growth Plans and associated investment plans
- e. To maintain an ongoing dialogue with the Derby and Derbyshire business community through the relevant Economic Advisory Boards (i.e. the Derbyshire Economic Partnership and the Derby Renaissance Board)
- f. To oversee the planning, alignment and performance of delivery partners and organisations in order to achieve more effective and efficient commissioning and ultimately better outcomes
- g. To hold to account relevant bodies whose work impacts on the economic well-being of Derby and Derbyshire
- h. To ensure a smooth transition of activities and functions from the Joint Committee to the EPB

## **Derby and Derbyshire Authorities Joint Committee for Economic Prosperity Arrangements**

### **Introduction**

The Joint Committee will be a legally constituted body with powers delegated to it by its constituent member authorities in the following areas:

- Decision making on Government and EU funds available in the area, including those delegated by the D2N2 LEP
- Decision making on future delivery arrangements, including potential pooled resources, commissioning and performance / contract management
- Reviewing future governance requirements and how best these can be met in Derby and Derbyshire
- Strategic performance management of key economic growth focussed projects and initiatives. This is to include transport and housing related initiatives and, potentially, welfare to work and skills programmes

The above delegated powers may change, subject to the outcome of the wider review into governance and the potential establishment of an Economic Prosperity Board.

### **1. Operating Arrangements**

Derbyshire County Council shall act as the host authority for the Joint Committee and provide necessary officer support.

### **2. Membership**

- 2.1 The Joint Committee shall be made up of 1 councillor from each of the 10 constituent authorities (8 District/Borough Councils, 1 City Council, 1 County Council).
- 2.2 All members of the Joint Committee may vote in proceedings of the Committee.
- 2.3 Co-opted non-voting members /observers eg. Chief Executives or nominees, Chief Executive of D2N2 LEP, BIS Local representative, business community representatives

### **3. Casual Vacancies**

- 3.1 A vacancy on the Joint Committee arises when a councillor resigns from the membership of the Joint Committee.
- 3.2 Each constituent authority will fill vacancies for their representative on the Joint Committee in accordance with the arrangements in its constitution.

### **4. Term of Office**

- 4.1 A council representative shall be appointed annually to the Joint Committee to hold office for the following municipal year and all such appointments shall be notified to the host authority no later than 31 May in each year, subject to the proviso that he or she shall cease to be a member of the Joint Committee if he or she ceases to be a member of the appointing council (and does not on the same day again become a member of that council).
- 4.2 Where possible a council will give consideration to continuity of membership to enable the Joint Committee's expertise and skills to be developed for the effective delivery of the objectives of the Joint Committee.

## **5. Resignation and Removal of Councillor Members**

- 5.1 A council may decide in accordance with its procedure to remove its representative from the Joint Committee at any time and upon doing so shall give written notice to the host authority of the change in its representative.
- 5.2 A council representative may resign from the Joint Committee at any time by giving notice to the appointing council who will inform the host authority.
- 5.3 In the event that any member resigns from the Joint Committee or is removed from the Joint Committee by his or her council, the council shall immediately take steps to nominate and appoint an alternative member of the Joint Committee, in accordance with the agreed arrangements.

## **6. Non-attendance at Meetings**

- 6.1 Where a council representative fails, throughout a period of six consecutive months from the date of his or her last attendance, to attend any meeting of the Joint Committee then the host authority shall recommend to the relevant council that due consideration be given to removing the member from the appointment to the Joint Committee and the appointment of a replacement member from that council.

## **7. Allowances and Expenses**

Each council has the discretion to pay its representative on the Joint Committee special responsibility allowances and to reimburse reasonable expenses incurred. No allowance or expenses payments will be made by the Joint Committee to council members. Any allowances or expenses which may be made to council members arising out of Joint Committee membership shall be determined and borne by the appointing council for each Joint Committee member individually.

## **8. Conduct**

All councillor members must observe the Code of Conduct of their appointing council and any related protocols as agreed by the Joint Committee.

## **9. Validity of Proceedings**

The validity of the proceedings of the Joint Committee shall not be affected by a vacancy in the membership of the Joint Committee or a defect in appointment.



**Rules of Procedure**

**1. Chair of the Joint Committee**

- 1.1 The Chair and Vice-Chair of the Joint Committee will be appointed by the Joint Committee at the beginning of the municipal year.
- 1.2 The Chair shall, unless s/he resigns or becomes disqualified, continue in office until his/her successor becomes entitled to act as chair in the following municipal year.
- 1.3 In the event of the resignation or disqualification of the Chair, a new Chair will be appointed at the next meeting.

**2. Meetings of the Joint Committee**

- 2.1 There shall be a minimum of six ordinary meetings of the Joint Committee held in public in each municipal year to carry out the functions of the Joint Committee. In addition, extraordinary meetings may be called from time to time.
- 2.2 An extraordinary meeting may be called by the Chair, by four members of the Joint Committee or by the Director of Legal Services of the host authority.

**3. Quorum**

A meeting of the Joint Committee cannot take place unless at least seven voting members (or their nominated substitutes) including the County Council and City Council members are present.

**4. Substitutes**

A nominated substitute will be appointed for each council representative by their authority.

**5. Voting**

All council representatives (or their nominated substitutes) may vote in proceedings of the Joint Committee. Voting will be by show of hands and by simple majority.

**6. Disorderly Conduct**

The Chair may, in the event of a disturbance interfering with the orderly despatch of business, adjourn or suspend a meeting for such period as the Chair considers

appropriate.

## **7. Work Programme**

The Joint Committee will be responsible for setting its own work programme taking into account the responsibilities set out in the Terms of Reference for the Joint Committee.

## **8. Agenda Items**

- 8.1 The agenda for a meeting of the Joint Committee shall include consideration of any item requested by a member of the Joint Committee subject to the Director of Legal Services of the host authority receiving written notice at least 10 working days before the date of the meeting.
- 8.2 The Joint Committee's agenda will be issued to Joint Committee members at least 5 clear working days before the meeting (unless the Chair is satisfied that there is good reason to consider an urgent item). It will also be published on the host authority's website and by sending copies to each of the authorities and by any means the Joint Committee considers appropriate.

## **9. Notice of Meetings**

- 9.1 Ordinary meetings will take place in accordance with a programme decided by the Joint Committee, and will start at the time decided by the Joint Committee.
- 9.2 Members of the Joint Committee will be given at least 5 clear working days' notice of a meeting of the Joint Committee (unless the Chair is satisfied that there is good reason to hold an urgent meeting).

## **10. Report to the Joint Committee**

The publication of reports of recommendations is subject to the exclusion or any exempt or confidential information as defined in the rules on access to information in the Local Government Act 1972 (as amended).

## **11. Advisory Groups**

- 11.1 Time limited advisory groups may be established from time to time by the Joint Committee to undertake specific task-based work.
- 11.2 The work undertaken by an advisory group will be scoped and defined beforehand, together with the timeframe within which the work is to be completed and the reporting time for the outcome of the work.

# **Article 17 – The Governance, Ethics and Standards Committee**

The Governance, Ethics and Standards Committee

The Council meeting will establish a Governance, Ethics and Standards Committee.

Composition

The Governance and Ethics Committee will be comprised of 8 Elected Members and 3 Independent Persons.

Role and Function

Standards, ethics and probity

1. To design, implement, monitor, approve and review the standards of ethics and probity of the Council, both for Elected Members and Officers. The Committee's powers shall include responding to consultation documents and the promulgation of Codes of Conduct but the adoption and revisions to the local Members Code of Conduct shall be reserved to the Council. This will also include supporting the Monitoring Officer in the following:
  - Taking any action required on the receipt, management and investigation of any Code of Conduct Complaint against an Elected Member; and
  - Taking action in the determination of a Code of Conduct Complaint including the convening of hearings where necessary.
2. To promote a culture of openness, ready accountability and probity in order to ensure the highest standards of conduct of Councillors and employees.
3. To lead on all aspects of the Council's Governance and Ethics by promoting the values putting people first, valuing public service and creating a norm of the highest standards of personal conduct.
4. To oversee and manage programmes of guidance, advice and training on ethics, standards and probity for Elected Members and Officers on the Members Code of Conduct.

5. To be responsible for the Council's register of Members' interests and to receive reports from the Monitoring Officer on the operation of the register from time to time.
6. To be responsible for written guidance and advice on the operation of the system of declarations of Members' Interests and to receive reports from the Monitoring Officer on the operation of the system of declarations from time to time.
7. To be responsible for written advice and guidance on the operation of gifts and hospitality for both Elected Members and Officers and to receive reports from the Monitoring Officer on the operation of the system of declarations from time to time.
8. To establish, monitor, approve and issue advice and guidance to Elected Members on a system of dispensations to speak on, or participate in, matters in which they have interests and give dispensation in appropriate cases.
9. To exercise the functions of the Council in relation to the ethical framework, corporate governance and standards of conduct of Joint Committees and other bodies.
10. To support the Monitoring Officer in his/her/their statutory role and the issuing of related guidance from time to time.
11. To receive regular reports on the performance of the Corporate Complaints process, Local Government Ombudsman referrals and to recommend revisions to related policies and procedures as appropriate.
12. The Committee will be responsible for the overview of the Confidential Reporting Code.

## Governance

13. To advise the County Council on the monitoring, amendments to and overall operation of the Constitution.
14. To approve changes to the Scheme of Delegation relating to functions delegated to the officers and the overall range of functions delegated to senior officers.
15. To receive regular reports from the Chairman of the Member Development Group regarding the work of the Group, member development activities and member training and development priorities and plans, via a standing item on the Committee's agenda.

16. Taking into account the recommendations of the Independent Remuneration Panel, to advise the County Council on any matters in connection with the Members' Allowances Scheme.
17. To monitor the attendance of members at meetings of the County Council and its committees on an annual basis within the context of member development and the effectiveness of the political structure.
18. To oversee the powers and duties of the County Returning Officer in relation to elections and local government boundaries pursuant to the Representation of the People Act 1983.
19. The Chairman of the Governance, Ethics and Standards Committee will provide an annual report to Full Council.

# Article 18 – Joint Arrangements

## 18.1 Arrangements to promote well-being

The Council (in respect of matters which are not Executive functions), or the Leader or the Cabinet (in respect of matters which are Executive functions or otherwise the responsibility of the Executive), in order to promote the economic, social or environmental well-being of its area or in pursuance of any statutory functions, 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.

## 17.2 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise functions which are not Executive functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with those other local authorities.
- (b) The Leader or Executive may establish joint arrangements with one or more local authorities to exercise functions which are Executive functions. Such arrangements may involve the appointment of joint committees with those other local authorities.
- (c) Except as set out below, the Executive may only appoint Executive members to a joint committee and those members need not reflect the political composition of the local authority as a whole.
- (d) The Executive may appoint members to a joint committee from outside the Executive in the following circumstances:
  - (i) the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Executive may appoint to the joint committee any councillor who is a member for an electoral division which is wholly or partly contained within the area;
  - (ii) the joint committee is between the County Council and a single district council and relates to functions of the Executive of the County Council. In such cases, the Executive of the County Council may

appoint to the joint committee any Councillor who is a member for an electoral division which is wholly or partly contained within the area.

In both of these cases, the political balance requirements do not apply to such appointments.

### **18.3 Access to Information**

- (a) The Access to Information Rules in Appendix 6 of this Constitution apply.
- (b) If all the Members of a joint committee are Members of the Executive in each of the participating authorities then its access to information regime is the same as that applied to the Executive.
- (c) If the joint committee contains Members who are not on the Executive of any participating authority, then the Access to Information rules contained within the Local Government Act 1972 will apply.

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

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

### **18.5 Contracting Out**

The Council and the Executive 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.

## **Article 19 – Officers**

### **19.1 Management Structure**

- (a) **General.** The Council may engage such employees (referred to as officers) as it considers necessary to carry out its functions.

- (b) **Corporate Management Team.** The Corporate Management Team will comprise the following posts: for the following posts:
- (c) **Head of Paid Service, Monitoring Officer and Chief Finance Officer.** The Council will designate the following posts as shown:

Post	Designation
Strategic Director	Head of Paid Service
Director of Legal Services	Monitoring Officer
Director of Finance & ICT	Chief Finance Officer

Such posts will have the functions described in Article 18.2-18.4 below.

- (d) **Structure.** The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is illustrated at Appendix 16 of this Constitution.

## 19.2 Functions of the Head of Paid Service

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

## 19.3 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 that it is widely available for consultation by members, employees and the public.
- (b) **Ensuring lawfulness and fairness of decision-making.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council or to the Executive in relation to an Executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.



- (c) **Supporting the Governance and Ethics Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Governance and Ethics Committee.
- (d) **Conducting investigations.** The Monitoring Officer will conduct investigations into ethical standards matters and make reports or recommendations in respect of them to the Governance and Ethics Committee.
- (e) **Proper officer for access to information.** The Monitoring Officer will ensure that Executive decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (f) **Advising whether Executive decisions are within the budget and policy framework.** The Monitoring Officer will advise whether decisions of the Executive are in accordance with the budget and policy framework.
- (g) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity, budget and policy framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.
- (h) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

#### 19.4 Functions of the Chief Finance Officer

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the full Council or to the Executive in relation to an Executive function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administering of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

- (d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity, budget and policy framework issues to all Councillors and will support and advise councillors and officers in their respective roles.
- (e) **Giving financial information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

#### **19.5 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

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

#### **19.6 Conduct**

Officers will comply with the Officers Code of Conduct referred to in Appendix 12 of this Constitution.

#### **19.7 Employment**

The recruitment, selection and dismissal of officers will comply with the policies of the Council and the Officer Employment Procedure Rules set out in Appendix 9 of this Constitution.

#### **19.8 Statutory Scrutiny Officer**

Under the provisions of the Local Democracy, Economic Development and Construction Act 2009, the Democratic and Registration Services Manager has been designated as the County Council's Statutory Scrutiny Officer.

# **Article 20 – Finance, Contracts and Legal Matters**

## **20.1 Financial Management**

The management of the Council's financial affairs will be conducted in accordance with the Financial Regulations set out in Appendix 8(b) of this Constitution.

## **20.2 Contracts**

Every contract made by the Council will comply with the Standing Orders Relating to Contracts set out in Appendix 8(b) of this Constitution.

## **20.3 Legal Proceedings**

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

## **20.4 Authentication of documents**

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

Any contract entered into on behalf of the local authority in the course of the discharge of an Executive function shall be made in writing.

## **20.5 Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Director of Legal Services. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Director of Legal Services should be sealed. The affixing of the Common Seal will be attested by the Director of Legal Services, Assistant Director of Legal Services or Principal Solicitor. An entry of every sealing of a document shall be made and consecutively numbered in a book provided for the purpose and signed by the person who was present at the sealing and attested the seal.



# **Article 21 – Review and Revision of the Constitution**

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

The Governance and Ethics Committee will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

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:

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

## **21.2 Changes to the Constitution**

Changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Governance and Ethics Committee.

# **Article 22 – Suspension, Interpretation and Publication of the Constitution**

## **22.1 Suspension of the Constitution**

**Limit to suspension.** The Articles of the Constitution may not be suspended. The Rules of Procedure (Appendix 3) may be suspended by the full Council to the extent permitted within those Rules and the law.

## **22.2 Interpretation**

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

## **22.3 Publication**

(a) The Monitoring Officer will ensure that a copy of the Constitution is accessible on the Council's website and may give a printed copy of it on request to any member of the Authority.

(b) The Monitoring Officer will ensure that such a copy is available for inspection at County Hall and to be purchased by members of the local press and the public on payment of a reasonable fee.

(c) The Monitoring Officer will ensure that a summary of the Constitution is made available on the website and at County Hall and is updated as necessary.

# **ARTICLE 23 – The Appointments and Conditions of Service Committee**

The Council will establish an Appointments and Conditions of Service Committee.

## **Composition**

The Appointments and Conditions of Service Committee will comprise of 8 Elected Members

For the purposes of disciplinary issues only: There will be 3 Independent Persons eligible to sit on this Committee.

The Chairman and Vice-Chairman will be appointed by the Council.

## **Role and Function**

1. To approve corporate employment policies, other than minor or technical changes to existing policies, which do not affect the underlying principles of the policies.
2. To take key policy decisions in relation to equal pay, single status, job evaluation and market supplement payments.
3. To determine the standard terms and conditions on which all staff hold office, including procedures for their dismissal.
4. To consider proposals for changes to standard terms and conditions of employment including the local implementation of national pay awards to the Councils pay structure.
5. To consider corporate disputes on terms and conditions of employment.
6. To receive reports from the Corporate Joint Committee and the Health and Safety Committee as required in respect of the remit of the Appointments and Conditions of Service Committee.
7. Fulfil the governance role in ensuring the Leader of the Council is undertaking effective performance monitoring of Executive Directors.
8. To be responsible for appointments and dismissals as detailed in Appendix 9 of the Constitution.

# Appendix 1 – Responsibility for Functions

## A. INTRODUCTION

1. The Council has adopted the Leader and Cabinet executive (England) governance model. The 'executive' consists of the Leader of the Council (who is appointed by full Council and may be removed by it) and 2 or more councillors appointed to the Cabinet from time to time by that Leader. The executive of Derbyshire County Council is described as 'the Cabinet'.
2. In accordance with the law, any function of the Council which is not otherwise specified in legislation is an 'executive function' and is the responsibility of the Leader and Cabinet. The Leader and Cabinet are responsible for all of the County Council's functions (including local area functions), except those which are required by the law or this Council's Constitution, to be the responsibility of the Council itself, or any other non-executive part of the Council. Executive functions are regarded as exercisable by the Cabinet (or officers or individual Cabinet Members) on behalf of the Council and may not be exercised by the Council.
3. Such executive functions may be discharged in accordance with provisions made by, or under, this Constitution or the law, in particular the Local Government Act 2000, Public Involvement in Health Act 2007, Localism Act 2011 and associated Regulations.
4. Legislation specifies particular non-executive functions which cannot be the responsibility of the Cabinet, and also local area functions which may be allocated to be the responsibility of the Cabinet, but do not need to be. All local choice functions which are not otherwise allocated under this Constitution are the responsibility of the Leader and Cabinet.
5. The Leader may personally discharge functions which are the responsibility of the **executive** or arrange for their discharge by the Cabinet, another member of the Cabinet, a committee of the Cabinet, a joint committee or by an officer. The Leader may change these arrangements from time to time. Unless the Leader otherwise directs, the Cabinet itself may also arrange for the discharge of any of its functions by a committee of itself, a joint committee, individual Cabinet Member or by an officer.
6. This scheme reflects the assignment of functions by either the Council (in respect of matters which are not executive functions) or by the Leader of the Council or Cabinet (in respect of matters which are the responsibility of the **executive**) as appropriate to the particular function. In relation to delegation to officers, the scheme does not distinguish between the two sources of delegation.



7. Responsibility for the functions of the Council and Cabinet is delegated or assigned as set out in the following provisions of this scheme as updated from time to time, and such delegation/assignment includes the power to do anything which is calculated to facilitate or is conducive to the discharge of those functions.
8. The provisions of this scheme take account of the requirements of the Local Government Act 2000, the Local Government and Public Involvement in Health Act 2007, Localism Act 2011 and relevant legislation including Regulations in the assignment of functions to the Council itself, to the Leader/Cabinet, to other Committees or Panels. They take account of any prohibitions, restrictions or local choice in the assignment of these functions.
9. The Council, the Leader, Cabinet, individual Members, Committees or Panels to which functions are assigned, shall act in accordance with the law and the provisions of the Council's Constitution, including any Standing Orders, Procedure Rules, Financial Regulations and protocols approved from time to time (except those joint committees or any other member bodies regulated by separate constitutions).
10. Those functions reserved to the full Council itself are not to be delegated or assigned except as permitted under the law or this Constitution.
11. Each body or person having decision-making powers (a 'Delegate') shall implement and act within the policies of the Council, having regard to the advice of the Chief Legal Officer and Chief Finance Officer as necessary.
12. Each Delegate shall have the power to delegate further to an officer all or any of the functions delegated to it.
13. Each Delegate shall have the power to institute or defend or authorise appearance in legal proceedings within the scope of their delegation, having regard to the advice of and with the consent of the Director of Legal & Democratic Services.
14. A Delegate may decide not to exercise any function in relation to a particular matter and invite the Council, Leader or Cabinet (depending upon whether the function is the responsibility of the executive) or any other appropriate body as the case may be to do so instead.
15. The functions, powers and duties are delegated to officers in accordance with the scheme of delegation to officers.
16. Meanings:
  - (a) Executive functions shall mean those functions that by law must be the responsibility of the Cabinet.

- (b) Non-executive functions shall mean those functions that by law must not be the responsibility of the Cabinet.
- (c) Local area functions shall mean those functions that the Council may decide to exercise itself or delegate to any part of the Council including the Cabinet.
- (d) Responsibility of the Cabinet shall include those matters which are executive functions, or local choice functions which have been delegated to the Cabinet.

## **B. PRINCIPLES OF DELEGATION**

The principles guide the allocation of responsibility for decision-making at Cabinet Member and Executive Director and Director level.

In respect of matters delegated from Cabinet to individual Cabinet Member, the focus would be on policy issues within the policy and expenditure frameworks agreed by Council/Cabinet:-

- Policy matters, internal to the service, and required to provide guidance to officers to ensure significant policy decisions are implemented
- Details of policy matters delegated by Cabinet once principles have been agreed
- Expenditure items not specifically detailed within Service Plans but not sufficiently significant in scale to refer to Cabinet
- Responses to consultation documents not referred to Cabinet.

In respect of matters delegated from Cabinet to Executive Directors or Directors in consultation with Cabinet Members, the focus would be on service management issues with policy or political implications (no surprises policy)

- Significant management decisions which could have an adverse or controversial impact on the delivery of services or achievement of agreed targets
- Development of Service Plans and Policy Statements for consideration by Cabinet

In respect of matters delegated from Cabinet to an Executive Director or Director these would relate solely to the management of services and resources covering:-

- Management of services within the framework of the Council Plan, Service Plans and Council policies and standards agreed by Members
- Management of resources within the framework of the corporate strategies (i.e. Financial, Information & Communications Technology, Procurement, Human Resources and Asset Management) agreed by Members.

## **C. SCHEME OF DELEGATION**

### **Aims**

Democratic accountability should be the key aim of the Scheme of Delegation together with:-

- Member authority for policy/strategic decisions
- Effective scrutiny of policy/strategic issues
- Officer responsibility for service delivery
- Effective monitoring of service performance.

### **Member Advantages**

The Scheme of Delegation details below the decisions to be taken at the different levels. For Cabinet Members it will deliver the:-

- Ability to control key/strategic decisions in Council and Cabinet
- Opportunity to consider and shape policy within the Cabinet
- Involvement in Council Plan/Budget formulation in informal 'Star Chamber' type arrangements.

For individual Cabinet Members the advantages are:-

- Enhanced authority and responsibility to implement policy within agreed frameworks
- Increased ability to take speedier policy decisions
- Greater involvement in shaping service delivery in line with policy
- Improved information on service activities and executive decisions
- Improved service personal/political profile
- Protection of personal positions and interests through collective responsibility in Council/Cabinet and support from Executive Directors or Directors.

Other councillors will see improvements through:-

- Greater involvement, given the range of decisions proposed for Council
- An enhanced role through Improvement and Scrutiny Committees

- More responsibility for inspecting and monitoring service delivery within their local area
- Increased influence via the Sustainable Community Strategy Plan etc in shaping partner organisation activity.

### **Member-Officer Relationships**

The Scheme of Delegation will only work effectively if there is mutual understanding and trust between Members and Officers.

However, to support the Scheme of Delegation and particularly where matters are delegated from Cabinet to Cabinet Member and Executive Directors or Directors, it is suggested that:-

- ‘Service Plans’ should be of sufficient detail to provide an effective framework for decisions
- Information on service delivery should be enhanced to ensure that members know what is going on without having to ask
- Protocols, or sets of criteria, for the detailed implementation of specific policy or service areas should be agreed between the Cabinet Member and Executive Directors or Directors
- The principle is reinforced that Executive Directors or Directors err on the side of caution in informing members of decisions that might have political implications
- Decisions delegated to officers within departments are dealt with in a structured way with proper records and audit trails so it is clear who is responsible and what the reasons were for the decisions.

## D FULL COUNCIL

### Meanings

- (a) **Policy Framework.** The policy framework means the following plans and strategies:-
- Annual Library Plan;
  - Children's and Young People's Plan;
  - Community Care Plan;
  - Sustainable Community Strategy;
  - County Community Safety Agreement;
  - Local Transport Plan;
  - Plans and strategies which together comprise the Development Plan;
  - Youth Justice Plan;
  - Council's Corporate Plan;
  - Food Law Enforcement Service Plan;
  - Adult Services Plan;
  - and any other Strategy, Plan or Agreement that requires the approval of full Council.
- (b) **Budget.** The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and, if required, the setting of virement limits different to those in Financial Regulations.

### Functions of the Full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework and the budget;
- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Appendix 6 of this Constitution, making decisions about any matter in the discharge of an **Executive** function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to, or not wholly in accordance with, the budget;
- (d) appointing the Leader;
- (e) agreeing or amending the terms of reference for committees, deciding on their composition and making appointments to them;

- (f) appointing representatives to outside bodies unless the appointment is an **Executive** function or has been delegated by the Council;
- (g) adopting a Members' allowances scheme under Appendix 15;
- (h) changing the name of the area;
- (i) confirming the appointment of the head of paid service;
- (j) making, amending, revoking, re-enacting or adopting bye-laws and promoting or opposing the making of local legislation or personal Bills;
- (k) all other matters which, by law, must be reserved to Council.

### **Council Meetings**

There are three types of Council meeting:-

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings;

and they will be conducted in accordance with the Council Procedure Rules in Appendix 3 of this Constitution.

## **E. CABINET**

The Cabinet will be responsible for guiding the Council in the formulation of its corporate plan of objectives and key priorities. Within the policy framework, budgets and major plans approved by the full Council, the Cabinet will have **executive** responsibility for the implementation of the Council's key goals and objectives.

It will operate within the Scheme of Delegations set out in this document.

The Leader chairs the Cabinet and appoints six members as Cabinet Members and allocates cross-service Portfolio responsibilities to the Cabinet Members.

### **Matters for Cabinet**

The Local Government Act 2000 delegates most functions to the Cabinet or **Executive**, for example.

- Policy formulation within and across services
- Performance indicator and target setting
- Recommending Corporate Plans to Council
- Recommending Service Plans to Council
- Agreeing variations to Service Plans
- Monitoring Council Plan and Best Value targets
- Monitoring Service Plan delivery
- Preparing budget estimates
- Monitoring revenue/capital budget spend
- Reviewing progress on major capital schemes and other service developments
- Agreeing major organisational changes
- Agreeing virement between service areas
- Agreeing externally funded initiatives not included in Service Plans
- Agreeing detailed policy implementation criteria
- Agreeing Best Value Review reports
- Agreeing policy representations to Government
- Agreeing representation on 'larger than local' county, regional and national bodies.



## **F. CABINET MEMBER PORTFOLIOS**

Cabinet Members are authorised to make decisions required in the area of their individual Cabinet Portfolio.

- (a) Cabinet Members may take policy, budget and expenditure decisions in accordance with the principles set out in paragraph Financial Regulations.
- (b) Cabinet Members may take decisions on tenders and contracts in accordance with Standing Orders In Relation To Contracts.
- (c) Cabinet Members may take decisions on virement, audit, debt write-off and placing of orders in accordance with Financial Regulations.
- (d) Cabinet Members may deal with certain petitions in accordance with the Council's Petition Scheme.
- (e) Cabinet Members may make decisions on:
  - (i) appointment of Members to outside bodies (Leader of the Council)
  - (ii) appointment of governors to local authority schools (Cabinet Member for Children's Services)
  - (iii) attendance of other Members at courses and conferences
  - (iv) grants administered by the Council.
- (f) The Cabinet Member for Council Services may take decisions concerning the acquisition or disposal of land.

### **Strategic Leadership, Culture and Tourism**

- Council Strategic Policy
- Council Plan
- Budget
- Strategic Budget Monitoring
- Public Relations
- Policy & Research
- External Relations (East Midlands Councils, Local Government Association, Central Government & MPs)
- Local Enterprise Partnership
- DEP and LEP Liaison
- Twinning
- Tourism
- Libraries, Museums, Arts and Heritage
- Archives and Modern Records

## **Highways, Transport and Infrastructure**

- Local Planning Frameworks
- Housing and Infrastructure
- Land Reclamation
- Strategic Planning
- Minerals and Waste Planning
- Waste Management
- Digital Derbyshire
- Highways and Bridges
- Street Lighting
- Footpaths
- Road Safety
- Public Transport
- Community Transport
- The Countryside
- Council Transport Co-Ordination

## **Adult Care**

- Home Care
- Residential Care
- Day Care
- Developing whole Person Care
- Housing Related Support
- Safeguarding
- Adults with Learning Difficulties
- Adults with Physical Disabilities
- Adults with Mental Ill-Health
- Multi-Agency Partnerships
- Personalisation
- Links with Health and Voluntary Sector

## **Corporate Services**

- Asset Management
- Efficiency and Value for Money
  - Service Re-design
  - Property Rationalisation
  - County Transport Co-ordination
- Finance and Budget Monitoring
- Procurement
- Human Resources
- Legal and Democratic Services
- Property

- Renovation and Energy Efficiency
- Carbon Management
- Climate Change
- Information and Communications Technology Services
- Elections

### **Economic Development and Regeneration**

- Local Enterprise Partnership
- Neighbouring Local Enterprise Partnerships
- External Funding
- Economic Development
- Local Economic Strategy and Assessment
- Inward Investment and Indigenous Growth
- Apprenticeships
- Business Support and Skills
- Markham Vale

### **Health and Communities**

- Health and Wellbeing Board
- Relationship with the NHS
- Public Health
- Health Improvement
- Developing whole Person Care
- Engagement with Communities
- Equalities
- Community Cohesion
- Community Consultation and Community Leadership
- Voluntary Sector
- Crime and Disorder and Partnerships
- Domestic Violence
- Action on Drugs and Alcohol
- Emergency Planning
- Trading Standards
- Sports Development
- District and Parish Council Liaison
- Registration Services
- Coroner's Services

### **Young People**

- Improving Outcomes for Young People
- Children's Services Planning
- Multi-agency Partnerships
- Safeguarding

- Children's Disabilities
- Engagement with Young People
- Engagement with Parents and Carers in Service Design
- Youth Service
- Early Years and Childcare
- Children's Centres
- Links to Voluntary Sector
- School Capital Programme
- Surplus Places
- School Support – Personnel, Finance and IT
- School Admissions
- School Improvement
- Governor Support
- Home to School Transport
- Special Education needs
- Adult Education
- Careers Information, Advice and Guidance Service
- FE Colleges
- Links to Academies
- Youth Offending
- Corporate Parenting

## G. LOCAL CHOICE FUNCTIONS

With regard to local choice functions, these are allocated as follows:

<b>FUNCTION</b>	<b>DECISION MAKING BODY</b>	<b>EXTENT OF RESPONSIBILITY</b>
The determination of an appeal against any decision made by or on behalf of the Council	Cabinet	In the absence of any existing appeals mechanism provided by the constitution  Consultation with the Director of Legal and Democratic Services and relevant Executive Director
The making of arrangements for appeals against the exclusion of pupils from school pursuant to the Schools Standards and Framework Act 1998	Cabinet	The appeals themselves are heard by lay and independent panel members appointed by the Director of Legal and Democratic Services
The making of arrangements for appeals in relation to school admission appeals pursuant to the Schools Standards and Framework Act 1998	Cabinet	The appeals themselves are heard by lay and independent panel members appointed by the Director of Legal and Democratic Services
The making of arrangements in relation to appeals by Governing Bodies pursuant to the School Standards and	Cabinet	Delegated to the Director of Legal and Democratic Services as detailed within the Scheme of Delegation at appendix 1 of the constitution



<b>FUNCTION</b>	<b>DECISION MAKING BODY</b>	<b>EXTENT OF RESPONSIBILITY</b>
Functions relating to Health and Safety at work	Executive Directors and Directors	As detailed within the Scheme of Delegation at Appendix 1
Functions relating to Elections	Director of Legal and Democratic Services in capacity of County Returning Officer	
Functions relating to the name and status of areas and individuals	Full Council	
Power to make, amend, revoke or re-enact bye-laws pursuant to any provision of any enactment (including a local Act) whenever passed, and s14 Interpretation Act 1978	Full Council	
Power to promote or oppose local or personal bills pursuant to s239 Local Government Act 1972	Full Council	
Powers to make Standing Orders	Full Council	
Dealing with maladministration	Governance, Ethics and Standards Committee	In consultation with the Director of Legal and Democratic Services
Duty to make arrangements for the proper	Director of Finance and ICT	

<b>FUNCTION</b>	<b>DECISION MAKING BODY</b>	<b>EXTENT OF RESPONSIBILITY</b>
administration of financial affairs		
Preparation of the Council's Statement of Accounts, Income and Expenditure and Balance Sheet,  Including the preparation of the Annual Governance Statement	Audit Committee  Full Council	In consultation with the Director of Finance and ICT       In consultation with the Director Finance and ICT, Director of Legal and Democratic Services, Assistant Director for Finance (Audit) and Executive Directors
Appointments to outside bodies	Full Council	



## **H. POWERS DELEGATED TO STRATEGIC DIRECTORS IN CONSULTATION WITH CABINET MEMBERS**

1. This Scheme delegates to the Executive Directors and other officers the powers and duties necessary for the discharge of the Council's functions subject to the provisions of Part A and Part B below. It is adopted with the aim of streamlining and simplifying the decision-making processes of the Council and accordingly, the Scheme should be interpreted widely rather than narrowly. Where functions are delegated, these should be taken to include all powers and duties necessary to carry out those functions under all present and future legislation and all incidental powers including power to serve statutory notices (after consultation with the Director of Legal and Democratic Services (Monitoring Officer) where specified, and carry out works in default.
2. Part A of this Scheme of delegation sets out the general delegations. They are all subject to the provisions of Part B.
3. Part B sets out the restrictions and conditions applicable to the exercise of any delegated powers by Executive Directors and Directors including the general powers and the specific powers in Part C.
4. Part C sets out the specific delegations to departmental Executive Directors and Directors.

## **PART A**

- A1** Executive Directors will take all action necessary to implement their Service Development Plan within the terms in which the Plan was approved by the County Council.
- A2** Executive Directors may, within the approved budget, therefore, exercise all matters of day-to-day administration and operational management of the services and functions for which they are responsible to the County Council, the Cabinet or a committee which delegation shall include taking and implementing decisions including in particular any decision which is not a key decision and which is concerned with maintaining the operation or effectiveness of those services or with a matter incidental to the discharge of the Council's functions or which falls within the scope of a policy decision taken by the Council.

### **A3 Conditions**

- 3.1 The scheme does not delegate to the Executive Directors or other Officers any key decisions or delegate matters to individual members of the Council's Cabinet. Key decisions are defined in Article 7.
- 3.2 All powers and duties that an Executive Director or other Officer is authorised to exercise or perform must be exercised or performed on behalf of and in the name of the Council and in accordance with the Constitution.
- 3.3 Where any matter involves professional or technical considerations not within this sphere of competence of the Executive Directors or other Officers they must consult the appropriate professional or technical Officer of the Council before authorising action.
- 3.4 Appointments to act as authorised or proper Officers must be made by the Director of Legal and Democratic Services (Monitoring Officer) unless specified later in the Scheme.
- 3.5 The Director of Legal and Democratic Services (Monitoring Officer) is appointed to act as authorised or proper Officer for the purposes of any Act of Parliament or statutory instrument where qualified to do so and another Officer has not been appointed.
- 3.6 The Director of Legal and Democratic Services (Monitoring Officer) may appoint other Officers to act as authorised or proper Officers for the purposes of any Act of Parliament or statutory instrument and to appear on behalf of the Council in proceedings before the Magistrates or County Court.
- 3.7 The leader of the Council and the appropriate Executive Director must be consulted about responses to consultation papers issued by Government Departments or National or Regional Bodies. The appropriate Member of the Council Cabinet must be consulted about responses to long term or strategic plans of neighbouring planning authorities.
- 3.8 Consultants may only be appointed in accordance with the contract procedure rules.
- 3.9 Any reference to an Executive Director or other Officer includes any other person authorised in writing by that Officer to act on their behalf.
- 3.10 In addition to the general powers conferred upon them as Executive Director, these Officers will be authorised as to exercise all the powers and duties specifically conferred on subordinate Officers in their department. All powers and duties conferred upon subordinate Officers will be exercised in accordance with any direction issued by their Executive Director, save for the powers and duties conferred upon the Monitoring Officer and the Chief Finance Officer.

3.11 Reference to any statutory provision includes any statutory provision amending, consolidating or replacing it for the time being in force.

#### **A4 Staffing Conditions**

4.1 The Executive Directors will be responsible for appointing, managing, disciplining and dismissing all employees within their Departments subject to complying with:

- Corporate Employment Policies and Conditions of Service.
- Any appropriate schemes or arrangements laid down by the Council or the Council Cabinet.
- Any directions that may be issued from time to time by the Director of Legal and Democratic Services (Monitoring Officer).
- The Officer and Employment Procedure Rules.

4.2 The following matters must be dealt with in conjunction with the Director of the Organisational Development and Policy:

- Departmental Monitoring of Equal Opportunities, attendance, ill health retirement etc.
- Implementation of Workforce Development Plans.
- Temporary Secondments and similar arrangements in accordance with the Council's policies and procedures.
- Appeals against discipline, grievance etc.
- Ill health retirements within Policy.
- Work experience placements.
- Secondary employment.
- Reviewing and authorising changes to departmental structures and establishments.
- Authorising overtime payments for employees not otherwise entitled.
- In consultation with the Director of Finance and ICT and the Director of Legal and Democratic Services, authorising payments for employees in cases of early retirement, voluntary redundancy and compulsory redundancy.
- Authorising the creation of additional temporary posts where budgetary provision exists, following formal evaluation of posts.
- Paying compensation to employees for pain and suffering incurred by them as a result of assault and or harassment and/attacked by animals whilst undertaking their duties and responsibilities.
- Authorising the payment of injury allowances.

**A5 Sub-delegation:** This Scheme includes the power for officers to further delegate any function which has been delegated to them under this scheme, to another officer or to other officers. Every such sub-delegation shall be in

writing, setting out the name of the delegate, the terms and conditions upon which that function is to be performed, and accountability for the performance of the sub-delegated function. The officer making such sub-delegation shall record the sub-delegation in a register maintained for the purpose by the Director of Legal and Democratic Services (Monitoring Officer).

## **PART B**

**B1** Delegations to Executive Directors and Directors do not include:-

- (a) any matter reserved to the full Council;
- (b) any matter which by law may not be delegated to an officer;
- (c) any matter reserved to the Cabinet or a Committee;
- (d) any matter which constitutes a key decision.

**B2** The exercise of delegated powers by an Executive Director or Director shall:-

- (a) be in accordance with the policies and plans of the County Council and their decisions from time to time,
- (b) be in accordance with the County Council's Constitution; and
- (c) not be outside the powers and duties conferred on the Council by law.

**B3** Executive Directors and Directors may exercise delegated powers provided that where there are policy or political issues, this is in consultation with the Cabinet Member holding the appropriate portfolio in the Cabinet for powers which are the responsibility of Cabinet and in consultation with the Chairman of the appropriate committee for powers which are the responsibility of any committee. Within that consultation, consideration should be given to whether it would be appropriate to consult any other Member or other person prior to exercising any delegated power.

**B4** In exercising delegated powers it is the duty of an officer to whom the exercise of powers is delegated to consult such other officers, Director of Finance & ICT and Director of Legal and Democratic Services as may be appropriate in the circumstances and to have regard to any advice given.

**B5** In respect of any matter where an officer proposes to exercise delegated powers where there is doubt as to whether the proposed exercise is contrary to the policy framework or contrary to or not wholly in accordance with the budget then the advice of the Director of Finance & ICT and the Director of Legal and Democratic Services must first be sought.

**B6** Any delegation under Part A of this document is subject to any more specific provision relating to a delegation to a particular Executive Director or Director under Part C of this document.

## **SPECIFIC POWERS DELEGATED TO STRATEGIC DIRECTORS OR DIRECTORS IN THE DISCHARGE OF THE FUNCTIONS OF THE COUNTY COUNCIL**

### **PART C – INDEX**

- Executive Director – Commissioning, Communities and Policy
- Director of Legal and Democratic Services (Monitoring Officer)
- Director of Finance & ICT (Chief Finance Officer)
- Director of Organisation Development and Policy
- Director of Property
- Director of Communities
  
- Executive Director – Children’s Services
  
- Executive Director – Adult Care and Health
- Director of Public Health
  
- Executive Director – Economy, Transport and Environment
- Chief Planning Officer

### **SPECIFIC DELEGATIONS TO STRATEGIC DIRECTORS**

Notwithstanding any other provision of this constitution, the Executive Directors shall have power, after discussion, if practicable, with the leader of the Council or the relevant Cabinet Member or Chairman, to take such action deemed to be necessary and expedient in matters requiring urgent consideration and which, because of the time scales involved, or the need to safeguard the interests of the County Council, cannot be dealt with by submission to the next following meeting of the Council, Cabinet, Cabinet Member or Committee.

### **SPECIFIC DELEGATIONS**

#### **EXECUTIVE DIRECTOR – COMMISSIONING COMMUNITIES AND POLICY**

1. To be designated as the Head of Paid Service, and where he or she considers it appropriate to do so in respect of any proposals of his or hers with respect to any of the matters specified below, to prepare a report to the authority setting out his or her proposals.

Those matters are –

- (a) The manner in which the discharge by the authority of their different functions is co-ordinated;
- (b) The number and grades of staff required by the authority for the discharge of their functions;
- (c) The organisation of the authority’s staff; and
- (d) The appointment and proper management of the authority’s staff.

2. Where a Director from Commissioning, Communities and Policy is absent from the workplace for a period of time that requires others to exercise delegated authority in that officer's absence, the Executive Director for Commissioning, Communities and Policy shall undertake, allocate or re-allocate responsibility for exercising particular delegations to any officer of the council in the interests of effective corporate management as he or she thinks fit, save for that the Head of Paid Service cannot substitute for the Monitoring Officer, and can only substitute for the Chief Financial Officer if they are a fully qualified member of one of the six accountancy bodies that constitute the Consultative Council of Accountancy Bodies (CCAB).

### **Director of Legal and Democratic Services**

1. To be the County Council's solicitor and Chief Legal Officer and in that capacity to take all necessary steps, including the obtaining of Counsel's advice in connection with any matter concerning the County Council.
2. To be the Proper Officer for any purpose for which the County Council has not designated another officer to be Proper Officer.

To maintain the Registers of:

- i. The financial and other interests of Members and co-opted members of the County Council as required by the Local Government Act 2000.
  - ii. Officers' declarations of interest in contracts and other pecuniary interests.
  - iii. Any other matter relating to the interests of Members and co-opted members which the County Council may from time to time establish.
3. In special circumstances, to approve attendance by Members at conferences and other events for the purposes of Members' Allowances.
4. To prosecute, withdraw, defend, compromise, settle, appeal and appear in proceedings on behalf of the County Council in any court of law, whether criminal or civil, tribunal, inquiry, chamber or other hearing or before any Judge, Registrar, Recorder, Magistrate, Coroner, Inspector, Arbitrator, Mediator, or expert.
5. To designate officers of the County Council as being authorised under Section 223 of the Local Government Act 1972 to institute, prosecute, defend or appear on the County Council's behalf in proceedings before a Magistrates' Court and to conduct such proceedings notwithstanding that the officer concerned may not be a solicitor holding a current practising certificate.
6. To appoint, in writing, in pursuance of Section 60 of the County Courts Act 1984 (as amended) officers of the County Council to address or appear before

the District Judge in the County Court in proceedings which relate to the recovery of possession of a property belonging to the County Council and for the recovery of rent, mesne profits, damages or other sums claimed by the County Council in respect of the occupation by any person of such property.

7. To establish and service a Complaints Review Panel comprising three independent persons (ie not Elected Members) with expert knowledge of Social Services to consider complaints under the terms of the National Health Service and Community Care Act 1989 which Panel is to make recommendations to the County Council on the course of action to be taken about any such complaint.
8. To make arrangements for dealing with the following kinds of appeal under the Schools Standards and Framework Act 1998:
  - Admission Appeals
  - Appeals against exclusion
  - Appeals by Governing Bodies
9. To be the Proper Officer and the County Council's Returning Officer for the purpose of the election of County Councillors and to undertake all the duties of those officers pursuant to the Representation of the People Act 1983 and the Local Government Act 1972.
10. To give public notice of any vacancy in the office of Councillor pursuant to Sections 86 and 87 of the Local Government Act 1972.
11. To act as the Proper Officer for the Council's Registration Service, including:
  - (a) To approve premises for the solemnization of marriages.
  - (b) To carry out the County Council's duties under the Marriage Acts 1949 and 1994 (other than those relating to fees and final appeals)
  - (c) To set such fees as are appropriate for ensuring full costs recovery to the County Council in respect of civil marriage ceremonies on local authority approved premises.
12. To authorise, subject to consultation with the Chairman of the Safety of Sports Grounds Panel:-
  - (a) an application to a Court under the Safety of Sports Grounds Act 1975 to prohibit or restrict the admission of spectators;
  - (b) the issue of a Prohibition Notice under the Fire Safety and Safety of Places of Sport Act 1987 when the risk to spectators at a ground is so great that until steps have been taken to reduce it to a reasonable level, the admission of spectators ought to be restricted or prohibited.
  - (c) the service of a Preliminary Notice to Enforce Safety at Outdoor Sports Grounds where it is confirmed that a stand provides cover for more than 500 people.

13. To make technical amendments to safety certificates.
14. In consultation with the Chairman of the Regulatory Planning Committee to decide the final form of the conditions which the County Council would wish to be attached to, and the framework of, any Section 106 Agreement, if the Secretary of State was minded to grant permission for a particular development following an appeal in relation thereto.
15. In consultation with the Executive Director Economy, Transport and Environment to enter into agreements for the execution of highways works under the Highways Act 1980.
16. To carry out the functions of the Council in relation to commons and town and village greens and in particular:
  - (a) To determine applications to register land as a town and village green.
  - (b) To determine applications to amend the registers of common land and town and village greens.
17. Under section 53 of the Wildlife and Countryside Act 1981:
  - (a) determine whether or not to make Definitive Map Modification Orders (DMMOs) except where the Director of Legal Services considers that the case is one which should be determined by the Regulatory, Licensing and Appeal Committee.
  - (b) where opposed DMMOs are to be decided by an Inspector acting on behalf of the Secretary of State, either at a hearing or public inquiry, authorise the stance to be taken by officers.
18. To undertake any revisions or amendments to the Constitution required as a consequence of amendments or variations to legislation, or the implementation of new legislation. Such amendments to be retrospectively approved by Council.
19. To give effect to the wishes of Political Groups on appointments and revocation of appointments to relevant bodies.
20. To appoint an independent person of another authority's Standard Committee, where necessary because of a conflict of interest or non-availability, to serve a temporary member of the Standards Committee.
21. To appoint and revoke appointments to the Independent Appeals Panel.
22. To make arrangements for appeals against School exclusion or admission decisions.



23. To maintain a central record of all delegations under this scheme and make this available for public inspection.
24. To maintain a central record of all delegations under this scheme and make this available for public inspection pursuant to Section 100G Local Government Act 1972.

### **Democratic and Registration Services Manager**

1. To act as the authorised/proper officer for the following matters:-
  - (a) Secretary to the Independent Remuneration Panel for Members' Allowances and
  - (b) Chief Scrutiny Officer.

### **Director of Finance & ICT**

1. To be the Council's Chief Finance Officer under Section 151 of the Local Government Act 1972. This means the Director of Finance & ICT is responsible for determining the way the Council administers its financial systems and processes.
2. To carry out all Treasury Management activities within the Treasury Management Policy Statement and Annual Treasury Management Strategy approved from time to time by the Executive and in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities and the raising of loans and the issuing of County Council bills in the case of emergency.
3. To take and implement any decision which he or she is empowered to take in accordance with Financial Regulations including the Standing Orders relating to Contracts
4. Responsibility for day-to-day management of the Local Government Pension Scheme Fund investments in accordance with the investment strategy determined by the Pensions and Investment Committee.
5. In respect of pensions
  - (a) Commutation of a pension to a lump sum where ill-health retirees have a life expectancy of less than 12 months.
  - (b) Following consultation with the Chairman of the Pensions and Investment Committee, the following decisions relating to individual Scheme Members:-
    - (i) Recovery of pension overpayment.
    - (ii) Putting a deferred pension benefit into payment on compassionate grounds.

(iii) Determining co-habitation/ (v) extending the time limit for a decision to be made by a Scheme Member.

6. To be responsible, for the preparation, maintenance, monitoring, review and implementation of the County Council's Information Technology Strategy, which embraces the County Council's Information Security Policy.
7. To act as the Council's Senior Information Risk Officer (SIRO)
8. To undertake any revisions or amendments to the Financial Regulations including the Standing Orders relating to Contracts as required as a consequence of amendments or variations to legislation, or the implementation of new legislation. Such amendments to be retrospectively approved by Council.

#### **Assistant Director of Finance (Audit)**

1. To act as the Council's Chief Audit Executive as required by the Public Sector Internal Audit Standards.
2. To develop a risk based plan of internal audit activity covering the Council's operations for approval by the Audit Committee.
3. To deliver an annual internal audit opinion and report which concludes on the overall adequacy and effectiveness of the Council's framework of governance, risk management and control and informs the Annual Governance Statement.

#### **Director of Organisation, Development and Policy**

1. To develop review and monitor personnel policy and standards across the Council.
2. To establish and maintain effective consultation and negotiation arrangements with recognised Trade Unions.
3. To develop, review and monitor Employment Policy in relation to Equality of Opportunity.
4. In conjunction with the Director of Finance and ICT, to annually review the amounts of compensation provided for in the Council's Employment Policies to make sure they remain at appropriate levels and in line with inflation.
5. To approve the implementation of grades resulting from the job evaluation process.
6. To approve changes to terms of conditions of employment where there is a cost of less than £100,000 in a financial year.

#### **Director of Property**

1. To take all necessary steps to secure the cessation of any unauthorised use or occupation of the County Council's land and property assets.
2. To submit all planning and planning related applications, including those for the County Council's own operational development and highway schemes; for the disposal of surplus land/property; for Conservation Area consent; and for Listed Building consent.
3. In consultation with the appropriate Executive Directors to accept, grant, surrender or review any interests and rights over the Council's existing land and premises as may be deemed necessary or appropriate, subject to the value of the interest not exceeding £100,000. A schedule of such transactions will be maintained and reported quarterly to the Cabinet Member for Council Services.
4. In consultation with appropriate Executive Directors or Directors to acquire or dispose of interests in land or property as may be deemed appropriate, subject to the value of the interest not exceeding £500,000. A schedule of such transactions will be maintained and reported quarterly to the Cabinet Member for Council Services.
5. In consultation with appropriate Executive Directors or Directors to accept an auction offer of within 10% of the reserve price on the day of the auction from the auctioneer if the proposed disposal does not reach its reserve.
6. In consultation with the appropriate Executive Directors or Directors to agree payments or compensation up to a value of £100,000 due to landowners in respect of creation agreements, creation orders or compulsory purchase orders.

### **Director – Community Services**

1. To undertake enforcement and administrative duties under the legislation detailed in the list below:

#### **Animal Health and Welfare**

Animal Health and Welfare Act 1984

Animal Health Act 1981 and 2002

Animal Welfare Act 2006

Control of Horses Act 2015

#### **Consumer Credit**

Administration of Justice Act 1970 (Section 40)

Consumer Credit Act 1974 and 2006

Malicious Communications Act 1988

**Fair Trading**

Accommodation Agencies Act 1953  
Cancer Act 1939  
Climate Change Act 2008  
Consumers, Estate Agents and Redress Act 2007  
Consumer Rights Act 2015  
Companies Act 1985 and 2006  
Copyright, Designs and Patents Act 1988  
Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002  
Criminal Attempts Act 1981  
Customs and Excise Management Act 1979  
Education Reform Act 1988  
Energy Act 1976  
Energy Conservation Act 1981  
Enterprise Act 2002  
Estate Agents Act 1979  
Fair Trading Act 1973  
Forgery and Counterfeiting Act 1981  
Fraud Act 2006  
Hallmarking Act 1973  
Housing Act 2004  
Olympic Symbol etc. (Protection) Act 1995  
Prices Acts 1974 and 1975  
Solicitors Act 1974  
Telecommunications Act 1984  
Theft Acts 1968, 1978 and 1996  
Timeshare Act 1992  
Trade Descriptions Act 1968  
Trade Marks Act 1938 and 1994  
Unsolicited Goods and Services Act 1971  
Video Recordings Act 1984, 1993 and 2010

**Metrology**

Weights and Measures Act 1976 and 1985

**Quality Standards**

Agriculture Act 1970 (Part IV)  
Agricultural Produce (Grading and Marking) Acts 1928-31  
Food and Environmental Protection Act 1985  
Food Safety Act 1990  
The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015  
The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015  
The Official Feed and Food Controls (England) Regulations 2009  
Medicines Act 1968

**Road Traffic**

Motor Cycle Noise Act 1987  
Road Traffic Act 1988 and 1991  
Road Traffic Regulation Act 1984

Road Traffic (Foreign Vehicles) Act 1972

**Safety**

Anti-Social Behaviour Act 2003

Children and Families Act 2014

Children and Young Persons Act 1933

Children and Young Persons (Protection from Tobacco) Act 1991

Clean Air Act 1993

Control of Pollution Act 1974

Consumer Protection Act 1987

Intoxicating Substances (Supply) Act 1985

Knives Act 1997

Licensing Act 2003

Motor Vehicles (Safety Equipment for Children) Act 1991

Offensive Weapons Act 1996

Psychoactive Substances Act 2016

Tobacco Advertising and Promotions Act 2002

**Other**

Criminal Justice Act 1988

Criminal Justice and Police Act 2001

Criminal Law Act 1977

European Communities Act 1972

Proceeds of Crime Act 2002

**Petroleum and Explosives**

Fireworks Act 2003

Health & Safety at Work etc. 1974

Public Health Act 1961 (Section 73)

Together with:

- (a) any Orders or Regulations made thereunder or relating to any of the foregoing or having effect by virtue of the European Communities Act 1972;
  - (b) any offence under any legislation, or at common law, which is of a similar nature or related to the foregoing, including offences of aiding, abetting, counselling and procuring, incitement, conspiracy, perverting the course of justice and criminal attempts; and
  - (c) any modification or re-enactment to the foregoing.
2. To discharge the County Council's functions under section 17 of the Crime and Disorder Act 1998 to prevent crime and disorder.

3. To authorise the sharing of council information in accordance with section 115 of the Crime and Disorder Act.
4. To select, acquire and as necessary discard all books and other printed material, recordings, films, pictures and other libraries and archive material.
5. To collaborate with other libraries and organisations in:-
6. To dispose of surplus or used library materials.
  - (i) inter-lending of books and other library materials.
  - (ii) reciprocal use of services by non-residents.
  - (iii) the acquisition and storage of books and other libraries and archive materials.
7. To waive or reduce libraries and heritage charges where the director considers that the circumstances are such that full payment of the charges would cause particular hardship or otherwise be inappropriate.
8. To ensure compliance with the Museum Association Code of Ethics.
9. To permit copying, reproduction and publication of council copyrighted material held in the archive, library and museum collections.
10. To licence the use of library, archive and museum materials by third parties.
11. To approve policies and procedures required for archive and museum accreditation and keep fit for purpose.
12. To be an authorised officer for the purposes of the Regulation of Investigatory Powers Act.

### **EXECUTIVE DIRECTOR – CHILDREN’S SERVICES**

1. To carry out the functions of the Council as a Children’s Services Authority and Local Education Authority, (or Local Authority in the context of children’s social care matters and/or educational matters), including to be the Council’s Director of Children’s Services and undertake the functions required by Section 18 of the Children Act 2004, as amended from time to time.
2. To carry out the functions of the Council’s Local Education Authority (or Local Authority in the context of educational matters) including the functions of the Council relating to education, child employment in the youth service but excluding functions relating to adult learning and further and higher education set out in Section 18 (3) of the Children Act 2004 (as amended from time to time).

3. To be responsible for the general duties under sections 13(1) and 13A of the Education Act 1996 (as amended from time to time).
4. To carry out the functions of the Council as local education authority in relation to adult/family learning and further and higher education including the functions set out in section 18(3) of the Children Act 2004 (as amended from time to time).
5. To undertake all the powers and duties of the County Council as an Adoption Agency having regard to the recommendations of the adoption panel and to approve the charge for home study assessments for inter country adoptions in accordance with the policy agreed by Cabinet, and to appoint the members (except for the appointment of any members who are County Councillors) of the adoption and permanence panels in accordance with the Adoption Regulations 2011 or as amended from time to time.
6. To carry out the functions of the Council under the NHS Act 2006 and any other health legislation (as amended or replaced from time to time) to enter into arrangements with the NHS or other bodies for the exercise of the NHS or health functions or health related Council functions so far as those functions relate to children).
7. To carry out the functions of the Council under Section 23(C) to 24(D) of the Children Act 1989 and the Children and Social Work Act 2017 (as amended from time to time) in relation to aftercare arrangements etc.
8. To carry out the functions of the Council under Sections 10 to 13 and 17(A) of the Children Act 2004 (as amended from time to time) in relation to arrangements to safeguard and promote the welfare of children and young person's plans.
9. To carry out the functions of the Council in relation to Early Help/Sure Start and the Childcare Act 2006.
10. To carry out the functions of the Council in relation to youth offending services.
11. To be responsible for the development of corporate parenting.
12. To ensure the sufficiency of the child protection service and to promote and participate fully within multi-agency safeguarding arrangements to ensure that children within the Council's area are adequately safeguarded and protected.
13. To ensure the effectiveness of the Multi Agency Safeguarding Arrangements within Derbyshire in accordance with the Children and Social Work Act 2017 and Working Together to Safeguard Children 2018.'

14. To undertake statutory visits to children's homes and to make permanent or temporary variations in the approved number of places at any children services establishments.
15. To enforce, make applications and representations to a Court or Magistrate and authorise, institute and defend proceedings under any enactment which stand referred to the Cabinet, in consultation with the Director of Legal Democratic Services.
16. To grant licences and to approve bodies of persons to enable children to take part in public performances under Section 37 of the Children and Young Persons Act 1963.
17. To respond to alcohol licensing applications to highlight any concerns in relation to child safety.
18. To institute, intervene, or defend, on a County Council's behalf, wardship proceedings and to appear on the Council's behalf on any wardship proceedings involving the County Council in consultation with the Director of Legal and Democratic Services.
19. To approve the utilisation of funds received under Section 106 of the Town and Country Planning Act 1990 to the project named in the relevant Section 106 agreement, up to a maximum value of £150,000 per Section 106 agreement. A schedule of such expenditure will be maintained and reported quarterly to the Cabinet Member for Young People.

#### **EXECUTIVE DIRECTOR – ADULT CARE AND HEALTH**

1. To exercise the functions of the Council with regard to, powers and duties of an Adult Services Authority under all relevant legislation including, but not limited to social services, safeguarding adults, Mental Health services including the deprivation of liberty and Health functions.
2. To exercise all the powers and duties of the County Council in accordance with general policies from time to time laid down by the Cabinet for the administration of any arrangements made under relevant legislation with respect to services for adults including people with disabilities.
3. To make permanent or temporary variations in the approved number of places at any Adult Social Care establishment.
4. Where litigation is conducted in Court with respect to those who are aged 18 and over, instructions are provided in the name of the Executive Director for Adult Care and Health.
5. Where a Director from Adult Care and Health is absent from the workplace for a period of time that requires others to exercise delegated authority in that officer's absence, the Executive Director for Adult Care and Health shall



undertake, allocate or re-allocate responsibility for exercising particular delegations to any officer of the council in the interests of effective corporate management as he or she thinks fit.

### **Director – Public Health**

1. To undertake such statutory responsibilities as may be required by legislation or delegated to the authority or the Director by the Secretary of State from time to time.
2. To commission public health services on behalf of the Secretary of State and on behalf of the Council to address local Public Health challenges identified through the Public Health Outcomes Framework and tackle local priorities as set out in the joint Health and Wellbeing Strategy for Derbyshire.
3. To provide public health and population healthcare advice to NHS Commissioners and Providers. Contribute to and influence the work of NHS commissioners, ensuring a whole system approach across the public sector.
4. To authorise Consultants in Communicable Disease Control of Public Health England and/or their deputies to act on behalf of the Council as Proper Officer in the exercise of statutory functions relating to the control of infections and other disease and food poisoning.
5. To authorise allowances to persons excluded from work because of notifiable disease.
6. Lead the Council's development of the Local assessment of health and care needs. This to be done in partnership with local NHS Organisations and Clinical Commissioning Groups with a shared statutory duty to develop and deliver the JSNA for their defined population.

### **EXECUTIVE DIRECTOR – ECONOMY, TRANSPORT AND ENVIRONMENT**

- 1 To refer to the Secretary of State for the Environment any district council's proposal for its own development which would be detrimental to the County Council's interests or which would be contrary to the County Council's views.
- 2 (a) To determine applications to fell or prune trees covered by a County Council Tree Preservation Order.  
(b) To serve notice requiring a landowner to plant trees within a given timeframe where Tree Preservation Order conditions are in force in accordance with section 207 of the Town and Country Planning Act 1990.
- 3 To authorise the Peak District National Park Authority to discharge the County Council's powers and functions under the Ancient Monuments and Archaeological Areas Act 1979 in respect of that part of the Peak District

National Park which is within Derbyshire, without prejudice to the exercise concurrently by the County Council within that area of their powers under the Act.

- 4 In conjunction with the Director of Legal & Democratic Services to create footpaths and bridleways by agreement under the Highways Act 1980 and Town and Country Planning Act 1990 provided the proposal is supported by the local member, no objections are received and any payments to be made have been agreed by the Director of Property Services
- 5 In conjunction with the Director of Legal & Democratic Services to investigate, make and confirm (or decline) public path extinguishment orders, public path diversion orders and public path creation orders under the Highways Act 1980 and Town and Country Planning Act 1990 provided the proposal is supported by the local member and there are no objections.
- 6 To make up new footpaths, bridleways and restricted byways pursuant to section 27 of the Highways Act 1980
- 7 To authorise service of a notice that the highway is out of repair on persons alleged to be responsible for maintaining a highway pursuant to s56(1) Highways Act 1980
- 8 To authorise the service of a notice pursuant to sections 56(2) and 56 (4) of the Highways Act 1980 in response to a notice served by a complainant under Section 56(1).
- 9 To exercise default powers in respect of non-repair of privately maintainable highways under section 57 Highways Act 1980.
- 10 To apply to the Magistrates Court to stop up or divert a highway under sections 116 and 117 of the Highways Act 1980 provided the local member has been consulted and has not objected to the proposals.
- 11 To carry out temporary diversions under sections 122, 135 and 135A of the Highways Act 1980.
- 12 To authorise the erection of stiles etc. under s147 of the Highways Act 1980.
- 13 To enter into agreements relating to improvements for the benefit of persons with mobility problems under section 147ZA of the Highways Act 1980.
- 14 To serve notices and authorise all consequential action arising therefrom under Part IX of the Highways Act 1980 and the Rights of Way Act 1990 in order to assert and protect the rights of the public to the use and enjoyment of any public right of way.
- 15 (a) To carry out the duties of the County Council to assert and protect the rights of the public to the use and enjoyment of public rights of way under

Section 130 of the Highways Act 1980 including the power to bring proceedings in the Magistrates' Court.

- (b) To carry out the duties of the County Council under the Rights of Way Act 1990.
- 16 To serve notice on persons pursuant to Section 130A(6) of the Highways Act 1980
- 17 To apply for a variation of an Order made under Section 130B of the Highways Act 1980.
- 18
  - (a) To make temporary closure orders for public paths under Section 14 of the Road Traffic Regulation Act 1984 because of works on, or near, the path or because of the likelihood of danger or damage.
  - (b) To impose revised orders for public paths under Section 14 of the Road Traffic Regulation Act 1984 because of works on, or near, the path or because of the likelihood of danger or damage following notification to the Local Member.
  - (c) To rescind temporary closure orders imposed under Section 14 of the Road Traffic Regulation Act 1984 following notification to the Local Member.
- 19 To keep the register of information with respect to maps, statements and declarations deposited with the County Council under Section 31(6) of the Highways Act 1980.
- 20 To keep the register with respect to applications under Section 188ZA, 118C, 119ZA and 119C of the Highways Act 1980.
- 21 To keep the register of prescribed information with respect to applications under Section 53(5) of the Wildlife and Countryside Act 1981.
- 22 To enter into agreements with respect to means of access to any access land under Section 35 of the Countryside and Rights of Way Act 2000.
- 23 To designate a footpath as a cycle track under the Cycle Tracks Act 1984.
- 24
  - (a) To authorise the Peak District National Park Authority to discharge the County Council's functions, as contained in the Countryside Act 1968 in relation to sites.
  - (b) To authorise other bodies to erect signposts and waymarks on public paths pursuant to s27 (5) of the Countryside Act 1968.
- 25 In relation to highways to exercise the following powers and duties under the Highways Act 1980:-
  - (a) to assert and protect the rights of the public to the use and enjoyment of highways under Section 130 of the Highways Act 1980.

- (b) To issue, revoke, amend, suspend or otherwise vary licences, notices and consents and grant permissions relating to the street scene environment
  - (c) To exercise all powers of enforcement (including but not limited to the service of notices, carrying out of works, recovery of costs and court proceedings) with respect to statutory duties and powers under the Highways Act 1980;
  - (d) To administer the Advance Payments Code;
  - (e) to determine the amount of any deposit or security required in respect of buildings having a frontage to a new state or private street in accordance with Section 219 and 220 including supervision and legal charges in the case of Section 38 Agreements and Bonds
  - (f) In conjunction with the Director of Legal and Democratic Services to make and enter into agreements for the creation, maintenance, improvement and adoption of highways (including bridges).
  - (g) To approve the adoption of privately maintainable highways or streets under Sections 37, 38 and 228 of the Highways Act 1980 so that the highways or streets become maintainable by the Council at public expense.
  - (h) To carry out highway drainage works
  - (i) to undertake works by, or on behalf of, other persons under Section 296 Highways Act 1980
  - (j) To revoke prescribed improvement lines and prescribed building lines under sections 73 and 74 of the Highways Act 1980
- 26 To approve the rescinding of New Street Orders made under section 159 of the Highways Act 1959
- 27 To carry out the functions of the Council as a street or streetworks authority including the grant of street works licences under the New Roads and Street Works Act 1991.
- 28 After seeking the views in each case of the local member(s) of the County Council affected thereby and the relevant district council and parish council, and provided the local member(s) of the County Council so consulted do not object thereto, to exercise the powers and duties of the County Council under Sections 90A and 90I of the Highways Act 1980 (road Humps and other Traffic Calming Works); and under the Road Traffic Regulation Act 1984 (as amended) in respect of the following matters:-
- (a) Traffic Regulation Orders (Part I of Act )
  - (b) Experimental traffic schemes (Part I of Act)

- (c) Speed limits (Part VI of Act)
  - (d) Administrative and other powers and duties for the purposes of items (a) to (h) above (Parts IX and X of Act)
- 29 To exercise the powers and duties of the County Council under the Road Traffic Regulation Act 1984 (as amended) that are not dealt with by DES25 above:-
- (a) Temporary prohibitions and restrictions on roads (Part II of Act)
  - (b) Provision of crossings and playgrounds (Part III of Act)
  - (c) Provision of off street parking (Part IV of Act)
  - (d) Provision of placing of traffic signs (Part V of Act)
  - (e) Placing of bollards and other obstructions (Part VII of Act)
  - (f) Administrative and other powers and duties for the purposes of items (a) to (e) above (Parts IX and X of Act)
- 30 In consultation with the Chief Constable, Chief Fire Officers and other representatives of organisations concerned with road safety, to maintain, monitor, review and implement a road safety strategy within the County Council's road safety policies.
- 31 To take and implement any decision necessary to fulfil the obligations of the County Council pursuant to, and in accordance with, a Service Level Agreement relating to the Council's participation in the Derby and Derbyshire Road Safety Partnership including approving the annual operational plan for the scheme.
- 32 To approve district councils' applications for orders to amend charges for parking places in accordance with the powers contained in Section 35 of the Road Traffic Regulations Act 1984.
- 33 To take action on behalf of the County Council, after consultation where appropriate with district councils, under Sections 5 (traffic signs), 6 (damage to footways), 7 (plans of new streets), 8 (vesting of former highway land) and 10 (grass verges etc) of the Derbyshire Act 1981.
- 34 To deal with individual cases where an altered highway produces a significant and obvious hardship either by the alteration directly or by a substantial increase in traffic which has been triggered by the alteration and where the total cost of providing discretionary noise insulation does not exceed the current cost of £5,000 per scheme (index linked in subsequent years by the national GDP).
- 35 In consultation with the appropriate Cabinet Member, to award grants.
- 36 To accept grants up to £50,000 in respect of projects undertaken by the Economy, Transport and Environment Department.

- 37 To respond to consultations received relating to applications to stop up or divert sections of highway under sections 247 and 251 of the Town and Country Planning Act 1990 where it is necessary for the purpose of enabling a development to be carried out in accordance with planning permission or as specified by a government department.
- 38 To discharge the responsibilities of the County Council as lead local flood authority under the Flood and Water Management Act 2010
- 39 To discharge all powers of enforcement with respect to the statutory duties and powers under the Land Drainage Act 1991<sup>40</sup> To liaise with district and borough councils in connection with any aspect of flood management which has been delegated to such councils by the County Council and to ensure the effective discharge of such delegated functions
- 41 To carry out the functions of the Council in relation to emergency preparedness, resilience and response, including the Civil Contingency Act 2004 and to invoke powers under the Public Order Act 1986 to ensure the protection of the Local Authority's land and assets.

### **Specific Delegations to the Head of Planning Services**

- 1 To determine applications for:
  - (a) planning permission for County Matter development;
  - (b) planning permission for development which the Authority itself proposes to carry out; and
  - (c) for replacement conditions to regulate permissions for existing Mineral Working Sites as provided for in the Environment Act 1995 at Schedule 13 (initial review) and Schedule 14 (periodic review), where the proposal under the application is considered by the Head of Planning Services to be (1) in accordance with the Development Plan and any relevant supplementary planning documents and emerging Development Plan policy (2) unaffected by any significant objection\* to the application.

*\* In this specific delegation "significant objection" means: an objection, which is on at least one relevant planning ground which is not capable of being overcome by amendment and/or the imposition of appropriate conditions and/or planning obligations.*

- 2 To determine submissions made under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO).
- 3 To make directions under Article 5 of the GPDO (*which require an application for planning permission in respect of certain types of proposal for mineral exploration preparation for mineral exploration and removal of material from mineral working deposits which would otherwise be permitted by Article 3 of the GPDO, and which may be made where a mineral planning authority is*

*satisfied, because one or more of several criteria as detailed in Article 5 apply to the case, that it is expedient that the development proposed or any part of it should not be carried out unless permission for it is granted on an application).*

- 4 To determine applications for Hazardous Substances Consent.
- 5 To determine applications for Certificates of Lawful Use or Development under Sections 191 and 192 of the Town and Country Planning Act 1990.
- 6 To produce Screening Opinions and Scoping Opinions as provided by the Environmental Impact Assessment Regulations for England.
- 7 To carry out assessments in accordance with the Habitats Directive of impacts of development proposals to be determined by the Council on protected wild species and designated habitats.
- 8 To agree to requests for extensions of time for the submission of a Scheme of Conditions under the Schedule 13 of the Environment Act 1995.
- 9 As provided by Schedule 14 of the Environment Act 1995 as amended, to exercise power to require conditions review applications to be made for existing Mineral Working Sites, to agree and all relevant incidental powers under the schedule to extend the review period and agree to postponement of final dates for mineral review applications.
- 10 To authorise completion of agreements with landowners and interested parties pursuant to Sections 106 and 106A of the Town and Country Planning Act 1990 which provide and / or amend planning obligations where any decisions on behalf of the Council for granting planning permission or any other type of planning consent or any planning appeal proceedings require such obligations to be entered into or amended.
- 11 To determine submissions (including submissions for approval of reserved matters and submissions for variations to be approved) made as a requirement of a condition to which a planning permission is subject or any planning obligation, except where:
  - (a) the Regulatory – Planning Committee when authorising the grant of permission to which the condition or obligation relates specified that the submission must be determined by the Committee
  - (b) in a case where a district or parish council or local Member has been consulted and has responded with a significant objection on planning grounds to the submission
  - (c) in the view of the Head of Planning Services the submission whilst not falling within (a) or (b) above has raised considerable public concern or

issues which it is proper for the Regulatory – Planning Committee to be aware of before the submission is determined.

- 12** To determine any application for non-material amendment in respect of an existing planning permission.
- 13** To approve attendance by officers at meetings with district councils, parish councils or at public meetings in connection with the development control functions of the Authority.
- 14** To make submissions in relation to any appeals against decisions by the Authority to refuse permission or against conditions imposed by the Authority in granting permissions, and to arrange for appropriate officers or external experts to give evidence at public inquiries or hearings in relation to any such appeals.
- 15** To authorise the issue of Enforcement Notices, Stop Notices, Temporary Stop Notices and Breach of Condition Notices.
- 16** To apply for injunctions to prevent or restrain breaches of planning control.
- 17** To give observations on behalf of the County Council in response to district councils, adjoining authorities, the Peak District National Park Authority, the National Infrastructure Commission, Government Departments / Agencies and statutory undertakers/public utilities in response to consultations on planning, planning-related applications and related matters including consultations on emerging Local Plans, unless the observations would represent a material departure from a policy of the County Council, a Minerals Local Plan, Waste Local Plan or other Development Plan Document, or any other planning policy for which the County Council is responsible (either alone or jointly).
- 18** To request the Secretary of State to consider “calling-in” any application for planning permission to another local planning authority which would be detrimental to the County Council’s interests or would represent a material departure from a Local Plan, or other Development Plan Document, or any other planning policy.



## Appendix 2 - Petition Scheme

Derbyshire County Council welcomes petitions and recognises that petitions are one way in which people can let us know their concerns. All petitions sent or presented to the Council will receive an acknowledgement from the Council within 10 working days of receipt. This acknowledgement will set out what we plan to do with the petition. We will treat something as a petition if it is identified as being a petition, or if it seems to us that it is intended to be a petition.

The County Council has decided that a petition for the purposes of this Petition Scheme must be signed by 10 or more persons who live, work or study in the Council's area.

Petitions can be presented in paper or electronic format. Paper petitions should be sent to:

The Director of Legal Services  
Derbyshire County Council  
County Hall  
Matlock  
Derbyshire  
DE4 3AG

Electronic petitions can be created, signed and submitted online at [www.derbyshire.gov.uk/petitions](http://www.derbyshire.gov.uk/petitions)

Under normal circumstances, a petition will be presented to the appropriate Cabinet Member meeting. Details of these meetings can be found at [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk) or by contacting the Democratic and Registration Services Manager either by telephone on 01629 538327 or by email on [petitions@derbyshire.gov.uk](mailto:petitions@derbyshire.gov.uk). If you would like to present your petition to the appropriate Cabinet Member meeting, or would like your County Councillor or someone else to present it on your behalf, please contact the Democratic and Registration Services Manager at least 10 working days before the meeting and they will talk you through the process.

If your petition has received more than 7,500 (just under 1% of the Derbyshire population) signatures or more it will also be scheduled for a Full Council debate and, if this is the case, we will let you know whether this will happen at the same meeting at which you presented your petition or a later meeting of the Full Council.

### **What are the guidelines for submitting a petition?**

Petitions submitted to the Council must include:

- a clear and concise statement covering the subject of the petition. It should state what action the petitioners wish the Council to take.
- the name and address and signature of any person supporting the petition (which may be an address where signatories live, work or study).

Petitions should be accompanied by contact details, including an address, for the petition organiser. This is the person we will contact to explain how we will respond to the petition. The contact details of the petition organiser will not be placed on the website. If the petition does not identify a petition organiser, we will contact signatories to the petition to agree who should act as petition organiser.

Petitions which are considered to be vexatious, abusive or otherwise inappropriate will not be accepted. In the period immediately before any local or national election or referendum, we may need to deal with your petition differently – if this is the case, we will explain the reasons and discuss the revised timescale which will apply. If a petition does not follow the guidelines set out above, the Council may decide not to do anything further with it. In that case, we will write to you to explain the reasons.

### **What will the Council do when it receives my petition?**

An acknowledgement will be sent to the petition organiser within 10 working days of receiving the petition. It will let them know what we plan to do with the petition and when they can expect to hear from us again. It will also be published on our website.

If we can do what your petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed. If the petition has enough signatures to trigger a Council debate, or a senior officer giving evidence, then the acknowledgment will confirm this and tell you when and where the meeting will take place. If the petition needs more investigation, we will tell you the steps that we plan to take.

If the petition applies to a planning or licensing application, is a statutory petition (for example requesting a referendum on having an elected mayor), or concerns a matter where there is already an existing right of appeal, other procedures apply.

We will not take action on any petition which we consider to be vexatious, abusive or otherwise inappropriate and will explain the reasons for this in our acknowledgement of the petition.

To ensure that people know what we are doing in response to the petitions we receive, the details of all the petitions submitted to us will be published on our website, except in cases where this would be inappropriate. Whenever possible we will also publish all correspondence relating to the petition (all personal details will be removed). When you sign an e-petition, you can elect to receive this information by email. We will not send you anything which is not relevant to the e-petition you have signed, unless you choose to receive other emails from us.

## How will the Council respond to petitions?

Our response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:

- taking the action requested in the petition
- considering the petition at a Cabinet Member meeting or Full Council.
- holding an inquiry into the matter
- undertaking research into the matter
- holding a public meeting
- undertaking consultation
- holding a meeting with petitioners
- referring the petition for consideration by one of the Council's Improvement and Scrutiny Committees\*
- writing to the petition organiser setting out our views about the request in the petition

\*Improvement and Scrutiny Committees are committees of Councillors who are responsible for scrutinising the work of the Council. In other words, the Improvement and Scrutiny Committee has the power to hold the Council's decision makers to account.

In addition to these steps, the Council will consider all the specific actions it can potentially take on the issues highlighted in a petition.

If your petition is about something over which the Council has no direct control, for example the local railway or hospital, we will consider making representations on behalf of the community to the relevant body. The Council works with a large number of local partners and where possible, will work with these partners to respond to your petition. If we are not able to do this for any reason (for example, if what the petition calls for conflicts with Council policy), then we will set out the reasons for this to you. You can find more information on the services for which the Council is responsible here: [http://www.derbyshire.gov.uk/Council/Council\\_works/](http://www.derbyshire.gov.uk/Council/Council_works/) or by contacting the Democratic and Registration Services Manager.

If your petition is about something for which a different council is responsible, we will give consideration as to the best method for responding to it. This might consist of simply forwarding the petition to the other council, but could involve other steps. In any event, we will always notify you of the action we have taken.

## Full Council Debates

If a petition contains more than 7,500 signatures it will be debated by the Full Council unless it is a petition asking for a senior Council officer to give evidence at a public meeting. This means that the issue raised in the petition will be discussed at a meeting which all Councillors can attend. The Council will endeavor to consider

the petition at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting.

The petition organiser (or their nominee) will be given five minutes to present the petition at the meeting. The petition will then be discussed by Councillors for a maximum of 15 minutes. The Council will decide how to respond to the petition at this meeting. They may decide to take the action the petition requests, not to take the action requested for reasons put forward in the debate, or to commission further investigation into the matter, for example by a relevant committee. Where the issue is one on which the Council's Cabinet is required to make the final decision, the Council will decide whether to make recommendations to inform that decision. The petition organiser will receive written confirmation of this decision. This confirmation will also be published on our website.

### **Officer evidence**

Your petition may ask for a senior Council officer to give evidence at a public meeting about something for which the officer is responsible as part of their job. For example, your petition may ask a senior Council officer to explain progress on an issue, or to explain the advice given to Elected Members to enable them to make a particular decision. The senior officers who may be asked to give evidence will be the Council's Chief Officers or their nominees.

If your petition contains more than 3,750 signatures, the relevant Chief Officer (or their nominee) will give evidence at a public meeting of the Council's appropriate Improvement and Scrutiny Committee.

The list of Chief Officers that can be called to give evidence is set out below:

- Strategic Director of Commissioning, Communities and Policy
- Strategic Director of Adult Care and Health
- Strategic Director of Children's Services
- Strategic Director of Economy, Transport & Environment.

You should be aware that the Improvement and Scrutiny Committee may decide that it would be more appropriate for another officer to give evidence instead of any officer named in the petition – for instance, if the named officer has changed jobs. The Committee may also decide to call the relevant Councillor, usually the Cabinet Member or where appropriate, the local Councillor, to attend the meeting. Committee members will ask the questions at this meeting, but you will be able to suggest questions to the Chairman of the Committee by contacting the Democratic and Registration Services Manager either by telephone on 01629 538327 or by email on [scrutiny@derbyshire.gov.uk](mailto:scrutiny@derbyshire.gov.uk) up to three working days before the meeting.

### **E-petitions**

The Council welcomes e-petitions which are created and submitted through our website [www.derbyshire.gov.uk/petitions](http://www.derbyshire.gov.uk/petitions) E-petitions must follow the same

guidelines as paper petitions as detailed in this Petition Scheme. The petition organiser will need to provide us with their name, postal address and email address. You will also need to decide how long you would like your petition to be open for signatures. Most petitions run for six months, but you can choose a shorter or longer timeframe, up to a maximum of 12 months.

When you create an e-petition, it may take five working days before it is published online. This is because we have to check that the content of your petition is suitable before it is made available for signature.

If we feel we cannot publish your petition for some reason, we will contact you within this time to explain. You will be able to change and resubmit your petition if you wish. If you do not do this within 10 working days, a summary of the petition and the reason why it has not been accepted will be published under the 'rejected petitions' section of the website.

When an e-petition has closed for signature, it will automatically be submitted to the Director of Legal Services. In the same way as a paper petition, you will receive an acknowledgement within 10 working days. If you would like to present your e-petition to a Council meeting, please contact the Democratic and Registration Services Manager within 10 working days of receipt of the acknowledgement.

A petition acknowledgement and response will be emailed to everyone who has signed the e-petition and elected to receive this information. The acknowledgment and response will also be published on this website.

### **How do I 'sign' an e-petition?**

You can see all the e-petitions currently available for signature here [www.derbyshire.gov.uk/petitions](http://www.derbyshire.gov.uk/petitions) . When you sign an e-petition you will be asked to provide your name, your postcode and a valid email address. When you have submitted this information you will be sent an email to the email address you have provided. This email will include a link which you must click on in order to confirm the email address is valid. Once this step is complete, your 'signature' will be added to the petition. People visiting the e-petition will be able to see your name in the list of those who have signed it but your contact details will not be visible.

### **What can I do if I feel my petition has not been dealt with properly?**

If you feel that we have not dealt with your petition properly, the petition organiser has the right to request to one of the Council's Improvement and Scrutiny Committees review the steps that the Council has taken in response to your petition. It is helpful to everyone, and can improve the prospects for a review if the petition organiser gives a short explanation of the reasons why the Council's response is not considered to be adequate.

The County Council has four Improvement and Scrutiny Committees, each with their own areas of responsibility as follows:

- Resources
- People
- Places
- Health

For further details of these committees, including their areas of responsibility and details of when and where they meet, refer to [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk) or contact the Democratic and Registration Services Manager.

The appropriate Committee will endeavor to consider your request at its next meeting, although on some occasions this may not be possible and consideration will take place at the following meeting. Should the committee determine we have not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include instigating an investigation, making recommendations to the Council's Cabinet and arranging for the matter to be considered at a meeting of the Full Council.

Once the request has been considered the petition organiser will be informed of the results within 5 working days. The results of the review will also be published on our website.

The provisions contained within the Petition Scheme will be the subject of regular review.

# **Appendix 3 - Council Procedure Rules**

## **STANDING ORDERS OF THE COUNTY COUNCIL**

1. Annual Meetings
2. General Meetings
3. Quorum
4. Order of Business
5. Minutes
6. Motions Requiring Notice
7. Motions Not Requiring Notice
8. Questions by Members
9. Questions by Members on the Report from Cabinet
10. Questions by the Public
11. Rules of Debate
12. Closure Motions and Budget Motions
13. Voting
14. Interests
15. Disorderly Conduct
16. Petitions
17. Committees
18. Canvassing
19. Suspension and Variation
20. Interpretation

1. The Annual Meeting of Council will be held at 2.00 pm on the third or fourth Wednesday in May each year, as Council may decide.
2. **General meetings** of the Council will take place in accordance with the programme of meetings decided at the Council's Annual Meeting. All meetings will be held at County Hall, Matlock, commencing at 2 pm.
  - 2.1 Members of the public may record and report on meetings which members of the public are allowed to attend. However, oral reporting or oral commentary during meetings is not permitted as this would be disruptive to the good order of the meeting and such conduct would be considered to be disorderly in accordance with Clause 15.
3. **Quorum** If there are not at least 16 Members present, the Chairman will adjourn the meeting to a specified time and date.
4. The **order of business** at the Council will be as follows:
  - (a) If necessary, the appointment of the Chairman
  - (b) Apologies
  - (c) Declarations of interests
  - (d) Chairman's announcements
  - (e) Minutes of the previous meeting
  - (f) Report of the Leader of the Council and Members' Questions
  - (g) Questions submitted by the public
  - (h) Petitions
  - (i) Reports of officers
  - (j) Presentations
  - (k) Report from the Cabinet and Members' questions on the Report
  - (l) Questions submitted by Members
  - (m) Motions
  - (n) Receive the minutes of committees, joint committees and the Fire Authority
- 4.1 Unless the majority of Members present vote for the meeting to continue, any meeting that has lasted for three hours will adjourn without delay. Any remaining business will be considered at the next ordinary meeting of the Council or an alternative date and time for a meeting will be arranged.
5. No discussion will take place upon the **minutes** of the Council except upon their accuracy.
- 5.1 The Chairman will sign the **Minutes** of the proceedings at the next suitable meeting.
- 5.2 Where in relation to any meeting of the Authority the next such meeting is a meeting called under paragraph 3 (Extra-Ordinary Meetings) of Schedule 12 of the Local Government Act 1972, the next following meeting of the Authority



(being a meeting called otherwise than under that paragraph) shall be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) (Signing of Minutes) of that schedule.

6. **Notice of a motion** shall be given in writing or by email by the Member to the Director of Legal and Democratic Services by 12 noon at least 10 working days before the meeting of the Council. The Director of Legal and Democratic Services will record the date of receipt in a book which shall be open to inspection by any person.

6.1 Motions for which notice has been given will be listed in the agenda in the order in which they were received unless the Member who gave notice states in writing that they wish to withdraw it.

6.2 Motions must be about matters for which the Council has responsibility or which affect its area.

7. **Notice** shall not be required for Motions

(a) Concerning the appointment of the Chairman of the County Council, Civic Chairman of Derbyshire County Council and Vice Civic Chairman of Derbyshire County Council for the year at the meeting, the accuracy of minutes of the Council, the order of business, or

(b) Proposing appointments, or references to decision-making bodies, receipt of minutes and approval of any recommendations, amendments to motions, leave to withdraw motions, adjourning the meeting or exclusion of the public, or

(c) Under Standing Orders 12 (closure of debate), 15 (that a named member be not further heard) or 19 (suspension of Standing Orders).

8. **Questions by Members**

8.1 After giving written notice to the Director of Legal and Democratic Services by 12 noon on the Friday before the Council Meeting, a Member of the Council may ask the Chairman, a member of the Executive or the Chairman of any Committee or Sub-Committee a question on any matter in relation to which the Council has powers or duties or which affects Derbyshire.

8.2 An answer may take the form of:

(a) a direct oral answer;

(b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or

- (c) Where the reply cannot conveniently be given orally, a written answer circulated later to the questions

8.3 A Member asking a question under this Standing Order may ask one supplementary question without notice of the Member to whom the first question was asked. The supplementary question must arise directly out of the original question or the reply.

8.4 A Member may ask the nominated representative of the Derbyshire Fire Authority a question on the discharge of the functions of the Authority. Written notice of any such questions must first be given to the Director of Legal and Democratic Services by 12noon on the Friday before the Council meeting.

**9A. Questions by Members on the Report of the Leader of the Council**

- (a) A Member of the Council may ask the Leader of the Council a question directly arising from the report.

- (b) A Member asking a question under this Standing Order may ask one supplementary question which must arise directly out of the original question or reply.

**9B. Questions by Members on the Report from Cabinet**

- (a) After giving written notice to the Director of Legal and Democratic Services by 12 noon on the Friday before the Council meeting, a Member of the Council may ask a member of the Executive a question on items in the report.

- (b) A Member asking a question under this Standing Order may ask one supplementary question without notice of the Member to whom the first question was asked. The supplementary question must arise directly out of the original question or the reply.

**10. Questions by the Public**

**General**

10.1 Members of the public who are on the Derbyshire County Council register of electors, or are Derbyshire County Council tax payers or non-domestic tax payers, may ask questions of members of the Cabinet at ordinary meetings of the Council. The maximum period of time for questions by the public at a Council Meeting shall be 30 minutes.

**Order of Questions**

10.2 Questions will be asked in the order notice of them was received, except that the Chairman may group together similar questions.

### **Notice of Questions**

- 10.3 A question may only be asked if notice has been given by delivering it in writing email to the Director of Legal and Democratic Services no later than 12noon three working days before the Council Meeting (ie on a Friday when Council meets on the following Wednesday). The notice must give the name and address of the questioner and the name of the Cabinet Member of the Council to whom the question is to be put.

### **Number of Questions**

- 10.4 At any one meeting no person may submit more than one question, and no more than one such question may be asked on behalf of one organisation.

### **Scope of Questions**

- 10.5 The Director of Legal and Democratic Services may reject a question if it:
- Exceeds 200 words in length;
  - is not about a matter for which the Council has a responsibility, or which affects Derbyshire;
  - is defamatory, frivolous or offensive;
  - is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
  - requires the disclosure of confidential or exempt information.

### **Asking the Question at the Meeting**

- 10.6 The Chairman will invite the questioner to put the question to the member named in the notice. If the questioner who has submitted a written question is unable to be present, he/she may ask the Chairman to put the question on his/her behalf. In the absence of the questioner, the Chairman may ask the question on the questioner's behalf, indicate that a written reply will be given, or decide that the question will not be dealt with.

### **Supplementary Question**

- 10.7 A questioner who has put a question in person may also put one supplementary question without notice to the Cabinet Member who has replied to his/her original question. A supplementary question must arise directly out of the original question or the reply. The Chairman may reject a supplementary question on any of the grounds in Standing Order 10.5 above.

## **Written Answers**

- 10.8 The time allocated for questions by the public at each meeting will be 30 minutes. This period may be extended at the discretion of the Chairman. Any questions not answered at the end of the time allocated for questions by the public will be answered in writing. Any question that cannot be dealt with during public question time because of the non-attendance of the Cabinet Member to whom it was to be put, will be dealt with by a written answer.

## **Reference of Question to the Council Cabinet or a Committee**

- 10.9 Unless the Chairman decides otherwise, no discussion will take place on any question, but any Member may move that a matter raised by a question be referred to the Cabinet or the appropriate Committee or Sub-Committee. Once seconded, such a motion will be voted upon without discussion.

## **Record of Questions**

- 10.10 The Director of Legal and Democratic Services will keep a record, open to public inspection, of all public questions received and will immediately send a copy of the question to the Member to whom it is to be put. Rejected questions will include reasons for the rejection. Copies of all questions will be circulated to all Members and will be made available to the public attending the meeting. The Director of Legal and Democratic Services will be responsible for sending to the questioner a copy of the answer provided at the Council Meeting as soon as practicable after the Council Meeting.

## **11. Rules of Debate**

- 11.1 Members shall stand when speaking and address the Chairman.
- 11.2 Whenever the Chairman rises, any member then standing shall sit and the Council shall be silent.
- 11.3 If two or more Members wish to speak the Chairman shall call one, ordinarily giving the other(s) a later opportunity to speak.
- 11.4 A motion or amendment shall not be discussed unless it has been proposed and seconded.
- 11.5 The proposer of a motion with the consent of the Council may alter the motion.
- 11.6 When a motion is under debate no other motion shall be moved except one of the motions specified in Standing Order 7.
- 11.7 No speech may exceed 10 minutes except with the consent of the Chairman.

11.8 A Member may rise on a point of order, or in personal explanation, and shall be entitled to be heard. A point of order shall relate only to an alleged breach of a Standing Order or statutory provision which the Member will specify. A personal explanation shall be confined to a relevant earlier statement which has been misunderstood.

11.9 The mover of the motion has a right of reply at the close of the debate on the motion or on any amendment. Any other Member may only speak a second time in a debate under Standing Order 11.8 or with the permission of the Chairman.

11.10 An amendment shall be relevant to the motion and shall not merely negate or be negative to it:

- i) it shall be either to refer a matter to the Cabinet or a committee; or
- ii) to insert, add, alter or leave out words in or from the motion. A further amendment shall not be moved while an amendment is being considered.

11.11 The ruling of the Chairman under this Standing Order shall not be open to discussion.

## **12. Closure Motions and Budget Motions**

12.1 At the conclusion of a speech of a Member, another Member may move that the question be now put or the meeting or debate be adjourned. If such closure motion is seconded, and the Chairman does not rule that the matter should be discussed further on that occasion, the Chairman shall put to the vote the closure motion. In the case of a debate closed by a motion that the question be now put the right of reply of the mover of the original motion will then be exercisable.

12.2 No motion or amendment to propose a precept shall be considered unless it contains sufficient detail within it to justify the precept moved. In determining whether or not a particular motion or amendment is in order the Chairman shall have regard to:

- i) advice of relevant officers;
- ii) information available within the motion or amendment concerning proposed reductions or increases in service estimates, or proposed measures which would reduce expenditure or increase income, or the government grant implications of the level of expenditure proposed; and
- iii) any other relevant matter.

## **13. Voting**

13.1 When a vote is to be taken the Chairman shall call for a show of hands or if five Members stand a recorded vote. If there is a recorded vote a record of those voting for and against will be kept and any Member present but not declaring their vote shall be recorded as abstaining.

13.2 Where immediately after a vote is taken at a meeting of a relevant body, if any Member of that body so requires, there shall be recorded in the minutes of the proceedings of that meeting whether that person cast his or her vote for the question or against the question or whether he or she abstained from voting.

In this paragraph "relevant body" means the authority, the Cabinet, a committee or sub-committee of the Authority or a relevant joint committee or sub-committee of such a body.

13.3 Immediately after any vote on any decision relating to the making of the calculation or the issuing of the precept is taken at a budget decision meeting there must be recorded in the minutes the names of the persons who cast votes for the decision or against the decision or who abstained from voting.

13.4 Where three or more persons are nominated for any position and there is not a majority in favour of any one person, the person having the least number of votes shall be disregarded and a fresh vote taken and so on until there is a majority in favour of one person.

13.5 If there are equal numbers of votes for or against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.

#### **14. Interests**

14.1 Where any business of the meeting relates to or is likely to relate to:

- (a) a Disclosable Pecuniary Interest as described at paragraph 4(1) of the Code of Conduct for Members;
- (b) a Personal Interest as described at paragraph 4(2) of the Code of Conduct for Members; or
- (c) any Other Interest as described at paragraph 4(3) of the Code of Conduct for Members.

held by a Member, the Member must, at the commencement of the consideration of that item of business, or as soon as the interest becomes apparent, disclose to the meeting the existence and nature of that interest.

14.2 Where a Member discloses an interest, and that interest is a Disclosable Pecuniary Interest, the Member must withdraw from the meeting room where

the item of business is being discussed and, unless the Member has been granted a dispensation by the Governance, Ethics and Standards Committee, he or she may not:

- (a) participate in any discussion of the matter at the meeting
- (b) vote on the matter at the meeting
- (c) continue to deal with that matter

14.3 Disclosures of interests will be recorded in the minutes of the meeting.

## 15. **Disorderly Conduct**

15.1 If at a meeting any Member of the Council commits misconduct by persistently disregarding the ruling of the Chairman, by behaving irregularly, improperly or offensively or by wilfully obstructing the business of the Council, the Chairman or any other Member may move "that the Member named be not further heard" and the motion, if seconded, shall be put and determined without discussion.

15.2 If misconduct by the Member continues the Chairman shall move that the Member named shall be excluded from the meeting and the motion, if seconded, shall be put and determined without discussion.

15.3 If a member of the public interrupts the proceedings at any meeting the Chairman shall warn the person. If the interruption continues the Chairman shall order the person's removal from the meeting. In the case of a general disturbance in any part of a meeting open to the public, the Chairman shall order that part to be cleared.

15.4 The Chairman may, in the event of a disturbance interfering with the orderly dispatch of business, adjourn or suspend a meeting for such period as the Chairman considers appropriate.

## 16. **Petitions**

16.1 Any **petition** signed by 10 or more members of the public and not received to be dealt with under a procedure regulated by law, shall be dealt with in accordance with the Council's Petition Scheme (Appendix 2).

## 17. **Committees**

17.1 When **appointing** a committee the Council may also appoint the Chairman and Vice- Chairman, who in each case must be a Member of the Council.

17.2 A **substitute** Member may take the place of a Member who is unable to attend a meeting of one of the Committees or Sub-Committees. Such substitute Member, once named by a member of the absent Member's

political group, will be accepted onto the Committee with power to speak and vote

- 17.3 The **quorum** of a committee or sub-committee shall be one quarter of the whole number of Members, or two, whichever is the greater number;
- 17.4 **Meetings** - The Chairman of a committee may call a special meeting at any time. A quarter of the Members of a committee may require the Director of Legal and Democratic Services to call a special meeting. The requisition must be in writing setting out the business to be considered. The special meeting will only consider the business so set out. All meetings of committees shall be summoned by the Director of Legal and Democratic Services.
- 17.5 **Information** - A copy of the agenda of every meeting of a Council, committee together with the index of reports of Executive Directors and Directors shall be sent to every Member of the Council, in accordance with the Access to Information Rules (Appendix 6).
- 17.6 **Local Members** - With the consent of the Chairman, a Member whose electoral division is directly affected by a matter or who has special knowledge which is relevant, may attend any committee and may speak (but not vote) on any particular matter.
- 17.7 **Requests from Members** - The agenda for any committee shall include consideration of any item requested by a member of the committee, subject to the Director of Legal and Democratic Services receiving written notice at least 10 working days before the date of the meeting.
- 17.8 **Application of Standing Orders** - Standing Orders 2 (general meetings) 13 (voting), 15 (disorderly conduct) and 20 (interpretation) shall apply to meetings of Committees with any necessary adaptation.
18. **Canvassing** - A Member of the Council shall not solicit for any person any appointment within the Council but this shall not preclude a Member from giving a written reference for a candidate for a post.
19. **Suspension and Variation**
- 19.1 Subject to paragraph 2 of this Standing Order any of the preceding Standing Orders may be suspended so far as regards any business of the meeting where suspension is moved.
- 19.2 A motion to suspend Standing Orders shall not be moved without notice unless at least one half of the whole number of the Members of the Council are present.



- 19.3 Any motion to add to, vary or revoke any Standing Order, shall, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.
20. **Interpretation** The ruling of the Chairman as to the application and meaning of any Standing Order shall not be challenged at any meeting of the Council.

# **Appendix 4 - Cabinet Procedure Rules**

## **1. How does the Cabinet operate?**

### **1.1 Who may make cabinet decisions?**

The arrangements for the discharge of cabinet functions may be set out in the cabinet arrangements adopted by the Council. If they are not set out there, then the Leader or Cabinet may decide how they are to be exercised. In either case, the arrangements or the Leader may provide for cabinet functions to be discharged by:

- i) the Cabinet as a whole;
- ii) a committee of the Cabinet;
- iii) an individual member of the Cabinet;
- iv) an officer;
- v) joint arrangements; or
- vi) another local authority

In the absence of a Cabinet Member, the Leader or Deputy Leader may discharge cabinet functions falling within that Cabinet Member's area of responsibility.

### **1.2 Delegation by the Leader**

At the annual meeting of the Council, the Council will approve a written record of delegations to be included in the Council's scheme of delegation at Appendix 1 to this Constitution. The Council will make available the following information about cabinet functions in relation to the coming year:

- i) the names, addresses and electoral divisions of the people appointed to the Cabinet by the Council;
- ii) the extent of any authority delegated to Cabinet Members individually, including details of the limitation on their authority;
- iii) the terms of reference and constitution of such committees as are appointed and the names of Cabinet Members appointed to them;
- iv) the nature and extent of any delegation of decision making functions to committees, any other authority or any joint arrangements and the names of those Cabinet Members appointed to any joint committee for the coming year; and

### **1.3 Sub-delegation of Cabinet decision making functions**

- (a) Where the Cabinet, a committee of the Cabinet or an individual member of the Cabinet is responsible for an cabinet decision making function, they may delegate further to a committee, joint arrangements or an officer.
- (b) Unless the Council directs otherwise, then the Cabinet may delegate further to a committee of the Cabinet or to an officer.
- (c) Unless the Cabinet directs otherwise, a committee of the Cabinet to whom functions have been delegated may delegate further to an officer.
- (d) Even where cabinet functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.

### **1.4 The Council's scheme of delegation and cabinet functions**

- (a) Subject to (b) below the Council's scheme of delegation will be subject to adoption by the Council and may only be amended by the Council. It will contain the details required in Article 7 (Decision Making) and be set out in Appendix 1 of this Constitution.
- (b) If the Cabinet is able to decide whether to delegate its functions, it may amend the scheme of delegation relating to its functions at any time during the year. To do so, the Cabinet must give written notice to the Director of Legal and Democratic Services and to the person, body or committee concerned. The notice must set out the extent of the amendment to the scheme of delegation, and whether it entails the withdrawal of delegation from any person, body, committee or the Cabinet as a whole. The Director of Legal and Democratic Services will present a report to the next ordinary meeting of the Council setting out the changes made by the Cabinet.
- (c) Where the Leader seeks to withdraw delegation from a Cabinet committee of the Cabinet, notice will be deemed to be served on that committee when he/she has served it on its Chairman.

## **1.5 Conflicts of Interest**

- (a) Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Appendix 11 of this Constitution.
- (b) If every member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Appendix 11 of this Constitution.
- (c) If the exercise of a cabinet function has been delegated to a committee of the Cabinet, an individual member or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Code of Conduct for Members referred to in Appendix 11 of this Constitution.

## **1.6 Cabinet meetings – when and where?**

The Cabinet will normally meet on a four weekly basis, or at such times deemed appropriate by the Leader, at times to be agreed by the Leader. The Cabinet shall normally meet at the Council's main offices or another location to be agreed by the Leader.

## **1.7 Public or private meetings of the Executive?**

The Cabinet meeting will be open to the public, subject to confidentiality rules. Members of the public may record and report on meetings which members of the public are allowed to attend. However, oral reporting or oral commentary during meetings is not permitted as this would be disruptive to the good order of the meeting and such conduct would be considered to be disorderly in accordance with Clause 15 of the Council Procedure Rules (Appendix 3).

## **1.8 Quorum**

The quorum for a meeting of the Cabinet shall be 3 including the Leader or Deputy Leader.

## **1.9 How are decisions to be taken by the Cabinet?**

- (a) Decisions which have been delegated to the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information rules in Appendix 6 of the Constitution.
- (b) Where decisions are delegated to a committee of the Cabinet, the rules applying to cabinet decisions taken by them shall be the same as those applying to those taken by the Cabinet as a whole.

## **2. HOW ARE CABINET MEETINGS CONDUCTED?**

### **2.1 Who presides?**

The Leader, or in his/her absence, the Deputy Leader.

### **2.2 What business?**

At each meeting of the Cabinet the following business will be conducted:

- i) consideration of the minutes of the last meeting;
- ii) declarations of interest, if any;
- iii) matters referred to the Cabinet (whether by an Improvement and Scrutiny Committee or by the Council) for reconsideration by the Cabinet in accordance with the provisions contained in the Improvement and Scrutiny Procedure Rules as set out in Appendix 5 or the Budget and Policy Framework Procedure Rules set out in Appendix 7 of this Constitution;
- iv) matters set out in the agenda for the meeting, (in accordance with the Access to Information Procedure rules set out in Appendix 6 of this Constitution)
- v) consideration of reports from an Improvement and Scrutiny Committee.

### **2.3 Consultation**

All reports to the Cabinet from any member of the Cabinet 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 Improvement and Scrutiny Committee, 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.

### **2.4 Who can propose items for the Cabinet agenda?**

- Any member of the Cabinet;
- Head of Paid Service;  
Director of Finance and ICT (Chief Financial Officer);  
Director of Legal and Democratic Services (Monitoring Officer);
- Executive Directors;
- Requests from any Member of the Council

# **Appendix 5 - Improvement and Scrutiny Procedure Rules**

## **1. What will be the number and arrangements for Improvement and Scrutiny Committees?**

The Council will have four Improvement and Scrutiny Committees, their size to be determined at the Annual Meeting of the Council, and terms of reference as set out in Article 6. Such Committees may appoint Sub-Committees or Panels as they consider appropriate.

## **2. Who may sit on Improvement and Scrutiny Committees?**

All Councillors except members of the Cabinet may be members of an Improvement and Scrutiny Committee. However, no member may be involved in scrutinising a decision in which he/she has been directly involved.

## **3. Education Representatives and Co-optees**

The Improvement and Scrutiny Committee (People) will include in its membership the following representatives with voting rights:

- (a) One Church of England diocese representative;
- (b) One Roman Catholic diocese representative;
- (c) Two parent governor representatives; and

Where the Committee is dealing with matters other than education, these representatives shall not vote but may stay in the meeting and speak.

Each Improvement and Scrutiny Committee, or sub-committee shall be entitled to appoint other non-voting co-opted members to assist in carrying out their work as they consider appropriate.

## **4. Meetings of the Improvement and Scrutiny Committees**

Each Improvement and Scrutiny Committee will meet in accordance with a timetable of meetings approved by the Council. Normally each Committee will meet bi-monthly but may be called from time to time as and when appropriate. A meeting may also be called by the Chairman of the relevant Improvement and Scrutiny Committee, or if requisitioned by one third of the number of members of the Committee (rounded up).

## **5. Quorum**

The quorum for an Improvement and Scrutiny Committee shall be one quarter of the number of members of the committee (rounded up).

## **6. Who Chairs Improvement and Scrutiny Committee Meetings?**

Chairmen of Improvement and Scrutiny Committees/Sub-Committees will be drawn from among the Councillors sitting on the Committee/Sub-Committee, and subject to this requirement the Committee/Sub-Committee may appoint such person as it considers appropriate as Chairman.

## **7. Work Programme**

Each Improvement and Scrutiny Committee will be responsible for setting their own work programme and in doing so shall take account of the wishes of the members of the Committee. The work programme should include matters on which there are requests from the Council or the Cabinet for advice.

## **8. Agenda Items**

Any member of an Improvement and Scrutiny Committee shall be entitled to give notice to the Director of Legal & Democratic Services that he/she wishes an item, relevant to the functions of the Committee, to be included on the agenda for the next available meeting of the Committee. On receipt of such a request the Director of Legal & Democratic Services will ensure that it is included on the next available agenda. Members who are not appointed to the Improvement and Scrutiny Committee in question may ask their party group spokesman to give notice of an item.

Improvement and Scrutiny Committees shall also respond, as soon as their work programme permits, to requests from the Council, and if it considers it appropriate the Cabinet, to review particular areas of Council activity. Where they do so, the Committees shall report their findings and any recommendations back to the Cabinet and/or Council. The Council and/or the Cabinet shall consider the report of the Improvement and Scrutiny Committee at their next available meeting.

## **9. Policy and Project Reviews**

- (1) The role of the Improvement and Scrutiny Committees in relation to the development of the Council's budget and policy and framework is set out in detail in the Budget and Policy Framework Procedure Rules.
- (2) In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, Improvement and Scrutiny Committees may make proposals to the Cabinet and/or Council relating to matters within their terms of reference.
- (3) Improvement and Scrutiny Committees may hold inquiries and investigate the available options for future direction in policy development and may appoint advisers to assist them in this process. They may go on site visits, conduct surveys, hold public meetings, commission research and do other things that are reasonably considered necessary to inform their deliberations. They may ask witnesses to attend a meeting on matters under consideration and, if appropriate, pay advisers and witnesses a reasonable fee and expenses for doing so.

## **10. Reports from Improvement and Scrutiny Committee**

- (1) Once it has formed recommendations on proposals, the Improvement and Scrutiny Committee will prepare a formal report and submit it either to the Cabinet or to the Council as the Committee thinks appropriate.
- (2) If one single final report cannot be agreed, then a minority report may be prepared and submitted alongside the majority report.
- (3) The Cabinet or Council will receive the final scrutiny report and respond usually within two months confirming acceptance or otherwise of the report's recommendation and an action plan for implementation.

#### **11. Rights to documents**

- (1) Members of Improvement and Scrutiny Committees have the rights to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution. Members will also be informed of the Council's forward plan of key decisions; and of executive decisions of the Council, Cabinet and Committees.
- (2) Nothing in this paragraph prevents more detailed liaison between the Cabinet and Improvement and Scrutiny Committees as appropriate depending on the particular matter under consideration.

#### **12. Attendance at Improvement and Scrutiny Committees**

- (1) An Improvement and Scrutiny Committee may scrutinise and review decisions made or actions taken or proposed to be taken in connection with the discharge of the Council's functions. As well as reviewing documentation, in fulfilling its Improvement and Scrutiny role, it may request any member with Cabinet responsibilities, senior officer of the Council, or other person to attend and provide information within their remit on:
  - Measures to improve the implementation of Council policies
  - Any particular decision or series of decisions;
  - The extent to which actions taken implement Council policy
  - Service performance

The overriding intention is to seek improvements in the delivery of Council's services.

- (2) Where the response to any question or request for information would disclose confidential or exempt information within the meaning of Schedule 12A of the Local Government Act 1972, the Committee shall be so advised by the member or officer and the Chairman shall move that the answer is taken in confidential session and the question shall be put without being seconded or debate. No member or officer giving evidence to an Improvement and Scrutiny Committee shall be under any obligation to disclose publicly personal information about an individual employee, child in care or at school, or any recipient of Council services.



- (3) An Improvement and Scrutiny Committee may invite people other than members or officers to discuss issues of local concern and/or answer questions. It may, for example, wish to hear from residents, service users and representatives from other public sector organisations.

### **13. Call-in**

Call-in should only be used in exceptional circumstances. These are where members have evidence which suggests that issues have not been handled in accordance with the decision-making principles set out in Article 13 (decision-making).

- (1) When a decision is made by Cabinet, an individual member of Cabinet, a Committee of Cabinet, or a key decision is made by an officer with delegated authority from Cabinet or under joint arrangements the decision shall be published, including where possible by electronic means and shall be available at the main offices of the Council, normally within one week of the decision being made.

All Members will be informed of the decision made.

- (2) Notice of the decision will bear the date upon which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless four Councillors, including two Councillors from at least two political groups give notice to the Director of Legal & Democratic Services requesting a call-in of that decision.
- (3) The Director of Legal & Democratic Services upon receiving a request for the call-in of a decision shall notify the decision taker of the call-in and inform the appropriate Chairman of the Improvement and Scrutiny Committee. A meeting of the appropriate Improvement and Scrutiny Committee will then consider the requisitioned call-in decision at its next available meeting.
- (4) If, having considered the decision, the Improvement and Scrutiny Committee is still concerned about it, it may then refer it back to the decision-making person or body for reconsideration setting out in writing the nature of the concerns or refer the matter to full Council. If the Improvement and Scrutiny Committee has no objection to the decision, those requesting the call-in shall be so informed and the decision implemented.
- (5) If the matter was referred to full Council and the Council does not object to a decision which has been made then the decision will be effective. However, if the Council does object and the decision is within its terms of reference the decision will be amended according to the Council's wishes. In those cases where the Council does object and has no locus to make decisions in respect of Cabinet decisions, the Council will refer any decision to which it objects back to the decision-making person or body together with the Council's views on the decision. That decision-making body or person shall choose whether to amend the decision or not, before reaching a final decision and implementing it.

### **Call-in and Urgency**

- (6) The call-in procedure set out above shall not apply where the decision being taken by Cabinet 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 interest. All reports recommending that decisions be taken should say whether or not it is proposed that call-in be waived. The record of the decision, and notice by which it is made public, shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The Chairman of the appropriate Improvement and Scrutiny Committee should agree both the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. Decisions taken as a matter of urgency should be reported to the next available meeting of the Council, together with the reasons for urgency.
- (7) The operation of the provisions in relation to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

#### **14. Procedure at Improvement and Scrutiny Committee Meetings**

- (1) Improvement and Scrutiny Committees shall consider the following business:
  - (a) Minutes of the last meeting.
  - (b) Consideration of any matter referred to the Committee for a decision in relation to call-in for a decision.
  - (c) Responses of Cabinet or Council to reports of the Improvement and Scrutiny Committee.
  - (d) Business as otherwise set out in the agenda.
- (2) Where Improvement and Scrutiny Committees conduct investigations and reviews, the Committees may also ask people to attend to give evidence at meetings which are to be conducted in accordance with the following principles:
  - (a) That the investigation be conducted fairly and all members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak.
  - (b) That those assisting the Committee by giving evidence be treated with respect and courtesy and see that the investigation be conducted so as to maximize the efficiency of the investigation or analysis.
- (3) Following any investigation or review the Committee shall prepare a report, for submission to the Cabinet and/or Council, as appropriate, and shall make its report and findings public.

#### **15. Matters within the remit of more than one Improvement and Scrutiny Committee**

- (1) Where an Improvement and Scrutiny Committee conducts a review or scrutinises a matter which also falls (whether in whole or in part) within the remit of another Improvement and Scrutiny Committee, then the Committee conducting the review shall invite the Chairman of the other Committee (or his/her nominee) to attend its meetings when the matter is being reviewed.

- (2) To enable the work of the three Improvement and Scrutiny committees to be co-ordinated, monthly meetings of the chairmen will be held to discuss future work programmes and agree the allocation of project reviews to appropriate Committees.

## **16. Councillor Call For Action**

Issues may be reported to an Improvement and Scrutiny Committee as a last resort under the Guide for Derbyshire County Councillors or Councillor Call for Action (February 2009).

## **CALL-IN PROCEDURES**

### **Procedure to be Adopted when a Decision is Called-In**

1. The Director of Legal & Democratic Services on receiving a request for the call-in will check that the call-in notice is signed by the requisite number of Members. The call-in notice must identify which principle(s) of decision making in Article 15 of the constitution have allegedly been breached and give reasons. This requirement will be checked by the Director of Legal & Democratic Services.
2. The Director of Legal & Democratic Services will arrange a meeting of the appropriate Committee, in consultation with the Chairman of that committee.
3. The Director of Legal & Democratic Services will acknowledge the call-in notice and notify the appropriate Cabinet member.
4. The Scrutiny Officer will invite the signatories to the call-in notice, the relevant Council Cabinet member(s) and the relevant Strategic Director to attend the call-in meeting. The call-in signatories and the relevant Council Cabinet member or a Cabinet member nominee would be expected to attend. The relevant Strategic Director may nominate a second or third tier officer to attend in his/her place. If none of the call-in signatories attend, the Committee will decide whether to proceed. If the Committee decides not to proceed, then the call-in will be decided on the basis that the Committee does not have any concerns it wishes to refer to the Council Cabinet, and the Council Cabinet will not be required to reconsider the decision.
5. The Scrutiny Officer will send copies of the call-in notice, minute of Council Cabinet/Cabinet Member meeting and any associated reports to members of the Committee with the agenda for the meeting.
6. The Scrutiny Officer will liaise with the Chairman and the **Vice** Chairman of the Committee over any other appropriate arrangements for the call-in, e.g. additional information. witnesses etc. If the Chairman or **Vice** Chairman have signed the call-in notice, the SO will liaise with another member of the Committee nominated by the Chairman or Vice **Chairmen**.

7. The aim of the Committee meeting when the call-in is considered should be inquisitorial not adversarial. The Meeting Procedure for a call-in of a Council Cabinet decision will be adopted.

## **Meeting Procedure for a Call-in of a Council Cabinet Decision**

### **The role of the Chair**

1. This procedure shall be implemented at the meeting by the Chairman and any deviation from this procedure will be at the discretion of the Chairman. The Chairman will advise attendees at a Call-in meeting of any reasonable intention to deviate from the procedure at the start of the meeting where possible.
2. In the absence of the Chairman, the meeting will be led by the **Vice** Chairman. In the absence of both, the Monitoring Officer or their representative shall facilitate a vote of Members so that a Chairman shall be appointed. The appointed Member will chair for the duration of the meeting or until the Chairman or **Vice** Chairman is present.
3. Where the Chairman is in attendance, the **Vice** Chairman shall be treated in the same way as every other Member of the Board.

### **Role of signatories to the Call-in notice and the Council Cabinet member**

4. Signatories to the Call-in notice and the Council Cabinet Member will be invited to provide evidence to the Committee, both in terms of a presentation and by answering questions put to them by the Committee.
5. There is no provision for either the signatories to the Call-in or the Cabinet Member to question each other, either directly or through the Chairman.

### **Role of officers in attendance**

6. Supporting Officers will be present from Democratic Services (providing procedural advice to the Chairman and Committee as required and recording decisions) and Improvement and Scrutiny (advising the Chairman and the Committee as required on relevant scrutiny of the decision under consideration). The Monitoring Officer or their representative may also be present and may undertake any of these duties in addition to providing any legal advice if required.
7. Strategic Directors or Assistant Directors Heads of Service may provide support to the Council Cabinet Member and contribute to the meeting as required by advising the Committee on the strategic, technical or operational basis of decisions taken or considerations given relevant to the Call-in, or by responding to questions referred by the Council Cabinet Member to them.

### **Procedure at the meeting**

8. The signatories to the Call-in notice will be invited to address the Committee on the Call-in, and will be required to focus on justifying why they considered the council's decision-making principles to have been breached as raised in the signed Call-in Notice lodged with the Monitoring Officer. The order in which signatories are invited to speak will be at the discretion of the Chair. Signatories shall limit their contributions to the reasons for the call-in.
9. After all signatories have made their contributions, members of the Committee will be invited to put questions to the signatories and receive responses to those questions.
10. The Council Cabinet Member will then be invited to address the Committee on the call-in by the Chairman and will be required to respond to the assertions relating to the council's decision-making principles as set out in the Call-in notice.
11. After the Council Cabinet Member has made their contribution, members of the Committee will be invited to put questions to the Council Cabinet Member. The Council Cabinet member shall be entitled to refer questions put to them to the Officers supporting them.
12. One nominated signatory shall be invited to make a further statement to the Committee, lasting no more than ten minutes, summarising the signatories' case and responding to any further points raised by the Council Cabinet Member at Points 10 and 11.
13. The Council Cabinet Member shall be invited to make a further statement to the Committee lasting no more than ten minutes, responding to the Call-in Notice and any points raised by the nominated signatory at Point 12
14. There shall be no further contributions from signatories to the Call-in notice, the Council Cabinet Member or Officers attending in support of the Council Cabinet Member.

### **Contributions by members of the Committee**

15. The Chairman shall invite members of the Committee to make any contributions they may wish prior to the vote being taken. Each member of the Committee shall be permitted to make one speech lasting no more than ten minutes.

Voting on whether decision-making principles have or have not been breached

16. The Chairman shall then ask each Member in turn to state whether they consider the decision-making principles identified in the Call-in Notice were, or were not, breached giving reasons. Where a Member considers that a principle has been

breached, they will be required, at this stage, to state which principles they consider to have been breached. This information shall be recorded by the Monitoring Officer or their representatives.

17. The Chairman may, at their discretion, state whether they believe the decision-making principles identified in the Call-in Notice were or were not breached, giving reasons.

#### **Finding of no breach**

18. In the event that a majority of Members consider that there was not a breach, the Chairman will state that the Committee has resolved that the Council Cabinet Decision identified in the Call-in Notice did not breach the decision-making principles and close the meeting.

#### **Finding of a breach**

19. In the event that a majority of Members consider that there was a breach in the decision making procedure, the Chairman will invite the Monitoring Officer or their representative to address the Committee. The Monitoring Officer or their representative will state which decision making principles were individually identified by Committee members as having been breached, and which of those principles were identified by a majority of Members present as having been breached.
20. The Chairman will declare the outcome of the vote and the resultant resolution and close the meeting referring the decision back to the next meeting of the Council Cabinet.

#### **Consideration of multiple Call-in notices in relation to the one decision of Council Cabinet**

21. In the event that more than one Call-in notice is received in relation to a single matter, the Chairman will use their discretion to vary the procedure accordingly to afford signatories to all Call-in notices equal opportunity to state their case.

# **Appendix 6 - Access to Information Procedure Rules**

## **1. SCOPE**

- 1.1 These rules apply to all public meetings of the Council, the Cabinet, Improvement and Scrutiny Committees, the Regulatory Committees and other committees of the Council (together called meetings).
- 1.2 Where the Governance, Ethics and Standards Committee is convened to consider or review, as the case may be, an allegation that a Member has contravened the Council's Code of Conduct for Members, the provisions set out in the Council's procedure for considering complaints that Members have breached the Code of Conduct shall apply and the meeting and papers will not be open to the public.

## **2. ADDITIONAL RIGHTS TO INFORMATION**

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law nor do these rules limit or diminish the Council's duties to protect certain information, including personal information. This includes the rights and duties arising from the provisions of the Access to Information Legislation.

## **3. RIGHTS TO ATTEND MEETINGS**

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

## **4. NOTICES OF MEETING**

The Council will give at least five clear days' notice of any meeting by posting details of the meeting at County Hall, Matlock and on its website at [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk).

## **5. 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 office and on the website at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda (where reports are prepared after the summons have been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Councillors).

## **6. SUPPLY OF COPIES**

The Council will supply copies of:

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

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

## **7. ACCESS TO MINUTES ETC AFTER THE MEETING**

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

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

## **8. BACKGROUND PAPERS**

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

The Director of Legal and Democratic Services 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 any important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report

but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of Cabinet reports, the advice of a political advisor.



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

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

## **9. SUMMARY OF PUBLIC'S RIGHTS**

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at County Hall.

## **10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS**

10.1 The public may only be excluded under 10.2 or 10.3 for the part or parts of the meeting during which it is likely that confidential or exempt information will be disclosed.

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

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

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

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

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

### **10.4 Meaning of confidential information**

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

### **10.5 Meaning of exempt information**

#### **Schedule 12A LGA 1972**

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

<i>Category</i>		<i>Condition</i>
1	Information relating to any individual.	
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)	<p>Information is not exempt information if it is required to be registered under:</p> <p>(a) the Companies Act 1985;  (b) the Friendly Societies Act 1974  (c) the Friendly Societies Act 1992  (d) The Industrial and Provident Societies Acts 1965 to 1978  (e) the Building Societies Act 1986; or  (f) the Charities Act 1993</p> <p>“Financial or business affairs” includes contemplated, as well as past or current, activities.</p>
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.	<p>“Labour relations matters” are any matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ie matters which may be the subject of a trade dispute or any dispute about any of those matters.</p> <p>For the purposes of this paragraph this shall apply to office-holders under the authority as it applies in relation to employees of the authority.</p>
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	
6	<p>Information which reveals that the authority proposes:</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make any order or direction under any enactment.</p>	
7	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	

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

In all cases the Director of Legal and Democratic Services shall determine whether the public interest as set out above is satisfied.

## **11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the Director of Legal and Democratic Services thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" pursuant to Schedule 12A together with the category of information likely to be disclosed.

## **12. APPLICATION OF RULES TO THE CABINET**

- 12.1 Rules 13-28 apply to the Cabinet and its committees. If the Cabinet or its committees meet to take a key decision then it must also comply with Rules 1-11 unless Rule 14 (general exception) or Rule 15 (special urgency) apply. A key decision is as defined in Article 15 of this Constitution.
- 12.2 If the Cabinet or its committees meet to discuss a key decision to be taken collectively, within 28 days of the date according to the Notice of key decision by which it is to be decided, then it must also comply with Rules 1-11 unless Rule 14 (general exception) or Rule 15 (special urgency) apply. A key decision is as defined in Article 7 of this Constitution. This requirement does not include meetings whose sole purpose is for officers to brief members.

## **13. PROCEDURE BEFORE TAKING KEY DECISIONS**

### **13.1 Notice of Key Decision**

Subject to Rule 14 (general exception) and Rule 15 (special urgency), a key decision may not be taken unless:

- (a) a notice (called here a Notice of Key Decisions) has been published in connection with the matter in question;
- (b) at least 28 clear days have elapsed since the publication of the Notice of Key Decision; and

- (c) where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

### **13.2 Contents of Notice of Key Decision**

The Notice of Key Decision will state that a key decision is to be made by the Cabinet, a Committee, an individual member of the Cabinet or under joint arrangements in the course of a discharge of a function. It will describe the following particulars:-

- (a) the matter in respect of which the decision is to be made;
- (b) where the decision maker is an individual, that individual's name and title, if any, and, where the decision-maker is a decision-making body, the name of the body and a list of the membership of the body making the decision;
- (c) the date on which, or the period within which, the decision is to be made;
- (d) a list of the documents submitted to the decision maker for consideration in relation to the matter;
- (e) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
- (f) that other documents relevant to those matters may be submitted to the decision maker;
- (g) the procedure for requesting details of those documents (if any) as they become available.

Where in relation to any matter the public may be excluded from the meeting at which the matter is to be discussed or documents relating to the decision need not be disclosed to the public, the document referred to must contain particulars of the matters but may not contain any confidential, exempt information or particulars of the advice of a political adviser or assistant.

### **13.3 Publication of the Notice of Key Decision**

The Notice of Key Decision must be made available for inspection by the public at County Hall, Matlock and on the Council's website at least 28 clear days before the decisions is made.

## **14. GENERAL EXCEPTION**

Where the publication of the intention to make a key decision (the Notice of Key Decision) is impracticable, then subject to Rule 15 (special urgency), the decision may only be made if:

- (a) the Director of Legal and Democratic Services has informed the Chairman of a relevant Improvement and Scrutiny Committee, or in his absence the Civic-Chairman, in writing, or if there is no such person, each member of that committee in writing, by notice, of the matter to which the decision is to be made;
- (b) the Director of Legal and Democratic Services has made copies of that notice available to the public at the offices of the Council and on the Council's website; and
- (c) at least 5 clear days have elapsed since the Director of Legal and Democratic Services complied with (a) and (b).

As soon as is reasonably practicable after the Director of Legal and Democratic Services has complied with Rule 14 (a-c) he must make available at County Hall, Matlock and publish on the Council's website a notice setting out the reasons why compliance with Rule 13 is impractical.

## **15. SPECIAL URGENCY**

- (a) If by virtue of the date by which a decision must be taken Rule 14 (general exception) cannot be followed, then the key decision can only be taken if the decision maker (if an individual) or the chairman of the body making the decision, obtains the agreement of the chairman of a relevant Improvement and Scrutiny Committee that the taking of the decision is urgent cannot be reasonably deferred. If there is no chairman of a relevant Improvement and Scrutiny Committee, or if the chairman of each relevant Improvement and Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Civic Chairman will suffice.
- (b) As soon as is reasonably practicable after the decision maker has obtained agreement under Rule 15(a) he must make available at the Council's offices and publish on the website a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred.

## **16. REPORT TO COUNCIL**

16.1 The Improvement and Scrutiny Committee can require a report if it thinks that a key decision has been taken which was not:

- (a) the subject of a Notice of Key Decision; or

- (b) the subject of the general exception procedure under Rule 14; or
- (c) the subject of an agreement with a relevant Improvement and Scrutiny Committee chairman, or the Chairman of the Council or Civic Chairman of the Council under Rule 15.

The committee may require the Cabinet to submit a report to the Council within such reasonable time as the committee specifies. The report must include details of the decision and the reasons for the decision, the decision-maker, and the reasons for the Cabinet believing that the decision was a key decision. The power to require a report rests with the committee, but is also delegated to the Director of Legal and Democratic Services who shall require such a report on behalf of the committee when so requested by the chairman of the Improvement and Scrutiny Committee or any 5 members of the Improvement and Scrutiny Committee. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant Improvement and Scrutiny Committee.

## **16.2 Cabinet's report to Council**

The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the committee, then the report may be submitted to the meeting after that. The report to Council will set out the particulars of the decision, the individual or body making the decision, and if the Cabinet is of the opinion that it was not a key decision the reasons for that opinion.

## **16.3 Quarterly reports on special urgency decisions**

In any event, the Cabinet will submit quarterly reports to the Council on the cabinet decisions taken in the circumstances set out in Rule 15 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

## **17. NOTICE OF MEETING OF THE CABINET**

Members of the Cabinet or its committees will be entitled to receive five clear working days' notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

## **18. ATTENDANCE AT MEETINGS OF THE CABINET**

## **18.1 Cabinet Members**

All members of the Cabinet will be served notice of all (both those to be held in public and those to be held in private) meetings of committees of the Cabinet, whether or not they are members of that committee. All Members of the Cabinet are entitled to attend private meetings of the Cabinet and its committees. Members who are not a Member of the Cabinet or a member of the Committee making the decision are not entitled to attend private meetings save for Chairs and Vice Chairs of Committees Cabinet Support Members, Leader of the Main Opposition Group and Members of the Shadow Cabinet.

## **18.2 Officers**

- (a) The Head of Paid Service, the Chief Financial Officer and the Monitoring Officer, and their nominees are entitled to attend any meeting of the Cabinet and its committees. The Cabinet may not meet unless the Director of Legal and Democratic Services has been given reasonable notice that a meeting is to take place.
- (b) Executive Directors, or their nominees, may attend meetings of the Executive or its sub-committees to provide advice on relevant issues.

## **19. MEETINGS OF THE CABINET TO BE HELD IN PUBLIC**

Meetings of the Cabinet and its Committees will be held in public, unless it is likely that exempt or confidential information would be disclosed or whenever a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehavior at a meeting. The public may only be excluded for the part or parts of the meeting during which it is likely that exempt or confidential information will be disclosed.

## **20. NOTICE OF PRIVATE MEETINGS OF THE CABINET**

- 20.1 At least 28 clear days before a private meeting of the Cabinet or any of its committees, the decision making body must make available at the designated offices a notice of its intention to hold the meeting in private (a Notice of Private Meeting) and publish that notice on the Council's website.
- 20.2 At least 5 clear days before a private meeting, the decision making body must make available at the offices of the Council a further notice of its intention to hold the meeting in private and publish that notice on the Council's website.
- 20.3 A notice under paragraph 20.2 must include:-
  - (a) a statement of the reasons for the meeting to be held in private;
  - (b) details of any representations received by the decision making body about why the meeting should be open to the public; and

- (c) a statement of its response to any such representations.

## **21. GENERAL EXCEPTION**

- (a) Where the date by which a meeting must be held makes compliance with this rule impracticable, the meeting may only be held in private where the decision making body has obtained the agreement of the Chairman of a relevant Improvement and Scrutiny Committee that the taking of the decision cannot reasonably be deferred. If there is no chairman of a relevant Improvement and Scrutiny Committee, or if the chairman of each relevant Improvement and Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence, the Civic-Chairman will suffice.
- (b) As soon as is reasonably practicable after the decision making body has obtained agreement to hold a private meeting under paragraph 21(a) above, it must make available at the office of the Council a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred and publish that notice on the Council's website.

## **22. RECORD OF DECISIONS**

- 22.1 After any meeting of the Cabinet or any of its committees, whether held in public or private, the Director of Legal and Democratic Services or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record will include a record of the decision including the date that it was made, a statement of the reasons for each decision and any alternative options considered and rejected at that meeting, together with details of any conflict of interest relating to the matter decided which was declared by any member of the decision making body which made the decision and in respect of any declared conflict of interest, a note of dispensation.

### **22.2 Record of Individual Decision**

As soon as is reasonably practicable after a cabinet decision has been taken by an individual member of the Cabinet, he will prepare a report containing a record of the decision including the date it was made. The record will include a statement of the reasons for each decision and any alternative options considered and rejected by the member when making the decision. The record will also include details of any conflict of interest declared by any cabinet member who is consulted by the member which relates to the



decision and in respect of any declared conflict of interest, the record will also contain a note of dispensation granted.

## **23. INSPECTION OF DOCUMENTS FOLLOWING CABINET DECISIONS**

- (a) Subject to rule 29, after a meeting of a decision making body at which a cabinet decision has been made, or after an individual member of an officer has made a cabinet decision the Director of Legal and Democratic Services must ensure that a copy of any records prepared in accordance with Rule 22 (record of decisions) and any report considered at the meeting or, as the case may be, considered by the individual member relevant to a decision recorded in accordance with Rule 22 must be available for inspection by members of the public as soon as is reasonably practicable at the offices of the Council and on the Council's website. Where only part of the report is relevant to such a decision, that part must be available for inspection by members of the public as soon as is reasonably practicable at the offices of the Council and on the Council's website.
- (b) Where a request on behalf of a newspaper is made for a copy of any of the documents available for public inspection under Rule 6, those documents must be supplied for the benefit of the newspaper by the Council on payment by the newspaper to the Council of postage, copying or other necessary charge for transmission.

## **24. INSPECTION OF BACKGROUND PAPERS**

Subject to rule 29 where a copy of the whole or part of a report for a meeting is made available for inspection by members of the public in accordance with Rule 5 or 22 at the same time, a copy of the list compiled by the author of the background papers to the report or part of the report, must be included in the report or, as the case may be, part of the report and at least one copy of each of the documents included in that list must be available for inspection by the public at the offices of the Council and on the Council's website.

## **25. CABINET MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS**

The Cabinet will decide whether meetings relating to matters which are not key decisions will be held in public or private. Meetings of the Cabinet and its committees will be held in public, unless it is likely that exempt or confidential information would be disclosed or whenever a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehaviour at a meeting. The public may only be excluded for the part or parts of the meeting during which it is likely that exempt or confidential information would be disclosed.

## **26. IMPROVEMENT AND SCRUTINY COMMITTEE ACCESS TO DOCUMENTS**

### **26.1 Rights to Copies**

Subject to Rule 26.2 below, an Improvement and Scrutiny Committee (including its sub-committees) will be entitled to copies of any document which is in the possession or control of the Cabinet or its committees – and which contains material relating to

- (a) any business transacted at a meeting of the Cabinet or its committees; or
- (b) any decision taken by an individual member of the Cabinet.

### **26.2 Limit on Rights**

An Improvement and Scrutiny Committee will not be entitled to:

- (a) any document that is in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
- (c) the advice of a political assistant.

## **27. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

### **27.1 Material relating to business to be transacted at a Public Meeting**

All members will be entitled to inspect any document which is in the possession or under the control of the Cabinet or its committees (except those in draft form) and which contains material relating to any business previously transacted at a public meeting unless (a), (b) or (c) below applies

- (a) it contains exempt information falling within paragraphs 1, 2,4,5 or 7 of the categories of exempt information; or
- (b) it contains exempt information falling within paragraph 3 of the categories of exempt information and that information relates to any terms proposed or to be proposed to the Council in the course of negotiations for a contract.
- (c) it contains the advice of a political adviser.

27.2 Any document which is required by Rule 27.1 to be available for inspection by any Member of the Council must be available for such inspection for at least five clear days before the meeting except for:-

- (a) where a meeting is covered at shorter notice, such a document must be available for inspection when the meeting is convened; and
- (b) where an item is added to the agenda at short notice, a document that would be required to be available under Rule 27.1 in relation to that time, must be available for inspection when the item is added to the agenda.

### 27.3 Material relating to previous business

- (a) All members will be entitled to inspect any document (except those only available in draft form) which is in the possession or control of the Cabinet or its committees and contains material relating to any business previously transacted at a private meeting or to any decision made by a Member in accordance with cabinet arrangements 27.1 (a), (b) or (c) applies.
- (b) Any documents required to be made available for inspection under 27.3 must be made available when the relevant meeting concludes or, where an Cabinet decision is made by an individual member, immediately after the decision has been made, and in any event, within 24 hours of the conclusion of the meeting or the decision having been made as the case may be.

### 27.4 Material relating to key decisions

All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession of, or under the control of, the Cabinet or its committees which relates to any key decisions unless it contains exempt information falling within paragraphs \* ?? of the categories of exempt information above applies.

### 27.5 Nature of rights

These rights of a member are additional to another right he/she may have.

## 28. MEMBERS OTHER RIGHTS TO INFORMATION

- 28.1 A Member of the Council may, for the purposes of his or her duty as a Member and no other, inspect any document that has been considered by a public meeting of the committee or the Council including background papers unless the Director of Legal and Democratic Services considers that the exempt information is of a nature that members be required to demonstrate

a need to know. Applications should be made to the Director of Legal and Democratic Services and, if available, copies will be supplied upon request.

28.2 A Member shall not knowingly inspect or request a copy of any document relating to a matter in which he:-

- (a) is professionally interested; or
- (b) has a registerable or non-registerable personal interest within the meaning of the Code of Conduct for Members as set out in this Constitution.

28.3 This shall not preclude the Director of Legal and Democratic Services from declining to allow inspection of any document which is or would be protected by privilege in the event of legal proceedings arising from the relationship of solicitor and client and should be exempt under access to information legislation.

28.4 Subject to 28.1 above all reports, background papers to reports and minutes kept by any committee shall be open for the inspection of any member of the Council, as soon as the committee has concluded action on the matter to which such reports or minutes relate.

**29. CONFIDENTIAL INFORMATION, EXEMPT INFORMATION AND ADVICE OF A POLITICAL ADVISER OR ASSISTANT**

29.1 Nothing in these Rules is to be taken to authorize or require the disclosure of confidential information in breach of the obligation of confidence.

29.2 Nothing in these Rules:-

- (a) authorises or requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the Director of Legal and Democratic Services, that document or part of a document contains or may contain confidential information; or
- (b) requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the Director of Legal and Democratic Services, that document or part of a document contains or is likely to contain exempt information or the advice of a political adviser or assistant.

29.3 Where a Member of the Cabinet makes a cabinet decision in accordance with cabinet arrangements, nothing in these Rules:-

- (a) authorises or requires documents relating to that decision to be disclosed to the public, or made available for public inspection where, the documents contain confidential information; or
- (b) requires documents relating to that decision to be disclosed to the public, or made available for public inspection where the disclosure of the documents would, in the opinion of the Member making the decision, give rise to the disclosure of exempt information or the advice of a political adviser or assistant.

# **Appendix 7 - Budget and Policy Framework Procedure Rules**

## **1. The framework for Cabinet decisions**

The Council will be responsible for the adoption of its budget and policy framework. Once a budget or a policy framework is in place, it will be the responsibility of the Cabinet to implement it.

## **2. Process for developing the framework**

The process by which the budget and policy framework shall be developed is:

- (a) The Cabinet will publicise a timetable for making proposals to the Council for the adoption of any plan, strategy or budget that forms part of the budget and policy framework, and its arrangements for consultation after publication of those initial proposals. The Chairman of the appropriate Improvement and Scrutiny Committee will also be notified. The consultation period shall in each instance be not less than 6 weeks.
- (b) At the end of that period, the Cabinet will then draw up firm proposals having regard to the responses to that consultation. If a relevant Improvement and Scrutiny Committee wishes to respond to the Cabinet in that consultation process then it may do so. As the Improvement and Scrutiny Committee have responsibility for fixing their own work programme, it is open to the Improvement and Scrutiny Committee to investigate, research or report in detail with policy recommendations before the end of the consultation period. The Cabinet will take any response from an Improvement and Scrutiny Committee into account in drawing up firm proposals for submission to the Council, and its report to Council will reflect the comments made by consultees and the Cabinet's response.
- (c) Once the Cabinet has approved the firm proposals, they will be referred at the earliest opportunity to the Council for decision.
- (d) In reaching a decision, the Council may adopt the Cabinet's proposals, amend them, or if it has objections refer them back to the Cabinet for further consideration as provided for in paragraph (k) or (l) below.
- (e) If it accepts the recommendation of the Cabinet without amendment, the Council may make a decision which has immediate effect. Otherwise, it may only make a decision in principle. In either case, the decision will be made on the basis of a simple majority of votes cast at the meeting.
- (f) The decision will be publicised in accordance with Appendix 3 and a copy shall be given to the Members.

- (g) The decision will automatically become effective 5 days from the date of the Council's decision, unless the Leader informs the proper officer in writing within 5 days that he/she objects to the decision becoming effective and provides reasons why.
- (h) In that case, the Director of Legal and Democratic Services will call a Council meeting within a further 10 days. The Council will be required to re-consider its decision and the written submission.

The Council may

- (i) approve the Cabinet's recommendation by a simple majority of votes cast at the meeting; or
  - (ii) approve a different decision which does not accord with the recommendation of the Cabinet by a simple majority.
- (i) The decision shall then be made public in accordance with Appendix 6, and shall be implemented immediately;
- (j) In approving the budget and policy framework, the Council will also specify the extent of virement within the budget and degree of in-year changes to the policy framework which may be undertaken by the Cabinet, in accordance with paragraphs 5 and 6 of these Rules (virement and in-year adjustments) where this differs from that already expressed in Financial Regulations. Any other changes to the policy and budgetary framework are reserved to the Council.
- (k) Where the Cabinet has submitted a draft plan or strategy to the Council for its consideration, and following consideration of that draft plan or strategy, the Council has any objection to it, the Authority must take the action set out in paragraph 3 of the Standing Order Regulations.
- (l) Where, before 8<sup>th</sup> February in any financial year, the Cabinet submits to the Council for its consideration in relation to the following financial year:
  - (i) estimates of the amounts to be aggregated in making a calculation (where originally or by way of substitute) in accordance with any of sections 32-37 or 43-49, of the Local Government Finance Act 1992;
  - (ii) estimates of other amounts to be used for the purposes of such a calculation;
  - (iii) estimates of such a calculation; or
  - (iv) amounts required to be stated in a precept under Chapter IV of I of the Local Government Finance Act 1992,

and following consideration of those estimates or amounts, the Council has any objections to them, it must follow the procedure in paragraph 7 to 10 of the Standing Order Regulations.

**Note:** The Standing Order Regulations are the Local Authorities (Standing Orders) (England) Regulations 2001 (SI 2001 No 3384)

### **3. Decisions outside the budget or policy framework**

- (a) Subject to the provisions of paragraph 5 (virement), the Cabinet, committee of the Cabinet, individual members of the Cabinet and any officers, or joint arrangements discharging cabinet functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary or not only in accordance with the budget approved by full Council, then that decision may only be taken by the Council, subject to 4 below.
- (b) If the Cabinet, committee of the Cabinet, individual members of the Cabinet and any officers, or joint arrangements discharging cabinet functions want to make such a decision, they shall take advice from the Monitoring Officer and the Chief Financial Officer as to whether the decision they want to make would be contrary to the policy framework or contrary to, or not wholly in accordance with, the budget. If the advice of either of those officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 (urgent decisions outside the budget and policy framework) shall apply.

### **4. Urgent decisions outside the budget or policy framework**

- (a) The Cabinet, a committee of the Cabinet, and individual member of the Cabinet or officers, or joint arrangements discharging cabinet functions may take a decision which is contrary to the Council's policy framework or contrary to, or not wholly in accordance with, the budget approved by full Council if the decision is a matter of urgency. However, the decision may only be taken:
  - (i) if it is not practical to convene a quorate meeting of the full Council; and
  - (ii) if the Chairman of a relevant Improvement and Scrutiny Committee agrees that the decision is a matter of urgency.

The reasons why it is not practical to convene a quorate meeting of full Council and the Chairman of the relevant Improvement and Scrutiny Committee's consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the Chairman of a relevant Improvement and Scrutiny Committee, the



consent of the Chairman of the Council or, in the absence of both, the Civic Chairman of Derbyshire County Council will be sufficient.

- (b) Following the decision, the decision-taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it, and why the decision was treated as a matter of urgency.

## **5. Virement**

- (a) Steps taken by the Cabinet, a committee of the Cabinet, an individual member of the Cabinet or officers, or joint arrangements discharging cabinet functions to implement Council policy shall not exceed those budgets allocated to each budget head. However, such bodies or individuals shall be only be entitled to vire budget in accordance with the provisions contained within the Council's Financial Regulations.

## **6. In-year changes to policy framework**

The responsibility for agreeing the budget and policy framework lies with the Council, and decisions by the Cabinet, a committee of the Cabinet, an individual member of the Cabinet or officers, or joint arrangements discharging cabinet functions must be in line with it. No changes to any policy and strategy which make up the policy framework may be made by those bodies or individuals except those changes:

- (a) which will result in the closure or discontinuance of a service or part of a service to meet a budgetary constraint;
- (b) necessary to ensure compliance with the law, ministerial direction or government guidance;
- (c) in relation to the policy framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration;
- (d) which relate to policy in relation to schools where the majority of school governing bodies agree with the proposed change.

## **7. Call-in of decisions outside the budget or policy framework**

- (a) Where an Improvement and Scrutiny Committee is of the opinion that a cabinet decision is, or if made would be, contrary to the policy framework, or contrary to, or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and Chief Financial Officer.

- (b) In respect of functions which are the responsibility of the Cabinet, the Monitoring Officer's report and/or Chief Finance Officer's report shall be to the Cabinet with a copy of the same to every member of the Council. Regardless of whether the decision is delegated or not, the Cabinet must meet to decide what action to take in respect of the Monitoring Officer's report and/or the Chief Finance Officer's report and to prepare a report to Council in the event that the Monitoring Officer or the Chief Finance Officer conclude that a decision was a departure, and to the Improvement and Scrutiny Committee if the Monitoring Officer or the Chief Finance Officer conclude that the decision was not a departure.
- (c) If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Chief Financial Officer is that the decision is, or would be, contrary to the policy framework or contrary to, or not wholly in accordance with the budget, the Improvement and Scrutiny Committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 10 days of the request by the Improvement and Scrutiny Committee. At the meeting it will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or Chief Finance Officer. The Council may either;
- (i) endorse a decision or proposal of the executive decision-taker as falling within the existing budget and policy framework. In this case no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (ii) amend the Council's Financial Regulations or policy concern to encompass the decision or proposal of the body or individual responsible for that cabinet function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (iii) where the Council accepts that the decision or proposal is contrary to the policy framework or contrary to, or not wholly in accordance with, the budget, and does not amend the existing framework to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of either the Monitoring Officer/Chief Finance Officer.

## ***Appendix 8(a)***

# **FINANCIAL REGULATIONS**

***To: All Members and Employees***

The Chief Financial Officer has legal responsibilities for the financial administration of the Council's affairs and for determining the procedures and systems (whether electronic or not) to achieve this.

The Director of Legal Services as Monitoring Officer has responsibilities for legal compliance/probity.

Financial Regulations and Procedures apply to all Members and employees and to all transactions.

There are separate regulations under the Derbyshire Scheme for Financing Schools.

Where supplementary rules are made subsequent to these Regulations, these will be published. It has not been possible to foresee every eventuality so, should any doubt arise, you should consult the Chief Financial Officer. The Council Tax payers and citizens will expect everyone involved with the Council's affairs to treat the Council's resources with care and seek to obtain value for money - economy, efficiency and effectiveness - at all times.

The Regulations deal with the control of resources by Strategic Directors in their Departments. The responsibilities of other officers are separately listed throughout the document and supplemented by Scheme of Delegations.

It is important that all employees are familiar with the detail that applies to their daily role. The regulations relating to procurement matters have been amended including changes in thresholds, evaluating for risk, increased requirement for transparency and the use of frameworks. These changes will allow increased flexibility for officers whilst maintaining the focus on delivery of value for money and accountability.

***Barry Lewis***  
***Leader of the Council***

***Simon Spencer***  
***Deputy Leader of the Council***

***Peter Handford***  
***Director of Finance & ICT***  
***(Chief Financial Officer)***

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## **A INTRODUCTION**

### **FINANCIAL REGULATIONS**

- 1 To conduct its business efficiently a local authority needs to ensure that it has sound financial management policies in place and that they are strictly adhered to. Part of this process is the establishment of financial regulations, which set out the financial policies of the Council.
- 2 The County Council has produced this updated set of financial regulations, which reflects best practice and provides a practical source of advice to assist the Council to deliver its services.
- 3 The financial regulations provide clarity about the accountabilities of individuals - Cabinet Members and officers including the Monitoring Officer, the Chief Financial Officer and Strategic Directors. Each of the financial regulations sets out the overarching financial responsibilities.
- 4 Departments should link the financial regulations with other internal regulatory frameworks which form part of the Council's constitution - for example - contract standing orders, schemes of delegation, the role of both Audit and Improvement and Scrutiny Committees and Employee Codes of Conduct, which include specific issues such as hospitality and gifts. Departments may also wish to supplement this handbook with their own more detailed financial procedures, guidance and instructions. Each of these additional publications must be approved by the Chief Financial Officer.

There is a separate version of financial regulations for Schools which is approved by Audit Committee.

- 5 Derbyshire County Council is one of the largest local authorities in England. It serves a population of 764,000 and an area of 255,071 hectares. It provides a diverse range of services to its residents. It works in partnership with 8 district councils, parish and town councils and a number of other organisations.

The Council provides the following services:

- |                            |  |
|----------------------------|--|
| • learning and development | • public protection                            |
| • social care              | • countryside services                         |
| • strategic planning       | • environmental management                     |
| • economic development     | • registration of births, deaths and marriages |
| • roads and highways       |  |

- cultural and community including libraries, museums & archives
- coroners
- emergency planning
- public transport facilities
- asset management
- public health

6 The Council's governance structure is laid down in its Constitution. This document contains the:

- Articles of the Constitution
- Responsibility for Functions
- Rules of Procedure
- Codes and Protocols
- Members' Allowances Scheme
- Management Structure

## **FINANCIAL PROCEDURES**

7 Each section of the financial procedures follows the format set out below;

- why is this important?
  - this sets the context for the financial procedures.
- key controls
  - this explains the key internal controls which set the framework for ensuring financial regulations are operating effectively.
- responsibilities of the Chief Financial Officer and Monitoring Officer.
- responsibilities of Strategic Directors.
  - these last two sections clarify the responsibilities of operational managers in relation to financial management. This is distinct from the role of finance employees. Strategic Directors are, of course, free to delegate functions within their Departments as set out in their Scheme of Delegation, in which case the responsibilities as stated apply to their managers.



## **B STATUS OF FINANCIAL REGULATIONS**

- 1 Financial regulations provide the framework for managing the Council's financial affairs. They apply to every Member and Officer of the Council and anyone acting on behalf of the Council. As Financial Regulations are part of the constitution any change must be agreed by Council after being reported to Audit Committee.
- 2 The regulations identify the financial responsibilities of the Council, Cabinet, Audit Committee, Improvement and Scrutiny Committees, the Monitoring Officer, the Chief Financial Officer and Strategic Directors. Cabinet Members and Strategic Directors should maintain a written record where these responsibilities have been delegated to their employees including devolved employees. Where responsibilities have been delegated or devolved to other responsible officers, such as governors, references to the Strategic Director in the regulations should be read as referring to them.
- 3 All Members and Officers 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 all Council resources is legal, properly authorised and provides Value for Money (VfM).
- 4 The Council's Audit Committee is responsible for ensuring a continuous review of the financial regulations and for advising the Cabinet and Council of any additions or changes necessary. The Chief Financial Officer is responsible for reporting, where appropriate, any breaches of the financial regulations to the Council and/or to the Cabinet Members.
- 5 The Council's detailed financial procedures setting out how the regulations will be implemented are contained in the Annexes to the Financial Regulations.
- 6 Strategic Directors are responsible for ensuring that all employees in their Departments are aware of their responsibilities according to the financial regulations and other internal regulatory documents and comply with them.
- 7 The Chief Financial Officer is responsible for issuing advice and guidance to underpin the financial regulations which Members, Officers and others acting on behalf of the Council are required to follow.
- 8 Throughout this document all references to authorisation/signatories apply to both hardcopy and electronic records. A digital signature/authorisation carries no less weight and imposes no less responsibility on the authorising officer than a handwritten signature.

Designated authorising officers must ensure that they maintain the security of their personal user identity and password details as these identifiers will be taken as the equivalent of a personal, handwritten signature for the purposes of authorisation.

- 9 Employees are reminded that, under the Code of Conduct for Employees, orders and contracts must be awarded on merit and in accordance with Financial Regulations and Standing Orders in relation to contracts. Breaches of these requirements must be reported to the Assistant Director of Finance (Audit), and may result in action being taken under the Council's disciplinary procedures.

## **C FINANCIAL REGULATIONS FOR DERBYSHIRE COUNTY COUNCIL**

### **C(1) FINANCIAL REGULATION 1 - FINANCIAL MANAGEMENT & CONTROL**

#### **Overview of financial accountabilities in relation to:**

##### ***The Council***

- 1 The Council is responsible for adopting the Council's Constitution and Code of Conduct for Employees and for determining the budget and policy framework within which the Cabinet operates. It is also responsible for setting and monitoring compliance with the Council's overall framework of accountability and control. The framework is set out in a written Constitution. Together with the Cabinet, the Council is responsible for monitoring compliance with policies and Cabinet decisions.

##### **The Cabinet**

- 2 The Cabinet is responsible for proposing to the Council the policy framework and budget, for delivering services and discharging functions in accordance with the policy framework and budget.
- 3 The extent to which decisions of the Cabinet can be delegated is set out within the body of these regulations. Joint Committees or responsible Cabinet Members have authority to decide certain matters.
- 4 Together with the Council, the Cabinet is responsible for monitoring compliance with policies, Cabinet decisions and the framework of accountability and control.

##### **Committees**

##### **Improvement and Scrutiny Committees**

- 5 The Council has Improvement and Scrutiny Committees whose role is to scrutinise Cabinet or individual decisions before or after they have been implemented. These Committees are also responsible for making recommendations on future policy options and reviewing the general policy and service delivery of the Council.
- 6 The Improvement and Scrutiny Committees have a right to be involved in the budgetary process of the Council.

### **Audit Committee**

- 7 The Council has an Audit Committee, part of whose role is to independently contribute to the Council's overall process for ensuring that effective internal control systems are adequately maintained.

### **Audit Matters**

- 8 The Council's Auditors, both Internal and External act in an independent advisory capacity and report to the Audit Committee, Cabinet and Council. The Audit Committee have rights of access to obtain all the information they consider necessary and to consult directly with internal and external auditors. The Audit Committee is responsible for reviewing the external auditor's statutory report and the Assistant Director of Finance (Audit)'s annual report.

### **Standards Committee**

- 9 The Standards Committee is responsible for promoting and maintaining high standards of conduct amongst Councillors. In particular, it has responsibility for advising on the adoption of the Code of Conduct for Employees, for its operation and its updating.

### **Other Committees**

- 10 Regulatory functions such as planning and licensing together with the administration of the County Council's Pensions Fund are not the responsibility of the Cabinet and are exercised through committees which report to the Council.

### **Officers**

- 11 It is the duty of all Officers of the Council to serve all Members of the Council equally.

### **The Statutory Officers**

#### **Head of Paid Service**

- 12 The Head of Paid Service is responsible for:-
  - (a) The manner in which the discharge by the authority of their different functions is co-ordinated;
  - (b) The number and grades of staff required by the authority for the discharge of their functions;

- (c) The organisation of the authority's staff; and
- (d) The appointment and proper management of the authority's staff

### **Monitoring Officer**

- 13 The Director of Legal Services, in the capacity of Monitoring Officer, is responsible for promoting and maintaining high standards of conduct and therefore provides support to the Standards Committee. The Monitoring Officer is also responsible for reporting any breaches of the law to the Council and the Cabinet.

### **Scrutiny Officer**

- 14 The Scrutiny Officer is responsible for administering the Council's Improvement and Scrutiny Committees and providing support to these Committees and the Members of them. In addition, the Scrutiny Officer provides support and guidance to:

- (a) Members of the Council,
- (b) Members of the Executive of the Council, and
- (c) Officers of the Council,

in relation to the functions of the Council's Improvement and Scrutiny Committees.

### **The Director of Finance & ICT**

- 15 The Director of Finance & ICT is the Chief Financial Officer of the Council, and 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 the:

- **Local Government Act 1972 - Section 115 Accountability of Officers**

Every officer employed by a local authority, whether under this Act or any other enactment, shall at such times during the continuance of his office or within three months after ceasing to hold it, and in such a manner as the local authority direct, make out and deliver to the Council, or in accordance with their directions, a true account in writing of all money and property committed to his charge, and of his receipts and payments, with vouchers and other documents and records supporting the entries therein, and a list of persons from whom or to whom money is due in connection with this office, showing the amount due from or to each.

Every such officer shall pay all money due from him to the proper officer of the local authority or in accordance with their directions.

- **Local Government Finance Act 1988 - Section 114 - Functions of Responsible Officers as regards reports**

The Chief Financial Officer is also the responsible officer under Section 114 of the Local Government Finance Act 1988 for reporting to Council if the Council: -

- (a) has made or is about to make a decision which involves or would involve the Council incurring expenditure which is unlawful;
- (b) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the Council, or
- (c) is about to enter an item of account the entry of which is unlawful.

In addition, the Chief Financial Officer is under a duty to report to Council if it appears to him that the expenditure of the Council incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.

- **Local Government Act 1972 - Section 117 Disclosure by Officers of Interest in Contracts**

Employees should be aware of the provisions of Section 117(1) of the Local Government Act 1972, which provides that “if it comes to the knowledge of an officer employed whether under this Act or any other enactment by a local authority that a contract in which he/she has any pecuniary interest whether direct or indirect (not being a contract to which he is himself a party), has been or is proposed to be entered into by the authority or any committee thereof, he/she shall as soon as practicable give notice in writing to the authority of the fact that is interested therein.”

An indirect pecuniary interest for these purposes is as follows: -

- (a) if the officer or any nominee of the officer is a member of a Company or other body with which the contract was or is proposed to be made,
- (b) if the officer is a partner or is in the employment of a person with whom the contract is or is proposed to be made,

- (c) in the case of married persons living together the interest of one spouse, if known to the other, is deemed to be the interest of the other spouse.

**Section 117(2)** states that “an officer of a local authority shall not, under colour of his office or employment, accept any fee or reward whatsoever other than his proper remuneration”.

Any officer who has direct or indirect interest in any contract, or who is offered any fee or reward shall write to the Monitoring Officer immediately. Any person who fails to comply with Section 117(1) and/or (2) may render themselves liable to a fine of £1,000.

- **Local Government Act 1972 - Section 151**

Under Section 151 “Every local authority shall make arrangements for the proper administration of their financial affairs, and shall secure that one of their officers has responsibility for the administration of those affairs”.

The County Council have appointed the Chief Financial Officer as the responsible officer.

**No item having financial consequences shall be placed on a Council meeting agenda without obtaining the Chief Financial Officer's financial assessment. Any report containing new proposals shall include an independent financial assessment by the Chief Financial Officer.**

- **Local Government Act 2003**

The Local Government Act 2003 requires that the Chief Financial Officer has:

- (a) a statutory duty to advise the Council on Cabinet proposals in accordance with their responsibilities under Section 151 of the Local Government Act 1972 and the Local Government Act 2003;
- (b) responsibilities in relation to the level of the Council's reserves and protocols for their use;
- (c) responsibilities to take into account matters as specified in CIPFA's Prudential Code for Capital Finance in Local Authorities (2003);
- (d) robustness of estimates included in the budget and the adequacy of the reserves for which the budget provides.

The annual investment strategy is an annual statement prepared in accordance with the Local Government Act 2003. Section 15(1), states that all Authorities must “have regard to guidance on investments issued by the Secretary of State”, when investing surplus cash.

- 16 The Chief Financial Officer will support these financial regulations by the issue of more detailed instructions to Strategic Directors from time to time.

### ***Responsibilities of Strategic Directors***

- 17 All Strategic Directors shall be responsible for ensuring that all employees of their Departments comply with financial regulations and any other financial instructions the Chief Financial Officer may issue from time to time. They also have delegated powers to take such actions deemed necessary and expedient in matters requiring urgent consideration and because of the timescale involved, or the need to safeguard the interests of the Council, cannot be dealt with by submission to the next Council or Cabinet Member Meeting.
- 18 They shall also ensure that:
- (a) existing and new employees are informed of their responsibilities under financial regulations and are familiar with these documents,
  - (b) all financial regulations or contracts and award procedures are followed by officers in their Department,
  - (c) relevant records are maintained and retained,
  - (d) particular care is necessary to ensure that Officers whose responsibilities extend to routine aspects of budgeting, record keeping, ordering, income and payments are fully aware of the detailed requirements of the relevant Appendices to these regulations.
- 19 To consult the Chief Financial Officer on any matter which is liable to materially affect the finances of the Council before any provisional or other commitment is incurred.
- 20 To be responsible for securing VfM in relation to their activities and for achieving financial performance targets.



## The Decision Making Process

- 21 The Cabinet is responsible for establishing protocols to ensure that individual Cabinet Members consult with relevant Officers before taking a decision within his/her delegated authority. In doing so he/she must take account of advice as to legal and financial liabilities and risk management issues which may arise from the decision.
- 22 The Monitoring Officer must ensure that Cabinet decisions and the reasons for them are made public. He/she must also ensure that Council Members are aware of decisions made by the Cabinet and of relevant decisions made by Officers under the terms of any specifically delegated Cabinet responsibility.
- 23 The Monitoring Officer is responsible for advising the Council, Cabinet and Officers regarding who has authority within the Council to take a particular decision.

## Key Decisions

**These decisions are subject to the access to information requirements for open government. A key decision is defined as a decision that affects two or more electoral wards or saves/costs more than £500,000.**

- 24 The Monitoring Officer and Chief Financial Officer, in consultation with the Head of Paid Service, are responsible for advising the Cabinet or Council whether a decision is likely to be considered contrary to, or not wholly in accordance with, the policy framework or budget. In this context “contrary to the budget” may be as a result of:
  - (a) initiating a new policy,
  - (b) committing expenditure in future years to above the budget level.
- 25 It is ultimately the responsibility of Strategic Directors to consult with the Chief Financial Officer on any matter which is liable to materially affect the Council’s finances before any commitments are incurred. The Chief Financial Officer has a legal duty to provide financial advice to the Council. Strategic Directors should not, therefore, appoint financial consultants or outside advisers without consulting the Chief Financial Officer.

### ***Virement***

- 26 The Council is responsible for agreeing procedures for virements (transfer of funds between budgets).
- 27 Strategic Directors are responsible for agreeing in-year virements within delegated limits, as set out in Appendix 1, paragraph 2(b).

### ***Treatment of year-end balances***

- 28 Cabinet is responsible for agreeing procedures for carrying forward under or overspendings on budget headings.

## **C(2) FINANCIAL REGULATION 2 - FINANCIAL PLANNING**

### Introduction

- 1 The Council is responsible for approving the following, which will be proposed by the Cabinet:

- the policy framework,
- the Council Plan,
- the Revenue Budget and Five Year Financial Plan,
- the Capital Programme and Treasury Management Strategy.

The Council is also responsible for approving procedures for agreeing variations to approved budgets, plans and strategies.

- 3 The Council is also responsible for determining when a decision will be deemed contrary to the budget and should therefore be referred to the Council by the Chief Financial Officer and/or Monitoring Officer.
- 4 The Cabinet is responsible for taking in year decisions on resources and priorities in order to deliver the budget within the financial limits set by the Council.

### Preparation of the Council Plan

- 5 The Corporate Management Team, is responsible for proposing the Council Plan to the Cabinet for consideration before its submission to Council for approval.

## **BUDGETING**

### Budget guidelines

- 6 The Chief Financial Officer will issue guidelines on budget preparations to Members and Strategic Directors in accordance with Council and Cabinet requirements. The guidelines will take account of:
  - legal and consultation requirements,
  - medium term planning prospects,
  - available resources,

- spending pressures,
- relevant government guidelines,
- cross-cutting issues (where relevant).

### **Budget preparation**

- 7 The Chief Financial Officer is responsible for ensuring that a revenue budget is prepared on an annual basis for consideration by the Cabinet before 8 February, and subsequent submission to the Council. The Council may amend the budget, or ask the Cabinet to reconsider it before approving it. The budget must, however, be approved and precepts notified to billing authorities prior to 1 March in accordance with the Local Government Act 1992.
- 8 The Chief Financial Officer is responsible for preparing a report in accordance with the Local Government Act 2003 which the Council must consider when it is making its statutory calculations required to determine its precept. The report must deal with the robustness of the estimates included in the budget and the adequacy of reserves for which the budget provides. The Ministry of Housing, Communities and Local Government advises that the professional advice of the Chief Finance Officer is required on these two questions, and that they are connected with matters of risk and uncertainty.
- 9 The Cabinet is responsible for issuing guidance on cash limits and the general content of the budget in consultation with the Chief Financial Officer as soon as possible following approval by the Council.
- 10 It is the responsibility of Strategic Directors to ensure that annual revenue estimates reflecting agreed service plans and including all necessary resource plans and financial estimates are prepared in consultation with the Chief Financial Officer and are reported to the Cabinet.

### **Preparation of the Capital Programme and Treasury Management Strategy**

- 11 The Chief Financial Officer, in consultation with the Corporate Management Team, is responsible for ensuring that a capital programme is prepared on an annual basis in accordance with the requirements of CIPFA's Prudential Code for Capital Finance in Local Authorities (2017) for consideration by the Cabinet, before submission to the Council.

### **C(3) FINANCIAL REGULATION 3 - CONTROL OF RESOURCES INCLUDING EMPLOYEES**

#### **Internal control**

- 1 Internal control refers to the system of controls devised by management to help ensure the Council's objectives are achieved in a manner which promotes effective, efficient and economical use of resources and that the Council's assets and interests are safeguarded.
- 2 The Audit Committee is responsible for reporting to Cabinet and Council on matters arising from its review of internal control and governance and the Annual Governance Statement.
- 3 It is the responsibility of the Strategic Directors to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve effectiveness, efficiency and economy and for achieving their financial performance targets.

#### **Employees**

- 4 The Head of Paid Service is responsible for providing overall management of employees. He/she is also responsible for ensuring that there is proper use of the job evaluation or other agreed systems for determining the grade and remuneration of a job.
- 5 Strategic Directors are responsible for controlling total employee numbers by:
  - adjusting the employee numbers to that which can be funded within approved budget provision, varying the provision as necessary within that constraint in order to meet changing operational needs and in line with the Council's HR Strategy.
  - the proper use of appointment procedures as defined in the Recruitment and Selection Guidelines.

#### **Budget monitoring**

- 6 The Chief Financial Officer is responsible for providing appropriate financial information to enable budgets to be monitored effectively. He/she must monitor the control of income and expenditure against budget allocation and report to the Cabinet on variances in line with the requirements of the budget monitoring policy.

- 7 It is the responsibility of Strategic Directors to control income and expenditure within their area and to monitor performance and provide information to the Chief Financial Officer to ensure reporting is in line with the budget monitoring policy. They should also take any action necessary to avoid exceeding their financial allocation.
- 8 Meetings between the Chief Financial Officer and Strategic Directors are held monthly, to discuss the projected outturn, in accordance with the Budget Monitoring Policy.

### **Register of Members' interests**

- 9 The Monitoring Officer is responsible for ensuring that the procedures agreed by Council for the registration of Members' interests comply with statutory requirements.

### **Risk Management - Code of Audit Practice Requirements**

- 10 The Cabinet is jointly responsible for approving the Council's Risk Management Policy Statement (after receiving a report from the Audit Committee on risk management, internal control and governance and the Annual Governance Statement) and for effecting proper insurance.
- 11 The Council's Audit Committee considers, at each meeting, a report on the Council's Risk Register and is charged to consider any significant changes in risk and with monitoring the effectiveness with which key risks identified are managed.
- 12 The Chief Financial Officer is responsible for preparing the Council's Risk Management Policy Statement, promoting it throughout the Council and for advising the Cabinet on proper insurance cover.
- 13 The Chief Financial Officer shall be responsible for effecting all necessary insurance within the policy determined from time to time by the Council. Strategic Directors will be responsible for notifying to him/her changes in any insurable risks and will submit claims in accordance with the approved arrangements.
- 14 Strategic Directors shall consult the Chief Financial Officer and Director of Legal Services before giving any indemnity on behalf of the Council.
- 15 Strategic Directors shall notify the Chief Financial Officer immediately of any loss, liability or damage, which may lead to a claim against the Council.

## **Security**

- 16 Strategic Directors should ensure that appropriate records, whether held in a manual or electronic format, are properly maintained and securely held. They are also responsible for ensuring that all business critical systems are identified, that systems so identified are adequately documented and that sound arrangements for the security and continuity of service in the event of disaster are in place and have been tested in advance where practicable.

## **C(4) FINANCIAL REGULATION 4 – SYSTEMS AND PROCEDURES**

### **Decision making procedures**

- 1 The Council is responsible for approving procedures for reporting its decision-making processes and the financial information associated with them. The Director of Legal Services should provide a system for the recording of the Council's decisions and for the secure storage of media used to record those decisions.

### **Income and expenditure**

- 2 It is the responsibility of Strategic Directors to ensure that a proper scheme of delegation has been established within their Departments, operating effectively and reviewed and updated annually to a standard determined by the Chief Financial Officer. It should identify employees authorised to act on behalf of the Cabinet, Cabinet Member or the Strategic Director, in respect of payments, income collection, for placing orders and the award of contracts, together with the limits of their authority. The Council is responsible for approving procedures for writing off debts as part of its overall control framework of accountability and control.

### **Financial systems and procedures**

- 3 The Chief Financial Officer is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any proposed changes by Strategic Directors to existing financial and/or control systems or the establishment of new systems must be reported to and considered by the Assistant Director of Finance (Audit) who will consider the potential impact on the Internal Control framework and report to the Chief Financial Officer, raising any concerns as appropriate. The Chief Financial Officer will then formally consider the proposed changes. No changes may be actioned without the formal approval of the Chief Financial Officer.
- 4 Strategic Directors are responsible for the proper and effective operation of financial processes and control systems within their own Departments.
- 5 Any changes to financial instructions and procedure notes by Strategic Directors, to meet their own specific service needs, should be agreed by the Chief Financial Officer who will seek Cabinet approval where appropriate.
- 6 Strategic Directors must ensure that they have sufficient, appropriately qualified employees and other resources to meet their responsibilities



and must consult the Chief Financial Officer to ensure that such employees have received appropriate financial training.

### **Data protection**

- 7 Strategic Directors should ensure that, where appropriate, classes of information held on computer and other systems are notified to the Information Commissioner in accordance with Data Protection legislation and that employees are aware of their responsibilities under this legislation and the Freedom of Information Act 2000 and The Environmental Information Regulations 2004.

## **C(5) FINANCIAL REGULATION 5 – EXTERNAL ARRANGEMENTS**

- 1 The Council provides a distinctive leadership role for the community and brings together the contributions of the various stakeholders.
- 2 The Cabinet is responsible for approving delegations, including frameworks for partnerships. The Cabinet is the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs. It is responsible for ensuring that the contractual arrangements for any work for third parties or external bodies comply with Corporate Strategy.
- 3 The Council/Cabinet Members will decide on Member representation and the Corporate Management Team will decide on Officer representation of the Council on partnership and external bodies, as required by statute or the Council.
- 4 The Monitoring Officer is responsible for promoting and maintaining the same high standards of conduct with regard to financial affairs and governance in partnerships that apply throughout the Council.
- 5 The Chief Financial Officer must specify the accounting and auditing arrangements to be adopted relating to partnerships and joint ventures and trading relationships and consider the overall corporate governance arrangements when arranging contracts with external bodies. Auditing arrangements should include, as a minimum, guaranteed rights of access for the Council's auditors at all times to all documents, records, employees and premises which relate to, or are provided by, the Council's contributions to the partnership, joint venture or trading relationship. He/she must ensure that the risks have been fully appraised before agreements are entered into with external bodies.
- 6 Strategic Directors are responsible for:
  - ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies and third parties,
  - maintaining a register of all contracts/partnership agreements entered into with external bodies in accordance with procedures approved by the Director of Legal Services which must include details of :
    - the aims and objectives of the contract/partnership;
    - its approved duration;

- the Council's commitment in terms of finance and other resources;
- the framework by which the performance of the contract/partnership is to be monitored;
- exit strategy on completion or termination of the contract/partnership ensuring that before entering into agreement with external bodies, a risk management appraisal has been prepared;
- ensuring that such agreements and arrangements do not impact adversely upon the services provided for the Council;
- ensuring that all agreements and arrangements are properly documented;
- providing appropriate information to the Chief Financial Officer to enable a note to be entered into the Council's Statement of Accounts;
- ensuring that all Council employees designated/seconded to work on the contract/partnership are aware that, throughout such work, they continue to be bound by the policies, contractual requirements and financial regulations of the Council and remain accountable to the Council for their actions.

## **ANNEX 1: FINANCIAL MANAGEMENT AND CONTROL**

- 1 Financial management standards
- 2 Managing and controlling spending
  - (a) revenue budget
  - (b) scheme of virement
  - (c) treatment of year end balances
- 3 Accounting policies
- 4 Accounting records and returns
- 5 Format of the accounts

## **1 FINANCIAL MANAGEMENT STANDARDS**

### *Objectives*

- 1 All Members and Officers have a duty to abide by the highest standards of probity in dealing with financial issues. This is achieved 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.

### ***Responsibilities of Chief Financial Officer***

- 2 To ensure the proper administration of the Council's financial affairs.
- 3 To set financial standards, and to monitor their compliance.
- 4 To ensure proper professional practices are adhered to, and to act as head of profession in relation to the standards, performance and development of employees engaged in financial work throughout the Council.
- 5 To advise on the key strategic controls necessary to secure sound financial management.
- 6 To ensure that financial information is available to enable accurate and timely reporting of comparisons of national and local financial performance indicators.

### ***Responsibilities of Strategic Directors***

- 7 To promote and ensure adherence to the financial management standards set by the Chief Financial Officer in their Departments.
- 8 To promote and ensure adherence to proper financial practices in relation to the standards, performance and development of employees in their Departments.

## 2 MANAGING AND CONTROLLING INCOME AND EXPENDITURE

### A Revenue Budget

#### **Objectives**

- a.1 Budget management ensures that resources allocated by Members are used for their intended purposes and that these resources are properly accounted for. Budgetary control is a continuous process enabling the Council to review and adjust its budget targets during the financial year. It also provides the mechanism to call to account managers responsible for defined elements of the budget.
- a.2 By identifying and explaining variances against budgetary targets, the Council can identify changes in trends and resource requirements at the earliest opportunity. The Council itself operates within an annual cash limit, approved in setting the overall budget. To ensure that the Council in total does not overspend, each service is required to manage its own income and expenditure within the cash limited budget allocated to it.

#### **Key controls**

- a.3 The key controls for managing and controlling the revenue budget are:
  - (i) budget holders will be responsible for the income and expenditure on budget heads for which they have been assigned responsibility;
  - (ii) all budgeted income and expenditure is allocated to a named budget manager;
  - (iii) budget managers accept accountability for their budgets and the level of service to be delivered;
  - (iv) budget managers follow an approved authorisation process for all expenditure;
  - (v) income and expenditure is properly recorded and accounted for;
  - (vi) performance levels/levels of service are monitored in conjunction with the budget and necessary action taken to align service outputs and the budget.

### *Responsibilities of Chief Financial Officer*

- a.4 To establish an appropriate framework of budgetary management and control which ensures that:
- (i) budget management is exercised within annual cash limits unless the Council agrees otherwise;
  - (ii) each Strategic Director has available timely information on income and expenditure on each budget heading, to enable managers to fulfil their budgetary responsibilities;
  - (iii) all officers responsible for committing expenditure and generating or collecting income must comply with corporate guidance and financial regulations and standing orders;
  - (iv) each budget head has a single named manager, determined by the Strategic Director. Budget responsibility should be aligned as closely as possible to the decision-making which commits expenditure;
  - (v) significant variances from approved budgets are promptly investigated and the reasons for such variances are pursued with the responsible managers.
- a.5 To administer and ensure adherence to the Council's scheme of virement.
- a.6 To submit reports to the Cabinet and to Council, in consultation with the Strategic Director, where a Strategic Director is unable to balance expenditure and resources within existing approved budgets under his or her control.
- a.7 To prepare and submit reports on the Council's projected income and expenditure compared with the budget.

### ***Responsibilities of Strategic Directors***

- a.8 To maintain budgetary control within the Department, in adherence to the principles in 2a.4 and to ensure that all income and expenditure is promptly and properly recorded and accounted for.
- a.9 To ensure that a single accountable budget officer is identified for each item of income and expenditure under the control of the Strategic Director.

- a.10 To ensure that spending remains within the service overall cash limit, and is not overspent, by monitoring the budget.
- a.11 To ensure that a monitoring process is in place to review performance levels/levels of service in conjunction with the service plan and that any necessary action is taken.
- a.12 To prepare and submit to the Cabinet or Cabinet Member, where required, reports on the service's projected income and expenditure compared with its budget, in consultation with the Chief Financial Officer in accordance with the schedule in the Council's Budget Monitoring Policy
- a.13 To ensure prior approval by the Council for new proposals\* not included in the agreed budget or service plan, which:
  - (i) create material financial commitments in future years,
  - (ii) initiate new policy or cease existing policies,
  - (iii) materially extend or reduce the Council's services,
  - (iv) create or identify material new sources of income,
  - (v) where services are to be financed from government grant, sales of goods and services, or other external services, which are time limited, the proposal must contain an exit strategy that does not rely on future finance from Council Tax.
- a.14 To ensure compliance with the Council's scheme of virement.
- a.15 To consult with the relevant Strategic Director where it appears that a budget proposal, including a virement proposal may impact materially on another service or Strategic Director's level of activity.
- a.16 To ensure that the departmental forward procurement plan, detailing all procurement requirements above £50,000 for the forthcoming 24 months is included as part of the departmental service plan and; where such requirements cannot be identified in the service plan, to seek approval of Cabinet or Cabinet Member (as appropriate) prior to commencing the procurement process.

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\* A report on new proposals should explain the full financial implications, after consultation with the Chief Financial Officer. Unless the Council has agreed otherwise, Strategic Directors must plan to contain the financial implications of such proposals within their cash limit. The proposal must be in line with the requirements issued by the Chief Financial Officer.



## **2 MANAGING AND CONTROLLING INCOME AND EXPENDITURE**

### **B Scheme of Virement**

- b.1 The Council's scheme of virement is monitored by the Chief Financial Officer to ensure compliance with guidelines set by Council. Any variation from this scheme requires the approval of Council.
- b.2 The Council approves annual budgets for each Department and Strategic Directors and the budget holders are therefore authorised to incur expenditure in accordance with those estimates. The rules below cover virement, which is switching income and expenditure between Departments.
- b.3 The scheme of virement is intended to enable Strategic Directors and their employees to manage budgets with a degree of flexibility within the overall policy framework determined by the Council and, therefore, to optimise the use of resources. Strategic Directors are expected to exercise their discretion in managing their budgets responsibly and prudently. In particular, they should aim to avoid supporting recurring expenditure from one-off sources of savings or additional income, or creating future commitments, including full-year effects of decisions made part way through a year, for which they have not identified future resources. Strategic Directors must plan to fund such commitments from within their own budgets.

#### ***Responsibilities of Chief Financial Officer***

- b.4 To prepare a joint report, with relevant Strategic Directors, to the Cabinet where any virements greater than £100,000 per annum are proposed between Departments.

#### ***Responsibilities of Strategic Directors***

- b.5 A Strategic Director may exercise virements on budgets under his/her control within their Department. Strategic Directors are able to carry out virements within their own budgets as long as it does not involve the following:
  - (i) a new policy or policy change;
  - (ii) does not result in an increase in commitment in future years which cannot be met from within existing budgets;

- (iii) does not compromise the policy/service objectives in the approved strategic plan (and related service plans).

Any virements not meeting these criteria shall be subject to approval by Cabinet.

- b.6 Amounts greater than £100,000 per annum resulting in a virement of funds between Departments requires the approval of the Cabinet, following a joint report of the Chief Financial Officer and the Strategic Director which must specify the proposed expenditure, the source of funding and must explain the implications in the current and future financial years.
- b.7 No virement relating to a specific financial year should be made after accounting period 14 of that year.
- b.8 Where an approved budget heading is designated by the Chief Financial Officer as a lump sum budget or contingency intended for allocation during the year, its allocation will not be treated as a virement, provided that the amount is used in accordance with the purposes for which it has been established.
- b.9 Strategic Directors must report all interdepartmental virements to the Chief Financial Officer as part of the period end assurance framework.

## **2 MANAGING AND CONTROLLING INCOME AND EXPENDITURE**

### **C Treatment of end of year balances**

#### **Objectives**

- c.1 The Chief Financial Officer makes proposals to Cabinet on the treatment of balances.
- c.2 The rules below cover arrangements for the transfer of resources between accounting years, i.e. a 'carry forward'.

#### **Key controls**

- c.3 Appropriate accounting procedures are in place to ensure that carried forward totals are correct.

#### **Responsibilities of Chief Financial Officer**

- c.4 To administer the scheme of 'carry forward' within accounting policies and any other guidelines set by the Council.
- c.5 To report the extent of overspends and underspends on service estimates carried forward to the Cabinet.

#### **Responsibilities of Strategic Directors**

- c.6 The Departmental outturn position will be reported to Cabinet after the end of the financial year along with the variances on the budgets that are deemed to be controllable. The Chief Financial Officer will determine which budgets are classed as controllable and non-controllable.

Over/underspends against controllable budgets can only be carried forward with the approval of Cabinet. Requests to carry forward and/or utilise previous years' underspends will normally be through the annual outturn report.

- c.7 Each school's surplus shall be carried forward to support the future expenditure of the school concerned. Any deficit will also be carried forward for the individual school to recover, if necessary, via a licensed deficit. Full details of

the arrangements are contained within the Derbyshire Scheme for Financing Schools.

### **3 ACCOUNTING POLICIES**

#### **Objectives**

- 1 The Chief Financial Officer is responsible for the preparation of the Council's Statement of Accounts, in the format required by the CIPFA Code of Practice on Local Authority Accounting in the UK, for the financial year ending 31 March. The Audit Committee is responsible for reporting to Cabinet and Council on matters arising from its review of the accounting policies and Annual Accounts of the Council, and will play a pro-active role in promoting discussion on both the content of the Statement of Accounts and ongoing financial statements.

#### **Key controls**

- 2 The key controls for accounting policies are:
  - (a) suitable accounting policies are selected and applied consistently;
  - (b) judgements are made and estimates prepared which are reasonable and prudent;
  - (c) statutory and other professional requirements are observed to maintain proper accounting records;
  - (d) all reasonable steps have been taken for the prevention and detection of fraud and other irregularities.

#### **Responsibilities of Chief Financial Officer**

- 3 To select suitable accounting policies and to ensure that they are applied consistently. The accounting policies will be set out in the Statement of Accounts which is prepared at 31 March each year, and will cover such items as:
  - (a) the basis on which debtors and creditors at year end are included in the accounts,
  - (b) details on substantial provisions and reserves, and contingent liabilities,
  - (c) fixed assets,
  - (d) depreciation,
  - (e) capital charges,

- (f) debt redemption,
  - (g) work in progress,
  - (h) stocks and stores,
  - (i) deferred charges,
  - (j) government grants,
  - (k) leasing,
  - (l) pensions,
  - (m) allocation of central support services.
  - (n) capital receipts.
- 4 To identify any significant changes in accounting policies, and to ensure that they are reported to, and approved by, the Audit Committee.

***Responsibilities of Strategic Directors***

- 5 To adhere to the accounting policies approved by the Chief Financial Officer.

## **4 ACCOUNTING RECORDS AND RETURNS**

### **Objectives**

- 1 Proper accounting records are 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 Statement of Accounts to present fairly its operations during the year. These are subject to external audit. This provides assurance that the accounts are properly prepared and proper accounting practices have been followed.

### ***Key controls***

- 2 The key controls for accounting records and returns are:
  - (a) all Cabinet Members, finance employees and budget managers operate within the required accounting standards of the Council;
  - (b) all the Council's transactions, material commitments, and contracts and other essential accounting information have been recorded completely, accurately and on a timely basis;
  - (c) procedures are in place to enable accounting records to be reconstituted in the event of failure;
  - (d) balances and reconciliation procedures are carried out to ensure transactions are correct;
  - (e) the duty imposed on the Council by the Accounts and Audit Regulations to maintain an adequate and effective audit of its accounting records and its system of internal control.

### ***Responsibilities of Chief Financial Officer***

- 3 To determine all accounting procedures and the form of financial records for the Council.
- 4 To compile all accounts and accounting records, or ensure that they are compiled under his/her direction.

- 5 To comply with the following principles when allocating accounting duties:
  - (a) separating the duties of providing information about sums due to or from the Council and calculating, checking and recording these sums from the duty of collecting or disbursing them;
  - (b) employees with the duty of examining or checking the accounts of cash transactions shall not themselves be engaged in these transactions.
- 6 To prepare, certify and publish the pre-audit statement of accounts of the Council for each financial year, in accordance with the statutory timetable, to make any necessary changes as a result of the external audit and for the Audit Committee to then approve the post-audit Statement of Accounts before the statutory deadline.
- 7 To ensure that retention periods for financial records are specified and promulgated throughout the Council. The periods for which documents are to be retained are separately specified.

### **Responsibilities of Strategic Directors**

- 8 To consult with and obtain the approval of the Chief Financial Officer before making any changes to the format of the accounting records and procedures.
- 9 To comply with the principles outlined in paragraph 5 when allocating accounting duties.
- 10 To maintain adequate records to provide an audit trail leading from the source of income/expenditure through to the accounting statements.
- 11 To supply the information required to enable the Statement of Accounts to be completed, in accordance with guidelines issued by the Chief Financial Officer.



## **5      FORMAT OF THE ACCOUNTS**

### **Objectives**

- 1      The format of the budget will determine the level of detail on which financial control and management will be exercised.

### **Key controls**

- 2      The key controls for the budget format are:
  - (a)    the format complies with all legal requirements;
  - (b)    the format complies with CIPFA's Service Reporting Code of Practice.

### **Responsibilities of Chief Financial Officer**

- 3      To advise the Audit Committee on the format of the budget.

### **Responsibilities of Strategic Directors**

- 4      To comply with accounting guidance provided by the Chief Financial Officer.

## **ANNEX 2: FINANCIAL PLANNING**

- 1 Financial Strategy
- 2 Budgeting
  - (a) resource allocation
  - (b) capital programmes
  - (c) preparing revenue budgets in accordance with the Council's financial strategy
- 3 Use of reserves

## **1 FINANCIAL STRATEGY**

### **Objectives**

- 1 The aim of the Financial Strategy is to set out the framework for the financial operation of the Council in support of its strategic and policy objectives as set out in the Council Plan. The Financial Strategy serves to drive (in conjunction with the Council Plan and Service Plans) the Medium Term Financial Plan, Capital Strategy, Capital Programme and Annual Revenue Budget. The aim of the Financial Strategy is to maximise, within existing policies, the resources available to the Council and to assist in the continuous improvement of the provision of cost effective and affordable service delivery.

### **Key Controls**

- 2 The key controls for the Financial Strategy are:
  - (a) to ensure it is driven by the Council Plan;
  - (b) to ensure it is reviewed annually;
  - (c) to ensure the Financial Strategy drives the Medium Term Financial Plan, Capital Programme and Annual Revenue Budget.

### **Responsibilities of Chief Financial Officer**

- (a) to produce and update annually the Financial Strategy for approval by Cabinet;
- (b) to ensure Financial Regulations, the Medium Term Financial Plan, Capital Programme and Annual Revenue Budget together with any other financial policies, plans and guidance are consistent with the Financial Strategy.

### **Responsibilities of Strategic Directors**

- (a) to contribute to the development of the Financial Strategy;
- (b) to ensure all financial policies, plans and guidance within Departments are consistent with the Financial Strategy.

## **2 BUDGETING**

### **A Resource allocation**

#### **Objectives**

- a.1 A mismatch often exists between those resources available and those required. A common scenario is that the available resources are not adequate to fulfil needs/desires. It is, therefore, imperative that resource allocation is carefully prioritised and the resources available are fairly allocated in order to fulfil all legal responsibilities. Resources will include employees, money, equipment (including ICT facilities, vehicles and plant) goods, materials, land and accommodation.

#### ***Key controls***

- a.2 The key controls for resource allocation are:
- (a) resources are acquired using an approved authorisation process;
  - (b) resources are only used for the purpose intended by the Council, to achieve the approved policies and objectives, and are properly accounted for;
  - (c) resources are secured for use when required;
  - (d) resources are used with the minimum level of waste, inefficiency or loss for other reasons.

#### ***Responsibilities of Chief Financial Officer***

- a.3 To advise on methods available for the funding of expenditure, such as grants from central government and other income and borrowing requirements.
- a.4 To assist in the allocation of income and expenditure to managers.

### ***Responsibilities of Strategic Directors***

- a.5 To work within budget limits and to utilise resources allocated and further allocate resources in the most effective, efficient and economical way.
- a.6 To identify opportunities to minimise or eliminate resource requirement or consumption without a detrimental effect on service delivery, such as efficiencies, partnerships and collaborations, applying fees and charges or other commercial arrangements.

## **BUDGETING**

### **B Capital programmes**

#### **Objectives**

- b.1 Capital expenditure involves acquiring or enhancing assets with a long term value, such as land, buildings and major items of plant and equipment or vehicles. Capital assets shape the way services are delivered for the long term and create financial commitments for the future in the form of financing costs and revenue running costs.
- b.2 The Government places controls on the financing capacity of the Council. This means that capital expenditure should form part of a programme, should be carefully prioritised in order to comply with the Council Plan, maximise the benefit of scarce resources and comply with CIPFA's Prudential Code for Capital Finance in Local Authorities (2017).

#### ***Key controls***

- b.3 The key controls for capital programmes are:
  - (a) specific approval by the Council of its Capital Strategy and Infrastructure Plan;
  - (b) the preparation of a project and estimates, including associated revenue expenditure, for appraisal and recommendation by the Capital Strategy Group and approval by the Cabinet;
  - (c) proposals for the purchase, lease of, or improvements and alterations to buildings must be approved by the Director of Property.

#### ***Responsibilities of Chief Financial Officer***

- b.4 To prepare the Capital Strategy jointly with Corporate Management Team who will report the Strategy to the Cabinet for approval. The Cabinet will make recommendations on the capital estimates and on any associated financing requirements to the Council.

The Chief Financial Officer, in conjunction with Strategic Directors, will compile the annual Capital Programme. This will contain schemes\* (which are designed to meet a particular need or issue) and individual projects. The programme will be approved by Council in February each year. For the purposes of these regulations an individual scheme will be classed as a single project.

- b.5 To prepare and submit reports to Cabinet/Council on the projected expenditure and resources compared with the approved estimates on a regular basis.
- b.6 To issue guidance concerning capital schemes and controls for example on project appraisal techniques e.g. the Council's project appraisal and management toolkit. The definition of 'capital' will be determined by the Chief Financial Officer, having regard to Government regulations and accounting requirements.

### **Responsibilities of Strategic Directors**

- b.7 To comply with guidance concerning capital schemes and projects and controls issued by the Chief Financial Officer.
- b.8 To ensure that all capital proposals have undergone a project appraisal in accordance with guidance issued by the Chief Financial Officer currently contained in the Council's project appraisal and management toolkit.

For schemes, an initial report will be taken to Cabinet to commit the scheme budget. Any balance remaining to be allocated at a later date will be dealt with under b.10.

### **Overspends**

- b.9 Where there are overspends on a project, virement can take place utilising the capital resources under the control of the Strategic Director as follows:
  - up to £250,000 by the Strategic Director
  - from £250,000 to £500,000 to be approved by Cabinet Member
  - over £500,000, to be approved by Cabinet.

Where there may be the need to vire from a project that is funded by borrowing, this must be agreed with the Chief Financial Officer.

Any overspend that needs to be funded from an increase in borrowing will require the approval of Cabinet.

### **New Projects not already approved in the Capital Programme**

b.10 Any subsequent projects can be approved as follows:

- up to £250,000 by the Strategic Director
- from £250,000 to £500,000 to be approved by Cabinet Member
- over £500,000, to be approved by Cabinet.

Cabinet approval is required for any new Project to be funded from borrowing.

### **Corporate Contingency Funds**

b.11 The corporate contingency budget is funded by borrowing and is under the control of the Chief Financial Officer

The Chief Financial Officer will authorise the use of contingency funds up to £250,000. Over £250,000 will require Cabinet approval.

b.12 The use of capital receipts can only be used with the approval of the Chief Financial Officer.

b.13 To nominate an officer who will act as sponsor for the project and an officer who will be responsible for the financial management of the project.

Where a department requests a feasibility study, then the cost of this will initially be borne by the department. If this then becomes a capital project, then the costs of the feasibility can be charged to the project

b.14 To assist in the preparation of regular reports of the estimated final cost of schemes in line with the timetable set out by the Chief Financial Officer.

b.15 To ensure that adequate records are maintained in respect of all capital contracts.

b.16 To ensure that they do not enter into credit arrangements, such as borrowing or leasing arrangements, without the prior approval of the Chief Financial



Officer and, if applicable, approval of the scheme through the Capital Programme.

- \* Examples of a scheme are Basic Need, Local Transport Plan, Schools Access initiative, Disabled Adaptations.

The Chief Financial Officer will determine which funding streams can be considered to be classed as a scheme for the purposes of these regulations.

## **2 BUDGETING**

### **C Preparing revenue budgets in accordance with the Council's Financial Strategy**

#### **Objectives**

- c.1 The Council is a complex organisation responsible for delivering a wide variety of services. It needs to plan effectively and to develop systems to enable scarce resources to be allocated in accordance with carefully weighed priorities. The budget is the financial expression of the Council's plans and policies.
- c.2 The revenue budget must be constructed so as to ensure that resource allocation properly reflects the spending plans and priorities of the Council. Budgets (spending plans) are needed so that the Council can plan, authorise, monitor and control the way money is allocated and spent.
- c.3 Medium term planning (or a 3 to 5 year planning system) involves a rolling planning cycle in which the Council develops its plans. As each year passes another future year will be added to the Medium Term Plan. Medium term planning involves a minimum 5 year rolling planning cycle which ensures that the Council is always preparing for events in advance.

#### **Key controls**

- c.4 The key controls for budget preparations are:
  - (a) specific budget approval for all expenditure;
  - (b) budget managers accept accountability within delegations set by the Cabinet for their budgets and the level of service to be delivered;
  - (c) a monitoring process is in place to review regularly the effectiveness and operation of budget preparation and that any corrective action is taken.

#### ***Responsibilities of Chief Financial Officer***

- c.5 To prepare and submit reports on budget prospects for the Cabinet, including resource constraints set by the Government. Reports should take account of medium term prospects, where appropriate.

- c.6 To determine the detailed form of revenue estimates, consistent with the general directions of the Council, and after consultation with the Cabinet and Strategic Directors.
- c.7 To prepare and submit reports to the Cabinet on the aggregate spending plans of Departments and on the resources available to fund them; identifying, where appropriate, the implications for the level of Council Tax to be levied.
- c.8 To advise on the medium term implications of spending decisions.
- c.9 To encourage best use of resources and VfM by working with Strategic Directors to identify opportunities to improve effectiveness, efficiency and economy, and by encouraging good practice in conducting financial appraisals of development or savings options, and in developing financial aspects of service planning.
- c.10 To advise the Council on Cabinet proposals in accordance with his responsibilities under Section 151 of the Local Government Act 1972.

### ***Responsibilities of Strategic Directors***

- c.11 To prepare estimates of income and expenditure, in consultation with the Chief Financial Officer, to be submitted to the Cabinet for approval.
- c.12 To prepare budgets which are consistent with any relevant cash limits, the Council's annual budget cycle and guidelines issued by the Cabinet. The Chief Financial Officer shall prescribe the format in accordance with the Council's general directions.
- c.13 To integrate financial and budget plans into service plans, so that budget plans can be supported by financial and non-financial performance measures.
- c.14 To consult with Cabinet Members and relevant Strategic Directors, where it appears that a budget proposal is likely to impact on another service or level of service activity.
- c.15 In consultation with the Chief Financial Officer and in accordance with the agreed guidance and timetable to prepare detailed draft revenue and capital budgets for consideration by the Cabinet and Council.
- c.16 To have regard to:
  - spending patterns and pressures revealed through the budget monitoring process;

- legal requirements;
- policy requirements as defined by the Council;
- initiatives already underway.

### **3 USE OF RESERVES**

#### **Objective**

- 1 Reserves are maintained as a matter of prudence.

#### *Key controls*

- 2 To maintain reserves in accordance with the CIPFA Code of Practice on Local Authority Accounting in the UK, the Council's Reserve Policy and agreed accounting policies.

#### *Responsibilities of Chief Financial Officer*

- 3 To advise on prudent levels of reserves for the Council and to consider the advice of external audit in this matter.
- 4 To ensure that the nature and purpose of all reserves is clearly identified and that they conform to accepted accounting practice.
- 5 To ensure all movements to and from reserves receive the appropriate level of authorisation.
- 6 That the Council's Reserve Policy is reviewed on an annual basis.
- 7 Where Cabinet/Cabinet Member has approved the budget for a scheme to spend resources in-year and there are commitments against the scheme at year-end, an earmarked reserve should be created for use by the Department.
- 8 Other reserves will be created by the Chief Financial Officer in line with accounting policies where necessary.

## **ANNEX 3: CONTROL OF RESOURCES INCLUDING EMPLOYEES**

- 1 Internal controls
- 2 Audit requirements
  - a) internal audit
  - b) external audit
  - c) preventing financial irregularities
  - d) hospitality and gifts
- 3 Resources: Land, buildings, fixed plant and machinery
  - a) security
  - b) inventories
  - c) stocks and stores
  - d) intellectual property
  - e) private use of County Council facilities
  - f) asset disposal
- 4 Risk management and insurance
- 5 Treasury management
  - a) treasury management and banking
  - b) investments and borrowing
  - c) trust funds and funds held for third parties
  - d) imprest accounts
  - e) Money Laundering Regulations and Proceeds of Crime Act
- 6 Employees

# 1 INTERNAL CONTROLS

## Objectives

- 1 The Council is complex and beyond the direct control of any one individual. It therefore requires internal controls to manage and monitor progress towards strategic objectives.
- 2 The Council has statutory obligations to meet and, therefore, requires internal controls to identify, meet and monitor compliance with these obligations.
- 3 The Council faces a wide range of financial, administrative and commercial risks, both from internal and external factors, which threaten the achievement of its objectives. Internal controls are necessary to identify, evaluate and control these risks.
- 4 The system of internal controls is established in order to provide measurable assurance of:
  - efficient and effective operations;
  - reliable financial information and reporting;
  - compliance with laws and regulations.

## *Key controls*

- 5 Effective review on a regular basis.
- 6 Managerial control systems including defining policies, setting objectives and plans, monitoring financial and other performance and taking appropriate anticipatory and remedial action. The key objectives of these systems are to promote ownership of the control environment by defining roles and responsibilities.
- 7 Financial and operational control systems and procedures, which include physical safeguards for assets, segregation of duties, authorisation and approval procedures and information systems.
- 8 An effective internal audit function which operates in compliance with the principles embodied in the Accounts and Audit Regulations 2015 (Regulations 3 and 5), the Public Sector Internal Audit Standards and with any other statutory obligations, regulations and professional Best Practice.

## **Responsibilities of the Chief Financial Officer**

- 9 To assist the Council to put in place an appropriate control environment and effective internal controls which provide reasonable assurance of effective and efficient operations, internal financial controls and compliance with laws and regulations.
- 10 To ensure that the Council puts in place effective internal financial controls covering codified guidance, budgetary systems, supervision, management review and monitoring, physical safeguards, segregation of duties, accounting procedures, information systems and authorisation and approval processes.

## **Responsibilities of Strategic Directors**

- 11 To manage processes so as 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.
- 12 To update existing controls and establish and implement new ones following consultation with the Assistant Director of Finance (Audit) who will consider the potential impact on the Internal Control Framework, and report to the Chief Financial Officer, raising any concerns as appropriate. The Chief Financial Officer will then formally consider the proposed changes. No changes may be actioned without the formal approval of the Chief Financial Officer.
- 13 To ensure employees have a clear understanding of the consequences of a lack of proper internal control frameworks or the deliberate breach or circumvention of such frameworks.



## **2 AUDIT REQUIREMENTS**

### **A INTERNAL AUDIT**

#### *Objective*

- a.1 The Chief Financial Officer has a statutory responsibility for the overall financial administration of the Council's affairs. Under the requirements of the Accounts and Audit Regulations 2015 (Regulation 5) the Council is responsible for maintaining an adequate and effective internal audit.
- a.2 Internal Audit is an independent, objective assurance and consulting activity established by the Council designed to add value and improve the Council's operations. It assists the Council accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

#### *Key controls*

- a.3 The key controls for internal audit are:
  - (i) that it remains independent in its planning and operation,
  - (ii) the Assistant Director of Finance (Audit) has direct access to the Audit Committee, Cabinet, Council and Strategic Directors.
  - (iii) Internal Audit officers comply with the requirements of the Accounts and Audit Regulations 2015 (Regulations 3 and 5), the Public Sector Internal Audit Standards and professional Best Practice.

#### ***Responsibilities of Chief Financial Officer***

- a.4 In accordance with Regulation 5 of the Accounts and Audit Regulations 2015, the Council is required to undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account Public Sector Internal Audit Standards or guidance.

#### ***Responsibilities of Assistant Director of Finance (Audit)***

- a.5 The Assistant Director of Finance (Audit) or his/her authorised representative, shall have a right of access at all times to such records and documents, including computer data, and premises (in accordance with the protocol approved by Cabinet) of the Council as appear to him/her to be necessary for the purposes of the audit and shall be entitled to require from any Officer or Member of the Council such information

and explanation as he/she thinks necessary for that purpose. The Assistant Director of Finance (Audit) shall provide relevant reports and advice to the officers concerned.

- a.6 The Assistant Director of Finance (Audit) is authorised to appraise the adequacy of procedures employed by Strategic Directors to secure effectiveness, efficiency and economy in the use of resources.
- a.7 All cases of suspected fraud, misappropriation or misuse of money, materials or equipment, or any mismanagement of money or other assets, or any other irregularities, must be reported immediately to the Assistant Director of Finance (Audit) who will investigate all cases of suspected fraud and other irregularities. He/she will, on conclusion of the audit investigation, report to the appropriate Strategic Director who will consider any legal proceedings and/or disciplinary action in consultation with the appropriate Strategic Director(s), Director of Legal Services, Chief Financial Officer and Assistant Director of Finance (Audit).
- a.8 The Assistant Director of Finance (Audit) must maintain Strategic and Annual Audit Plans which take account of the characteristics and relative risks of the activities involved which he/she will report to the Audit Committee annually for approval. He/she should liaise with Strategic Directors on the audit strategy and cover required. In addition to the statutory requirement this takes account of the need to seek added value, effective use of resources, improved performance and cost effective controls.
- a.9 Where an appropriate response to audit recommendations has not been made within a reasonable period, the Assistant Director of Finance (Audit) shall refer the matter to the appropriate Strategic Director for resolution. Where resolution cannot be reached, the matter shall be referred to the Chair of the Audit Committee, as specified in that Committee's Terms of Reference.
- a.10 The Assistant Director of Finance (Audit) shall produce an annual report giving his/her opinion on the Council's framework of internal controls to the Audit Committee in accordance with the requirements of the Public Sector Internal Audit Standards.
- a.11 The Assistant Director of Finance (Audit) is responsible for the consideration and formal approval of any changes that are proposed to existing financial, control and IT systems or the implementation of new systems. He/she will consider the potential impact on the Internal Control Framework and report to the Chief Financial Officer, raising any concerns as appropriate. The Chief Financial Officer will then formally consider the

proposed changes. No changes may be actioned without the formal approval of the Chief Financial Officer.

### **Responsibilities of Strategic Directors**

- a.12 To ensure that internal and external auditors are given unrestricted access to all records, personnel, assets and premises (in accordance with the protocol agreed by Cabinet) as necessary for the purpose of their work.
- a.13 To ensure that auditors are provided with any information and explanations which they seek in the course of their work.
- a.14 To consider and respond within 28 working days to recommendations in audit memoranda and reports.
- a.15 To ensure that any agreed actions arising from audit recommendations are carried out in a timely and effective fashion.
- a.16 To notify the Assistant Director of Finance (Audit) immediately of any suspected fraud, misappropriation or misuse of money, materials or equipment, or any mismanagement of money or other assets, or any other irregularities. Pending investigation and reporting, the Strategic Director should in liaison with the Assistant Director of Finance (Audit) take all necessary steps to prevent further loss and to secure the integrity of records and documentation against removal, alteration or destruction.
- a.17 To ensure that new systems for maintaining financial records, or records of assets, or changes to such systems, are discussed with the Council's Assistant Director of Finance (Audit), prior to implementation. This regulation shall also apply to computer systems. The Assistant Director of Finance (Audit) will consider the potential impact on the Internal Control Framework and report to the Chief Financial Officer, raising any concerns as appropriate. The Chief Financial Officer will then formally consider the proposed changes. No changes may be actioned without the formal approval of the Chief Financial Officer.

## **2 AUDIT REQUIREMENTS**

### **B EXTERNAL AUDIT**

#### **Objectives**

- b.1 The Council has opted to use Public Sector Audit Appointments as part of a national joint procurement exercise to determine the Council's external auditor over the medium term.
- b.2 The Chief Financial Officer is responsible for working with the external auditor and for advising the Audit Committee, Cabinet, Council and Strategic Directors on their responsibilities in relation to external audit. The external auditor has the same rights of access as the internal auditor to all documents that are necessary for audit purposes.
- b.3 The Act requires the Comptroller and Auditor General (C&AG) to prepare one or more codes of audit practice prescribing the way local auditors are to carry out their functions. This responsibility is important both nationally and locally in supporting auditors and underpinning a consistent, high-quality approach to the audit of local public bodies. The C&AG has taken the opportunity to prepare a single code covering the audit of different types of local public body. This reflects the fact that the core statutory responsibilities placed on the auditors of the different types of local public body covered by the Code are essentially the same.
- b.4 The basic duties of the external auditor are governed by Section 20 of the Act, under which auditors need to satisfy themselves that:
  - the accounts comply with the requirements of the enactments that apply to them;
  - proper practices have been observed in the preparation of the statement of accounts and that the statement presents a true and fair view;
  - the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.
- b.5 The Council's accounts are scrutinised by external auditors who must be satisfied that the Statement of Accounts 'presents fairly' the financial position of the Council and its income and expenditure for the year in question and complies with the legal requirements.

## **Key controls**

- b.6 The C&AG provides a code of audit practice which prescribes how the external auditors carry out their functions.

### *Responsibilities of Chief Financial Officer*

- b.7 To draw up the timetable for final accounts purposes and to advise staff and external auditors accordingly.
- b.8 To ensure that external auditors are given access to those premises, employees, documents and assets which the external auditors consider necessary for the purposes of their work.

## **Responsibilities of Strategic Directors**

- b.9 To ensure that external auditors are given access to those premises, employees, documents and assets which the external auditors consider necessary for the purposes of their work.
- b.10 To ensure that all paperwork and systems are up to date and available for inspection.

## **2 AUDIT REQUIREMENTS**

### **C PREVENTING FINANCIAL IRREGULARITIES**

#### *Objectives*

- c.1 The Council's Policy for the prevention of financial irregularities is set out in full in its Anti Fraud and Anti Corruption Strategy Policy and Fraud Response Plan - which are issued to all Members and Officers of the Council.
- c.2 The Council will not tolerate fraud and corruption in the administration of its responsibilities whether from inside or outside the Council.
- c.3 The Council's expectation of propriety and accountability is that Members and Officers at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and practices.
- c.4 The Council also expects that individuals and organisations (e.g. suppliers, contractors, partner bodies and service providers) that it comes into contact with, will act towards the Council with integrity and without thought or actions involving fraud and corruption.
- c.5 The Audit Committee is charged with conducting an annual review and re-affirmation of the Council's Anti Fraud and Anti Corruption Strategy and the Fraud Response Plan. It will also review and approve the Council's strategy to ensure the adequate on-going training and awareness of all employees regarding anti fraud and corruption measures.
- c.6 The Council has in place an approved Whistleblowing The Confidential Reporting Code which applies to all employees, contractors working for the Council on Council premises, suppliers, those providing services to the Council in their own premises and members of the public. This Code provides a procedure for making confidential disclosures about suspected wrongdoing, irregularity or a failure of standards within the Council.
- c.7 The Audit Committee is charged with providing an annual report to Cabinet and Council on the continued adequacy and effectiveness of the Whistleblowing The Confidential Reporting Code, its publication and the strategy to ensure that both Members and Officers remain aware of, and comply with, its requirements.

### *Key controls*

c.8 The key controls regarding the prevention of financial irregularities are that:-

- (a) the culture and tone of the Council is one of honesty and opposition to fraud and corruption;
- (b) all Members and Officers act with integrity and lead by example;
- (c) all individuals and organisations associated in any way with the Council will act with integrity;
- (d) senior managers are required to deal swiftly and firmly with those who defraud the Council or who are corrupt;
- (e) all employees should ensure that they remain aware of, and use, when appropriate, the Whistleblowing The Confidential Reporting Code.

### *Responsibilities of Chief Financial Officer*

c.9 To maintain adequate and effective audit arrangements for the Council.

### *Responsibilities of Assistant Director of Finance (Audit)*

c.10 To ensure that the outcome of investigations into potential fraud/irregularity are reported to the appropriate Strategic Director(s) in accordance with the Council's agreed procedure.

### **Responsibilities of Strategic Directors**

- c.11 To notify the Assistant Director of Finance (Audit) immediately of any suspected fraud, misappropriation or misuse of money, materials or equipment, or any mismanagement of money or other assets, or any other irregularities. Pending investigation and reporting, the Strategic Director should in liaison with the Assistant Director of Finance (Audit) take all necessary steps to prevent further loss and to secure the integrity of records and documentation against removal, alteration or destruction.
- c.12 To instigate the Council's disciplinary procedures where the outcome of an Audit investigation indicates improper behaviour.

## **2 AUDIT REQUIREMENTS**

### **D SECONDARY EMPLOYMENT GIFTS AND HOSPITALITY**

**(See the requirements of the Council's Code of Conduct for Employees and Members)**

#### **Secondary Employment**

- d.1 The Council recognises that employees may undertake secondary employment (either within or outside of the council). A second job for the purpose of this advice is any job, paid or unpaid, with any employer and/or any type of self-employment. The carrying out of public duties does not count as a second job.
- d.2 Any secondary employment you undertake must not, nor have the potential to:
- Create a conflict of interest, for example, working for a company that either supplies or buys from the Council, or is in competition with the Council;
  - Overlap with official duties;
  - Make use of Council resources (including knowledge, property or equipment);
  - Weaken public confidence in the Council;
  - Bring the Council into disrepute, for example by undertaking an activity that could be deemed to be incompatible with your role;
  - Affect your performance or duties whilst at work.

Any secondary employment you undertake must:

- Be undertaken outside of your working hours with the Council;
  - Be undertaken away from your place of work.
- d.3 If undertaking secondary employment outside the Council, you must declare this to your Director/Strategic Director and agree that it be recorded on any register of secondary employment maintained by your Department.

You will be expected to inform your manager of:

- The name of your second employer;
- The type of business in which the second employer is involved;
- The type of work involved;
- The proposed hours of work.



- d.4 When considering accepting secondary employment, either within or external to the Council, you must consider the implications of the working time directive which stipulates the maximum hours you should work in a week and required rest breaks. In particular, if you will be working over 48 hours per week in your combined roles, you must inform your manager, as this is in contravention of the Working Time Regulations, and you may be required to sign an opt out agreement.
- d.5 If any conflict between your roles is identified, you must resolve the conflict in favour of your role and duties with the Council.

## **EGIFTS**

- d.6 You may accept 'token' gifts from customers, contractors or service users up to the value of £50. Acceptable examples are calendars, diaries, pens or chocolates. All gifts should be reported to your manager.

You must not accept gifts worth more than £50 and you must report such offers to your Strategic Director.

You must refuse any offer of a gift where you suspect that an improper motive may exist – i.e. the giver is seeking to influence your decisions or actions and you must report such offers to your Strategic Director. This is the case regardless of the monetary value of the offer.

In no circumstances should you accept a monetary gift (including gift vouchers) and again, you must report such offers to your Strategic Director.

## **Hospitality**

- d.7 You should only accept hospitality (meals/refreshments) if there is a genuine need to impart information or to represent the Council. You should also ensure that accepting the hospitality does not create a conflict of interest and is not likely to cause embarrassment to the Council.

You should report the offer of hospitality, whether accepted or not, to your line manager, and should ensure that all such offers are recorded in the appropriate hospitality register.

## **Responsibilities of Strategic Directors**

- d.8 To maintain an appropriate register detailing secondary employment for staff within the Department and ensure that this register is subject to periodic review.
- d.9 To maintain an appropriate register of gifts and hospitality including details of any offers which have been declined and ensure that this register is subject to periodic review.

### **3 RESOURCES: Land, buildings, fixed plant and machinery**

#### **A SECURITY**

##### **Objectives**

- a.1 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 should be safeguarded and used efficiently in the delivery of services, and that there should be arrangements for the security of both assets and service operations.

##### *Key controls*

- a.2 The key controls for the security of resources such as land, buildings, fixed plant and machinery are:-
- (a) resources are acquired using an approved authorisation process;
  - (b) resources are used only for the purposes of the Council and properly accounted for;
  - (c) resources are secured to be available for use when required;
  - (d) resources no longer required are promptly disposed of in accordance with the law and the regulations of the Council so as to maximise benefits.

##### *Responsibilities of Chief Financial Officer*

- a.3 To ensure that an asset register is maintained in accordance with good practice which records plant and machinery and all moveable assets of a material value currently owned, or used, by the Council.
- a.4 To receive that information from each Strategic Director required for accounting, costing and financial records.

##### ***Responsibilities of Director of Property***

- a.5 The Director of Property shall act in the capacity of corporate landlord for any property owned or leased by the Council.
- a.6 The Director of Property shall maintain a property database, for all land and properties currently owned or used by the Council.

- a.7 To ensure the ongoing provision of effective security arrangements for the Council's buildings and other assets.
- a.8 To record all disposals of assets, which shall be in accordance with the Council's agreed procedure.

### **Responsibilities of Strategic Directors**

- a.9 To formally notify the Chief Financial Officer/Director of Property at the earliest opportunity of the requirement to purchase, take possession of or dispose of any material asset so that the Chief Financial Officer/Director of Property can arrange to process the transaction.
- a.10 Where there is no contractual obligation, expenditure on rented property shall be subject to consultation with the Director of Property.
- a.11 Any use of property by a Department or establishment other than for service delivery should be supported by documentation identifying terms, responsibilities and duration of the use.
- a.12 To ensure that lessees and other prospective occupiers of Council land and/or premises are not allowed to take possession or enter the land and/or premises until a lease or agreement, in a form approved by the Director of Property/Director of Legal Services has been established as appropriate.
- a.13 Where land or buildings are surplus to the requirements, they must be passed to the Director of Property for re-use or disposal. Running costs of the building remain the responsibility of the transferee until the asset is either sold or brought into new usage.
- a.14 To pass title deeds to the Director of Legal Services who is responsible for custody of all title deeds.
- a.15 To ensure that no Council asset is subject to personal use by an employee without proper authority.
- a.16 To ensure the safe custody of vehicles, equipment, furniture, stocks, stores and other property belonging to the Council.
- a.17 To ensure that the Department maintains an up-to-date register of all plant machinery and moveable assets in accordance with arrangements defined by the Chief Financial Officer.
- a.18 To ensure assets are identified, their location recorded and that they are appropriately marked and insured.

- a.19 To consult the Chief Financial Officer and Director of Property in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.
- a.20 To ensure cash holdings on premises are kept to a minimum.
- a.21 To ensure that keys to safes and similar receptacles are carried on the person responsible at all times; loss of any such keys must be reported to the Chief Financial Officer as soon as possible.
- a.22 To ensure the valuation of assets for accounting purposes meets the requirements specified by the Chief Financial Officer.
- a.23 To ensure that all their employees are aware that they have a personal responsibility with regard to the protection and confidentiality of information, whether held in manual or computerised records. Information may be sensitive or privileged, or may possess some intrinsic value and its disclosure or loss could result in a cost to the Council in some way. Employees are governed by the requirements of the Data Protection and Computer Misuse Acts and should comply with the guidance provided by the Information Security Policy. Measures to protect the Council's resources include maintaining the confidentiality of passwords and ensuring that manual and electronic data is held in secure locations.

### **3      RESOURCES: Land, buildings, fixed plant and machinery**

#### **B      INVENTORIES**

##### *Responsibilities of Strategic Directors*

- b.1    To maintain inventories, and to record an adequate description of the items they contain (including ICT equipment). All items with a purchase price where known or estimated purchase cost greater than £250 should be recorded.
- b.2    To carry out an annual check of all items on the inventory in order to take action in relation to surpluses or deficiencies, annotating the inventory accordingly. Attractive and portable items such as computers, cameras and dvd players whose purchase price may not exceed £250 should prudently be both recorded on the inventory and identified with security marking as belonging to the Council.
- b.3    To ensure that property is only used in the course of the Council's business.
- b.4    Any proposals for the maintenance of inventory records involving electronic media or computerised systems must be reported to and considered by the Assistant Director of Finance (Audit) who will consider the potential impact on the Internal Control Framework and report to the Chief Financial Officer raising any concerns prior to implementation as many of the propriety software packages on the market do not contain adequate security features or audit trails. The Chief Financial Officer will then formally consider the proposed changes. No changes may be actioned without the formal approval of the Chief Financial Officer.

### 3. RESOURCES: Land, buildings, fixed plant and machinery

#### C STOCKS AND STORES

*Joint responsibilities of Strategic Directors and Chief Financial Officer*

- c.1 To make arrangements for the care and custody of stocks and stores in the Department.
- c.2 To ensure stocks are maintained at reasonable levels and subject to a regular independent physical check. All discrepancies should be recorded, investigated and pursued to a satisfactory conclusion.
- c.3 To write-off discrepancies and obtain appropriate approval in accordance with the table below:

Written off by	Discrepancy Amount
Strategic Director/Chief Financial Officer	£0 - £181,303 (OJEU)
Cabinet Member	£181,303-£500,000
Cabinet	£500,000+

- c.4 To authorise or write-off disposal of redundant stocks and equipment. Procedures for disposal of such stocks and equipment should be by competitive quotations or auction unless following consultation with the Chief Financial Officer, the Cabinet decides otherwise in a particular case.
- c.5 To write-off redundant stocks and equipment and obtain appropriate approval in accordance with the table below:

Written off by	Redundant Stocks/Equipment Amount
Strategic Director/Chief Financial Officer	£0 - £181,303 (OJEU)
Cabinet Member	£181,303-£500,000
Cabinet	£500,000+

- c.6 All discrepancies on stocks and stores should be taken seriously. Where there is any suspicion that the discrepancy is a result of theft or fraudulent

activity, this must be reported to the Assistant Director of Finance (Audit) immediately.

- c.7 Where concerns relate to the operation and management of the store, the discrepancy should be investigated by relevant Departmental staff. However, if concerns arise during this review that there may be potential dishonesty/fraudulent activity, the matter must be reported to the Assistant Director of Finance (Audit) immediately.
- c.8 Any stocks and stores discrepancies may only be written-off after the discrepancy has been investigated.
- c.9 Accounting policies require the Chief Financial Officer to reflect the true value of Stocks and Stores at the financial year end. This may require amounts to be written off before approval is obtained. When this occurs, retrospective approval should be sought.



### **3 RESOURCES: Land, buildings, fixed plant and machinery**

#### **D INTELLECTUAL PROPERTY**

(see the requirements of the Council's Code of Conduct for Employees)

##### *Objectives*

- d.1 Intellectual property is a generic term that includes inventions, computer programs and writings. If the employee during the course of employment creates these, then as a general rule they belong to the employer, not the employee. Various Acts of Parliament cover different types of intellectual property.
- d.2 Certain activities undertaken within the Council may give rise to items which may be patentable. These are collectively known as intellectual property.

##### ***Key Controls***

- d.3 In the event that the Council decides to become involved in the commercial exploitation of inventions, the matter should only proceed following consultations with, and taking advice from, the Director of Legal Services on a case by case basis.

##### ***Responsibilities of Strategic Directors***

- d.4 To ensure that employees are aware that they should not make use of the County Council's intellectual property to conduct private work.

3      **RESOURCES: Land, buildings, fixed plant and machinery**

E      **PRIVATE USAGE OF COUNTY COUNCIL FACILITIES**

**(See the requirements of the Council's Codes of Conduct for Employees and Members)**

- e.1      Employees are reminded that equipment or facilities of the Council may not be used for personal purposes. Where an explicit policy has been approved by Cabinet to provide for limited, personal use within a regulated framework, employees are reminded that the Council may legitimately monitor such private use to ensure compliance with that framework. Employees may not conduct outside work on the Council's premises or use its facilities or equipment for such purposes.

County Council facilities include, but are not limited to:

- Property
- Vehicles
- Telecommunications equipment
- Photocopiers/printers
- Computer hardware
- Software.

3      **RESOURCES: Land, buildings, fixed plant and machinery**

F      **ASSET DISPOSAL**

**Objective**

- f.1      It would be unsatisfactory and inefficient for the cost of assets to outweigh their benefits. Obsolete, non-repairable or unnecessary resources should be disposed of in accordance with the law and regulations of the Council.

**Key Controls**

- f.2      Assets are disposed of at the most appropriate time and only when it is in the best interests of the Council and that the best price is obtained. For items of significant value, disposal should be by competitive tender or public auction. Waste electrical and electronic equipment should be disposed of in compliance with the Waste Electrical and Electronic Equipment Regulations 2006.

### ***Responsibilities of Chief Financial Officer***

- f.3 To advise on best practice for disposal of assets.
- f.4 To ensure appropriate accounting entries are made.

### ***Responsibilities of Strategic Directors***

- f.5 To seek advice from the Chief Financial Officer on the disposal of surplus or obsolete materials, stores or equipment.
- f.6 To ensure that income received for disposal of an asset is properly banked and coded.

## **4 RISK MANAGEMENT AND INSURANCE**

### **Objectives**

- 1 All organisations, whether they are in the private or public sectors, face risks to people, property and continued operations, which can affect delivery of services and achievement of the Council's objectives. Risk is defined as the chance or possibility of loss, damage or injury 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.
- 2 Insurance has been the traditional means of protecting against loss but this cannot be seen as the complete answer. By reducing, or even preventing, the incidence of losses (whether they result from crime or accident) the Council will improve service delivery and the effective use of resources, reduce stress and anxiety for service users and employees and benefit from reduced costs of providing insurance cover. It will also avoid the disruption and wasted time caused by losses and insurance claims.
- 3 It is the overall responsibility of Cabinet to approve the Council's Risk Management Strategy and to promote a culture of risk management awareness throughout the County.

### **Key Controls**

- 4 The key controls for risk management and insurance are:
  - procedures are in place to identify, assess, prevent or mitigate material risks and these procedures are embedded within the culture of the Council;
  - acceptable levels of risk are determined and insured against where appropriate;
  - managers are made aware of the spectrum of risks for which they are responsible and are provided with relevant information on risk management initiatives;
  - provision is made for losses which may result from the risks that remain;
  - procedures are in place to investigate insurance claims within required timescales;

- a monitoring process is in place which ensures the regular review of the effectiveness of risk reduction strategies and the operation of these controls. The risk management process should be conducted on a continuing basis;
- the Council's Audit Committee will receive a report, at each meeting, on the Council's Risk Register and will consider any significant changes and monitor the effectiveness of the management of the key risks identified.

### **Responsibilities of Chief Financial Officer**

- 5 To prepare and promote the Council's Risk Management Policy Statement.
- 6 To develop risk management strategies in conjunction with Strategic Directors.
- 7 To effect corporate insurance cover, through external insurance and internal funding, and negotiate all claims in consultation with other officers where necessary.
- 8 To include all appropriate employees of the County Council in a suitable fidelity guarantee insurance.
- 9 To offer insurance cover to schools in accordance with Fair Funding arrangements.
- 10 Claims against the County Council by its employees where there is no legal liability may be settled by the Director of Legal Services up to a limit of £300 in any case, in respect of damage to or loss of personal property occurring in the course of their duties. Provided that there is no contributory negligence, the settlement to be on the following basis: -
  - (a) for repairs to clothing or other property - full cost;
  - (b) for replacement of clothing or other property (where repair was impracticable) - three quarters of reasonable replacement cost.

### **Responsibilities of Strategic Directors**

- 11 To notify the Chief Financial Officer immediately of any loss, liability or damage which may lead to a claim against the Council, together with any information or explanation required by the Chief Financial Officer or the Council's insurers. These should be reported irrespective of the application of any insurance excess.

- 12 To notify the Chief Financial Officer promptly of all new risks, properties, vehicles, plant or equipment, which require insurance, and of any alterations affecting existing insurances.
- 13 To consult the Chief Financial Officer and the Director of Legal Services on the terms of any indemnity that the Council is requested to give.
- 14 To ensure that Council employees, or anyone covered by the Council's insurances, do not admit liability or make any offer to pay compensation which may prejudice the assessment of liability in respect of any insurance claim.
- 15 To take responsibility for risk management having regard to advice from the Chief Financial Officer, the Corporate Risk Management Policy & Strategy and other specialist officers (eg Risk Management, Emergency Planning, Crime Prevention, Fire Prevention, Health and Safety).
- 16 To ensure that there are regular reviews of risk within their Departments in accordance with the Council's Corporate Risk Management Policy & Strategy.

## **5 TREASURY MANAGEMENT**

### **Objectives**

- 1 The County Council is responsible for the in-house management and investment of many hundreds of millions of pounds in respect of both itself and the Derbyshire Pension Fund. Codes of Practice aim to provide assurances that the Council's money is properly managed in a way which balances risk with return.

### **A Treasury Management and Banking**

#### **Responsibilities of Chief Financial Officer**

- a.1 To arrange 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.
- a.2 To report at least twice a year to the Audit Committee/Cabinet on treasury management activities.
- a.3 To operate bank accounts as are considered necessary within the terms of the banking arrangement. Opening or closing any bank account shall require the prior approval of the Chief Financial Officer.

#### *Responsibilities of Strategic Directors*

- a.4 To ensure that the Council's Treasury Management Practices as set out in the Treasury Management Manual are followed and regularly reviewed.

## **B Investments and Borrowing**

### **Responsibilities of Chief Financial Officer**

- b.1 To ensure that all investments of money are made in the name of the Council, or school in the case of a school operating an approved bank account, or in the name of nominees approved by the Council.
- b.2 To ensure that:-
  - all negotiable instruments which are the property of the Council or its nominees are securely held by the Council's External Custodian;
  - the title deeds of all property and land in the Council's ownership are passed to the Director of Legal Services who will maintain their safe custody;
  - other share certificates relating to investments in Unquoted Companies, which are the property of the Council or its nominees, are securely held by the Chief Financial Officer; and
  - all investments on behalf of the Council in Strategic Pooled Funds are independently validated by the Council's appointed external audit provider.
- b.3 To effect all borrowings in the name of the Council.
- b.4 To act as the Council's registrar of stocks, bonds, and mortgages, and to maintain records of all borrowing of money by the Council.

### ***Responsibilities of Strategic Directors***

- b.5 To ensure that no loans are made to third parties and no interests are acquired in companies, joint ventures, or other enterprises without the approval of the Council, following consultation with the Chief Financial Officer.



## **C Trust Funds and Funds held for Third Parties**

### *Responsibilities of Strategic Directors*

- c.1 To arrange that all trust funds are in the name of the Council. Trust funds should not be held in the name of individual officers. All officers acting as trustees by virtue of their official position shall deposit securities etc. relating to the trust with the Chief Financial Officer/Director of Legal Services unless the deed otherwise provides.
- c.2 To arrange, where funds are held on behalf of third parties, for their secure administration, approved by the Chief Financial Officer and maintain written records of all transactions.
- c.3 To ensure that trust funds are operated within any relevant legislation and the specific requirements for each trust, and to contact the Director of Legal Services as appropriate.

## **D Imprest Accounts**

### ***Responsibilities of Chief Financial Officer***

- d.1 To provide employees of the Council with cash or bank imprest accounts to meet minor expenditure and low value procurement spend on behalf of the Council and to prescribe rules for operating these accounts.
- d.2 To maintain a record of all petty cash advances made and periodically review the arrangements for the safe custody and control of these advances.
- d.3 To record and maintain the issue of debit cards held against imprest accounts, and in conjunction with Strategic Directors ensure the cards are used in accordance with the Corporate Debit Card Policy
- d.4 To reimburse imprest holders as often as necessary to restore the imprest balance in accordance with the Imprest Management Programme guidance.

### *Responsibilities of Strategic Directors*

- d.5 To ensure that employees operating an imprest account:
  - (a) Operate the account in accordance with the Imprest Management Program Guidance and comply with the Corporate Debit Card Policy ensuring that the Chief Financial Officer is informed of any debit holders no longer authorised to hold cards and that they have been securely destroyed
  - (b) obtain and retain vouchers and receipts to support each payment from the imprest account. Where appropriate an official receipted VAT invoice must be obtained;
  - (c) make adequate arrangements in their office for the safe custody of the account;
  - (d) produce upon demand by the Chief Financial Officer, cash and all vouchers to the total value of the imprest amount;
  - (e) record transactions promptly;
  - (f) reconcile and balance the account at least monthly; reconciliation to be recorded within the Council's Imprest Management Programme;

- (g) do not overdraw the imprest bank account,
- (h) ensure that the imprest is never used to cash personal cheques or to make personal loans and that the only payments into the account are the reimbursement of any surplus monies remaining from purchases which have been funded by an advance;
- (i) operate in accordance with Section 115 of the Local Government Act 1972 whereby any officer employed by the Council shall at such times during the continuance of his/her office or within three months of ceasing to hold it and, in such a manner as the Council may direct, make out and deliver to the Council a true account in writing of all money and property committed to his/her charge, and of his/her receipts and payments with vouchers and other documents and records supporting the entries contained, and a list of persons from whom or to whom money is due in connection with this office, showing the amount due from or to each;
- (j) do not purchase goods on behalf of the Council using a personal store/loyalty card;
- (k) no payment is made from an imprest account to fund the purchase of foreign currency for the purposes of defraying expenditure in connection with authorised overseas visits. However, the use of debit cards abroad held against imprest accounts is permitted if operated in accordance with the Corporate Debit Card Policy. Any foreign currency requirements should be processed by the Corporate Resources General Office who will obtain the appropriate currency;
- (l) all discrepancies on imprest accounts should be taken seriously. Where there is any suspicion that the discrepancy is a result of theft or fraudulent activity, this must be reported to the Assistant Director of Finance (Audit) immediately;
- (m) where concerns relate to the operation and management of the account, the discrepancy should be investigated by relevant Departmental finance staff. However, if concerns arise during this review, that there may be potential dishonesty/fraudulent activity, the matter must be reported to the Assistant Director of Finance (Audit) immediately;
- (n) any imprest account imbalances may only be written-off by the Strategic Director after the discrepancy has been investigated;

- (o) approval must be sought by the Chief Financial Officer or their delegated officer to use imprest accounts for other income and expenditure streams that cannot be processed via the main council accounts.

## **E Money Laundering Regulations and Proceeds of Crime Act**

- e.1 Money laundering is a term used for a number of offences involving the proceeds of crime or terrorist funds. It also includes the processing, or in any way dealing with, or concealing, the proceeds of crime.
- e.2 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 place specific obligations on employees responsible for handling and processing cash transactions.

### ***Key controls***

- e.3 It is Council policy not to accept individual cash payments of more than £10,000.
- e.4 For amounts between £2,500 and £10,000, confirmation must be sought from the payee that the funds were not generated under circumstances that would leave the County Council in jeopardy. The Council's anti-money laundering officer will make the relevant decisions.
- e.5 Where the transaction is under £2,500 and there are reasonable grounds to suspect money laundering activities, proceeds of crime or it is suspicious, the matter must be reported to the Council's nominated anti-money laundering officer.

### **Responsibilities of Chief Financial Officer**

- e.6 The Chief Financial Officer should ensure that appropriate arrangements are in place to inform and provide training to all relevant Officers in respect of the requirements placed upon them by this legislation. He/she will also determine and maintain appropriate internal reporting procedures including the nomination of an Officer whose job is to receive disclosures from anyone in the organisation who is suspicious of money laundering and report this to the National Crime Agency.

### ***Responsibilities of Strategic Directors***

- e.7 Strategic Directors should ensure that all employees are made aware of the Anti-Money Laundering Policy and receive appropriate training on their obligations under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and the duty to notify the Chief Financial Officer of any known or suspected money laundering activities.

## 6 EMPLOYEES

### Objectives

- 1 In order to provide the highest level of service, it is essential that the Council recruits and retains high calibre, knowledgeable employees, qualified to an appropriate level. An appropriate Human Resources Strategy and policies should exist, in which HR requirements and budget allocation should be matched.

### *Key controls*

- 2 The key controls for human resources are:
  - (a) that workforce planning is in place for forecasting HR requirements and cost;
  - (b) that procedures are in place for monitoring employee expenditure against budget;
  - (c) that controls are implemented which ensure that employee time is used efficiently and benefits the Council.

### ***Responsibilities of the Director of Organisation Development and Policy***

- 3 To act as an advisor to Strategic Directors on areas such as PAYE, National Insurance and pension contributions as appropriate.

### *Responsibilities of Strategic Directors*

- 4 To monitor employee activity to ensure the maintenance of adequate control over such costs as sickness, overtime, training and temporary employment costs.
- 5 To ensure that effective management and supervision protocols exist to validate the accuracy and integrity of working times recorded and expenses claimed.
- 6 To ensure that the requirements of the Recruitment and Selection Policy in respect of the validation of qualifications claimed and references regarding previous employment are followed. Similarly that for all posts requiring Disclosure and Barring Service checks, these checks are completed prior to the employee taking up appointment and appropriate evidence retained.

## **ANNEX 4: SYSTEMS AND PROCEDURES**

- 1     General
- 2     Income
- 3     Payments to Members and employees
- 4     Ordering and paying for work, goods and services
- 5     Taxation

## **1 GENERAL**

### **Objectives**

- 1 Strategic Directors operate many systems and procedures relating to the control of the Council's assets, including purchasing, costing and management systems. Departments are reliant on IT for their financial management information. The information must therefore be accurate and the systems and procedures sound and well administered. They should contain controls to ensure that transactions are properly processed and errors detected promptly.
- 2 The Chief Financial Officer has a professional responsibility to ensure that the Council's financial and control systems are sound and therefore the Assistant Director of Finance (Audit) must be consulted on any new developments or proposed changes, and will assess the potential impact of such changes on the Internal Control Framework and report to the Chief Financial Officer, raising any concerns as appropriate. The Chief Financial Officer will then formally consider the proposed changes. No changes may be actioned without the formal approval of the Chief Financial Officer.

### **Key Controls**

- (a) Basic data exists to enable the Council's objectives, targets, budgets and plans to be formulated;
- (b) performance is communicated to the appropriate managers on an accurate, complete and timely basis;
- (c) early warning is provided of deviations from target, plans and budgets that require management attention;
- (d) operating systems and procedures are secure;
- (e) an ongoing audit of the Council's activities and control systems both financial and operational is maintained.

### **Responsibilities of Chief Financial Officer/Assistant Director of Finance (Audit)**

- 3 To make arrangements for the proper administration of the Council's financial affairs, including to:
  - (a) issue advice, guidance and procedures for the Council's Members, Officers and others acting on its behalf (Chief Financial Officer);



- (b) determine the accounting systems, form of accounts and supporting financial records (Chief Financial Officer);
- (c) review any proposed changes to existing financial and/or control systems or the establishment of new systems and consider the potential impact on the Internal Control Framework and report to the Chief Financial Officer raising any concerns (Assistant Director of Finance (Audit)). The Chief Financial Officer will then formally consider the proposed changes. No changes may be actioned without the formal approval of the Chief Financial Officer;
- (d) agree the Departmental Scheme of Financial Delegation proposed by Strategic Directors annually (Chief Financial Officer).

### **Responsibilities of Strategic Directors**

- 4 To ensure that accounting records are properly maintained and held securely.
- 5 To ensure that vouchers and documents with financial implications are retained in accordance with arrangements approved by the Chief Financial Officer.
- 6 To ensure that a complete audit trail, allowing financial transactions to be traced from the original document to the accounting records and vice versa, is maintained.
- 7 To incorporate appropriate controls to ensure that:
  - (a) all input is genuine, complete, accurate, timely and not previously processed;
  - (b) all processing is carried out in an accurate, complete and timely manner;
  - (c) output from the system is complete, accurate and timely.
- 8 To ensure that the organisational structure provides an appropriate segregation of duties to provide adequate internal controls and minimise the risk of fraud or other malpractice.
- 9 To ensure there is a documented and tested disaster recovery plan to allow information system processing to resume quickly in the event of an interruption.

- 10 To ensure that all business critical systems are identified, documented and appropriate officers trained in their operation.
- 11 To consult with the Assistant Director of Finance (Audit) before changing any existing system or introducing new systems.
- 12 To establish a scheme of delegation identifying officers authorised to act upon the Strategic Director's behalf in respect of payments, income collection, imprest accounts and placing orders, including variations and determining the limits of their authority. The scheme of delegation should be reviewed and updated annually.
- 13 To supply lists of authorised officers, with specimen signatures and delegated limits, to the Chief Financial Officer, together with any subsequent variations.
- 14 To ensure that effective contingency arrangements, including back up procedures, exist for computer systems. Wherever possible, back up information should be securely retained in a fireproof location, preferably off site, or in an alternative location within the building.
- 15 To ensure that, where appropriate, all systems containing personal data are identified and registered in accordance with the Data Protection legislation and that staff are aware of their responsibilities under the legislation.
- 16 To ensure that relevant standards and guidelines for computer systems issued by the Director of Finance & ICT are observed.
- 17 To ensure that computer equipment and software are protected from loss and damage through theft, vandalism etc.
- 18 To comply with the Copyright, Designs and Patents Act 1988 and in particular, ensure that:
  - (a) only software legally acquired and installed by the Council is used on its computers and appropriate licences are retained;
  - (b) staff are aware of legislative provisions;
  - (c) in developing systems, due regard is given to the issue of intellectual property rights.
- 19 To ensure that employees are aware of their obligations to comply with and observe electronic access controls, maintain security and

confidentiality of electronic identifiers and passwords and their duty to comply with the requirements of the Computer Misuse Act 1990.

## **2 INCOME**

### **Objectives**

- 1 Income can be a vulnerable asset and effective income collection systems are necessary to ensure that all of the income due is identified, collected, receipted and banked promptly and properly.

### **Key Controls**

- 2 The key controls for income are:

- (a) all income due to the Council is identified and charged correctly;
- (b) all income is collected from the correct person, at the right time using the correct procedures and the approved recording systems;
- (c) all money received by an employee on behalf of the Council is paid intact and without delay to the Chief Financial Officer or as he/she directs, to the Council's bank, and properly recorded;
- (d) effective action is taken to pursue non-payment within defined timescales;
- (e) the County Council does not accept individual cash payments with a value in excess of £10,000;
- (f) The Chief Financial Officer or the Director of Legal Services, in conjunction with the Strategic Director, will have the authority to write off any debt where all reasonable measures have been taken to recover the debt. Budget Monitoring reports to both management and Members will include an analysis of the latest departmental / portfolio debt recovery positions.
- (g) appropriate write off action is taken within defined timescales;
- (h) appropriate financial provisions are made for bad or doubtful debts;
- (i) appropriate accounting adjustments are made following write off action;
- (j) all appropriate income documents are retained and stored for the defined period in accordance with the "Guidelines on the Retention of Financial Records".

### ***Responsibilities of Chief Financial Officer***

- 3 To agree arrangements for the collection of all income due to the Council and approve the procedures, systems and documentation for its collection.
- 4 To approve all receipt forms, books or tickets and similar items and satisfy him/herself regarding the adequacy of the arrangements for their control and safe storage, including electronic storage media.
- 5 To establish and initiate appropriate recovery procedures, including legal action where necessary, for debts which are not paid promptly.
- 6 Under section 151 of the 1972 Local Government Act and in accordance with accounting policies the Chief Financial Officer has responsibility for the administration of financial affairs and as such must ensure that debt is reflected accurately and promptly within the financial accounts, and so will have the ability to apply financial postings as he deems appropriate.
- 7 Once the Chief Financial Officer and the Director of Legal Services establish that a debt is irrecoverable due to bankruptcy or insolvency the write off will be processed promptly and where necessary reported retrospectively.
- 8 The Chief Financial Officer and the Director of Legal Services will ensure that an annual review of historic debt takes place to ensure that debt is proactively managed.
- 9 The Chief Financial Officer will each year prepare a summary report of debt write offs charged to Departmental budgets and circulate to Strategic Directors.

### **Responsibilities of Strategic Directors**

- 10 To establish a schedule of fees and charges for the supply of goods and services etc, including the appropriate charging of VAT and review it at least annually, within corporate policies.
- 11 To separate the responsibility for identifying amounts due and the responsibility for collection, as far as is practicable.
- 12 To establish and initiate appropriate recovery procedures, including legal action where necessary, for non-invoiced debts which are not paid promptly.
- 13 To ensure that invoices are accurate and issued promptly within a target maximum of 21 days from provision of service. Strategic Directors have

a responsibility to collect debts and to provide any information requested by the Chief Financial Officer/Director of Legal Services to enable debts to be pursued effectively on the Council's behalf.

- 14 To officially record income collected using the approved system(s).
- 15 At all points where it is reasonable to expect that postal remittances may be received to ensure that at least two employees are present when post is opened so that money received by post is properly identified and recorded.
- 16 To hold securely receipts, tickets and other records of income, for six years plus the current accounting year in line with statutory requirements and retention schedules.
- 17 To process and maintain debit/credit card details in accordance with approved procedures and ensuring compliance with the Payment Card Industry (PCI) Security Standards.
- 18 To ensure all income collected is held securely in locked storage to safeguard against loss or theft and to ensure the security of cash handling. Access to such locked storage should be minimised.
- 19 To ensure that income is paid intact and promptly into the appropriate Council bank account in the form in which it is received. The processing of cash should be reduced as far as is practicably possible. Appropriate details should be recorded on paying in slips to provide an audit trail.
- 20 To ensure income is not used to cash personal cheques or other payments.
- 21 To keep a record of every transfer of official money between employees of the Council. The receiving officer must sign for the transfer and the transferor must retain a copy.
- 22 As per the Departments scheme of delegation, authorise write off debts up to the OJEU limit, and to keep a record of all sums so written off. In no case will the officer raising the debt be empowered to authorise its writing off. Once raised, no bona fide debt can be cancelled except by payment in full, its formal writing off or in the form of a reversal or reduction adjustment under procedures agreed with the Chief Financial Officer.
- 23 Ensure write off action is done promptly and that appropriate financial provisions are made for bad or doubtful debts.

- 24 To notify the Chief Financial Officer of outstanding income relating to the previous financial year as soon as possible after 31 March in line with the timetable determined by him.
- 25 To minimise administration costs by limiting the issue of an invoice to sums of £25 and above unless a lower limit is agreed with the Chief Financial Officer. Sums due below this level should be collected prior to service delivery in accordance with procedures agreed with the Chief Financial Officer. Pensioner debt invoices should not be ordinarily raised for sums under £100 and should be adjusted accordingly within the Finance and HR systems.

### **3 PAYMENTS TO MEMBERS AND EMPLOYEES**

#### **Objectives**

- 1 Employee costs are the largest item of expenditure for most Council services. It is, therefore, important that there are effective controls in place to ensure that payments are made only where they are due for services to the Council and that payments accord with individual's conditions of employment.

#### **Key Controls**

- 2 The key controls for payments to Members and employees are:
  - (a) proper authorisation procedures and adherence to corporate timetables for:
    - Starters,
    - Leavers,
    - Variations,
    - Enhancements;
  - (b) frequent reconciliation of payroll expenditure against approved budget;
  - (c) all appropriate payroll documents are retained and stored for the defined period in accordance with the "Guidelines on the Retention of Financial Records".

#### **Responsibilities of the Director of Organisation Development and Policy**

- 3 To arrange and control secure and reliable payment of salaries, wages, compensation or other emoluments to existing and former employees in accordance with procedures prescribed by him/her, on the due date.
- 4 To ensure these entries are entered into the accounting systems in a form prescribed by the Chief Financial Officer.
- 5 To record and monitor tax, pension and other deductions.
- 6 To make arrangements for payment of all travel and subsistence claims to Officers.



- 7 To make arrangements for payment of all travel and subsistence claims to Members after receipt of the duly authorised form from the Chief Financial Officer.
- 8 To provide advice and encouragement to secure payment of salaries and wages by most economical means.
- 9 Recovery of overpayments of salary for employees and pensioners.

#### **Responsibilities of Chief Financial Officer**

- 10 To make arrangements for paying Members travel or other allowances upon receiving the prescribed form duly completed and authorised.
- 11 To reconcile all payroll entries into the accounting system on a monthly basis.
- 12 To determine the form which entries from the payroll system should take when posted into the accounting system.

#### **Responsibilities of Strategic Directors**

- 13 To ensure appointments are made in accordance with the regulations of the Council and approved establishments, grades, scale of pay and that adequate budget provision is available.
- 14 To notify the Director of Organisation Development and Policy of all appointments, terminations, or variations which may affect the pay or pension of an employee or former employee, in the form and to the timescale required by the Director of Organisation Development and Policy.
- 15 To ensure that adequate and effective systems and procedures are operated for HR and payroll aspects, so that:
  - (a) payments are only authorised to bona fide employees;
  - (b) payments are only made where there is a valid entitlement;
  - (c) conditions and contracts of employment are correctly applied;
  - (d) employees' names listed on the payroll are checked at regular intervals to verify accuracy, completeness and continued employment;
  - (e) there is an effective system of checking and certifying payroll forms.

- 16 To maintain up to date lists of the names of officers authorised to sign records, a copy of which should be forwarded to the Director of Organisation Development and Policy, together with specimen signatures.
- 17 To ensure that payroll transactions are processed only through the payroll system. Strategic Directors should seek advice from the Director of Organisation Development and Policy in respect of the employment status of individuals employed on a “self-employed or sub contract” basis. HM Revenue & Customs applies a tight definition for employee status and in cases of doubt, advice should be sought from the Director of Organisation Development and Policy/Director of Legal Services.
- 18 To certify travel and subsistence claims and other allowances. Certification is taken to mean that journeys were pre-authorised, related to official business and expenses actually, properly and necessarily incurred and that allowances are properly payable by the Council, ensuring that cost-effective use of travel arrangements is achieved. Due consideration should be given to tax implications and the Director of Organisation Development and Policy is informed where appropriate. Full details on the claiming of expenses by employees will be issued from time to time by the Director of Organisation Development and Policy.
- 19 To ensure that the details of any employee benefits in kind are notified to the Director of Organisation Development and Policy to enable full and complete reporting within the Income Tax Self-Assessment system.
- 20 To ensure that all appropriate payroll documents are retained and stored for the defined period in accordance with the “Guidelines on the Retention of Financial Records”.

### **Responsibilities of Members**

- 21 To submit claims for Members’ travel, subsistence and dependant carers’ allowances on a monthly basis and in any event, within one month of the financial year end.

## **4 ORDERING AND PAYING FOR WORK, GOODS AND SERVICES**

### **Objectives**

- 1 Public money should be spent with demonstrable probity and in accordance with the Council's policies. The Council's procedures should help to ensure that services receive VfM in their purchasing arrangements. These procedures should be read in conjunction with the Council's Standing Orders Relating to Contracts and the Derbyshire Codes of Conduct.

### **General**

- 2 Every member and officer of the Council has a responsibility to declare, by completing the Council's Declaration of Interest form, any links or personal interests which they may have with purchasers or suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the Council.
- 3 Official orders, whether electronic or paper based, must be in a form approved by the Chief Financial Officer. Official orders must be issued for all work, goods or services to be supplied to the Council except for supplies of utilities, debit card transactions, periodic payments such as rent or rates, petty cash purchases or other exceptions specified by the Chief Financial Officer.
- 4 Each order must conform to the directions of the Council on procurement and the standardisation of supplies and materials. Standard terms and conditions must not be varied without the prior approval of the Chief Financial Officer.
- 5 Apart from petty cash and schools' own bank accounts the normal method of payment of money due from the Council shall be by BACS transfer. Payments can be made by cheque or other instrument but this will be a small proportion of total payments. The use of direct debit and other forms of payment methods shall require the individual, prior agreement of the Chief Financial Officer.
- 6 Official orders must not be raised for any personal or private purchases, nor should personal or private use be made of Council contracts.

### **Key controls**

- 7 The key controls for ordering and paying for work, goods and services are:

- (a) all goods and services are ordered only by appropriate persons using approved electronic ordering systems. In emergencies, manual orders can be used;
- (b) all goods and services shall be ordered in accordance with the Council's Standing Orders Relating to Contracts/Procurement Strategy;
- (c) goods and services received are checked on receipt to ensure they are in accordance with the order and receipted wherever the electronic system used for ordering allows;
- (d) payments are authorised by officers who can certify that goods received conform to price, quantity and quality;
- (e) in normal circumstances the process of ordering, receipt of goods/services and authorisation of payment will be carried out by separate officers to maintain adequate separation of duties;
- (f) all payments are made to the correct person, for the correct amount and are properly recorded, regardless of the payment method;
- (g) all appropriate payment documents are retained and stored for the defined periods in accordance with the Council's 'Guidelines on the Retention of Financial Records';
- (h) all expenditure, including VAT, is accurately recorded against the appropriate budget head and any exceptions corrected;
- (i) all references in this section of the regulations should be taken to include, and apply equally to e-commerce transactions. The advent of this element of the Council's operations requires that processes are in place to maintain the security and integrity of data for transacting business electronically; and
- (j) during an emergency or business continuity event it may become necessary to procure supplies at short notice or to place orders with suppliers who are not already approved by the Council. Further details on these arrangements can be found in the Council's Corporate Business Continuity Plan.

#### **Responsibilities of Chief Financial Officer/Assistant Director of Finance (Audit)**

- 8 To ensure that all of the Council's financial systems and procedures are sound and well administered.

- 9 The Assistant Director of Finance (Audit) will review any proposed changes to existing financial and/or control systems or the establishment of new systems and consider the potential impact on the Internal Control Framework and report to the Chief Financial Officer raising any concerns. The Chief Financial Officer will then formally consider the proposed changes. No changes may be actioned without the formal approval of the Chief Financial Officer.
- 10 To approve the form of official orders, and associated terms and conditions (Chief Financial Officer).
- 11 To make payments, whether or not provision exists within the estimates, where the payment is specifically required by statute or is made under a court order (Chief Financial Officer).
- 12 To make payments to contractors on the certificate of the appropriate Strategic Director, which must include details of the value of work, retention money, amounts previously certified and amounts now certified (Chief Financial Officer). The Chief Financial Officer can set tolerances which will be monitored.
- 13 To provide advice and support on making payments by the most economical means (Chief Financial Officer).

### **Responsibilities of Strategic Directors**

- 14 To ensure that all contracts have been awarded and expenditure has been approved in accordance with the Procurement and Award Procedures set out in Appendix A of these Regulations.
- 15 To ensure that employees comply with these Procurement requirements and are aware of their responsibilities under the Council's Code of Conduct for Employees.
- 16 Official orders shall be in a form approved by the Chief Financial Officer and shall be signed personally either manually or by secure electronic protocols by the Strategic Director or by officers authorised by him/her. Responsibility for orders lies with the Strategic Director.
- 17 To ensure that uniquely numbered orders are used for all goods and services.
- 18 To ensure that all orders are placed using properly approved systems and to refer any proposed changes to existing financial systems or the implementation of new systems to the Assistant Director of Finance

(Audit) before they are introduced. Where orders are produced in a printed format they are controlled stationery and should be retained securely when not in use.

- 19 To ensure that where credit procurement and debit cards are available to employees they are controlled, used and maintained in accordance with procedures that have been agreed by the Chief Financial Officer.
- 20 To ensure that orders are only used for goods and services provided to the County Council. Individuals must not use official orders to obtain goods or services for their private use.
- 21 To ensure that only those employees authorised by the Strategic Director sign orders and to maintain an up-to-date list of such authorised employees:
  - including specimen signatures where paper based systems are used, or
  - reports of access privileges for all users of electronic systems identifying in each case the limits of their authority.
- 22 The signatory of the order should be satisfied that the goods and services ordered are appropriate and needed, that there is adequate budgetary provision and that quotations or tenders have been obtained as required by standing orders and good procurement practice. VfM should always be taken into consideration.
- 23 To ensure that a budgetary control system is established which enables commitments incurred by placing orders to be shown against the appropriate budget allocation so that it can be taken into account in budget monitoring reports.
- 24 To ensure that goods and services are checked on receipt to validate that they are in accordance with the order, and that the order whether paper or electronic is endorsed 'goods received' and dated. A different officer from the person who signed the order should carry out this check. Appropriate entries will then be made in inventories or stores records.
- 25 To ensure that payment is not made unless a proper invoice has been received, checked, coded and certified for payment and the order endorsed 'passed for payment' and dated to confirm:
  - (a) receipt of goods or services (payment should not be made in advance of goods being received unless specific prior approval is given);

- (b) that the invoice has not previously been paid;
  - (c) that expenditure has been properly incurred and is within budget provision;
  - (d) that prices are correct and accord with quotations, tenders, contracts or catalogue prices;
  - (e) that the invoice is arithmetically correct;
  - (f) the correct accounting treatment of any relevant tax;
  - (g) the invoice is correctly coded;
  - (h) discounts have been taken where available; and
  - (i) that appropriate entries will be made in accounting records.
- 26 To ensure that an authorised employee who should be a different officer from the person who authorised the order, and in every case a different officer from the person certifying that the checks detailed at 26 above have been completed, authorises invoices.
- 27 To ensure that the Department maintains and reviews periodically a list of staff approved to certify and authorise invoices. Names of authorising officers together with specimen signatures (or lists of access privileges) and details of the limits of their authority shall be forwarded to the Chief Financial Officer.
- 28 Payment should not routinely be made on a photocopied or faxed invoice, statement or other document other than the formal invoice unless specific prior approval has been obtained. Any instances of these being rendered should be reported to the Assistant Director of Finance (Audit).
- 29 To encourage suppliers of goods and services to receive payment by the most efficient means for the Council. Payments should, however, not be made by direct debit unless essential and with the prior approval of the Chief Financial Officer.
- 30 To ensure that the Department obtains best VfM from purchases by utilising the Council's approved procurement procedure taking, where appropriate, steps to obtain competitive prices for goods and services of the appropriate quality, with regard to the guidelines and best practices issued by the Chief Financial Officer.
- 31 To operate within the County Council's approved Procurement Strategy and procedures ensuring that for appropriate purchases competitive

quotations or tenders are sought. These will comply with Standing Orders in Relation to Contracts, which covers:

- (a) authorised officers and the extent of their authority;
- (b) advertisement for competitive tenders or seeking quotations through the Source Derbyshire website and in additional publications when appropriate;
- (c) selection of tenderers;
- (d) compliance with UK and EU legislation and regulations;
- (e) procedures for the submission, receipt, opening and recording of tenders;
- (f) the circumstances where financial or technical evaluation is necessary;
- (g) procedures for negotiation;
- (h) acceptance of tenders;
- (i) the form of contract documentation;
- (j) cancellation clauses in the event of corruption or bribery; and
- (k) contract records.

32 To ensure that all employees are aware of the Council's Code of Conduct.

33 All acquisitions and disposals of land and/or buildings (whether by leasing, rental or any other means) shall be negotiated and agreed by the Director of Property and Director of Legal Services.

34 To ensure that no loan, leasing or rental arrangements are entered into without prior agreement from the Chief Financial 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 VfM is being obtained.

35 To notify the Chief Financial Officer of outstanding expenditure relating to the previous financial year as soon as possible after 31 March in line with the timetable determined by him/her and in all cases by no later than 30 April.

36 With regard to contracts for construction and alterations to buildings and for civil engineering works, to document and agree with the Chief Financial Officer, the systems and procedures to be adopted in relation



to financial aspects, including certification of interim and final payments, checking, recording and authorising payments, the system for monitoring and controlling capital schemes and the procedures for validation of sub contractors' tax status.

- 37 To notify the Chief Financial Officer immediately of any expenditure to be incurred as a result of statute/court order where there is no budgetary provision.
- 38 To ensure that all appropriate payment records are retained and stored for the defined periods in accordance with the "Guidelines on the Retention of Financial Records."
- 39 Other than for the use of refuelling a vehicle provided under the County Council's car hire scheme, which has been pre-authorised by a line manager, employees should not make official purchases using personal credit/debit cards for which they subsequently seek reimbursement from the County Council as this circumvents the requirement for pre-authorisation by an independent party and negates the requirement to demonstrate best value in relation to these purchases. Similarly personal store account cards/loyalty cards held in the name of private individuals should not be used in connection with County Council purchases.

## 5 TAXATION

### ***Objectives***

- 1 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.

### **Key controls**

- 2 The key controls on taxation are:
  - (a) budget managers are provided with relevant information and kept up to date on tax issues;
  - (b) budget managers are instructed on required record keeping;
  - (c) all taxable transactions are identified, properly carried out and accounted for within stipulated timescales;
  - (d) records are maintained in accordance with instructions;
  - (e) returns are made to the appropriate authorities within the stipulated time scale.

### **Responsibilities of Chief Financial Officer**

- 3 To complete a monthly return of VAT input and outputs to HM Revenue & Customs.
- 4 To provide monthly and annual returns to HM Revenue & Customs regarding the Construction Industry Tax Deduction Scheme:
- 5 To maintain up to date guidance for Council employees on taxation issues in the VAT Manual.
- 6 To account for tax in connection with pension fund investments, including overseas tax.

### **Responsibilities of Director of Organisation Development and Policy**

- 7 To complete all HM Revenue & Customs returns regarding PAYE.

### *Responsibilities of Strategic Directors*

- 8 To ensure that the correct VAT liability is attached to all income and that all VAT recoverable on purchases complies with HM Revenue & Customs Regulations.
- 9 All new proposals to generate income must be notified to the Technical Section, Corporate Finance to ensure that the VAT implications are evaluated and addressed.
- 10 All coding slips on creditor invoices, bank paying in slips and debtor accounts must be completed in accordance with instructions.
- 11 VAT on expenditure from imprest accounts can only be recovered if VAT receipts are obtained and included with reimbursement claims.
- 12 To ensure that, where construction and maintenance works are undertaken, the contractor fulfils the necessary Construction Industry Tax Deduction requirements.
- 13 To ensure that all persons employed by the Council are added to the Council's payroll and tax deducted from any payments, except where the individuals are bona-fide self-employed or are employed by a recognised employment agency. All payments to employees must be made through the payroll system, except with the explicit approval of the Chief Financial Officer.
- 14 To follow the guidance on taxation issued by the Chief Financial Officer in the VAT Manual. The VAT Manual is widely distributed and advice on any matter can be obtained from the Chief Financial Officer.

## **ANNEX 5: EXTERNAL ARRANGEMENTS**

- 1 Partnerships
- 2 External funding
- 3 Work for third parties

# **1 PARTNERSHIPS**

## **Objectives**

- 1 Local Authorities work in partnership with the wider public and voluntary sectors and private providers.

## **PARTNERSHIPS - GENERAL**

- 2 A partnership is “an agreement between two or more independent bodies working collectively to achieve an objective”, as a joint arrangement not as a single entity.
- 3 The main reasons for entering into a partnership are to achieve the aims and objectives of the Council by the most effective means. This will include:
  - (a) improving service delivery by maximising and sharing the use of resources;
  - (b) fulfil the Council’s role as a community lead;
  - (c) meet the Council’s statutory requirements;
  - (d) the desire to find new ways to share risk;
  - (e) the ability to access new resources;
  - (f) to forge new relationships.
- 4 A partner is defined as either:
  - (a) an organisation (private, voluntary or public) undertaking, part funding or participating as a beneficiary in a project, or
  - (b) a body whose nature or status give it a right or obligation to support the project.
- 5 Partners participate in projects by:
  - (a) acting as a project deliverer or sponsor, solely or in concert with others;
  - (b) acting as a project funder or part funder in the provision of financial or other resources;

- (c) being the beneficiary group of the activity undertaken in a project.

6 Partners have common responsibilities:

- (a) to be willing to take on a role in the broader programme appropriate to the skills and resources of the partner organisation;
- (b) to act in good faith at all times and in the best interests of the partnership's aims and objectives;
- (c) to be open about any conflict of interests which might arise;
- (d) to encourage joint working between themselves, promote the sharing of information, resources and skills between public, voluntary, private and community sectors;
- (e) to maintain the confidentiality of information received as a result of partnership activities or duties, and to recognise that such information may be of a personal/commercially sensitive nature;
- (f) to act wherever possible as ambassadors for the project;
- (g) to act at all times in accordance with the terms and conditions of the partnership agreement and within the broader requirements of demonstrable probity both in terms of personal conduct and stewardship of public funds.

**Key controls**

7 The key controls for Council partnerships are:

- (a) each proposed partnership should be subject to a risk assessment and allocated a risk ranking;
- (b) where the partnership has been given a risk ranking of High or Medium this must be justified by a formal business case and be subject to a formal legal arrangement;
- (c) to be aware of the nature of the partnership, and, for individual officers to be aware of their personal responsibilities and delegated authority as regards the partnership, under the Council's Financial Regulations and Standing Orders in Relation to Contracts;

- (d) to agree and formally document the roles and responsibilities of each of the partners involved in the project before its commencement;
- (e) all partnerships should be formed in accordance with agreed criteria and after proper legal consultation and should accord with guidance stipulated in the Council's Partnership Development Toolkit;
- (f) a formal register should be maintained which details, in respect of all partnerships in which the Council participates:
  - its aims and objectives,
  - its approved duration,
  - the Council's commitment in terms of finance and other resources,
  - the accountable organisation for the partnership,
  - the framework by which the performance of the partnership is to be monitored,
  - the Council's exit strategy on completion or termination of the partnership;
- (g) Auditing arrangements must include, as a minimum, guaranteed rights of access for the County Council's auditors at all times to all documents, records, premises and those employees who relate to, or are provided by, the Council's contributions to the partnership.

### **Responsibilities of Chief Financial Officer**

- 8 To advise on the effectiveness of the proposed framework of controls and responsibilities within the operation of the partnership.
- 9 To advise on the key elements of funding a project:
  - (a) risk assessment and scheme appraisal for financial viability;
  - (b) accounting and audit requirements.
- 10 Arrange for internal or external audit scrutiny as appropriate.

### **Responsibilities of Director of Legal Services**

- 11 The Director of Legal Services must:
  - (a) establish, maintain and review the legal framework for the County Council's participation in partnership working;

- (b) ensure that all proposed partnership arrangements are:
- within the County Council's powers,
  - the subject of a legal agreement in an approved form,
  - adequately defined by the agreement's terms and conditions,
  - subject to adequate insurance cover for any liability of the proposed partnership which may rest with the County Council,
  - financially viable,
  - open and promote active decision-making;
- (c) a constitution exists which clarifies:
- the aims and objectives of the partnership,
  - each partner's responsibility in terms of financial liability,
  - asset ownership issues resulting from the partnership,
  - each partner's responsibilities in respect of any employees employed for the purpose of the partnership,
  - security and confidentiality of information and the extent of any data sharing including requirements under the Freedom of Information Act,
  - the roles and responsibilities of individual partner bodies,
  - the regulatory framework for the partnership,
  - the exit strategy on cessation of the partnership including any liabilities then arising,
  - arbitration/conciliation arrangements in the event of dispute.

### **Responsibilities of Strategic Directors**

- 12 To ensure that the approval of the Cabinet is obtained before any negotiations are entered into with regard to proposed partnership arrangements and that a risk assessment of the proposed partnership has been undertaken.
- 13 To maintain the central register of all partnership arrangements entered into in accordance with procedures specified by the Chief Financial Officer and which contains as a minimum the details specified at paragraph 7(f) above.
- 14 To ensure that accountability frameworks are specified within a written agreement with all partners. This will include agreements regarding prevention and addressing of overspendings; covering inflation; managing efficiency savings; and other resource or financial issues.



- 15 To account for any contributions to pooled budgets and where the Council is the Budget Holder, maintain accounts in accordance with the agreed budget arrangements, the Council's accounting policies and procedures and the requirements of these regulations.
- 16 To ensure that all partnership agreements include adequate provision for internal and external financial monitoring of their operation, and that these provisions meet internal and external needs.
- 17 To ensure that all financial records relating to the Council's participation in the partnership are retained as required by the Council's Document Retention requirements.
- 18 To ensure that the Director of Legal Services has been consulted on and given approval to the proposed contractual arrangements for the partnership before any legal commitment is signed.
- 19 To ensure that there are sufficient, available levels of expertise, employees and resources to meet the obligations imposed by the partnership agreement.
- 20 To ensure compliance with the required control frameworks including these regulations with regard to any partnership initiatives.
- 21 To ensure that the performance of the partnership against its key aims and objectives, as identified in the partnership register, is regularly monitored and reported.
- 22 To ensure that an exit strategy is in place, to safeguard the County Council on completion or termination of the contract/partnership.

## **2 EXTERNAL FUNDING**

### **Objectives**

- 1 As local authorities are encouraged to provide 'seamless' service delivery through working closely with other agencies, voluntary organisations and private sector providers, the scope for external funding has increased. However, such funding is often linked to specific objectives which may not be sufficiently flexible to link with the Council's overall plan. Therefore funding conditions need to be carefully considered to ensure that they are compatible with the aims and objectives of the Council.

### **Key controls**

- 2 The key controls for external funding are:
  - (a) 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;
  - (b) To ensure that funds are acquired only to meet priorities in the policy framework approved by the Council;
  - (c) To ensure that any matched funding requirements are given due consideration and approval prior to entering into long-term agreements and that future revenue budgets reflect these requirements.

### **Responsibilities of Director of Legal Services**

- 3 To provide guidance on potential grant funded activities, ensure that they support priorities identified by Council and are within the legal powers of the Council.

### **Responsibilities of Chief Financial Officer**

- 4
  - (a) To maintain a record of expected grants to be received showing the amount of grant, receipt date(s) and designated responsible officer in consultation with Strategic Directors;
  - (b) To ensure that all funding notified by external bodies is received and properly recorded in the Council's accounts;
  - (c) To ensure that Strategic Directors make grant claims by the due date;

- (d) To identify the long-term implications of funding arrangements and ensure that these are considered prior to entering into any agreements;
- (e) To investigate ways of maximising grant income;
- (f) To ensure that the requirements of these Regulations including audit arrangements are met.

### **Responsibilities of Strategic Directors**

- 5 To provide plans which demonstrate how the grant funds will be used to support service plan objectives and any conditions attached to that funding.
- 6 To ensure that all expenditure is properly incurred and recorded, that income is received at the appropriate time, returns are made by the specified dates, and in liaison with the Assistant Director of Finance (Audit) that the audit requirements of the funding body can be met.
- 7 To ensure compliance with Financial Regulation 2.a13(v) (Revenue Budget) which requires that an exit strategy is in place and is implemented on the cessation of external funding.
- 8 To ensure that all required approvals are obtained before external funding agreements are entered into.
- 9 To maintain an up-to-date Departmental record of all external funding sources.
- 10 Where the Council receives additional funding for activities outlined in the Service Plan, this can be approved by the Strategic Director.
- 11 Where the Council receives additional funding above £500,000 not outlined in the Service Plan, this should be approved by Cabinet.

### **3 WORK FOR THIRD PARTIES**

#### **Objectives**

- 1 Current legislation enables the Council to provide a range of services to certain other bodies. Such work may enable the Council to maintain economies of scale and retain existing expertise. Arrangements should be in place to ensure that any risks associated with this work are minimised.

#### **Key controls**

- 2 To ensure that proposals are properly costed, self-financing and are not at variance with the Council's Plans or Policies. The service receiving income from third parties must reimburse all costs including development costs incurred by other council services in respect of traded income.
- 3 To ensure that contracts are drawn up using guidance provided by the Director of Legal Services and that the formal approvals process is adhered to. Where appropriate the Council should be protected against potential losses/claims by an appropriate level of professional indemnity insurance in line with the service to be provided.

#### **Responsibilities of Chief Financial Officer**

- 4
  - (a) To maintain a record of expected income to be received from third parties including the amount of income against associated expenditure, receipt date(s) and designated responsible officer in consultation with Strategic Directors;
  - (b) To ensure that all income generated from work for third parties is received and properly recorded in the Council's accounts;
  - (c) To ensure that Strategic Directors are able to demonstrate effective contract performance;
  - (d) To identify the long-term implications of income arrangements and ensure that these are considered prior to entering into any agreements;
  - (e) To investigate ways of maximising income from working for third parties;
  - (f) To ensure that the requirements of these Regulations including audit arrangements are met.

## **Responsibilities of Strategic Directors**

- 5 Strategic Directors may undertake work for third parties including traded activity as follows:
  - Up to £50,000 per annum to be approved by the Strategic Director
  - From £50,000 to £250,000 per annum, approved by the Strategic Director, in consultation with the Chief Financial Officer
  - £250,000 to £500,000 per annum with formal approval of the Cabinet Member
  - Over £500,000 per annum with the approval of Cabinet
- 6 For contracts (including traded activity) over £50,000 per annum a business case must be provided to the Chief Financial Officer setting out how the contract or traded arrangement will recover costs which adheres to the rules set out by the Chief Financial Officer.
- 7 To ensure that the Department has all necessary skills and expertise to discharge the requirements placed upon it by the contract or traded arrangement.
- 8 To ensure that all contracts or traded arrangements are properly executed and that all appropriate documentation exists.
- 9 To maintain a register of all contracts or traded arrangements entered into with third parties in accordance with procedures specified by the Director of Legal Services.
- 10 To ensure that appropriate insurance cover is effected.
- 11 To ensure that adequate arrangements are in place for prompt and accurate billing of any service provided.
- 12 To ensure that the Council is not put at risk from any bad debts. Service providers must also be prepared to review or withdraw services if substantial debts remain outstanding.
- 13 To ensure that such contracts or traded arrangements are not subsidised by the Council.
- 14 To ensure that such contracts or traded arrangements do not impact adversely upon the services provided for the Council.
- 15 To provide all appropriate information to the Chief Financial Officer to enable a note to be entered into the Statement of Accounts.

## **4 GRANTS TO EXTERNAL ORGANISATIONS**

### **Objectives**

- 1 The Council provides grants to external organisations

### **Key controls**

- 2 Cabinet Members will approve grants to external organisations up to £100,000. Any grants over £100,000 require Cabinet authorisation.

### **Responsibilities of Strategic Directors**

- 3 To ensure that Officers have satisfied themselves that organisations to be grant-aided are financially viable for the duration of the appropriate project or activity. They must also provide adequate notice of any grant they propose to make or withdraw.
- 4 To ensure that the purpose of the grant is communicated to the external organisation.
- 5 To maintain a register of all grants provided to external organisations in line with the Transparency Code to demonstrate political transparency and that there is no favouritism. The register should record the details of the grant including, date, amount, payee and objectives/purpose of the grant.

## ***Appendix 8(b)***

# **STANDING ORDERS RELATING TO CONTRACTS**

*1<sup>st</sup> April 2019*

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## 1. *INTRODUCTION*

***Section 135 of the Local Government Act 1972 requires a local authority to make standing orders with respect to the making of Contracts by them or on their behalf for the supply of goods or materials or for the execution of works.***

***These Standing Orders relating to Contracts (the “Standing Orders”) are the standing orders required by the 1972 Act. They form part of the Council’s Constitution and are, in effect, the instructions of the Council, to Officers and elected members, for entering into contracts on behalf of the Council.***

***These Standing Orders provide a framework for procurement activity across the Council. They set out how contracts for goods, services and works should be put in place; the governance requirements associated with such activity, and the contract management of contracts once they are entered into.***

***These Standing Orders should not be regarded in isolation, but rather as part of the overall governance and regulatory framework of the Council as set out in the Constitution, including, but not limited to, the Council’s Scheme of Delegation, the Financial Scheme of Delegation, and the Financial Regulations. These Standing Orders cover UK and EU legislative requirements as well as good practice.***

***These Standing Orders are to protect the interests of the Council, its officers, elected members and the general public and must be complied with at all times.***

## 2. GENERAL

### 2.1 Definitions and Interpretation

2.1.1 In these Standing Orders, the following words shall have the following meanings:

<b>“Business Case”</b>	means either of the Council’s two business cases for below £50,000 or £50,000 and above as set out in Standing Order 2.11;
<b>“Client”</b>	means the Council Officer who is responsible for the commissioning and delivery of works, goods, or services on behalf of the Council in their given role;
<b>“Contract”</b>	means an agreement with the Council for the execution of works or the supply of goods or services, including on a concession basis;
<b>“Corporate Debit Card Policy”</b>	means the policy of the Council in relation to the use of the Council’s corporate debit card;
<b>“Council”</b>	means Derbyshire County Council;
<b>“Council Plan”</b>	means a plan outlining the Council’s ambitions, values and overarching outcomes for Derbyshire as approved annually by Council;

<b>“Departmental Service Plans”</b>	means the departmental plans, which support the implementation of the Council Plan;
<b>“Directive”</b>	means Directive 2014/24/EU;
<b>“Enterprising Council Initiative”</b>	means the Council’s transformation programme, which is bold, ambitious and enterprising as set out in the report to Cabinet on 22 <sup>nd</sup> February 2018, entitled ‘Moving towards an Enterprising Council’;
<b>“Financial Regulations For Schools”</b>	means a document produced specifically in respect of financial regulations and procedures for schools;
<b>“Financial Scheme of Delegation”</b>	means the documents setting out the Officer financial authorisation levels for each Council Department;
<b>“Firm”</b>	means any business entity or person, including bodies corporate and corporations, associations, organisations, partnerships, co-operatives, trusts or other unincorporated bodies;
<b>“Light Touch Regime OJEU Threshold”</b>	means, for the purpose of these Standing Orders, the financial threshold for social and other specific services pursuant to regulation 5 of the Public Contracts Regulations 2015, which is set at £615,278 (equivalent to approx €750,000) as of, 1 <sup>st</sup> January 2018, and is revised every two years;
<b>“Order Form”</b>	means the order form used by the Council as part of the Council’s e-procurement system;

<b>“Officer”</b>	means an employee of Derbyshire County Council;
<b>“Procurement and Award Procedure”</b>	means the procurement and award procedures of the Council as set out in the eight Protocols detailed in Standing Order 3.2 and Appendix A of these Standing Orders;
<b>“Procurement Connection”</b>	means the area of the Council’s website that contains information and templates to assist with procurement activities;
<b>“Procurement Professional”</b>	means any Officer of the Council who is either (a) a qualified procurement professional, or (b) a procurement professional by way of their Council role as a purchaser of works, goods, or services;
<b>“Procurement Strategy”</b>	means the Council’s procurement strategy as may be amended and updated from time to time;
<b>“Protocols”</b>	means the procurement and award procedures of the Council as set out in Standing Order 3.2 and Appendix A.
<b>“Public Notice”</b>	means a notice published on the Source Derbyshire website, the Contracts Finder website and, where appropriate, one trade newspaper or journal circulating among such Firms that undertake such contracts;
<b>“Regulations”</b>	means the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Concession Contracts Regulations 2016, the

	Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 as amended and updated from time to time;
<b>“School Contract”</b>	means a Contract let by the governing body of a school acting in the exercise of its powers in respect of a delegated budget;
<b>“Senior Officer”</b>	means an Officer of sufficient seniority as set out in the Financial Scheme of Delegation and where not set out in those documents, as determined by the appropriate Strategic Director;
<b>“Standstill Period”</b>	means the period of time within which the Council must not enter into Contracts as set out in regulation 87 of the Public Contracts Regulations 2015;
<b>“Terms &amp; Conditions for Goods &amp; Services”</b>	means the Council’s corporate terms and conditions for goods and services;
<b>“Terms &amp; Conditions for Works”</b>	means the Council’s corporate terms and conditions for works;
<b>“Supplies and Services OJEU Threshold”</b>	means, for the purpose of these Standing Orders, the financial threshold for supplies and services pursuant to regulation 5 of the Public Contract Regulations 2015, which is set at £181,302

	(equivalent to approx €221,000) as of, 1 <sup>st</sup> January 2018, and is revised every two years;
<b>“Works OJEU Threshold”</b>	means, for the purpose of these Standing Orders, the financial threshold for works pursuant to regulation 5 of the Public Contracts Regulations 2015, which is set at £4,551,413 (equivalent to approx €5,548,000) as of, 1 <sup>st</sup> January 2018, and is revised every two years;

- 2.1.2 Any reference in these Standing Orders to a statute, statutory instrument or statutory provision includes a reference to that statute, statutory instrument or statutory provision together with all Standing Orders and regulations made under it as from time to time amended, consolidated or re-enacted.
- 2.1.3 Any reference in these Standing Orders to an Officer of a certain level shall include a reference to an Officer authorised by them to act on their behalf provided that such authorisation is contained within the Council’s Scheme of Delegation, including, the Financial Scheme of Delegation.
- 2.1.4 For the purposes of these Standing Orders, in ascertaining whether an agreement falls within the definition of a Contract, the determining factor will be the substance of the agreement and not the form. For the avoidance of doubt, where the effect of the agreement is that the Council has works, services or goods delivered to it or on its behalf, then for the purposes of these Standing Orders, it will be a Contract. Using other words, titles or headings as descriptors of an agreement (e.g. Memorandum of Understanding, Grant, Memorandum of Agreement etc.) where the Council has works, services or goods delivered for it or on its behalf, does not avoid the application of these Standing Orders.

- 2.1.5 Supplier and contractor are used interchangeably in these Standing Orders and mean a third party organisation with whom the Council may contract.

## **2.2 Basic Principles**

- 2.2.1 All procurement procedures must:

- (a) support all relevant Council plans, priorities and policies, including the Council Plan, the Enterprising Council Initiative and the Procurement Strategy, including social value;
- (b) realise value for money by seeking to achieve the optimum combination of whole life costs and quality of outcome;
- (c) uphold the highest standards of integrity;
- (d) comply with all applicable legislative requirements, including National and European Union (EU) law;
- (e) ensure:
  - (i) transparency – both in terms of procedures and contract opportunities;
  - (ii) equality of treatment and non-discrimination of potential suppliers;
  - (iii) proportionality – both in terms of procedures and decision making during the procurement process;
  - (iv) mutual recognition – giving equal validity to qualifications and standards from other Member States, where appropriate.

## **2.3 Application of the Standing Orders**

- 2.3.1 These Standing Orders apply to the procurement and letting of the following types of contracts by or on behalf of the Council:

- (a) the purchasing of any goods or materials;
- (b) the purchasing of any services, including consultancy services;
- (c) the renting, hiring or leasing of any equipment or goods;
- (d) the ordering or carrying out of any building or engineering works;  
and
- (e) the purchasing of any goods or services using external funding.

2.3.2 Every procurement and award of a Contract made by or on behalf of the Council shall also comply with National law and EU law, including the Treaty of Rome and subsequent EU Directives.

2.3.3 The OJEU threshold for goods and services is the Supplies and Services OJEU Threshold; the OJEU threshold for works is the Works OJEU Threshold and the OJEU threshold in respect of social and other specific services is the Light Touch Regime OJEU Threshold, all of which apply to the application of these Standing Orders.

2.3.4 Should there be a conflict or discrepancy between these Standing Orders and any National or EU law, the law shall always prevail and must be followed.

2.3.5 The procurement and award of a Contract made by or on behalf of the Council shall not comply with these Standing Orders where:

- (a) an exemption applies pursuant to Standing Order 2.4 below;
- (b) a waiver of the Standing Orders has been granted pursuant to Standing Order 2.5 below;



(c) the Contract is a School Contract procured by the school, in which case it shall be procured and awarded in accordance with the Financial Regulations For Schools.

2.3.6 Where another local authority undertakes a procurement as the commissioning authority for and on behalf of the Council, including with any other parties, the standing orders, procurement procedures and financial regulations of that other local authority may be relied upon provided that the Procurement Professional, in conjunction with the Client, ensures that the procurement of the works, goods and/or services to which that Contract relates, is carried out in accordance with all applicable National law, EU procurement law, including the Treaty of Rome and subsequent EU Directives and Regulations, and they shall obtain confirmation in writing from the other commissioning local authority that such compliance has been achieved.

## **2.4 Exemptions to the Standing Orders**

2.4.1 The following types of transactions and/or forms of Council expenditure are not required to be part of a competitive process pursuant to these Standing Orders. Please be advised that the following list is not exhaustive and advice should always be sought from Corporate Procurement or Legal Services where there is uncertainty:

- (a) expenditure under approved Council Contracts, which have already been appropriately procured in accordance with these Standing Orders;
- (b) disposals, acquisitions or transfer of interest in or over land/property, where such transactions do not form part of a wider works, goods or services transaction that is being procured;
- (c) items sold or purchased by public auction;
- (d) employment offers/contracts which makes the individual a direct employee of the Council;

- (e) expenditure with other Council departments that can provide works, goods or services to the Council;
- (f) Contracts for the execution of mandatory works by statutory undertakers, where the statutory undertaker is the only body that can perform the works.

2.4.2 Legal Services must be contacted for advice about whether a matter is exempt from the Standing Orders.

## **2.5 Waivers of Standing Orders**

2.5.1 Any requirement of these Standing Orders may be waived by the Council, Cabinet, Cabinet Member or Strategic Director, but only where it is satisfied that there are special circumstances justifying exemption and it is legal to do so.

2.5.2 All such waivers of these Standing Orders shall be formally minuted.

2.5.3 A waiver of these Standing Orders cannot circumvent the law and cannot as a matter of law excuse non-compliance with the law.

## **2.6 Procurement Strategy**

2.6.1 The aim of the Procurement Strategy is to:

- (a) set out how the Council will carry out procurement and commissioning activities, in line with the National Procurement Strategy, to ensure value for money in the delivery of high quality services; and
- (b) to recognise that the procurement and commissioning of goods, works and services can deliver additional benefits in the support of its strategic and policy objectives as set out in the Council Plan.

2.6.2 All procurement activities must be undertaken in accordance with the Procurement Strategy and Strategic Directors must ensure that all requirements of the supply of goods, services and works are carried out

in line with the Procurement Strategy and the Council's procurement Protocols.

- 2.6.3 The Chief Financial Officer is responsible for annually producing and updating the Procurement Strategy for approval by Cabinet.

## **2.7 Contract Value and Disaggregation**

- 2.7.1 The value of a Contract must not be sub-divided or underestimated for the purpose of reducing the total value of the contract in order to bring the procurement exercise below the relevant EU threshold and, therefore, be exempt from the application of the EU Directives, the Regulations or these Standing Orders.
- 2.7.2 In determining how to calculate the estimated value of a procurement in order to comply with the Public Contracts Regulations 2015, please contact Corporate Procurement or Legal Services for advice.
- 2.7.3 The value of a Contract must also not be sub-divided or underestimated for the purpose of reducing the total value of the contract in order to bring the procurement exercise below the Council's thresholds in the Protocols so as to avoid the Council's procedural requirements.
- 2.7.4 Contract expenditure figures must be monitored quarterly, based on an assessment of risk, to ensure that the basis of any Contracts awarded remain appropriate and legal.

## **2.8 Conflicts of Interest**

- 2.8.1 All Officers involved in any procurement process are required to adhere to the Officers' Code of Conduct and the Council's Anti-Fraud and Anti-Corruption Strategy. Furthermore, in accordance with the Officers' Code of Conduct as set out in the Constitution, where an Officer engages or supervises contractors or has any other official relationship with contractors and has previously had or currently has a relationship in a private or domestic capacity with a contractor, the Officer must declare that relationship to their Strategic Director.

- 2.8.2 Contracts and purchases must be awarded on merit, in accordance with these Standing Orders and the Financial Regulations and no special favour should be shown to businesses run by, for example, friends, partners or relatives.
- 2.8.3 Any Officer involved in a tendering process for goods, services or works that is above the Supplies and Services OJEU Threshold, must declare any interest they have in the matter to which that procurement process relates, including a nil interest, by completing and signing a Declaration of Interest Form, which will be held by Corporate Procurement. Should the Officer's interest change during the course of the procurement process, that change in interest must be declared. Appropriate action must be taken pursuant to the interest that is declared, including removing the Officer from that particular procurement process.

## **2.9 Compliance and Breach**

- 2.9.1 All Officers must comply with these Standing Orders and each Strategic Director shall ensure that Contracts let by Officers in his or her service comply with these Standing Orders.
- 2.9.2 Where an Officer is found to be in breach of these Standing Orders, appropriate action will be taken as follows:
- (a) for an inadvertent breach the Officer's manager will provide guidance and support, including explaining the consequences and gravity of non-compliance;
  - (b) for a first deliberate breach the Officer's manager will meet with the Officer to formally discuss the breach and any required actions and details of the breach shall be recorded;
  - (c) for subsequent deliberate breaches the Officer's manager will meet with the Officer together with a senior Officer to the manager to formally discuss the matter. Such remedial action may be taken as the manager and senior Officer consider appropriate in the

circumstances, including but not limited to, formal action under the Council's disciplinary procedure. Details of all subsequent deliberate breaches shall be recorded.

- 2.9.3 Any non-compliance with or breach of Standing Orders must be considered with regard to the requirements of paragraph 2Aa.7 of Financial Regulations. This details the action to be taken in all cases of suspected fraud, misappropriation or misuse of money, materials or equipment, or any mismanagement of money or other assets, or any other irregularities. In any case of doubt the Assistant Director of Finance (Audit) must be consulted.

## **2.10 Authority to Authorise**

- 2.10.1 The Council's Scheme of Delegation, which forms part of the Council's Constitution, including the Financial Scheme of Delegation sets out the governance requirements in respect of delegations for decision making that all Officers and elected members must comply with.
- 2.10.2 High level decisions are reserved for Council, Cabinet and Cabinet Member and any matter that is not reserved for Council, Cabinet or Cabinet Member may be approved by the Strategic Directors of each Department where such delegation is set out in the Council's Scheme of Delegation, including the Financial Scheme of Delegation.
- 2.10.3 Where goods, services or works are procured, Cabinet, Cabinet Member and Strategic Directors have authorisation to approve the procurement process and the award of contracts (depending on value) as detailed in Standing Order 3 and the table in Appendix A to these Standing Orders, which sets out the Council's eight Protocols.

## **2.11 Business Cases**

- 2.11.1 The following procurement processes require the submission of a Business Case to the Chief Financial Officer and the Director of Legal Services for approval before the procurement process commences:

- (a) Permission to use a non-Derbyshire County Council framework (Protocol 2A);
- (b) Sole supplier (Protocol 8);
- (c) Material changes to Contracts (Protocol 9);
- (d) Extensions of Contract beyond originally awarded period or indicated spend (Protocol 10).

2.11.2 There are two Business Case templates, one of which is for procurements with a contract value below £50,000 and is simple in nature; and the other is for procurements with a contract value of £50,000 and above. This higher value Business Case is more detailed and includes an options risk assessment section. Both Business Case templates are located on Procurement Connection.

2.11.3 Advice on completing the Business Cases may be obtained from Corporate Procurement.

## **2.12 Social Value**

2.12.1 Consideration must be given to how what is being procured might improve the economic, social and environmental well-being of Derbyshire residents as well as how that improvement might be secured. This applies to all procurements where it is relevant and it must be proportionate and in line with the Public Services (Social Value) Act 2012.

## **2.13 Departmental Service Plan**

2.13.1 It is Council practice that all procurements of Contracts with a contract spend above £50,000 must be included within the appropriate Departmental Service Plan, which will be approved by Council. Where such approval to procure a Contract is included in the Departmental Service Plan, the award of the Contract can then be approved at Strategic Director level.

- 2.13.2 If a procurement of a Contract is not detailed in the appropriate Departmental Service Plan, Cabinet or Cabinet Member (as appropriate) approval to procure the Contract must be obtained along with their approval to delegate the award of the Contract to the relevant Strategic Director.

### **3. COMPETITIVE PROCESS**

#### **3.1 Procurement Overview**

- 3.1.1 Officers must comply with National and EU procurement law and the Council's governance framework when undertaking the procurement of goods, services or works for or on behalf of the Council.
- 3.1.2 Pursuant to Standing Order 3.1.1, Officers must ensure that they comply with the Public Contracts Regulations 2015 when procuring goods, services or works.
- 3.1.3 There are seven main competitive processes permitted under the Public Contracts Regulations 2015 and they represent best practice for all procurements above the applicable OJEU thresholds:
- (a) Open Procedure;
  - (b) Restricted Procedure;
  - (c) Dynamic Purchasing System;
  - (d) Framework Agreements (with or without mini-competitions);
  - (e) Competitive Procedure with Negotiation;
  - (f) Competitive Dialogue;
  - (g) Innovation Partnership.
- 3.1.4 The Standing Orders pertaining to each of these is different and the process chosen to fulfil a supply requirement must not only meet the business needs of the Council but also the purpose for which the process was designed. Each process also comes with selection risks and resource implications, to which due consideration must be given.

- 3.1.5 It is, therefore, essential that Officers appraise themselves of the various procedures and how best to utilise them to deliver Value for Money (“**VfM**”) and the right business solution.
- 3.1.6 The Council has also created eight Procurement and Award Procedures, which are set out in the eight Protocols detailed in Standing Order 3.2 below and Appendix A, which must be followed when procuring goods, services or works.
- 3.1.7 The Procurement and Award Procedures identify the required approach that must be followed for contracts and awards across the Council and specifically highlight the following information:
- (a) the type of spend that they cover;
  - (b) the process that is required to deliver a compliant procurement;
  - (c) the minimum advertising requirements to conform to Council and legal requirements;
  - (d) the requirements of a contract between the Council and a contractor;
  - (e) how a contract should be awarded;
  - (f) where the publication of the award shall take place;
  - (g) registration of the contract on a departmental contract database; and
  - (h) the requirements for inclusion on the Council’s financial system to allow payment of the supplier and monitoring of the tender/contract process.
- 3.1.8 It must be noted that all references to OJEU in the ‘Award of Contract’ column in the Procurement and Award Procedures table in Appendix A, means the Supplies and Services OJEU Threshold, irrespective of whether the procurement is for goods, services or works. All references to OJEU in the other columns in the Procurement and Awards Procedure table in Appendix A, means the relevant OJEU threshold for the activity undertaken.



- 3.1.9 It should be noted that the admission of a contractor onto the Council's financial system will be dependent on demonstrating that the correct process of market engagement and award has been followed.
- 3.1.10 All procurements must use standardised documentation, which is located on Procurement Connection.
- 3.1.11 All competitions shall be in accordance with the best practice guidance of the Chief Financial Officer and the Director of Legal Services. Such guidance is available on Procurement Connection and defines the minimum standards required when undertaking procurement activity.
- 3.1.12 Where the procurement activity has a contract value that is below the relevant OJEU threshold for the activity that is being undertaken, Officers must ensure that they comply with EU Treaty principles, the Regulations, all relevant guidance, case law and advice from the Director of Legal Services when undertaking tender processes or seeking quotations.
- 3.1.13 It is recommended that early advice from Corporate Procurement and Legal Services is sought before the commencement of a procurement process.

### **3.2 Protocols – The Council's Procurement and Award Procedures**

The Council's Procurement and Award Procedures are comprehensively set out in the eight Protocols tabled in Appendix A. For the avoidance of doubt, any references to the OJEU threshold in the Award of Contract section of the Protocols, means the Supplies and Services OJEU Threshold, irrespective of whether the procurement is for goods, services or works. References to the OJEU threshold in the remainder of the Protocols, means the relevant OJEU threshold for the activity undertaken. The table in Appendix A clearly sets out the sections of the Protocols in seven columns. Below are some of the key features of each of the eight Protocols (please note that Protocols 4 and 6 are no longer in use and are not, therefore, highlighted below).

### 3.2.1 Protocol 1

3.2.1.1 Protocol 1 is applicable to all contracts above the relevant OJEU threshold, including Derbyshire County Council framework agreements, but excluding non-Derbyshire County Council framework agreements and, as such, the requirements of the Public Contracts Regulations 2015 must be complied with.

3.2.1.2 All such tendering must be carried out utilising the Council's approved eTendering system.

3.2.1.3 It is important that advice is sought from the Director of Legal Services at the earliest possible stage on the contract approach to be taken.

3.2.1.4 If a procurement is already included in the approved Departmental Service Plans, approval to award the contract must be sought from the Departmental Strategic Director. If it is not included in the approved Departmental Service Plan, approval to award must be sought from Cabinet Member or Cabinet, depending on value.

### 3.2.2 Protocol 2 (A)

3.2.2.1 Protocol 2 (A) must be followed where permission to use a non-Derbyshire County Council framework agreement is intended.

3.2.2.2 Under this Protocol the relevant value Business Case (below £50,000 or above £50,000) must be submitted to the Chief Financial Officer and the Director of Legal Services, which must include total spend that justifies the use of the non-Derbyshire County Council framework agreement, VfM, local impact, and evidence that the framework agreement is legally compliant.

3.2.2.3 Approval of the terms and conditions of the framework agreement is required from the Director of Legal Services.

3.2.2.4 If a procurement is already included in the approved Departmental Service Plan, the approval for permission to use a non-Derbyshire County Council framework agreement must

be sought from the appropriate Strategic Director. If the procurement is not in the approved Departmental Service Plan, approval for permission to use the non-Derbyshire County Council framework agreement must be obtained from Cabinet Member or Cabinet, depending on value.

### 3.2.3 Protocol 2 (B)

3.2.3.1 Protocol 2 (B) sets out the award and procedure route for call-offs from a non-Derbyshire County Council framework agreement (established under Protocol 2 (A)).

3.2.3.2 The terms and conditions of the framework agreement must be complied with, including the requirements for mini-competition, where appropriate.

3.2.3.3 Approval to award a call-off contract from a non-Derbyshire County Council framework agreement must be sought from the appropriate Strategic Director.

### 3.2.4 Protocol 3

3.2.4.1 Calling-off from a DCC Framework (established under Protocol 1 or 4) falls within Protocol 3.

3.2.4.2 The terms and conditions of the framework agreement must be complied with, including the requirements for a mini-competition, where appropriate.

3.2.4.3 Approval to award a call-off contract under a Derbyshire County Council framework agreement must be obtained from the appropriate Strategic Director.

### 3.2.5 Protocol 5

3.2.5.1 Expenditure between £50,000 and the OJEU threshold must be actioned in accordance with Protocol 5.

3.2.5.2 If a procurement is already included in the approved Departmental Service Plan, approval to award the Contract must be obtained from the appropriate Strategic Director. If the procurement is not in the approved Departmental Service Plan,

approval to award the Contract must be obtained from the appropriate Cabinet Member.

3.2.6 Protocol 7 (A)

3.2.6.1 Protocol 7 (A) sets out the requirements for one-off purchases of up to £1,000. Where such purchases are to be made, Protocol 7 (A) directs that one quotation is required.

3.2.6.2 Strategic Directors must authorise the transactions made pursuant to this Protocol.

3.2.6.3 Where appropriate, purchases are to be made using the Council's Debit Card in accordance with the Corporate Debit Card Policy.

3.2.7 Protocol 7 (B)

3.2.7.1 Protocol 7 (B) states that purchases of above £1,000 and up to £50,000 require a minimum of three written quotations, which shall be invited from suppliers considered competent to perform the contract. Where the Strategic Director considers that this is impractical or problematical, arrangements for inviting tenders or negotiating contracts under competitive conditions shall be in accordance with procedures agreed with the Chief Financial Officer.

3.2.7.2 Consideration must be given to inviting quotations from local Derbyshire businesses where possible.

3.2.7.3 Strategic Directors are responsible under this Protocol for approving the award of purchases under this Protocol.

3.2.8 Protocol 8

3.2.8.1 Protocol 8 sets out the procurement and award procedure in respect of sole suppliers.

3.2.8.2 Wherever possible the Council should avoid procurement involving sole suppliers of goods, services or works and should only act in accordance with the Public Contract Regulations 2015.

- 3.2.8.3 Specifications should be written so as to allow as many as possible in the market to submit solutions to Council requirements without any artificial constraints. There are, however, times when for compatibility or market reasons one supplier is the only viable source of a service, component, or software or is in a unique supply position.
- 3.2.8.4 By reason of the risks inherent in a sole supplier relationship, a Business Case is required to be submitted to and approved by the Chief Financial Officer and Director of Legal Services, which justifies the use of a sole supplier. Where the use of such suppliers is above the relevant OJEU threshold, the award must be published in the OJEU, and if it is above £25,000 it must be published on Contracts Finder and on the Source Derbyshire website.
- 3.2.8.5 Depending on the value of the proposed contract with a sole supplier, approvals need to be sought from Cabinet, Cabinet Member or Strategic Director.

### 3.2.9 Protocol 9

- 3.2.9.1 Protocol 9 sets out the procurement and award procedure in relation to material changes.
- 3.2.9.2 The requirement to make material changes to contracts should be avoided, however, the need to make material changes during the term of the contract may occur, where new unforeseeable circumstances occur.
- 3.2.9.3 Material changes to existing contracts produce a risk of challenge and it is, therefore, necessary to produce a Business Case with risk assessment to seek approval from the Chief Financial Officer and the Director of Legal Services.
- 3.2.9.4 In making material changes to contracts, the Council should only act in accordance with regulation 72 of the Public Contract Regulations 2015.

3.2.9.5 Depending on the value of the contract, approvals need to be sought from Cabinet, Cabinet Member or Strategic Director.

3.2.9.6 For changes to contracts, where the total cost of the contract is above £25,000, a notice must be published on the Source Derbyshire website and on Contracts Finder. For changes to contracts above the applicable OJEU threshold, a notice must also be published on OJEU in accordance with the Public Contract Regulations 2015.

#### 3.2.10 Protocol 10

3.2.10.1 Extensions to contracts beyond the originally awarded period or indicated spend fall within Protocol 10.

3.2.10.2 Such changes produce the risk of challenge and it is, therefore, necessary to produce a Business Case with risk assessment to seek approval from the Chief Financial Officer and the Director of Legal Services.

3.2.10.3 The Council should only act in accordance with the Public Contract Regulations 2015.

3.2.10.4 Depending on the value of the Contract, approvals need to be sought from Cabinet, Cabinet Member or Strategic Director.

3.2.10.5 For extensions to Contracts where the total cost of the Contract including the extension is above £25,000, a notice must be published on the Source Derbyshire website and on Contracts Finder. For changes to Contracts above the applicable OJEU threshold, a notice must also be published on OJEU in accordance with the Public Contract Regulations 2015.

### 3.3 Pre-Tender Market Testing

3.3.1 Before commencing a procurement procedure, the Council may conduct market consultations with a view to preparing the procurement and informing contractors of its procurement plans and requirements.

- 3.3.2 Advice may be sought, for example, from independent experts, authorities and market participants etc. and such advice may be used in the planning and conduct of the procurement procedure provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.
- 3.3.3 Corporate Procurement should be contacted for further advice about pre-tender market engagement.

### **3.4 Invitation to Tender/Request for Quotations**

- 3.4.1 Invitations to tender and requests for quotations must be issued in accordance with these Standing Orders.
- 3.4.2 All invitations to tender must be issued through the Council's approved eTendering system.
- 3.4.3 Only in exceptional circumstances may a procurement process be conducted by alternative means to Standing Order 3.4.1 (for example, due to technical failure), and permission to conduct a procurement process by alternative means must be obtained from the Chief Financial Officer and the Director of Legal Services before the procurement process begins.
- 3.4.4 Tenders and quotations must be invited so as to give sufficient time for the market to respond to the requirement.
- 3.4.5 For all Contracts above the applicable OJEU threshold, the standard Selection Questionnaire (SQ) (see Procurement Connection website) must be used for multi-stage procurements and adapted for single stage procurements.
- 3.4.6 The Council is committed to minimising the burden on businesses and all tender documentation should be relevant, proportionate, appropriate

to the goods, services or works required and in the standardised form located on Procurement Connection.

3.4.7 All tenders above the applicable OJEU threshold must conform to the requirements set out in the Public Contract Regulations 2015. The notice must be in the form prescribed by the Public Contract Regulations 2015. The electronic notice must be issued through the approved systems only.

3.4.8 The award of the Contract for tenders and quotations above £25,000 shall be disclosed on the Source Derbyshire website and Contracts Finder.

### **3.5 Clarification Questions**

3.5.1 Where details of a tenderer's bid are unclear, the Council may ask the tenderer for clarification of the submitted details. However, the nature of the questions asked can only be for clarification purposes and the responses to the questions must not involve changes to the features of the tenderer's submission. The response to clarification questions must, therefore, simply clarify what has already been submitted as the bid.

3.5.2 Corporate Procurement should be contacted for further advice about clarification questions.

### **3.6 Submission, Receipt and Opening of Tenders/Quotations**

3.6.1 An invitation to tender shall state clearly the closing date and time for its receipt and that:

(a) the Council does not bind itself to accept the lowest or any tender;

(b) all tender submissions must be made through the "response" feature of the Council's approved eTendering system;

(c) proof of posting will not be accepted as proof of delivery where a procurement process has been conducted via alternative means



pursuant to Standing Order 3.4.2 and the tender or supplementary information fails to arrive at the address shown on the additional bid information label before the closing date and time for the receipt of hard copy tenders and supplementary information; and

(d) only the electronic receipt issued within the Council's approved eTendering system will be accepted as proof of an electronic submission.

3.6.2 No tender shall be accepted if it is received after the closing date and time and shall be instantly rejected, except in the following circumstances:

(a) where the delay in submission is the result of the electronic tendering system and this can be verified to be the case; or

(b) where the late submission is the only submission received, it is compliant in every other respect and the approval of the Chief Financial Officer and the Director of Legal Services has been obtained to its consideration.

3.6.3 Any electronic tender submitted by any means other than through the Council's approved eTendering system will be deleted unread unless an alternative method to electronic tendering has been agreed pursuant to Standing Order 3.4.2.

3.6.4 Electronic tenders shall be kept within the secure area of the Council's approved eTendering system until the time and date specified for their opening.

3.6.5 Tenders received through the Council's approved eTendering system are subject to the electronic security protocols within that system, which require tenders to be opened electronically.

3.6.6 Where a procurement process has been conducted by alternative means pursuant to Standing Order 3.4.2 and hard copy tenders have

been received, all tenders shall be opened at one time, which shall be as soon as possible after the closing date and time and only in the presence of three Officers appointed by the Director of Legal Services and those Officers shall date and certify a list of tenders received.

### **3.7 Evaluation Criteria**

3.7.1 In any procurement process, the successful tenderer must be the one that submits:

(a) the lowest price; or

(b) offers the most economically advantageous tender based on specific criteria that is linked to the subject matter of the contract and can be used to demonstrate the most economically advantageous offer.

3.7.2 Examples of criteria used to identify the most economically advantageous offer include, but are not limited to: price, cost effectiveness, life cycle costs, quality, technical merit, capacity/availability to perform the contract, approach to continuous improvement etc.

3.7.3 All criteria must relate to the subject matter of the contract, be objectively quantifiable and align with the Council's corporate objectives.

3.7.4 These criteria should be assessed through either:

(a) Essential criteria – assessed on a compliant or pass basis/non-compliant or fail basis; or

(b) Technical criteria – assessed on a scored basis in accordance with a pre-set scoring matrix.

- 3.7.5 The procurement documentation must clearly set out the evaluation criteria and how the evaluation criteria will be applied. The procurement documentation must also set out the overall weightings to be attached to each of the criterion.
- 3.7.6 The evaluation of bids must be undertaken in accordance with the evaluation criteria detailed in the procurement documents provided to bidding organisations.

### **3.8 Post-Tender Negotiations**

- 3.8.1 Post-tender negotiations will only be undertaken in circumstances agreed by the Director of Legal Services and Chief Financial Officer. It is essential that such negotiations are conducted professionally and with demonstrable probity.
- 3.8.2 Post-tender negotiations take place after the formal receipt of tenders and before the formal award of Contracts. The purpose is to secure some improvement in price, delivery or quality.

### **3.9 Selecting the Successful Contractor**

- 3.9.1 The successful contractor must be the contractor that has submitted the tender that has been objectively judged to be the best when evaluated against the criteria as required under Standing Order 3.7 or that has submitted the lowest quotation.

### **3.10 Financial Vetting of Contractors**

- 3.10.1 The financial vetting of contractors is an integral part of the procurement process and is designed to ensure that the contractor is financially able to perform the requirements imposed by the Contract. In the context of this process, financial vetting should form part of the selection criteria and be proportional to the financial and business risk of the Council alongside other qualitative and quantitative factors that can be grounds for selecting or rejecting a preferred supplier.

3.10.2 The financial vetting procedure is the responsibility of the Chief Financial Officer, and is distinct from the technical vetting of contractors which is the responsibility of appropriate technical and professional Officers.

3.10.3 Subject to 3.10.4, the financial vetting of contractors must be undertaken where the contract value exceeds the Supplies and Services OJEU Threshold. For the avoidance of doubt, the Supplies and Services OJEU Threshold applies to works contracts for the purposes of financial vetting.

3.10.4 It may also be considered necessary to carry out financial vetting:

- (a) if the Contract is considered to be high risk;
- (b) where there are contract variations, changes in financial status or market conditions etc. during the period of the Contract; or
- (c) where the Chief Financial Officer or the Director of Legal Services states that it is a requirement.

The Chief Financial Officer will provide specific guidance on when financial vetting should be undertaken.

### **3.11 Award of Contract**

3.11.1 The Council must notify the successful and unsuccessful bidders, in writing, of the outcome of a procurement process in accordance with the Public Contracts Regulations 2015.

3.11.2 Where the procurement is above the applicable OJEU threshold, the Council must observe a Standstill Period pursuant to the Public Contracts Regulations 2015.

3.11.3 A Contract must not be awarded before the expiry of the Standstill Period.

- 3.11.4 Authority to award Contracts must be obtained prior to the award of a Contract and such authority must be in accordance with Appendix A of these Standing Orders and the Council's Scheme of Delegation.

### **3.12 Debriefing Organisations**

- 3.12.1 Should you receive a debriefing request from a tenderer, please contact Corporate Procurement or Legal Services for advice.

## **4. CONTRACTS**

### **4.1 Form of Contracts**

- 4.1.1 Pursuant to The Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001 the Council specifies that the following Contracts must be in writing:
- 4.1.1.1 any Contract above £1,000 awarded after a competitive process as determined in accordance with Standing Order 3 above (for the avoidance of doubt, competitive process does not include seeking quotations);
  - 4.1.1.2 those Contracts that do not fall within 4.1.1.1 with a contract value greater than £50,000;
  - 4.1.1.3 Any Contract specified by the Director of Legal Services or the Chief Financial Officer.
- 4.1.2 It is recommended that all other Contracts are in writing and, where they are not in writing, they must be evidenced in writing.
- 4.1.3 For the purposes of these Standing Orders, a Contract is in writing if all the terms agreed between the parties are set out in a document which is signed or sealed in accordance with these Standing Orders.

- 4.1.4 For the purposes of these Standing Orders, a Contract is evidenced in writing if all the terms agreed between the parties are set out in a number of documents that can be produced to prove the terms of the agreement.
- 4.1.5 Without prejudice to 4.1.1 above, the decision as to whether a Contract is evidenced in writing rather than in writing shall be the responsibility of the Strategic Director of each Directorate.

## **4.2 Content of Contracts**

4.2.1 Every Contract shall:

- (a) be in a form approved by the Director of Legal Services;
- (b) specify the subject matter, price, contract period and such other terms as are agreed;
- (c) require compliance with any appropriate British Standard Specification or Code of Practice or other equal and approved European standard;
- (d) indemnify the Council against any claim which may be made in respect of personal injury to any person in circumstances where it is not due to the negligence of the Council;
- (e) indemnify the Council against any claim for damage to property due to the negligence of the contractor and include provision to ensure that the contractor has appropriate insurance in place to protect against such claims and that the contractor shall produce evidence of such insurance to the satisfaction of the Council when requested;
- (f) contain a clause permitting cancellation in circumstances of corruption, such clause having the same effect as that set out in Appendix B to these Standing Orders;

- (g) contain a clause prohibiting a contractor from endorsing its products by reference in any way to the Council, such clause having the same effect as that set out in Appendix C to these Standing Orders;
- (h) contain a clause with acceptable levels of security in place with the effect of protecting the Council's data, including personal and special category data as defined by the Data Protection Act 2018, a model clause for which is available from Legal Services. These requirements are in line with the Council's information security management system, current data protection legislation and information security best practice.

#### **4.3 Contract Execution – Deed or Signature**

- 4.3.1 All Contracts in writing must be signed or sealed and dated (i.e. fully executed) before and not during or after the performance of the Contract and such signing, sealing and dating must be in accordance with these Standing Orders and the Council's Scheme of Delegation.
- 4.3.2 Pursuant to 4.1.1 above, all Contracts in writing must be signed unless the Director of Legal Services requires that they should be by deed or by law are required to be by deed.
- 4.3.3 The Council seal shall only be applied in the presence of the Director of Legal Services or some other person authorised by the Director of Legal Services who shall also attest the sealing and record particulars of the sealing in a book kept for the purpose.
- 4.3.4 Any Contract that falls within Standing Order 4.1.1 must be signed by two Senior Officers on behalf of the Council as follows:
  - (a) where Legal Services has been involved in the preparation and/or drafting of the contractual requirements, one of the signatures must be from a Senior Officer within Legal Services;

- (b) where Legal Services has not been involved in the preparation and/or drafting of the contractual requirements, two signatures from Senior Officers within the Directorate responsible for the Contract;
- (c) where specifically directed by the Director of Legal Services, in accordance with those directions. This is a legal requirement of The Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.

4.3.5 Any other Contract that does not fall within Standing Order 4.1.1 shall be signed by the relevant Officer in accordance with the Council's Scheme of Delegation.

4.3.6 A Contract shall only be signed or sealed and dated where the appropriate required authorities are in place.

#### **4.4 Council Terms & Conditions and Award Letter**

4.4.1 The Council's corporate Terms & Conditions for Goods & Services should be used as contractual terms for the purchase of goods and services where the value of the purchase is below the Supplies and Services OJEU Threshold.

4.4.2 The Council's corporate Terms & Conditions for Works should be used as contractual terms for the purchase of works that are below £50,000.

4.4.3 The Terms & Conditions for Goods and Services and the Terms & Conditions for Works must not be used for Contracts with a value higher than those set out in 4.4.1 or 4.4.2 above unless the consent of the Director of Legal Services has been obtained.

4.4.4 Where the Council's Terms & Conditions for Goods & Services or the Council's Terms & Conditions for Works are used, the appropriate Award Letter must be completed and signed by all contracting parties unless the purchase has been made using the Council's Order Form,



in which case the Order Form must be processed in accordance with the Council's processing procedure.

- 4.4.5 A supplier's terms and conditions may only be used in exceptional circumstances and justification for using such terms and conditions must be evidenced in writing and approved by the relevant Strategic Director.

#### **4.5 Approved Lists**

- 4.5.1 Approved lists must not be used where they are prohibited under the Public Contracts Regulations 2015.

#### **4.6 Framework Agreements**

- 4.6.1 Framework agreements are agreements between the Council and one or more suppliers for the provision of goods, services or works.
- 4.6.2 The term of a framework agreement must not exceed four years, except where:
  - (a) a longer period is permitted under the light touch regime pursuant to Part 2, Chapter 3 of the Public Contracts Regulations 2015; or
  - (b) where exceptional circumstances justify a longer duration, as provided for in regulation 33(3) of the Public Contracts Regulations 2015.
- 4.6.3 Where a Derbyshire County Council framework agreement is used, the framework agreement must be approved at Strategic Director level where the procurement is already approved in the Departmental Service Plan and, where it is not already approved in the Departmental Service Plan, it must be approved by Cabinet Member or Cabinet, depending on value.
- 4.6.4 Any call-off under a Derbyshire County Council framework agreement must be undertaken in accordance with the terms of the framework agreement and the award of the call-off contract must be approved at Strategic Director level.

- 4.6.5 The use of national, regional, sub-regional, consortium or other non-Derbyshire County Council framework agreements shall only be permitted after the submission and approval of a Business Case to the Chief Financial Officer and the Director of Legal Services. The Business Case must clearly identify the benefits to be gained, the legality of the framework agreement, the terms associated with any purchases made and the justification for not making the work available under a new tender. The two Business Case templates are available on Procurement Connection.
- 4.6.6 Where the contract value is below £50,000 or it is already approved in the Departmental Service Plan, approval to award a non-Derbyshire County Council framework agreement must be obtained from the relevant Strategic Director. Where procurements are not approved in the Departmental Services Plan, Cabinet Member or Cabinet approval (as appropriate) must be obtained in order to award the framework agreement. Approval to award a call-off must be obtained from the relevant Strategic Director.

#### **4.7 Corporate Contracts**

- 4.7.1 Where Council approved corporate Contracts are already in place, which have been procured in such a way that the requirements to be purchased were identified at both the advertising and specification stages, the corporate Contracts should be used and no further competitive process is required. The Chief Financial Officer will contract for all identified corporate and generic needs or will endorse Departmental or sub-Departmental level Contracts where they can be utilised by other Departments and sections.

#### **4.8 External Body Grant Funding**

- 4.8.1 Where grant money is received by the Council to fund the provision of works, goods or services under a Contract, then these Standing Orders shall apply in full. However, where the Council administers grant money on the funding body's behalf, these Standing Orders may not

apply and advice should be sought from Legal Services as to their applicability.

- 4.8.2 Where the funding body has attached grant conditions to the grant, care must be taken to ensure that any relevant grant requirements are appropriately captured in any Contracts between the Council and the eventual grant recipient.
- 4.8.3 Where grant conditions are attached that make compliance with these Standing Orders unachievable, the Director of Legal Services shall advise accordingly.
- 4.8.4 For advice about whether these Standing Orders apply to a grant, please contact Legal Services.

#### **4.9 Contract Management**

- 4.9.1 All Contracts must be contract managed to ensure that the Contract is carried out in accordance with its terms and conditions.
- 4.9.2 It is the responsibility of each Strategic Director to ensure that appropriate contract management arrangements are put in place that are proportionate to any given Contract.
- 4.9.3 All Departments shall hold a register of all Contracts, in a standard format issued by the Chief Financial Officer, which they shall update monthly, in line with the Local Government Transparency Code. All Contracts above £5,000 shall be reported to the Chief Financial Officer on a monthly basis.
- 4.9.4 Where possible, Contracts shall be identified on the Council's financial system to allow electronic ordering and to assist Officers in identifying approved Contracts.

## APPENDIX A – Procurement and Award Procedure - Protocols

	Spend Type	Process Required	Advertising Required	Contracting Requirements	Award of Contract	Publication of Award	Inclusion on SAP
Protocol 1	All contracts above OJEU, excluding non-DCC Frameworks	Tender through the Council's approved eTendering system	OJEU, Contracts Finder and Source Derbyshire website	Contract approved by Director of Legal Services	<p>Procurements approved in the Departmental Service Plan:</p> <p>Strategic Director</p> <p>Procurements not approved in the Departmental Service Plan:</p> <p>OJEU to £500,000 Cabinet Member</p> <p>Above £500,000 Cabinet</p>	OJEU, Contracts Finder, Source Derbyshire website and Departmental Contract Register	MD4, published catalogue and contract detail
Protocol 2 A & B	(A) Permission to use a non-DCC Framework	<p>i) As set out in the Framework documents and</p> <p>ii) Submission of Business Case to Chief Financial Officer and Director of Legal Services for approval</p>	None	Approval of Framework documents by Director of Legal Services	<p>Procurements approved in the Departmental Service Plan or below £50,000:</p> <p>Strategic Director</p> <p>Procurements not approved in the Departmental Service Plan:</p> <p>Above £50,000 to £500,000 Cabinet Member</p> <p>Above £500,000 Cabinet</p>	None	None
	(B) Call-off from a non-DCC Framework (established under Protocol 2 (A))	Call-off as set out in the Framework documents	None	Approval of call-off terms by Director of Legal Services	Strategic Director	£25,000 and above on OJEU (if above the OJEU threshold), Contracts Finder, Source Derbyshire website and Departmental Contract Register	MD4, published catalogue and contract detail

	Spend Type	Process Required	Advertising Required	Contracting Requirements	Award of Contract	Publication of Award	Inclusion on SAP
Protocol 3	Call-off from a DCC Framework (established under Protocol 1 or 4)	Call-off as set out in the Framework documents	None	Approval of call-off terms by Director of Legal Services	Strategic Director	£25,000 and above on OJEU (if above the OJEU threshold), Contracts Finder, Source Derbyshire website and Departmental Contract Register	MD4, published catalogue and contract detail
Protocol 4	NOT IN USE						
Protocol 5	£50,000 to OJEU threshold	Tender through the Council's approved eTendering system	Source Derbyshire website and for above £25,000 on Contracts Finder	The Council's Terms and Conditions or other form of contract as appropriate	Procurements approved in the Departmental Service Plan:  Strategic Director  Procurements not approved in the Departmental Service Plan:  Cabinet Member	£25,000 and above on Contracts Finder, Source Derbyshire website and Departmental Contract Register	MD4, published catalogue and contract detail
Protocol 6	NOT IN USE						
Protocol 7 A & B	(A) Quotation up to £1,000	Minimum of 1 quotation	None	The Council's Terms and Conditions or other form of contract as appropriate	Strategic Director	None	Council debit card or MD4
	(B) Quotation above £1,000 to £50,000	Minimum of 3 written quotations	None	The Council's Terms and Conditions or other form of contract as appropriate	Strategic Director	£25,000 and above on Contracts Finder and Source Derbyshire website	MD4
Protocol 8	Sole Supplier	Submission of Business Case to Chief Financial Officer	None	Contract approved by	Up to OJEU threshold:	£25,000 and above on OJEU (if above the	MD4, published catalogue

	<b>Spend Type</b>	<b>Process Required</b>	<b>Advertising Required</b>	<b>Contracting Requirements</b>	<b>Award of Contract</b>	<b>Publication of Award</b>	<b>Inclusion on SAP</b>
		and Director of Legal Services for approval		Director of Legal Services	Strategic Director Above OJEU threshold to £500,000: Cabinet Member Above £500,000: Cabinet	OJEU threshold), Contracts Finder, Source Derbyshire website and Departmental Contract Register	and contract detail
Protocol 9	Material Changes to Contracts	Submission of Business Case to Chief Financial Officer and Director of Legal Services for approval	None	Contract approved by Director of Legal Services	Up to OJEU threshold: Strategic Director Above OJEU threshold to £500,000: Cabinet Member Above £500,000: Cabinet	£25,000 and above on OJEU (if above the OJEU threshold), Contracts Finder, Source Derbyshire website and Departmental Contract Register	Update of catalogue and contract data
Protocol 10	Extensions of Contract beyond originally awarded period or indicated spend	Submission of Business Case to Chief Financial Officer and Director of Legal Services for approval	None	Contract approved by Director of Legal Services	Up to OJEU threshold: Strategic Director Above OJEU threshold to £500,000: Cabinet Member Above £500,000: Cabinet	£25,000 and above on OJEU (if above the OJEU threshold), Contracts Finder, Source Derbyshire website and Departmental Contract Register	Update of contract data

## **APPENDIX B – Bribery, Corruption and Fraud Clause**

1. The Council may terminate this contract by written notice with immediate effect and recover from the contractor all losses resulting from such termination, if the contractor, or any of its employees, agents or subcontractors (in all cases whether or not acting with the contractor's knowledge):
  - (a) directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to:
    - I. induce that person to perform improperly a relevant function or activity;
    - II. reward that person for improper performance of a relevant function or activity;
  - (b) directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;
  - (c) commits any offence:
    - I. under Section 117(2) of the Local Government Act 1972;
    - II. under the Bribery Act 2010;
    - III. under the Fraud Act 2006 and legislation creating offences concerning fraudulent acts;
    - IV. at common law concerning fraudulent acts relating to this contract or any other contract with the Council; or
    - V. defrauds, attempts to defraud or conspires to defraud the Council.

## **APPENDIX C – Endorsement Clause**

1. The award of this Contract shall not entitle the contractor to endorse its products by reference in any way to the Council nor shall the contractor exhibit or display for advertisement or otherwise any goods, equipment or vehicles to be supplied under the Contract to the Council and which can be identified with the Council (whether the property in such goods, equipment or vehicles shall have passed to the Council or not) without the written consent of the Council

# **Appendix 9 - 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, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or of the partner of such persons.
- (ii) No candidate so related to a Councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

### **(b) Seeking support for appointment.**

- (i) Subject to paragraph (iii), 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) Subject to paragraph (iii), no Councillor will seek support for any person for any appointment with the Council.
- (iii) Nothing in paragraphs (i) and (ii) above will preclude a councillor from giving a reference for a candidate for submission with an application for appointment.

## **2. Recruitment of Head of Paid Service and Executive Directors**

Where the Council proposes to appoint an Executive Director 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 (1) to be sent to any person on request.

### 3. **Appointments**

- (a) Subject to the paragraphs below and the exceptions detailed therein, appointment of officers (other than assistants to political groups) is the responsibility of the Head of Paid Service as delegated to Executive Directors for their service area under the Officer Scheme of Delegations at Appendix 1, and such appointments 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.
- (c) Paragraph (a) above does not apply to the appointment or dismissal of, or disciplinary action against:
  - (i) The Head of Paid Service
  - (ii) Statutory chief officers within the meaning of section 2(6) of the 1989 Act (politically restricted posts);
  - (iii) Non-statutory chief officers within the meaning of section 2(7) of the 1989 Act;
  - (iv) Deputy chief officers within the meaning of section 2(8) of the 1989 Act
  - (v) Any person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).
- (d) The full Council will approve the appointment of the Head of Paid Service and Executive Directors following the recommendation of such an appointment by a Panel formed from the Appointments and Conditions of Service Committee. That Panel must include at least one member of the Cabinet and the composition of the Panel will be undertaken in consultation with the Director of Organisational Development and Policy.

- (e) The full council may only make or approve the appointment of the Head of Paid Service where no well-founded objection from any member of the Cabinet has been received.
- (f) A Panel formed from the Appointments and Conditions of Service Committee will appoint the Council's Monitoring Officer and other officers falling within paragraph (c ) above, except the Director of Public Health. That Panel must include at least one member of the Cabinet and the composition of the Panel will be undertaken in consultation with the Director of Organisation Development and Policy in conjunction with the Head of Paid Service; or by the Head of Paid Service if the appointment is of the Director of Organisation Development and Policy.
- (g) **Appointment of the Director of Public Health:** A Panel comprising the following will appoint the Director of Public Health:
  - (i) A Councillor as determined by the Director of Organisation Development and Policy;
  - (ii) the Executive Director for Adult Care or an officer nominated by him/her
  - (iii) an externally facilitated assessor appointed following consultation with the Faculty of Public Health and agreed by Public Health England
  - (iv) The Regional Director of Public Health or his/her nominated deputy
  - (v) A senior NHS representative to be determined by the Executive Director for Adult Care
- (h) An offer of employment regarding appointments detailed in paragraphs (f) and (g) shall only be made where no well-founded objection from any member of the Cabinet has been received.

#### 4. **Disciplinary Action and Dismissal**

Disciplinary action means any action occasioned by alleged misconduct which, if proved, would according to the usual practice of the authority be recorded on the Officer's personal file, and includes proposals for dismissal for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Council has undertaken to renew such a contract.

**5. Disciplinary Action against the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (a relevant officer)**

- (i) Where an allegation is made against the Head of Paid Service Monitoring Officer or Chief Finance Officer (a relevant officer) relating to conduct or capability or some other substantial issue that requires consideration, the matter will be considered by a Panel formed from the Appointments and Conditions of Service Committee, which, in turn will advise the Council and make recommendations.
- (ii) The Panel will consider and action suspension, where appropriate. Any suspension must not last longer than two months, unless an extension is recommended by a suitably qualified and independent investigator.
- (iii) The Panel, including the independent persons, will operate as the Panel required by the Local Authorities (Standing Orders) (England) (amendment) Regulations.
- (iv) The Panel will include two or more independent non-voting persons appointed in accordance with s28(7) of the Localism Act 2011, who accept the invitation in the following priority order;
  - (a) a relevant independent person who has been appointed by the Council and who is a local government elector;
  - (b) any other independent person who has been appointed by the Council; and
  - (c) an independent person who has been appointed by another Council or Councils.
- (v) A relevant officer may only be dismissed by the full Council and may not be dismissed unless the procedure set out in the following paragraphs is complied with.
- (vi) At least twenty working days before the relevant meeting, namely, the meeting at which the Council will consider whether to approve any proposal to dismiss. The Panel will consider whether potential disciplinary, dismissal, capability or other substantial issues require

investigation and whether the relevant officer should be suspended.

- (vii) The Panel will inform the relevant officer of the allegations and allow him/her to respond in writing and in person. The Panel will then decide whether no further action is required or if the matter requires an investigation by a suitably qualified and/or independent person and the Panel will use its best endeavours to agree this person with the officer.
- (viii) The Panel will review the results of the investigation to consider what action if any, is appropriate, after hearing the views of the relevant officer, and report its recommendations. The independent persons must express their views but do not have a vote on whether the case should progress to full Council to consider dismissal.
- (ix) Where dismissal is recommended, the Panel will provide advice, views or recommendations to full Council for the Council to vote on whether it approves the proposal to dismiss. The relevant officer will be provided with all relevant papers or documents in advance of the meeting and allowed to make their representations. Written representations may also be given by the relevant officer in advance of the meeting.
- (x) Notice of dismissal must not be given before the matter has been considered by full Council and full Council must not approve any recommendation of dismissal of a relevant officer without considering:
  - (a) any advice, views or recommendations of the Panel
  - (b) the conclusions of any investigations into the proposed dismissal; and
  - (c) any representations from the relevant officer.
- (xi) In relation to an appeal, as the Authority has approved the dismissal, there is no one in the Authority who has the power to overturn the dismissal decision. In this respect and as set out above, the relevant officer will have the opportunity to make representations in writing and in person to the Panel, before any dismissal recommendation has been made and thereafter will have the opportunity to make written representations to full Council to be considered at the relevant meeting.

- (xii) Any discussion at meetings of the full Council or the Panel under these rules regarding an individual officer would be conducted under the exempt part of the meeting.

## **5. Action against the Director of Public Health**

In considering any disciplinary or dismissal action against the Director of Public Health, the Council will have regard to the provisions of the Health and Social Care legislation and any associated guidance issued by the Secretary of State.

Before terminating the appointment of a Director of Public Health, the Council will consult with the Secretary of State.

## **6. Procedure for seeking objections**

In respect of any proposal to appoint or dismiss an officer to a post falling within paragraph (c ) (i) – (iv) above, shall only be made where no well-founded objection from any member of the Cabinet has been received. No offer of appointment must be made and no notice of dismissal must be given until:

- (i) The Panel or officer proposing to appoint or dismiss must notify the Director of Organisation Development and Policy of the name of the person to whom it is proposed the offer is made or notice given, together with any other relevant particulars;
- (ii) The Director of Organisation Development and Policy must notify every member of Cabinet of:
  - (a) The name of the person to whom it is proposed the offer of employment is made or notice is given;
  - (b) Any other relevant particulars
  - (c) The period within which any objection to the making of the offer of employment or the giving of notice of dismissal is to be made by the Leader on behalf of the Cabinet to the Director of Organisation Development and Policy; and
- (iii) Either:
  - (a) The Leader has, within the period specified in the notice under sub-paragraph (ii) (c), notified the Panel or officer appointing or proposing to dismiss that neither he nor any other member of the Cabinet has any objection to the making of the offer;

- (b) The Director of Organisation Development and Policy has notified the Panel or officer that no objection was received by him/her within that period from the Leader; OR
- (c) The Panel or officer appointing or proposing to dismiss is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

#### **7. Action against Officers other than those stipulated in paragraph 4**

Any action against these officers (other than assistants to political groups) is the responsibility of the Head of Paid Service as delegated to Executive Directors for their service area under the Officer Scheme of Delegations at Appendix 1, and decisions regarding action against these officers may not be made by Councillors.

# Appendix 10 - Ethics Statement

Derbyshire County Council works with private, public and non-profit sectors to provide a range of services to the community. Accordingly, organisations, service providers, small businesses and individuals can expect high standards of ethical behaviour from Officers. Underpinning these expectations are our organisational values. They drive our behaviour and reflect how we conduct ourselves in our business.

This Statement provides guidance regarding the standards of ethical behaviour that organisations, service providers, small businesses and individuals can expect from Officers and that are expected of them, in their dealings with Council. Our values guide our actions in conducting business in a socially responsible and ethical manner. As an organisation, and as individuals, we respect, apply and comply with the law, support human rights and equal opportunity, protect the environment, achieve operational excellence and work for the benefit of our communities. Officers will, at all times, act with honesty and integrity in an open and transparent manner, performing their roles efficiently, effectively and fairly, thereby attracting the highest level of confidence from our community.

The Council's Code of Conduct for Employees sets the requirements of conduct in carrying out their functions. The Code of Conduct has been developed to assist Officers to:

- (i) Understand the standards of conduct that are expected of them;
- (ii) Enable them to fulfil their duty to act honestly and exercise a reasonable degree of care and diligence; and,
- (iii) Act in a way that enhances public confidence in the integrity of local government.

## Key Principles

This statement is based on a number of key principles and sets out standards of conduct that meet these principles and statutory provisions applicable to local government activities. The key principles are:

- (a) Integrity

We must not place ourselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence us in the performance of our duties.

(b) Leadership

We have a duty to promote and support the leadership of the Council in order to maintain and strengthen the public's trust and confidence in the integrity of the Council. By doing so we promote public duty to others in the Council and outside, by our own ethical behaviour.

(c) Selflessness

We have a duty to make decisions in the public interest and not act in order to gain financial or other benefits for ourselves, our family, friends or business interests. This means making decisions because they benefit the public, not because they benefit the decision maker or someone associated with the decision maker.

(d) Impartiality

We should make decisions on merit and in accordance with our statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. This means fairness to all, impartial assessment, merit selection in recruitment and in purchase and sale of Council's resources, considering only relevant matters.

(e) Accountability

We are accountable to the public for our decisions and actions and should consider issues on their merits, taking into account the views of others. This means recording reasons for decisions, submitting to scrutiny, keeping proper records, establishing audit trails and conducting audits.

(f) Openness

We have a duty to be as open as possible about our decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. This means recording, giving and revealing reasons for decisions, revealing other avenues available to the client or business, when authorised, offering all information, communicating clearly.

(g) Honesty

We have a duty to act honestly. We must declare any private interests relating to our duties and take steps to resolve any conflicts arising in such a way that protects the public interest. This means obeying the law, following the letter and spirit of policies and procedures, observing the Council's Code of Conduct for



Employees and exercising any delegated authority strictly for the purpose for which the authority was delegated.

(h) Respect

We must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.

In making our business decisions, we strive to obtain the best value for money. Depending on the circumstances, our decision-making takes into account many things including upfront costs, on-going costs, suitability, quality, reliability, availability, experience, reputation, safety, legal compliance, social value and environmental sustainability. While we strive to obtain the best price for goods and services, we do not necessarily buy at the cheapest price, nor sell at the highest price. The Council is required to balance all relevant factors, including initial cost, whole-of-life costs, quality, reliability and timeliness in determining true value for money.

Although Council business dealings must be transparent and open to public scrutiny, there will be times when information on the Council's relationships with private sector suppliers of goods and services, cannot be made publicly available. However we will always act fairly in our decision-making. That means we are objective, reasonable and even-handed. It does not mean that we can satisfy everyone all of the time. We will publicly support our decisions unless we have to maintain confidentiality or protect privacy.

### **Reporting Unethical Behaviour**

The Council is committed to promoting ethical behaviour. Allegations of unethical behaviour can be made to the Council's Monitoring Officer.

# **Appendix 11 - Code of Conduct for Members**

## **Introduction**

The public is entitled to expect the highest standards of conduct from all Members of the County Council.

The Code sets out the standards of service that are expected from Members of the Council (including Co-opted Members). In particular, Members should act in an open and transparent manner and should not do anything which would prejudice the reputation of the Council.

It is important for Members to understand their position as regards standards of conduct, and if in any doubt they should seek guidance. This is because, in some circumstances, a breach of the Code could be a criminal offence and because any person could make a complaint to the Council if they believe a Member has breached the Code.

This Code is adopted in accordance with the Localism Act 2011.

## **1. Application and Scope**

- (1) This Code of Conduct applies to you whenever you are acting in your capacity as a Member of Derbyshire County Council, including:-
  - (i) at formal meetings of the Council, its Committees and Sub-Committees, its Cabinet and Cabinet Committees
  - (ii) when acting as a representative of the Council
  - (iii) in taking any decision as a Cabinet Member or a Councillor
  - (iv) in discharging your functions as a Councillor
  - (v) at briefing meetings with officers and
  - (vi) at site visits
- (2) This Code does not have effect in relation to your conduct other than where it is in your official capacity.

## **2. Principles**

In your capacity as a Member, you must act in accordance with the Council's Code of Conduct which is consistent with the following principles specified in the Localism Act 2011:-

- (1) **SELFLESSNESS:** Holders of public office should act solely in the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or friends.
- (2) **INTEGRITY:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- (3) **OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- (4) **ACCOUNTABILITY:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- (5) **OPENNESS:** Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- (6) **HONESTY:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interests.
- (7) **LEADERSHIP:** Holders of public office should promote and support these principles by leadership and example

### 3. Obligations

As a Member of Derbyshire County Council, your conduct should, in particular, address the statutory principles in the Code of Conduct by:-

- (1) Championing the needs of residents, including the whole community and, in a special way, your constituents, including those who did not vote for you, and putting their interests first.
- (2) Dealing with representations or enquiries from residents, members of the community and visitors fairly, appropriately and impartially.
- (3) Not allowing other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' case work, the interests of Derbyshire County Council

or the good governance of Derbyshire County Council in a proper manner.

- (4) Exercising independent judgement and not compromising your position by placing yourself under obligations to outside individuals or organisations who might seek to influence the way you perform your duties as a Member of Derbyshire County Council.
- (5) Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- (6) Being accountable for your decisions and co-operating when scrutinised internally and externally, including by local residents.
- (7) Contributing to making Derbyshire County Council's decision making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding you and other Members to account, but restricting access to information when the wider public interest or the law requires it.
- (8) Respecting the confidentiality of information which you receive as a member by:
  - (i) not disclosing confidential information to third parties unless required by law to do so or where there is a clear and overriding public interest in doing so; and
  - (ii) not obstructing third parties' legal rights of access to information
- (9) Behaving in accordance with all of Derbyshire County Council's legal obligations, with particular regard to:
  - (i) the Data Protection Act 1998
  - (ii) the Freedom of Information Act 2000
  - (iii) the Bribery Act 2010
  - (iv) the Equality Act 2010
- (10) Having regard to the principles of Derbyshire County Council's policies, protocols and procedures, including those relating to the use of Derbyshire County Council's resources (which must not be used improperly for political purposes including party political purposes).
- (11) Valuing other Members and officers and engaging with them in an appropriate manner and in a manner which underpins the mutual

respect between individuals that is essential to good local government and respecting and not bullying any person.

- (12) Always treating people with respect, including the organisations and public you engage with and those you work alongside.
- (13) Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within the Council.

#### 4. Interests

The Localism Act provides for registration and disclosure of interests and in Derbyshire County Council, this will be done as follows:

##### (1) Disclosable Pecuniary Interests

- (a) You must comply with the statutory requirements to **register**, and **disclose at meetings** a Disclosable Pecuniary Interest as defined in Appendix A. You must not deal with any matters in which you have a Disclosable Pecuniary Interest and you must **withdraw from any meeting room** where it is being discussed unless you have been granted a dispensation<sup>1</sup> to enable you to take part in the discussion of, and/or vote on, that item.
- (b) You have a Disclosable Pecuniary Interest in any business of the Council where it is a pecuniary interest of yours or of:-
  - (i) your spouse or civil partner;
  - (ii) a person with whom you are living as husband or wife; or
  - (iii) a person with whom you are living as civil partners and you are aware that that other person has that interest.

##### (2) Personal Interests

- (a) In addition to the requirements of paragraph 4(1) (a) regarding Disclosable Pecuniary Interests, you must **register** and **disclose at meetings** any interest in any business of the Council where either it relates to or is likely to affect:-

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<sup>1</sup> NB In certain circumstances, the Standards Committee has the power to grant a dispensation to allow a Member to participate in any discussion, or vote on any matter notwithstanding that he or she has a Disclosable Pecuniary Interest in that matter. Applications for dispensations should be submitted in writing to the Monitoring Officer.

- (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;
- (ii) any body:
  - (aa) exercising functions of a public nature
  - (bb) directed to charitable purposes; or
  - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a governing member or in a position of general control or management;
- (iii) any trade union of which you are a member and membership of pressure groups, the Freemasons or other influential bodies of which you are a member.

and that interest is not a Disclosable Pecuniary Interest.

### **(3) Other Interests**

- (a) In addition to the requirements of paragraphs 4(1) and 4(2) above; if you attend a meeting at which any item of business is to be considered and you are aware that you have an interest in that item, you must make **verbal declaration** of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent.
- (b) You have an interest in an item of business of the Council where
  - (i) a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the Council's administrative area; or
  - (ii) it relates to or is likely to affect any of the interests listed in the Table in Appendix A to this Code, but in respect of a member of your family or a person with whom you have a close association (other than a "relevant person") and you are aware that that other person has that interest and that interest is not a Disclosable Pecuniary Interest or a

Personal Interest as described in paragraphs 4(1) and 4(2) above.

#### **(4) Registration of Interests**

(a) You must, within 28 days of:-

- (i) this Code being adopted by the Council, or
- (ii) your election or appointment to office

notify the Monitoring Officer in writing of any Disclosable Pecuniary or Personal Interest described in paragraphs 4(1) and 4(2) above.

(b) You must ensure that the Register of Interests is kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any change in respect of your registrable interests described in paragraphs 4(1) or 4(2), above.

(c) Following any declaration of a Disclosable Pecuniary Interest or a Personal Interest made in accordance with paragraph 4(1) and 4 (2), above which has not been entered in the Register of Interests you must notify the Monitoring Officer of the interest within 28 days of the declaration.

#### **5. Sensitive Interests**

- (1) Where you are concerned that the disclosure of an interest would lead to you or a person connected with you being subject to violence or intimidation, you may request the Monitoring Officer to agree that the interest is a sensitive interest.
- (2) If the Monitoring Officer agrees, then you merely have to disclose the existence of the interest rather than the detail of it at a meeting and the Monitoring Officer can exclude the detail of the interest from the Council's publicly available version of the Register.
- (3) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded is no longer a sensitive interest, notify the Monitoring Officer in writing.
- (4) In this Code, "sensitive information" means information the availability of which for inspection by the public creates, or is likely to create, serious risk that you or a person connected with you may be subjected to violence or intimidation.

## **6. Gifts and Hospitality**

- (1) You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £50 which you have accepted as a Member from any person or body other than the Council. You may register gifts of lower value if you consider this to be appropriate.
- (2) The Monitoring Officer will place your notification on a public Register of Gifts and Hospitality.



## Appendix A

### Disclosable Pecuniary Interests

The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011.

Disclosable pecuniary interests are defined in the relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as follows –

Interest	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or beneficial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992)
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority – (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge) – (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest
Securities	Any beneficial interest in securities of a body where –

	<p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either –</p> <ul style="list-style-type: none"> <li>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</li> <li>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</li> </ul>
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For this purpose –

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority (i.e .Derbyshire County Council);

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act namely;

- (i) the Member’s spouse or civil partner

- (ii) a person with whom the Member is living as husband and wife, or
- (iii) a person with whom the Member is living as if they were civil partners

“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.

# Appendix 12 - Code of Conduct for Officers

## **1 Introduction**

- 1.1 The public is entitled to expect the highest standards of conduct from all the County Council's employees. Your duty is to serve the Council in providing advice, implementing its policies and delivering services to the local community. In performing your duties, you must act with integrity, honesty, impartiality and objectivity.
- 1.2 The purpose of the Code is to assist you in carrying out your job by making clear the standards of behaviour the Council requires you to meet. It incorporates the existing laws, regulations and conditions of service you should be most aware of in your work for the Council.

## **2 Scope**

- 2.1 The Code applies to all employees of the County Council and is recommended to those schools where the Governing Body performs the function of the employer. The Code also applies to contractors, agency staff, volunteers and those on student/work experience placements working on behalf of the Council.
- 2.2 You should read the Code in conjunction with professional standards, departmental requirements and guidance regarding standards of conduct in particular areas of work. Some of these additional sources of guidance are listed in the Appendix at the end of this Code. This list is not exhaustive and you should familiarise yourself with any relevant guidance which may be provided in relation to your particular area of work. You should address any further queries you have to your line manager or another senior manager in your department.

## **3 Accountability**

- 3.1 As an employee, you are required to serve the whole of the Council and serve all Elected Members equally. You are accountable and owe a duty to the Council and you are expected, where it is a part of your duties, to provide appropriate advice to Elected Members and fellow employees with impartiality. You must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.
- 3.2 If you fail to comply with the Code's provisions, this may result in action under the Council's Disciplinary Procedure.

## **4 Maintenance of Standards**

- 4.1 You should inform your line manager if you identify any deficiency in service resulting from breaches of this Code. If you have concerns about raising the deficiency with your line manager, and wish to maintain confidentiality, you can use the Council's Confidential Reporting Code. In this case, you should inform your line manager or your Strategic Director or the Director of Legal Services.
- 4.2 The Council's Customer Service Charter aims to assist you in delivering the Council's vision. You should be aware of what it requires of employees and it can be found on Dnet under Working for the Council – Customer Care.

## **5 Disclosure of Information**

- 5.1 The Council is committed to open government and to rights of public scrutiny and participation. Legislation, including the Freedom of Information Act 2000 and the Data Protection Act 1998, requires that certain types of information must be made available to the public and other recognised third parties and to employees and Elected Members. Advice and guidance on the requirements of the Freedom of Information and Data Protection Acts is available from the Director of Legal Services.
- 5.2 You have a responsibility to safeguard the security and confidentiality of personal information you hold and you should ensure that only the appropriate amount of information required is provided to those who have a clearly established and legitimate need to use it. Advice and guidance on your existing statutory or common law obligations regarding confidentiality is also available from the Director of Legal Services.
- 5.3 You should not use any information obtained in the course of your employment for personal gain or benefit, nor should you pass it on to others who might use it in such a way.

## **6 Political Neutrality**

- 6.1 Certain posts are designated politically restricted by the Local Government and Housing Act 1989. Your contract of employment will tell you whether you hold one of these posts and, if you do, you will be required by law to observe certain restrictions regarding your out of work activities. For example, you may not:

- Stand for election to local authorities (except Town or Parish Councils), the House of Commons or the European Parliament.
  - Hold office in a political party.
  - Canvass at elections, or
  - Speak or write publicly on matters on party political lines.
- 6.2 Whether or not politically restricted, you must follow the policies of Derbyshire County Council and must not allow your own personal or political opinions to interfere with your work.
- 6.3 As a part of your work, you may be required to advise political groups. You must do so in ways which do not compromise your political neutrality.

## **7 Relationships**

### **7.1 Elected Members**

- 7.1.1 Mutual respect between employees and Elected Members is essential to good local government and working relationships should be kept on a professional basis. Close personal familiarity between yourself and individual Elected Members can damage the relationship and prove embarrassing to other employees and Elected Members and should therefore be avoided.

### **7.2 The Local Community and Service Users and Other Employees**

- 7.2.1 You should always remember your responsibilities to the community you serve and ensure courteous, efficient and impartial service delivery to all service users, groups and individuals within that community, as set out in the Customer Service Charter and in line with the Council's vision of improving life for local people. These responsibilities apply equally to your conduct with fellow employees, contractors, agency staff, volunteers and those on student/work experience placements working on behalf of the Council.

### **7.3 Contractors**

- 7.3.1 If you engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, you should declare that relationship to your Strategic Director.
- 7.3.2 Orders and contracts must be awarded on merit, in accordance with Financial Regulations and Standing Orders in Relation to Contracts,

and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

- 7.3.3 As a private citizen, you should be aware of possible conflicts of interest when you buy goods or use the services of firms who have dealings with the Council and you should follow departmental procedures relating to the disclosure of any such transactions.

## **8 Equalities**

- 8.1 You must comply with the Council's Equalities and Diversity Policy and legal requirements relating to equality issues. One of the Council's objectives is to promote equality of opportunity and prevent unlawful discrimination in all of its activities.

## **9 Appointment and other Employment Matters**

- 9.1 If you are involved in the appointment of employees, you should be aware that it is unlawful for you to make an appointment based on anything other than the ability of the candidate to undertake the duties of the post. To avoid any possible accusation of bias, you should not be involved in an appointment where you are related to an applicant or have a close association with the applicant.
- 9.2 You should not be involved in decisions relating to discipline, promotion or pay and conditions adjustments for another employee who is a relative or with whom you have a close association.

## **10 Taking Other Employment**

- 10.1 You should not undertake additional employment (paid or unpaid) – or allow your name to be put forward for consideration for such work – if your proposed additional work either will or has the potential to:
- Create a conflict of interest.
  - Overlap with official duties.
  - Make use of material to which you have access by virtue of your position.
  - Weaken public confidence in the Council.

Where you consider your proposed secondary employment may conflict with these requirements, you should inform your line manager who will advise you on whether you need to seek the agreement of your Strategic Director to your proposed additional employment.

## **11 Personal Interests**

- 11.1 Personal interests must not conflict with your public duty. An official position or information acquired in the course of your employment must not be used to further personal interests or for the interests of others.
- 11.2 You must declare to your Strategic Director any:
- Financial interest which could conflict with the Council's interests.
  - Non-financial interest which could conflict with the Council's interests.
  - Interest in an existing or proposed contract with the Council.
  - Membership of any organisation which could conflict with the Council's interests.
- 11.3 You should make any such declaration in writing to your Strategic Director. Any such declaration by a Strategic Director should be made in writing to your Strategic Director.

## **12 Stewardship**

- 12.1 You must ensure that you use public funds entrusted to you in a responsible and lawful manner and must not utilise property, vehicles or other facilities of the Council for personal use unless authorised in advance to do so. You should strive to ensure value for money to the local community and to avoid legal challenge to the County Council.
- 12.2 Personal Use of Internet and Email – any personal use must be in accordance with the Council's current Internet and Email Policy and Guidance and the related Frequently Asked Questions accessible on Dnet.
- 12.3 Personal Telephone Calls – Personal incoming and outgoing calls should occur infrequently and be kept as short as possible. You should use personal mobile phones or call boxes for any outgoing personal telephone calls. You may use charge cards to pay for personal telephone calls on Council telephones with the prior agreement of your line manager. You should refer to departmental guidelines on the personal use of Council mobile phones.
- 12.4 Intellectual Property is property which enjoys legal protection and is a result of intellectual effort, including patents, copyright, trademarks,



designs and software. Where developed in the course of your duties, such intellectual property is the property of the Council. You should not make use of the Council's intellectual property to conduct private work.

- 12.5 Any copies of material taken for use within the Council must only be as allowed under the Copyright Act and under the appropriate licensing agreement.

### **13 Corruption**

- 13.1 You must be aware that it is a serious criminal offence for you to corruptly receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in your official capacity.

### **14 Hospitality and Gifts**

- 14.1 You should only accept hospitality if there is a genuine need to impart information or to represent the Council. You should also ensure that accepting the hospitality does not create a conflict of interest and is not likely to cause embarrassment to the Council.
- 14.2 You should report the offer of hospitality, whether accepted or not, to your line manager.
- 14.3 Gifts should only be accepted if they are of nominal value (under £50) and reported to your line manager.
- 14.4 If gifts of more than nominal value (£50 and over) are offered or you suspect that an improper motive exists, you should always decline the offer and report it to your Strategic Director. This includes any preferential rates offered for goods and services. Officers should report the offer to your Strategic Director.

### **15 Sponsorship**

- 15.1 Where an outside organisation is seeking to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the Code's provisions concerning acceptance of hospitality or gifts and working with contractors apply. No sponsorship deal should be made without the prior agreement of your Strategic Director.
- 15.2 Where the Council wishes to sponsor an event or service, you must declare in writing to your Strategic Director any possible conflict of

interest or any benefit you or a member of your family or anybody with whom you have a close association. Similarly, where the Council is providing sponsorship or grant aid in the community, you should ensure that impartial advice is given and that there is no conflict of interest involved.

## **16 Contact with the Media**

- 16.1 Any enquiries from the media on work-related matters should be referred to the Communications Team. You should seek authorisation from your line manager, who should consult the Communications Team, before you speak, write or give interviews to the media.
- 16.2 If you wish to publish books, articles or letters you have written in connection with your duties, you must first consult your Strategic Director. Only with the consent of your Strategic Director may items be published.

## Appendix

A number of additional sources of guidance are listed here. However, this list is not exhaustive and you should ensure that you familiarise yourself with any relevant guidance which may be provided in respect of your particular area of work. Any queries in this respect should be addressed to your line manager or Departmental Personnel Section.

- Personnel Policies and Procedures of the Council.
- Terms and Conditions of Employment
- Confidential Reporting Code
- Guidance on the Disciplinary Procedure
- Internet and Email Use Policy and Guidance
- Equal Opportunities Policy
- General Financial Handbook, containing Standing Orders in Relation to Contracts, Financial Regulations, Financial Procedures, guidance on computers and technology, and extracts from the Local Government Act 1972, the Local Government Finance Act 1988 and the Accounts and Audit Regulations 1983.
- Council's Policy Statement - 'Anti-Fraud/Corruption Strategy'.
- Data Protection Act 1998
- Freedom of Information Act 2000
- Computer Misuse Act 1990
- Energy and Utility Procedural Guide
- Policy Statements on AIDS and other Infectious Diseases
- Administrative Document Officers' Travelling and Subsistence Expenses
- Customer Service Charter
- Minimum Practice Standards Established by Service Regulators (e.g. Commission for Social Care Improvement)
- Codes of Practice Established by Professional Bodies (e.g. General Social Care Council)

# **Appendix 13 - Member and Officer Relationships Protocol**

## **1. Underlying Principles**

The principles underlying this Protocol are as follows:

- There shall be mutual courtesy and respect between Members and Employees with regard to their respective roles as set out below.
- Members and Employees shall each carry out their respective duties in the best interests of the Council set out in this Constitution.

This Protocol applies to all dealings between Members and Employees and not just in formal meetings. In addition to this Protocol, Members and Employees are obliged to follow their respective Codes of Conduct.

## **2. The Role of Members**

These include the following:

- Setting the strategic direction and priorities of the Council via the Council Plan and the policy framework.
- Develop and set policies to promote these priorities which will then be implemented by the Employees.
- Monitor how those policies are being implemented.
- Represent the views of their communities and ward constituents, and deal with individual casework.
- Respect the statutory roles of Strategic Directors including the Head of Paid Service, the Director of Finance and ICT as Section 151 Officer, the Director of Legal Services as the Monitoring Officer, and the significance to be attached to their advice.
- Consult with the communities they represent on the development of policy, national and other local initiatives.
- Consult with the Monitoring Officer and the Director of Finance and ICT about vires, maladministration, financial impropriety and probity. Also where they have any doubt as to whether the particular decisions were, or are likely to be, contrary to the policy framework, or contrary to, or not wholly in accordance with the budget and/or the law.
- Respect Employees' political impartiality.
- Promote, and themselves demonstrate, the highest standards of conduct and ethics.

Members must not insist that any Employee:

- Change his or her professional advice.
- Take any action, or not take action that the Employee considers unlawful or illegal, or which would be likely to amount to maladministration.
- Act in a manner that could be perceived as party political

### **3. The Role of Employees**

Employees:

- Should conscientiously implement the policies set by Members.
- Will ask for guidance on implementation of the policies set by Members if they are unclear about any aspect of those policies.
- Give such professional advice to Members as may be required of them from time to time.
- Carry out their delegated functions to the best of their ability and in the interests of the Council.
- Must remember that he or she is employed by the Council as a whole and not by any particular part of the Council and act accordingly.
- Are under a duty to help all Members and all parts of the Council equally.
- Should take all relevant matters into account when formulating advice to Members.
- Will provide, or arrange for, training and development to Members as may be required of them from time to time.
- Will respond to queries raised by Members in a timely manner.

Employees must not:

- Set policy other than for the smooth running of office procedures and processes and as may have been delegated under the Council's Constitution and Scheme of Delegations.
- Take any action, or not take action, which would be unlawful or illegal or which would be likely to amount to maladministration.

### **4. Relationship between Members and Employees**

The relationship between Employees and Members should be characterised by mutual respect, which is essential to good local government. Members and officers should therefore have regard to the following:

- Close personal familiarity between individual Members and Employees can damage professional relationships and prove embarrassing to other Members and Employees. Situations should

be avoided that could give rise to suspicion and any appearance of improper conduct. This includes excessive socialising between Members and Employees.

- Any close personal or family relationships (e.g. parent/child, spouse/partner) between Employees and Members should be disclosed to your Strategic Director who will then decide how far this needs to be disclosed to others.
- Members should not raise matters relating to the conduct or capability of Employees either individually or collectively at meetings held in public/or in the Press. Employees have no means of responding to criticism like this in public. If Members feel they have not been treated with proper respect, courtesy or have any concern about the conduct or capability of an Employee they should raise the matter with the Strategic Director of the department concerned.

#### **5. Relationship between the Leader, Chairman of the Council, Members and Employees**

The Leader, Chairman of the Council and Committee Chairman shall be bound by the same provisions set out in paragraph 2 when acting as Leader/Chairman of the Council or Committee Chairman, as they would be when acting as an ordinary Council Member.

#### **6. Relationship between the Chairman of Improvement and Scrutiny Committees, Members of Improvement and Scrutiny Committees and Employees**

The Chairmen and Members of the Council's Improvement and Scrutiny Committees and related bodies shall:

- Seek the advice of the Monitoring Officer where they consider there is doubt about the vires for a decision; or the Monitoring Officer and other appropriate Employees where they consider a decision of a Committee might be contrary to the policy framework.
- When considering calling Employees to give evidence the Improvement and Scrutiny Committees shall not normally, without the consent of the relevant Strategic Director, request the attendance of a junior Employee, to ensure that more junior Employees are not put under undue pressure.
- When asking Employees to give evidence confine questions, so far as possible, to questions of fact and explanation relating to policies and decisions. Employees may be asked to give a professional opinion, but Employees may not be expected to give a political view.
- Where they consider it appropriate, ask Employees to explain and justify advice given to Members prior to decisions being taken and justify decisions they themselves have taken under the Council's

Constitution and their responses to consultations under the Scheme of Delegations.

- Not to question Employees in such a way as to either be in breach of the Council's Whistleblowing policy in relation to harassment, or deal with matters which are of a disciplinary nature.
- At all times, respect the political impartiality of the Employees.

## **7. Relationship between the Chairman and Members of Other Committees and Employees**

This shall apply to all the Council's Committees and Joint Committees. The Chairman and Members of those Committees shall:

- Be bound by the same provisions set out in section 2 above when sitting as a Committee; and
- Give Employees the opportunity to present any report and give any advice they wish to present or give.

## **8. Employee Relationships with Party Groups**

When dealing with the various party groups:

- Any request for advice to a political group or Member will be treated with strict confidence by the Employees concerned and will not be accessible by any other political group.
- Employees shall exercise care when giving briefings or commenting on the policies and actions of any of the Council's Committees or panels and maintain political impartiality at all times.

When acting in party groups, and dealing with Employees, Members shall:

- Recognise that attendance at Party Group meetings by Employees is not compulsory, but Party Groups may properly call upon Employees to support and contribute to such deliberations either by attendance or by preparing documentation for discussion by a group, subject to the availability of resources.
- Recognise that Party Groups are not empowered to make decisions on behalf of the Council and that any conclusions reached by such groups should not be actioned by Employees.
- Ensure they do not do anything that may compromise Employee impartiality.
- Ensure that confidential matters are not divulged to non-councillors.

## **9. Members in their Ward Role**

When acting in their ward role, Members:

- Need to be mindful of their competing roles, i.e. acting for the Council and acting for constituents, and the possible conflicts of interest that can arise and the pressure this can bring on Employee time.
- Recognise the Employees' right to suggest that senior Employees, the Council or a Committee/Improvement and Scrutiny Committee should authorise additional work requested by individual Members.

## **10. Member Access to Documents and Information**

Save as provided below every Member of a Committee, Improvement and Scrutiny Committee and/or Regulatory Committee of the Council has a right to inspect documents about the business of that Committee including Improvement and Scrutiny Committees as set out in the Access to Information Procedure Rules included within the Council's Constitution at Appendix 6.

A Member who is not a member of a specific Improvement and Scrutiny Committee/Committee or Regulatory Committee may have access to any documents of that part of the Council if:

- He or she satisfies the Council's Monitoring Officer, that he or she reasonably needs to see the documents to perform his or her duties; and
- The document or papers or information do not contain 'confidential' or 'exempt information'.

A Member should seek advice from the Monitoring Officer in circumstances where he or she wishes to inspect any document or have access to any information about a matter:

- In which he or she has a personal or prejudicial interest; or
- Where to do so would be in breach of the Data Protection Act 1998.

## **11. Non-Council Members on Council Bodies**

This applies to all those people who are not elected Members of the Council, but who are Members (including Independent Members) of, or attend any of the Council's Committees or any other bodies.

This Protocol applies equally to such non-Council members on Council bodies, as it does to Council Members.



## **12. Press Releases**

All Council press releases:

- Should be issued through the Council's Communications Team.
- Should be concerned with matters of policy.
- Should not contain anything of a political nature. In this respect special regard must be given to the relevant legislation concerning publicity issued by the Council, especially around election time.

## **13. Correspondence**

All correspondence written on behalf of the Council must be written on the relevant headed paper.

When Members are writing in their capacity as a Member they must make it clear whether they are writing on behalf of the Council or as the ward Member.

Correspondence between individual Members and Employees should be treated as confidential unless the Member or Employee indicates otherwise.

All correspondence should normally be open to the inspection of the public. This does not apply to correspondence written in connection with legal proceedings, contractual matters or any other matter where papers can remain 'exempt' within the meaning of Schedule 12A to the Local Government Act 1972, as amended, or if this would be in conflict with the Data Protection Act 2018.

## **14. Breach of the Protocol**

Complaints of a breach of this Protocol by a Member may be referred to the relevant Leader and/or Chief Whip of the relevant Political Group or the Monitoring Officer, who shall consult with the Chairman of Governance and Ethics Committee and, if appropriate, refer the complainant to the Governance and Ethics Committee to be considered further.

Complaints of a breach of this Protocol by an Employee may be referred to the relevant Strategic Director, the Monitoring Officer or the Section 151 Officer.

## **15. Further Advice**

Any particular cases of difficulty or uncertainty under this Protocol should be raised with the Monitoring Officer who will advise how to proceed.

## **Appendix 14 – Members’ Allowances – Independent Remuneration Panel**

1. The Independent Remuneration Panel plays a critical role in the setting of Members’ Allowances. Allowances and expenses of politicians and public servants are subject to a great deal of public interest. All councils publish their Members’ Allowances Scheme (See Part 6 of the Constitution), setting out the allowances Members are entitled to receive and what expenses they are able to claim for. The total amount of allowances claimed by each councillor is published annually by the Council and reported in the press. The Independent Remuneration Panel is responsible for reviewing the Members’ Allowances Scheme and recommending change when necessary.
2. The Local Government Act 2000 and the Consolidated Members’ Allowances Regulations 2003, enable the Panel to consider the following allowances:
  - Basic allowance
  - Special responsibility allowances
  - Dependent carer’s allowance
  - Pensions for Members
  - Travel and subsistence allowances
  - Co-optees’ allowances
  - Provision for suspension for allowances in certain circumstances
  - Suitability of an index for allowances and what that index may be.
3. Full Council appoints independent members to the Panel. The Panel will be composed of at least three independent members, although in Derbyshire, the Panel currently comprises five members. Panel members cannot be a Member of the Council or any of its committees, or an employee of the Council. They are appointed for a period of four years and no member may serve for more than two terms of office of four years.
4. The Panel’s recommendations are published and considered by all Councillors and must be voted on by the full Council.
5. The Panel is advised and supported by the Director of Legal Services and Monitoring Officer and the Director of Finance and ICT of Derbyshire County Council. Government guidance requires that all necessary evidence, guidance and information is made available to the Panel.

**Derbyshire County Council**  
**Independent Remuneration**  
**Panel**

**Terms of Reference**

The purpose of the Independent Remuneration Panel is as follows:

- 1 To make recommendations to the authority as to the amount of basic allowance that should be payable to its elected members
- 2 To make recommendations to the authority about the responsibilities or duties which should lead to the payment of a special responsibility allowance and as to the amount of such an allowance
- 3 To make recommendations to the authority about the duties for which a travelling and subsistence allowance can be paid and as to the amount of this allowance
- 4 To make recommendations as to the amount of co-optees' allowance
- 5 To make recommendations as to whether the authority's allowances scheme should include an allowance in respect of the expenses of arranging for the care of children and dependants and if it does make such a recommendation, the amount of this allowance and the means by which it is determined
- 6 To make recommendations on whether any allowance should be backdated to the beginning of a financial year in the event of the scheme being amended
- 7 To make recommendations as to whether annual adjustments of allowance levels may be made by reference to an index, and, if so, for how long such a measure should run

The IRP will make its recommendations in the form of a report to Council.

# **Appendix 15 – Members’ Allowance Scheme**

## **THE LOCAL AUTHORITIES (MEMBERS' ALLOWANCES) (ENGLAND) REGULATIONS 2003**

The Derbyshire County Council, in exercise of the powers conferred by the Local Authorities (Members' Allowances) (England) Regulations 2003, hereby makes the following scheme:

This scheme may be cited as the Derbyshire County Council Members' Allowances Scheme, and shall have effect for the period commencing on the 1 April 2017, as amended on 24 May 2017.

Members are reminded of the need to keep detailed supporting information, such as a diary, about every attendance for which they claim. This information should be available for scrutiny by the County Council's Auditors or other relevant persons as and when required.

### **1. Definitions**

- a) "Councillor" means a member of the Derbyshire County Council who is a Councillor;
- b) "year" means the 12 months ending with 31 March.
- c) "Schedule 1" sets out the annual equivalent amount and per activity rates payable to members with effect from the 1 April 2017. This schedule will be automatically updated annually in accordance with the methodology for year on year changes included as part of the scheme. Members will be informed annually of the rates for the forthcoming year.
- d) "Pay Award" is the increase in the pay award due to employees covered by the NJC Pay Rates for Local Government Services as at the 1 April each year.
- e) Later sections of the Scheme mention liability to Tax and the insurance arrangements for Members and Co-optees of the County Council. These sections do not deal with entitlements under the Scheme and are only brief summaries for information. The County Council does not guarantee that they are necessarily accurate or appropriate for individual Members or Co-optees. It is for Members and Co-optees to satisfy themselves personally that their tax and insurance arrangements are in order and they should consult their own advisers, as they think fit, about these matters.

## **2. Basic Allowance**

- a) Subject to paragraph 8, 9 and 10 for each year a flat rate basic allowance shall be paid to each Member. This allowance is designed to cover the time commitment of all Members in all meetings including those with officers and members of the public. It is also intended to cover incidental costs such as the use of home and private telephone facilities.
- b) The rate at which the Basic Allowance is paid is detailed in Schedule 3a. The allowance will be increased in line with the Pay Award with effect from 1 April each year.

## **3. Special Responsibility Allowances**

- a) Subject to paragraphs 8, 9 and 10 for each year a special responsibility allowance shall be paid to those Members who perform the special responsibilities in relation to the County Council that are specified in schedule 1 to this scheme.
- b) The rate at which the SRA's are set is detailed in Schedule 3a. The allowance will be increased in line with the Pay Award with effect from the 1<sup>st</sup> April each year.

## **4. Carers of Dependents' Allowance**

- a) Those councillors who incur expenditure for the care of children aged 16 or under, or dependent adults for whom documentary evidence of their care requirements has been provided are eligible to claim care costs for undertaking particular duties. These duties are specified in Schedule 2.
- b) The rate at which the Carers of Dependents Allowance is set is detailed in Schedule 3b. The allowance will equate to the National Living Wage hourly rate and will be updated in line with with any national alteration to this rate.
- c) In exceptional circumstances (e.g. where a dependent has a disability and specialised care is required) and with prior authorisation, higher hourly rates than the bench mark may be available
- d) Only actual receipted expenditure will be reimbursed
- e) If a household contains more than one Councillor, care costs may only be claimed once.
- f) The allowance cannot be claimed in respect of payments to other members of a Councillor's household

## **5. Travel Allowances**

- a) A Member may be reimbursed in respect of travel allowance, including an allowance in respect of travel by bicycle or by any other non-motorised form of transport, undertaken in connection with or relating to such duties as are specified in Schedule 2.
- b) The rates at which members can be re-imbursed for travel are set down in Schedule 3b. The car mileage rates are the same as those applicable to employees of the County Council under Single Status and shall be changed in line with changes made to the allowances paid to employees.
- c) The basis on which members travel will be reimbursed is detailed in Schedule 4.

## **6. Subsistence Allowance**

- a) Subsistence should not be claimed except in exceptional circumstances
- b) Where a Member is travelling out of county and required to be away overnight then the Corporate Resources Department Central Administration Office should, where possible, make advance provision for meals and accommodation when making travel arrangements.
- c) Where a Member has been unable to arrange for the Council to organise accommodation and subsistence out of county then the maximum rates that can be claimed are shown in Schedule 4. These rates are the same as those applicable to employees and will be updated when the employee rates are updated. Any claim for subsistence must be supported with receipts for actual expenditure incurred.

## **7. Co-optees Allowance**

- a) An annual allowance may be paid in respect of attendance at conferences and meetings for a Member of a committee or sub-committee of the County Council who is not a Member of the County Council.
- b) Where a Co-opted Member is a Member of a committee by virtue of their employment with the County Council then they will be ineligible to receive the Co-optees allowance.
- c) The rate at which Co-optees allowance is paid is set down in Schedule 3a. The rate is set at a fixed proportion of the Basic Allowance and as such will be increased annually to maintain that relative proportion.

## **8. Renunciation**

A Member may, by notice in writing given to the Director of Finance & ICT, elect to forego any part of his or her entitlement to an allowance under this scheme.

## **9. Part-year Entitlements**

- a) If an amendment to this scheme changes the amount to which a Member is entitled by way of a basic allowance or a special responsibility allowance, then in relation to each of the periods
  - (i) beginning with the year and ending with the day before that on which the first amendment in that year takes effect, or
  - (ii) beginning with the day on which an amendment takes effect and ending with the day before that on which the next amendment takes effect, or (if none) in that year,

the entitlement to such an allowance shall be to the payment of such part of the amount of the allowance under this scheme as it has effect during the relevant period as bears to the whole the same proportion as the number of the days in the period bears to the number of days in the year.

- b) An amendment to this scheme may change the duties specified in Schedule 2 to this scheme, or the amount payable by way of a Travelling, Subsistence or Dependent Carers Allowance. Where such an amendment takes place, entitlement to these Allowances shall be to the payment of the amount of the allowance under the Scheme as it has effect when the duty is carried out.
- c) The term of office of a Member may begin or end otherwise than at the beginning or end of a year. The entitlement of that Member to a basic allowance shall be to the payment to such part of the basic allowance as bears to the whole the same proportion as the number of days during which his or her term of office subsists bears to the number of days in that year.
- d) Where this scheme is amended as mentioned in sub-paragraph (a), and the term of office of a Member does not subsist throughout the period mentioned in sub-paragraph (a)(i), the entitlement of any such Member to a basic allowance shall be to the payment of such part of the basic allowance referable to each such period (ascertained in accordance with that sub-paragraph) as bears to the whole the same proportion as the number of days during which his or her term of office as a Member subsists



bears to the number of days in that period.

- e) Where a Member has during part of, but not throughout, a year such special responsibilities as entitle him or her to a special responsibility allowance, that Member's entitlement shall be to payment of such part of that allowance as bears to the whole the same proportion as the number of days during which he or she has such special responsibilities bears to the number of days in that year.
- f) Where this scheme is amended as mentioned in sub-paragraph (a), and a Member has during part, but does not have throughout the whole, of any period mentioned in sub-paragraph (a)(i) of that paragraph any such special responsibilities as entitle him or her to a special responsibility allowance, that Member's entitlement shall be to payment of such part of the allowance referable to each such period (ascertained in accordance with that sub-paragraph) as bears to the whole the same proportion as the number of days in that period during which he or she has such special responsibilities bears to the number of days in that period.

## **10. Acting-up Arrangements**

There will be occasions when Members with significant Special Responsibilities may be unable to undertake their duties. In the instances of illness or personal incapacity of the Leader, Deputy Leader or Cabinet Member, for a continuous period of 4 weeks or an accumulated absence of 4 or more weeks per quarter, then acting-up arrangements may be instituted as follows, subject to Cabinet approval: -

- a) In the absence of the Leader, the Deputy Leader would undertake the 'acting-up' arrangements.
- b) In the absence of the Deputy Leader, a Cabinet Member may be nominated by the Leader to undertake the 'acting-up' arrangements.
- c) In the absence of a Cabinet Member, the Leader or Deputy Leader would undertake the portfolio responsibilities; or alternatively such responsibilities may be allocated to another Cabinet Member.
- d) Where acting-up arrangements have been formally agreed due to a Member's illness or personal incapacity, then the Member undertaking the role will be eligible for the higher SRA from the date the acting-up arrangements are agreed.
- e) Where acting-up arrangements are to apply due to a Member's absence, then the absent Member must provide medical certification for the

absence. This will ensure that the absent Member continues to receive their SRA until they are able to resume their duties. If no medical certification is provided the SRA will cease from the date at which the acting-up arrangements have been commenced.

- f) The acting-up arrangements may only last for a maximum period of 6 months. This time period relates to the Member in the post concerned, not the Member in receipt of the additional SRA for acting-up.

## **11. Withholding of Payments Made to Members**

- a) Where a Member is suspended or partially suspended from their responsibilities or duties as a Member of the County Council in accordance with Part III of the Local Government Act 2000, or regulations made under that part, the part of either Basic or Special Responsibility Allowances payable to that Member in respect of duties or responsibilities from which they are suspended or partially suspended may be withheld by the County Council. The full Council will make any such decision.
- b) Where a Member is unavailable to undertake their duties for which they receive a SRA, for any reason other than sickness, and that period exceeds four weeks within a three month period, then the Council can withhold any SRA due to the Member concerned for the period during which the absence occurred. The Cabinet will make any such decision based on a report from the Director of Legal Services and considering each case on its merits.

## **12. Recovery of Payments Made to Members**

Where a payment has been made to a Member that relates to a period where either the Member concerned: -

- a) is suspended or partially suspended from their duties and responsibilities as a member in accordance with Part III of the Local Government Act 2000 or regulations made under that part;
- b) or ceases to be a member of the County Council;
- c) or is in any other way not entitled to receive the allowance in respect of that period;

The County Council may require that such part of the allowance as relates to any such period be repaid to the County Council. The full Council will make any such decision.

### **13. Payment of Allowances**

- a) Claims for Carers of Dependents, and Travel allowances under this scheme shall be made in writing on a regular basis, preferably monthly. All claims must be made on the appropriate form.
- b) The payment of Basic, Special Responsibility and Co-optees allowance is made automatically and no claim is required.
- c) A claim for allowances shall include, or be accompanied by, a statement by the Member claiming the allowance that he or she is not entitled to receive remuneration in respect of the matter to which the claim relates otherwise than under the scheme.
- d) All payments to Members are made by using the Bankers Automated Clearing System on the 15th of each month or the nearest preceding working day if the 15th falls on the weekend or at a Bank Holiday.

### **14. Tax and Benefits**

#### **Income Tax**

- a) Basic, Special Responsibility and Carers of Dependents' Allowances are subject to Income Tax as they are payments made in respect of the duties of an office.
- b) HMRC is notified of the names and addresses of all Members who claim taxable allowances. Tax is deducted at basic rate until the HMRC notifies the County Council of the appropriate tax code for each Member.
- c) Some expenses incurred by Members in the course of County Council duties as Members may be deductible against tax. Any Member who believes that some of his/her expenses as a Member may be tax deductible, should contact HMRC

#### **National Insurance Contributions**

- a) Basic, Special Responsibility and Carers of Dependents' Allowance payments will attract National Insurance (NI) contributions at levels that vary depending on the total earnings of Members.
- b) Some Members may not be liable to any NI Contributions on Allowances if they are over the state retirement age; in accordance with prevailing legislation. See HMRC website for information.

<http://www.hmrc.gov.uk/pensioners/paying-making.htm>

- c) Some Members, who are married women or widows who have elected to pay reduced rate contributions for NI, may also need to have their NI Contributions on allowances calculated at a reduced rate.
- d) Members who are self-employed may also be subject to different levels of NI Contributions.
- e) Members who believe that they fall into any of the above categories should contact the Director of Finance & ICT who will seek to obtain further information to assist with the query. Members should also obtain the appropriate certificates from the Department of Work and Pensions (DWP).

## **15. DWP Benefits**

- a) The receipt of allowances may affect Members who are receiving DWP Benefits. All allowances should be declared to the DWP who will be able to advise Members on any affect on their benefits.
- b) Members should note that failure to disclose any allowances to the DWP may result in prosecution.

## **16. Insurance for Members**

- a) The County Council provides insurance cover for Members when they are engaged on business that relates to their activities for the County Council. The insurance does not cover Party Political activities.
- b) The insurance covers certain risks in the following broad categories:
  - Public Liability
  - Officials' Indemnity
  - Libel and Slander
  - Employer's Liability
  - Personal Accident Insurance
  - Business Travel Insurance

For further details relating to the extent of this cover please contact: -

Insurance Section  
Finance & ICT Division  
Commissioning, Communities and Policy Department.

- c) Please note that the County Council's motor insurance does not extend to Members' own vehicles, even if these vehicles are used on County Council business. Members should ensure that they have advised their own

insurers and they are suitably covered if their own vehicles are to be used on County Council business.

## SCHEDULE 1

### **Special Responsibility Allowances**

<b>Post</b>		<b>No. Relative Responsibility %</b>	
<b>Council</b>	Chair	1	25.0%
	Vice-Chair	1	12.5%
<b>Cabinet</b>	Leader	1	100.0%
	Deputy Leader	1	75.0%
	Portfolio Holder	5	50.0%
<b>Leader of Main Opposition Group</b>		1	45.0%
<b>Leader of Minority Opposition Group (with at least 10% of Council Members)</b>		1	15.0%
<b>Cabinet Support Member</b>		7	26.0%
<b>Improvement and Scrutiny Committees</b>			
Chair		4	25.0%
Vice-Chair		4	12.5%
<b>Regulatory Committees</b>			
Chair		2	25.0%
Vice-Chair		2	12.5%
<b>Standards Committee</b>			
Chair		1	15.0%
Vice-Chair		1	7.5%
<b>Audit Committee</b>			
Chair		1	15.0%
Vice-Chair		1	7.5%
<b>Pensions &amp; Investments</b>			
Chair		1	15.0%
Vice- Chair		1	7.5%
<b>Fostering Panel</b>		2	N/A
<b>Adoption Panel</b>		2	N/A

- A member cannot be in receipt of more than two SRAs at any one time.
- The SRA for the Vice-Chairman of the Council will only be paid where the member concerned is not in receipt of any other SRA of at least 15%.

## SCHEDULE 2

### APPROVED DUTIES

The following are specified as approved duties for the purposes of Carers of Dependents and Travel Allowances, these require no further approval: -

- 1) the attendance at a meeting of the County Council, Cabinet or of any committee or sub-committee of the County Council, or of any other body to which the County Council makes appointments or nominations, or of any committee or sub-committee of such a body;
- 2) attendance as a representative of the County Council on approved Bodies at meetings relating to the body other than meetings of the body itself or Committees or Sub-Committees thereof;
- 3) the attendance at any other meeting, the holding of which is authorised by the County Council, Cabinet or a committee or sub-committee of the County Council, or a joint committee of the County Council and at least one other local County Council within the meaning of section 270(1) of the Local Government Act 1972, or a sub-committee of such a joint committee;
- 4) the attendance at a meeting of any association of County Councils of which the County Council is a member;
- 5) the performance of any duty in pursuance of any standing order made under section 135 of the Local Government Act 1972 requiring a Member or Members to be present while tender documents are opened;
- 6) the performance of any duty in connection with the discharge of any function of the County Council conferred by or under any enactment and empowering or requiring the County Council to inspect or authorise the inspection of premises;
- 7) duties carried out within the UK arising out of a Member holding an office to which a Special Responsibility Allowance applies, or such a duty carried out by their nominee;
- 8) attendance at County Hall for a meeting with either a Member in receipt of a SRA or an officer for the purposes of discussing matters relating to Council business which it is reasonable to expect the Member to have an interest;
- 9) attendance at training courses, the purpose of which is to assist Members to understand and carry out their duties more effectively, e.g. IT training courses, but are not directly related to the work of the County Council. All

such activities to be arranged by the County Council;

- 10) attendance by a Member at a Cabinet, Committee or Sub-committee meeting of the County Council for the purpose of making a statement to the meeting where the Member is not a Member of that Committee or Sub-committee.
- 11) attendance at Cabinet and relevant Cabco meeting of Shadow Cabinet Members, nominated by the Leader of the principal Minority Group.
- 12) attendance at Parish Council meeting within your constituency to which you have been invited to attend to discuss Derbyshire County Council business

The Director of Legal Services may approve the following duties. Any duty so approved will be reported to the next Cabinet meeting for information. Where the Director of Legal Services is unsure of the suitability of such attendance then that decision must be referred to Cabinet. The items included are: -

- 1) duties carried out by any Member of a Committee or Sub-Committee, e.g. visits and inspections, in order to discharge the functions of the Committee or Sub-Committee;
- 2) attendance by Members at conferences, seminars and other meetings at which it is necessary for the County Council to be represented. Any such attendance to have been approved by the relevant party leader or deputy leader before being agreed by the Director of Legal Services;
- 3) organised official visits including deputations to government departments;
- 4) attendance at official openings of new premises by Members of the appropriate committee;
- 5) attendance of a Member in receipt of a Special Responsibility Allowance or nominees as guest speakers at conferences or meetings closely connected with the functions and activities of the Committee, subject to a claim being made by the Member to the conference organiser for travelling, subsistence and any fees to be repaid to the County Council;
- 6) official and courtesy visits of a civic nature within the United Kingdom and abroad (such as "twinning" arrangements with overseas local Authorities);
- 7) attendance at interviewing panels.



Finally any other duty approved in advance by the Cabinet or relevant Cabinet Member, as appropriate, may qualify for Carers of Dependents and Travel allowances.

Amounts Payable to Members under Members Allowances Scheme **SCHEDULE 3a**

No Claim Required. These Allowances will be paid Automatically.		Annual Amount 2017-18 £
<b>Special Responsibility Allowances</b>		
Council	Chair	8,652
	Vice-Chair	4,326
Cabinet	Leader	34,611
	Deputy Leader	25,956
	Portfolio Holder	17,304
Leader of the Main Opposition Group		15,576
Leader of the Minority Opposition Group (with at least 10% of Council Members)		5,190
Cabinet Support Member		9,000
Scrutiny Panel	Chair	8,652
	Vice-Chair	4,326
Regulatory Committees	Chair	8,652
	Vice-Chair	4,326
Audit Committee	Chair	5,190
	Vice-Chair	2,595
Standards Committee	Chair	5,190
	Vice-Chair	2,595
Pensions & Investments	Chair	5,190
	Vice-Chair	2,595
Basic Allowance		10,476
Co-optees Allowance		690
Fostering Panel		1,836
Adoption Panel		918

### Schedule 3b

<b>Mileage rate</b>	<b>April 2013</b>
Per mile first 8,500	45.0p
Per mile after 8,500	12.2p
Passenger rate per mile	0.5p
Bicycle rate per mile	20.0p

**‘Carers of Dependents Allowance’** maximum per hour £7.50  
From 1<sup>st</sup> April 2017 (Maximum of £45.98 per day)

## SCHEDULE 4

### Travel Claims

The County Council will meet travel costs incurred on authorised official business as long as the chosen method of travel is the most cost-effective method, taking into account of the value of time saved, anticipated subsistence and other expenses and any other relevant matters ***All out of county travel by rail, air, sea or coach should be pre-authorised and booked through the Council using its corporate travel arrangements.***

### PUBLIC TRANSPORT

#### Rail Travel

Members are entitled to travel using Standard Class – or equivalent - rail tickets. Cheap rate fares should be used where they are available.

Tickets can be obtained through the Commissioning, Communities and Policy Department Central Administration Office and organised by Members Support Services whom forward them on to you.

Please note there is a cancellation fee, if a ticket is ordered but not used.

#### Taxi Travel

Taxis should only be used when the alternatives are not available or the following are applicable: -

- there is a significant saving in official time;
- you have to transport heavy luggage and / or equipment;
- where Members are travelling together and it is a cheaper option.

Please attach a receipt to your claim.

#### Air Travel

Members should only travel by air if it means an overall saving to the COUNTY COUNCIL through reduced travel and subsistence costs. All journeys must be approved in advance by the relevant committee.

#### Mileage Allowances

Rates are paid at a rate per mile and at the rate prevailing at the time of travel.

You must hold a current full driving licence.

All vehicles used on County Council business should be taxed, have a valid MOT certificate (if older than 3 years) and current insurance policy. The insurance policy must cover you for business use and indemnify the employer against all third party claims (including those concerning passengers) when the vehicle is used on official business.

If your insurance covers 'Social and Domestic Pleasure only' your whole policy will be invalid if you use your car for County Council business.

Mileage claimable must be calculated on the basis of the most reasonable route possible for the journey. Where it is reasonable to use Public Transport then Members will be expected to do so. If a Member decides to travel by car when it is reasonable to use public transport then the Member will only be reimbursed up to the lower of the car mileage amount or the cost of public transport. If a Member is in any doubt they should seek the advice of the Director of Finance & ICT.

HMRC has ruled that mileage payments in excess of approved mileage allowance payment (AMAP) are subject to payment of National Insurance. This will be deducted at source.

#### Overseas Travel

Overseas travel is classed as any journey outside the United Kingdom. Any journey, which incorporates travel overseas, must have prior authorisation from the relevant Committee. Claims should be made on the basis of any available tourist or cheap rate fares. The County Council will not reimburse the cost of obtaining a passport.

#### Other Costs

Any parking, toll or similar fee necessarily incurred on official business can be reclaimed from the County Council. Please attach receipts to your claim.

Parking fines or similar charges will not be paid by the County Council.

Subsistence Claims valid from 1<sup>st</sup> January 2017

#### **Ordinary Subsistence Rates**

Breakfast	£7.12
Lunch	£9.83
Tea	£3.87
Evening Meal	£12.20

Bed and Breakfast	£49.65	(£63.39 in London)
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**Absence of 24 hours or More**

Per day or part thereof	£33.00
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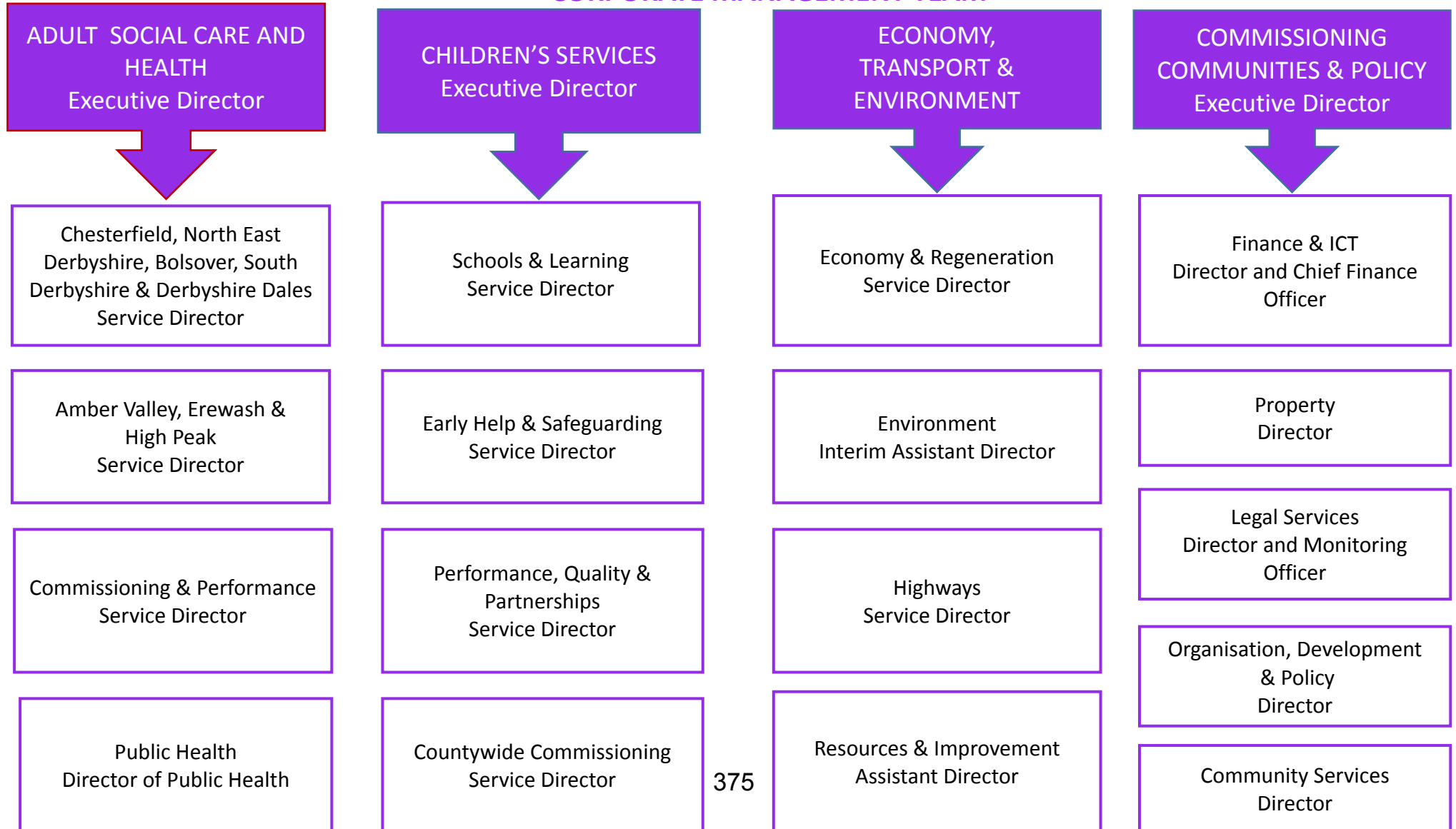
Per night	£49.65	(£63.39 in London)
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For clarification, should an officer be booked into a hotel on an accommodation only basis, then the maximum allowance for meals would be £33.00 total daily allowance (this is not in addition to any other allowances for individual meals).

Under normal circumstances, any overnight accommodation booked would be inclusive of all necessary meals and these should be invoiced directly to the Council for authorisation and payment in the normal way. This allows the Council to recover any VAT due.

## APPENDIX 16 - SENIOR MANAGEMENT STRUCTURE

### CORPORATE MANAGEMENT TEAM



# **Appendix 17 – Elected Member Role Profiles**

The role of the modern day councillor is high profile, complex and changing. It is important therefore, that Councillors receive clear guidance as to what is expected of them both in their role as a ward councillor and also when undertaking roles with SRAs.

Role profiles detail the responsibilities of the various roles, providing clarity to Councillors, officers and the public about what is expected within each remit and they can also be used to support Councillors in their development, by providing a means of identifying development needs both in their current role and roles they may aspire to in the future.

The Ward Member Role Profile is the foundation for all other role profiles and the responsibilities, skills and knowledge required for roles attracting SRAs are in addition to those for a ward councillor.

Attached are role profiles for the following positions within the Council which were agreed at the Council meeting held on 6 June 2018:

- Ward Member (Annex 1)
- Leader of the Council (Annex 2)
- Deputy Leader of the Council (Annex 3)
- Cabinet Member (Annex 4)
- Cabinet Support Member (Annex 5)
- Chairman of the County Council (Annex 6)
- Chairman of a Council Committee (Annex 7)
- Vice-Chairman of a Council Committee (Annex 8)
- Chairman of an Improvement and Scrutiny Committee (Annex 9)
- Opposition Group Leader (Annex 10)

## **Ward Member Role Profile**

### **Accountable to:**

- The public.
- Full Council.

### **Role Purpose**

Elected Members will be expected to:

- Represent the views of their local community.
- Deal with constituents' enquiries and representations – undertaking casework on their behalf and serving all fairly and equally.
- Liaise with Cabinet Members, other Councillors, Council officers and partner organisations to ensure that the needs of local communities are identified, understood and supported.
- Participate in the democratic process and the good governance of the County Council.
- Represent the Council when appointed to outside bodies.
- Act at all times with probity and propriety and in the best interests of the Council.
- Uphold the Council's Constitution at all times.

### **Main Duties and Responsibilities include to:**

- Act as a community champion and leader for their constituency and for the county, providing direction, resolving concerns and reconciling competing views and interests within their local communities.
- Represent individual constituents, undertaking casework on their behalf.
- Develop and maintain knowledge of how the Council works and represent the Council to the community.



- Provide information to the Council about their constituencies and act as a channel of two-way communication for their local communities about the decisions of the Council and Council Procedures.
- Participate in Full Council meetings, making informed and balanced decisions.
- To act in accordance with the Council's Constitution, Standing Orders, Principles of Decision-Making and Financial Regulations.
- Participate as a Member of Council committees to which they have been appointed by preparing for meetings, entering into debate, canvassing local people's views where appropriate and providing information to communities on the decisions taken.
- Attend meetings in their divisions as and when required.
- Attend and participate in meetings relevant to their area as appropriate.
- Represent the interests of the Council and its constituents on outside organisations.
- Develop and maintain a working knowledge of the Council's management arrangements, powers and duties.
- Develop and maintain a working knowledge of partner organisations at a local, regional and national level.
- Undertake training and development that is deemed necessary for the role of Elected Member.
- Attend conferences and seminars as required, reporting back on learning from these events.
- Establish and maintain effective working relationships with Members of all political parties and with officers of the Council.
- Uphold the Council's Constitution and promote high ethical standards, acting in accordance with the Members' Code of Conduct.
- Have regard to Equality and Diversity in accordance with the Council's policies and codes of conduct.

## **Leader of the Council Role Profile**

### **Accountable to:**

- Full Council
- The public

### **Role Purpose and Activities**

- Provide strong, fair and visible political leadership and direction to the Council and in relations to citizens, stakeholders and partners in the co-ordination of Council policies, strategies and service delivery;
- Lead the Council's efforts to achieve its mission;
- Lead in promoting the aims and core values of the Council;
- Lead the development of local, regional, national and European policy and strategic partnerships relating to the Council;
- Assume overall responsibility for guiding the development and formulation of corporate priorities and strategic policy direction and for presenting those policies to the Council and the wider community, acting as the principal political spokesperson on corporate and strategic issues;
- Provide political guidance to the Corporate Management Team on the implementation of the Council's priorities and objectives and revenue and capital budgets;
- Appoint other Cabinet Members to form the Cabinet;
- Chair and manage the business/work programme of the Cabinet, ensure a coordinated and coherent approach is taken to policy development and the delivery of services and also, where relevant and taking into account any advice from the Strategic Directors, the Council's Monitoring Officer or Director of Finance and ICT, ensure that proposals are made to the Council for decision within appropriate timescales and in accordance with the Budget and Policy Framework of the Council and all legislative and procedural requirements;
- Chair meetings of the Cabinet and determine the frequency and timing of meetings of the Cabinet and placing items on its agenda as he/she thinks appropriate;
- Ensure the development of effective corporate policies reflecting the Council's commitment to continuous improvement and co-ordinate the work of the Cabinet in:
  - (a) Developing corporate policies and programmes;
  - (b) Delivering high quality services to the people of the County;
  - (c) Monitoring performance;
  - (d) Preparing and monitoring revenue and capital budgets;

- (e) Reviewing the effectiveness of the Council's organisation and management process;
  - (f) Developing policies to promote the social, economic and environmental wellbeing of the County.
- 
- Delegate executive functions to any individual member of the Cabinet;
  - Ensure that decisions are taken properly, openly and, where appropriate, publicly and that key decisions are properly programmed and subject to effective public consultation;
  - Involve local people and communities in the business and activities of the Council as fully as possible;
  - Encourage scrutiny of the Council's policies and service delivery and the input to policy by all Councillors;
  - Ensure that Members are treated responsibly and responsively in representing their constituents;
  - Maintain and promote the highest standards of conduct in the Council's affairs and in the appointment of its staff;
  - Chair Strategic Director Appointment Panels;
  - Be consulted on any matter in relation to which consultation with the Leader is required under the Council's Constitution;
  - Represent the Council at all levels, liaise with Government and other relevant agencies where appropriate and act as the principal ambassador for the Council in advocating and explaining its roles and function and promoting it as a listening and accessible organisation;
  - Consider the learning and development needs of all Members and arrange suitable briefing and learning opportunities to take place through appropriate mechanisms; and
  - Be responsible for personal development and undergo appropriate development and continuous improvement for any role undertaken.

## **Deputy Leader of the Council Role Profile**

### **Accountable to:**

- Full Council
- The Leader of the Council
- The public

### **Role Purpose and Activities**

- Undertake a full deputising role in the absence of the Leader;
- Undertake portfolio responsibilities as a Cabinet Member as determined by the Leader;
- Undertake specific tasks and responsibilities as requested by the Leader;
- Work actively with the Leader to co-ordinate the work of the Cabinet;
- Share and support in general the full workload range of the Leader;
- Chair the Cabinet in the absence of the Leader of the Council;
- Promote and co-ordinate liaison between the Leader, the Cabinet and non-executive Members; and
- Be responsible for personal development and undergo appropriate development and continuous improvement for any role undertaken.

## **Cabinet Member Role Profile**

### **Accountable to:**

- Full Council
- The Leader
- The Cabinet
- The public

### **Role Purpose and Activities**

As a member of the decision-making Cabinet, the Cabinet Member will be responsible for making important decisions on a wide range of issues which affect and shape quality of life in the County. In particular they will:

- Act as the main focus of day to day political leadership, decision-making and democratic accountability at a whole authority level;
- Be a publicly recognisable and accountable 'key decision-maker' taking responsibility for Council performance;
- Collectively provide strong and fair executive leadership and clear political guidance to other Councillors and officers and the community;
- Develop with partners a clear vision for what the County needs and develop policies and take decisions which respond to local people's needs and aspirations;
- Take strategic decisions on competing priorities;
- Champion the vision and interests of the Council and the County on the regional and national stage;
- Be instrumental in building and nurturing local and thematic partnerships;
- Provide leadership and direction within the Council for designated portfolio areas;
- Work with senior officers within the Council and be accountable with them for the performance of services, allowing performance to be assessed from the perspective of customers and citizens;
- Develop financial and investment strategies to fulfil the Council's commitments to the sustainable community strategy for the County, working with partners in the public, business, voluntary and community sectors;
- Ensure that there is appropriate liaison with and support for frontline Councillors in their various roles, responding to them when they raise issues and ensuring that their local knowledge is taken into account when developing Council policies;

- Develop a clear understanding of their portfolio, the scope and range of the areas for which they are responsible and Council policies in respect of those areas;
- Act as spokesperson or advocate for those services within their portfolio;
- Attend Improvement and Scrutiny Committees as appropriate on matters relating to their portfolio; and
- Be responsible for personal development and undergo appropriate development and continuous improvement for any role undertaken.

## **Cabinet Support Member Role Profile**

### **Accountable to:**

- Full Council
- The Leader
- Cabinet Members
- The public

### **Role Purpose**

The role of Cabinet Support Member is specifically recognised in the statutory guidance issued by the Government under the Local Government Act 2000 for local authority executive arrangements. That guidance suggests that such a role might help provide an effective link between the Cabinet and other Members and also an effective developmental role for the Members involved.

### **Activities**

To support the Cabinet as a whole or an individual Cabinet Member with his or her portfolio workload including:

- Assist in the development with partners, of a clear vision for what the County needs and develop policies and take decisions which respond to local people's needs and aspirations;
- Have an input on strategic decisions on competing priorities affecting the portfolio and the Council as a whole;
- Provide support in championing the vision and interests of the Council and the County on the regional and national stage;
- Help build and nurture local and thematic partnerships;
- Help provide direction within the Council for designated portfolio areas;
- Work with senior officers within the Council in monitoring the performance of services, including performance from the perspective of customers and citizens;
- Assist to develop financial and investment strategies to fulfil the Council's commitments to the sustainable community strategy for the County, working with partners in the public, business, voluntary and community sectors;
- Assist in providing appropriate liaison with and support for frontline Councillors in their various roles, responding to them when they raise issues and ensuring that their local knowledge is taken into account when developing Council policies;
- Develop a clear understanding of the portfolio, the scope and range of the areas of responsibility and Council policies in respect of those areas;

- Act as an advocate for those services within the portfolio;
- Attend Improvement and Scrutiny Committees as appropriate on matters relating to the portfolio; and
- In general terms and relation to all of the above: attending/chairing relevant internal meetings; reading and commenting on papers and undertaking research; liaising with relevant officers; drafting press releases; carrying out interviews and representing the Council on appropriate external groups.
- Be responsible for personal development and undergo appropriate development and continuous improvement for any role undertaken.



## **Chairman of the County Council**

### **Accountable to:**

- Full Council
- The Leader of the Council
- The Public

### **Role Purpose and Activities**

- Preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Elected Members and the interests of the community;
- Uphold and promote the Council's Constitution, and to interpret the Council Procedure Rules when necessary;
- Have the discretion to exercise a casting vote in the case of an equality of votes at the Council meeting;
- Ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Elected members who are not on the Cabinet can hold the Leader and Cabinet Members to account;
- Promote public involvement in the Council's activities and to be the conscience of the Council;
- Be consulted on any matter in relation to which consultation with the Chairman of the Council is required under the Constitution;
- Request such additional meetings of the Council as may be considered necessary or appropriate;
- Be responsible for personal development and undergo appropriate development and continuous improvement for any role undertaken; and
- In the absence of the Civic Chairman of Derbyshire County Council this postholder may be invited to attend a civic or ceremonial event on behalf of the County Council if the need is required/deemed appropriate.

## **Civic Chairman of Derbyshire County Council**

### **Accountable to:**

- Full Council
- The Leader of the Council
- The Public

### **Role Purpose and Activities**

- To be a visible, positive ambassador for Derbyshire County Council and be entitled to wear the formal Civic Chain of Office at all civic and ceremonial events;
- Provide strong, fair and visible civic and ceremonial leadership of Derbyshire County Council in relation to all duties with members of the public, stakeholders, partners and other civic and ceremonial dignitaries;
- Attend all civic and ceremonial functions to which Derbyshire County Council has been invited to or hosts or otherwise is required or requested to attend including citizenship ceremonies;
- To promote inclusiveness and equality
- Act as a link between the Council and the various community bodies and organisations;
- Promote public involvement in the Council's activities;
- Be responsible for personal development and undergo appropriate development and continuous improvement for any role undertaken; and
- In the absence of the Chairman of the County Council this postholder will be invited to preside over a meeting of the County Council.

## **Vice Civic Chairman of Derbyshire County Council**

### **Accountable to:**

- Full Council
- The Leader of the Council
- The Civic Chairman of the County Council
- The Public

### **Role Purpose and Activities**

- The deputise for the Civic Chairman of the County Council in respect of the following and be entitled to wear a Chain of Office at all civic and ceremonial events:
  - To be a visible, positive ambassador for Derbyshire County Council;
  - Provide strong, fair and visible civic and ceremonial leadership of Derbyshire County Council in relation to all duties with members of the public, stakeholders, partners and other civic and ceremonial dignitaries;
  - Attend all civic and ceremonial functions to which Derbyshire County Council has been invited to or hosts or otherwise is required or requested to attend including citizenship ceremonies;
  - To promote inclusiveness and equality
  - Act as a link between the Council and the various community bodies and organisations;
  - Promote public involvement in the Council's activities; and
  - Be responsible for personal development and undergo appropriate development and continuous improvement for any role undertaken.

## **Chairman of a Committee Role Profile**

### **Applicable Committees**

This role profile applies to the Chairman of the following Council Committees:

- Pensions and Investments Committee
- Audit Committee
- Regulatory Planning Committee
- Regulatory Licensing and Appeals Committee
- Standards Committee

### **Accountable to:**

- Full Council
- External regulatory bodies
- The public

### **Role Purpose and Activities**

- Provide leadership and direction for the Committee;
- Chair and manage the business of the Committee, ensuring effective engagement by all Committee Members;
- Call such additional meetings of the Committee as may be considered necessary or appropriate and to determine the frequency and timing of meetings and the placing of items on the agenda as he/she thinks appropriate;
- Promote the role of the Committee both within and outside the Council;
- Represent the Council and the Committee on relevant external bodies as required;
- Guide Committee Members through the process of decision-making in relation to those functions delegated by the Council to the Committee;
- Be consulted on matters of business between Committee meetings;
- Ensure that the Committee takes balanced decisions based on all relevant evidence, always with impartiality and fairness;
- Ensure, where appropriate, that there is full consultation with and participation by all interested parties on issues to be considered by the Committee;
- Ensure that Committee decisions are properly recorded;
- Liaise and consult with relevant officers wherever appropriate;
- Consider the learning and development needs of the Committee and arrange suitable briefing and learning opportunities to take place through appropriate mechanisms;

- Developing broad knowledge of the role and functions of the Council, its Members and its structures and procedures;
- Have an awareness of national and local issues relating to the role of the Committee; and
- Be responsible for personal development and undergo appropriate development and continuous improvement for any role undertaken.

## **Vice-Chairman of a Committee Role Profile**

### **Applicable Committees**

This role profile applies to the Chairman of the following Council Committees:

- Pensions and Investments Committee
- Audit Committee
- Regulatory Planning Committee
- Regulatory Licensing and Appeals Committee
- Standards Committee

### **Accountable to:**

- Full Council
- External regulatory bodies
- The Chairman of the Committee
- The public

### **Role Purpose and Activities**

- Provide a deputising role in the absence of the Chairman;
- In the absence of the Chairman, to chair meetings of the Committee;
- Undertake specific tasks and responsibilities as requested by the Chairman;
- Share and support in general the full workload range of the Chairman;
- Work actively with the Chairman to co-ordinate the business of the Committee;
- Developing broad knowledge of the role and functions of the Council, its members and its structures and procedures; and
- Have an awareness of national and local issues relating to the role of the Committee.

## **Chairman of Improvement and Scrutiny Committee Role Profile**

### **Applicable to:**

- Health Improvement and Scrutiny Committee
- People Improvement and Scrutiny Committee
- Places Improvement and Scrutiny Committee
- Resources Improvement and Scrutiny Committee

### **Accountable to:**

- Full Council
- External regulatory bodies
- The public

### **Role Purpose and Activities**

The Chairman of the Improvement and Scrutiny Committee will:

- Chair meetings of the Improvement and Scrutiny Committee;
- Provide strong, fair leadership and clear guidance to Members and officers in relation to scrutiny functions;
- Have overall responsibility for the direction of scrutiny carried out by their Committee and for ensuring that an appropriate annual scrutiny work programme is set;
- Continuously monitor and evaluate the relevance of the Committee's annual Scrutiny Work Programme;
- Meet regularly with the Council's Improvement and Scrutiny Officers in order to ensure that the annual Scrutiny Work Programme is continually updated and that objectives within the Work Programme are achieved;
- Ensure that the work of the Improvement and Scrutiny Committee contributes to the delivery of continuous improvement in services and implementation of best practice;
- Ensure that the Committee reviews, challenges and questions the implementation of agreed policy and service delivery and makes recommendations to the Cabinet and Council to improve policy, performance and service delivery;
- Liaise with Cabinet Members at the appropriate time to ensure that the Committee is briefed on significant issues relating to the area of responsibility of the Committee;
- Seek to involve all Improvement and Scrutiny Committee Members in its work;
- Present reports and represent the views of Improvement and Scrutiny Committees at meetings of the Cabinet; and

- Be responsible for personal development and undergo appropriate development and continuous improvement for any role undertaken.



## **Minority Opposition Group Leader Role Profile**

[As it is expected that the Deputy Minority Opposition Group Leader should be able to deputise effectively for the Leader, this profile is applicable to the position of Deputy Opposition Leader]

### **Accountable to:**

- Full Council
- The public

### **Role Purpose and Activities**

In addition to the role purpose, duties and responsibilities of an Elected Member, the Minority Opposition Group Leader will be expected to:

- Be a political figurehead and the principal political spokesperson for their party;
- Provide leadership in building political consensus, where possible, around Council policies;
- Work with others in building a vision for the Council and the community;
- Provide strong, clear leadership in the coordination of Group policies and practices; and
- Scrutinise the Leader of the Council and the Cabinet.
- Ensure effective communication between party group members, other political groups, officers, the community and other partners.
- Provide support and mentoring to members of their Group as appropriate;
- Be aware of individual skills within the Group and facilitate further development as required;
- Comment on, challenge and review the Council's performance and policies;
- Nominate members of the Group to committees, working groups and outside bodies;
- Liaise with the Strategic Directors, Directors and other officers of the Authority on a regular basis in relation to Council business as appropriate;
- Support open and transparent scrutiny, encouraging the Group to work constructively with the Council, the Executive and statutory partners; and
- Adhere to the Authority's Equality and Diversity policies.

# **Appendix 18 – General Data Protection Regulations**

## **Privacy Notice**

The General Data Protection Regulation, as supplemented by the Data Protection Act 2018, came into effect in May 2018. The legislation sets out the responsibilities of the Council as data controller and the rights of individual data subjects in relation to which the Council holds personal data.

As it is required to do under the legislation, the Council has adopted a Record of Processing Activity and a Council Data Protection Policy drawing on a comprehensive set of information audits. These can be found on the relevant section of the Council's website.

The Council has effective governance of data protection in place via Cabinet and Audit Committee. The officer roles of Data Protection Officer, SIRO and Caldecott Guardian are allocated to senior officers and day to day information governance is overseen by the Information Governance Group chaired by the Director of Finance & ICT.

The Council and individual Members are registered with the Information Commissioner's Office. Both the Council's Privacy Notice and the supplementary Elected Members Privacy Notice are published on the Council's website.

## **Data Protection Act 2018 and the General Data Protection Regulation (GDPR) Introduction**

Elected Members are elected to represent their community on the Council.

Contact details of Elected Members are included on the Council's website at [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk)

Elected Members are legally speaking data controllers in their own right and must ensure that any personal information they hold / use in their office as an elected members for Council business is treated in line with GDPR and the Data Protection Act 2018.

However, given their close association with the Council, the Council arranges for registration of Elected Members as data controllers with the Information Commissioner and for annual renewal of their registration in accordance with legal requirements. Training on data protection issues is also available to Elected Members

## **Privacy Notices**

The Council has a Privacy Notice in place at;

Elected Members are expected to comply with the requirements of the Council's Privacy Notice in processing personal data, in addition to complying with the content of this Notice.

### **What use will Elected Members make of personal data?**

- Elected Members will wish to make use of personal data provided by their constituents and by the Council to enable them to provide their constituents with a response to complaints and enquiries.

The legal basis on which Members rely in order to use the information which they collect about individuals for the purposes set out in this notice is:

- Public Task – Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

### **What type of data will Elected Members hold?**

- Elected Members may hold personal data i.e. names, addresses, email addresses, phone numbers, dates of birth etc.
- Elected Members may also hold sensitive personal information (Special Category data) such as information regarding an individual's race; ethnic origin; political opinions; religious beliefs; trade union membership; health; sex life; or sexual orientation.

There is considered to be a substantial public interest in processing such data within the constraints set out in this notice.

- Elected Members are expected to keep all personal data secure in accordance with the Council's security policies.

<https://www.derbyshire.gov.uk/working-for-us/data/data-security.aspx>

- Elected Members will request personal information that is appropriate to enable them to carry out their functions on a 'need to know' basis. Processing of constituents' personal information will be undertaken in accordance with the principles of the Data Protection legislation.

### **Sharing of personal data by Elected Members**

Elected Members will not normally need the consent of constituents in order to hold or share the personal data with the Council and partner organisations such as the health service with which the Council already has data sharing agreements and which they reasonably could be expected to contact to progress the issue constituents have raised. Constituent's personal data must only be used for the purpose stated in their

enquiry. If there is any doubt about sharing personal data then advice should be sought from the Council's Data Protection Officer, details as set out below.

Particular care should be taken to ensure constituent's contact details are current to avoid correspondence being sent to the incorrect address.

If the personal data is to be used or shared in a way that the constituent would not reasonably envisage or with an agency that the Council does not normally deal with then the Elected Member will inform the constituent what they proposing to do with the data before using it or sharing it and seek their consent. If the constituent has any concerns about sharing the data and they tell the Elected Member this then their wishes must be respected and the data must not be shared.

Where Elected Members have relied on constituents' consent to use their data this needs to be carefully documented.

### **Retention of Personal Data**

Elected Members will normally process personal data until such time as they have resolved the issue and store electronic data and paper records for the minimum period that is necessary to do so and for no longer than their period of office. This is to allow them to build up case history and to return to records when further matters arise.

### **Unauthorised disclosure**

In the event of loss or inappropriate disclosure of personal data then Elected Members should follow the process set out here-

<https://www.derbyshire.gov.uk/working-for-us/data/if-something-goes-wrong/report-a-security-incident.aspx>

### **Enquiries/ Complaints**

Constituents are entitled to exercise the full range of their rights in relation to their personal data held by Elected Members as they are in relation to Council data.

<https://www.derbyshire.gov.uk/working-for-us/data/gdpr/request-to-exercise-your-rights-under-gdpr/your-rights-under-gdpr-and-data-protection-act.aspx>

If Elected Members have any concerns or they receive any complaints relating to the use of personal data they should contact the Data Protection Officer for the Council, Simon [Hobbs-simon.hobbs@derbyshire.gov.uk](mailto:Hobbs-simon.hobbs@derbyshire.gov.uk)

If an Elected Member is unable to resolve a complaint to an individual's satisfaction, the constituent can make a complaint to the Information Commissioner's Office at [www.ico.org.uk/concerns](http://www.ico.org.uk/concerns)

# **Appendix 19 - Guidance to Councillors Appointed to Outside Bodies**

## **1. Introduction**

This guidance sets out the main issues which councillors should consider when appointed by the Council to serve on outside bodies.

In the context of this guidance 'outside bodies' include trusts, companies, charities, school governing bodies, industrial and provident societies and community associations. Councillors may be involved as a director, trustee, governor or member (with or without voting powers).

Councillors who are involved in the management of outside bodies have responsibilities to that body that must be acted upon. Their role, responsibilities and potential liabilities will depend upon the legal nature of the organisation and the capacity in which they have been appointed. Failure to act in a proper manner may give rise to personal liability or liability for the Council.

With the increasing emphasis on partnership working, councillors, as community leaders, have an important role to fulfil in supporting and advising outside bodies. However, this can give rise to conflicts of interest, particularly where the organisation is seeking or receiving funding from the Council. Councillors always need to be clear about their roles and alert to potential conflicts of interest in order to ensure transparency and public confidence in local democracy.

The purpose of this guidance is to assist councillors in the discharge of their responsibilities on outside bodies clearly and effectively. It covers, primarily, the position of councillors appointed by the Council to serve on outside bodies, though much of the advice applies equally to councillors who are involved with outside bodies in a private capacity. In those situations, however, the Council's insurances will not apply.

This guidance is general and councillors should contact the Monitoring Officer for further advice if they have any particular issues of concern.

## **2. Issues to consider before appointment**

Before accepting an appointment to an outside body councillors should check the:

- legal status of the organisation, e.g. company, trust, charity, unincorporated association;
- capacity in which the councillor is to be appointed, e.g. director, trustee,
- member with voting rights or member with observer status;
- purpose of the organisation and how this relates to the Council's functions and objectives;
- relationship between the Council and the body and the likelihood and extent of any conflicts of interest;
- requirements of the organisation's governing instrument, e.g. constitution; trust deed; memorandum and articles of association, both as a member and generally;
- financial status of the organisation;
- governance and decision-making arrangements, including the management of risk;
- any code of conduct for members;
- potential liabilities;
- extent of any insurance cover for members.

Having checked the above, councillors should consider carefully whether they are willing to should be appointed to participate formally in the management of the external organisation e.g. as a director, trustee or voting member, or whether their role as a representative of the Council may be more effectively discharged as a non-voting member with observer status only. Bearing in mind the potential liabilities that may be incurred through formal involvement in an organisation, councillors are generally advised to seek appointment as members with observer status only, unless there are exceptional reasons for more formal participation.

Councillors are encouraged to seek advice from the Monitoring Officer where any of the above issues are unclear.

### **3. Application of the Code of Conduct for Members**

The Council's Code of Conduct for Members at Appendix 11 of the Constitution, places specific obligations on councillors when acting in that capacity in their dealings with outside organisations. The Code will, in particular, apply where a councillor is acting as a representative of the Council on an outside body.

Apart from the general duty to promote and support high standards of conduct, the following duties of the Code are particularly relevant in this context:

- act solely in the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate;

- avoid placing yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
- make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit;
- declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and take steps to resolve any conflicts in a way that protects the public interest.
- comply with the statutory requirements on the registration and declaration of interests.

Councillors who have a disclosable pecuniary interest in any business at a meeting of the Council e.g. award of a contract, must not participate in any discussion of the matter or vote on it, unless a dispensation has been obtained. Failure to comply with these requirements without reasonable excuse may result in prosecution.

Councillors who serve on more than one body, in particular, need to be mindful of potential conflicts of interest and always act in an open and transparent manner in carrying out their respective roles. For example, where a councillor is at a council meeting considering an application for a grant or a community asset transfer request from a parish council or other public body of which they are a member, they should declare the existence and nature of their interest. Having done so, they may, generally, take part in the discussion of that item and vote, unless there are particular reasons why this would not be appropriate. It is also advisable as a matter of transparency, to include details of the interest in their register of interests.

The same principle will generally apply where councillors are appointed to serve as school governors, but it is always necessary to have regard to the nature and extent of any conflict of interest in deciding whether to participate or vote. Where the governing body is considering a matter which is likely to have a material effect on the councillor or a member of their family, it would be advisable to declare an interest and take no further part in the proceedings.

Councillors appointed to serve on outside bodies should be mindful of their legal obligations regarding disclosure of confidential information and in case of doubt should seek advice from the Monitoring Officer.

#### **4. Predetermination and Bias**

Aside from the Code of Conduct, under common law, councillors must be careful to avoid any pre-determination or bias in their decision-making. Predetermination occurs where someone has a closed mind so that they are unable to apply their judgement fully and properly to the issue requiring a decision. This can lead to legal challenges and decisions being set aside.

The Localism Act 2011 has clarified the rules on predetermination. It makes it clear that a councillor is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take before the issue is decided. A councillor is not, for example, prevented from participating in discussion of an issue, or voting on it, if they have campaigned on the issue or made public statements about their approach to it.

The general position remains however, that, whatever their views, members must approach their decision-making with an open mind in the sense that they must have regard to all material considerations and must be prepared to change their views if persuaded that they should.

Councillors need to be aware that decisions may be challenged and set aside on the grounds of bias. Under common law, bias involves some element of partiality or personal interest in the outcome of a case, as a result of a close connection with the parties, or the subject matter of the dispute, or because of a tendency towards a particular shared point of view.

The relevant test for bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision-maker was biased. The risk of a successful challenge on these grounds may be overcome by proper observance of the requirements of the Code of Conduct and particularly the provisions set out above.

## **5. Legal status, capacity, duties and liabilities**

The specific responsibilities of councillors will depend upon the legal status of the outside body and the capacity in which they have been appointed. The position of councillors in relation to various types of outside body, is summarised in the appendices to this note as follows:

Appendix A - Director of Limited Liability Company

Appendix B - Trustee of Trust or Charitable Trust

Appendix C - Member of Unincorporated Association

Appendix D - Member of Steering Group, Joint Committee or Partnership  
Body

The key point to note, is that where councillors are carrying out their duties as a trustee, director, or management committee member, they may take account of the wishes of the Council, but their primary duty is to act in the best interests of the organisation to which they have been appointed.



## **6. Liability, Insurance and Indemnity**

Councillors can incur personal civil and criminal liability from formal participation in outside bodies. However, under section 265 of the Public Health Act 1875 (as applied by Section 39, Local Government (Miscellaneous Provisions) Act 1976), councillors enjoy statutory immunity from civil liability where they act within the powers of the authority, in good faith and without negligence.

This immunity does not apply however, where they act beyond the powers of the council or act in bad faith (i.e. with dishonest or malicious intent) or negligently, and it does not protect them from criminal liability, for example for fraud where they exercise managerial responsibilities.

Derbyshire County Council has a wide insurance provision to protect its assets and liabilities. Within these provisions the Council has extended its cover to protect its elected and co-opted members when carrying out duties in connection with the business of the County Council. Those afforded the protection are;

- Elected Members of the Council or co-opted members of any Committee or Sub-Committee.
- members of committees, schemes or associations formed to assist in the activities of the Council.

### **Further Advice**

Further assistance on the issues covered in this guidance may be obtained from the Council's Monitoring Officer.

## **APPENDIX A**

### **Councillors appointed as Directors of Limited Liability Companies**

#### **Legal Status**

1. Upon incorporation a company becomes a separate legal entity, which can hold property in its own right, enter into contracts and sue and be sued in its own name. In the case of a limited liability company the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company. This can be as little as £1.
2. Companies limited by shares are those which have a share capital e.g. 1000 shares of £1 each. Each member holds shares and receives a share in the profits made by the company according to the value of the shares held. Shares can be sold. Liability in the event of a winding-up is limited to the amount unpaid on the shares held.
3. Companies limited by guarantee do not have shares. Instead, each member agrees that in the event of the company being wound up they will agree to pay an agreed amount e.g. £1. This is most common in the public and voluntary sector, particularly where charitable status is sought.

#### **Directors' Duties**

4. The role of a councillor who has been appointed as a director will depend upon the company's Memorandum and Articles of Association (its Constitution). A company's constitution will vest most of its powers in the board of directors and the board will exercise these either directly or through managers appointed by the board. Directors must understand the requirements of the Memorandum and Articles of Association in order to fulfil their responsibilities properly.
5. Directors will need to be aware of the requirements of the "Combined Code on Corporate Governance" to the extent that this has been adopted by the company, including general management of the company, rules on directors' remuneration, internal financial and operational controls and risk management.
6. Directors, as agents of the company, must:
  - act in good faith in what they believe to be in the best interests of the company as a whole (not the Council);
  - act with reasonable care, diligence and skill;
  - exercise their powers reasonably and for the purpose for which they are given;

- keep an open mind when making decisions on company business; in particular a councillor director must exercise independent judgment and not simply follow Council policy when voting on company matters;
  - avoid placing themselves in a position where their private interests or their position as a councillor conflict with their duties to the company;
  - be aware of the company's financial position through attendance at board meetings and reading the accounts, agendas and minutes; it is not sufficient to assume that the other directors are doing a good job.
7. Some directors may be given special responsibilities under the company's constitution, for instance a managing director or finance director. Those with special roles will be expected to have the personal and technical skills to perform the duties associated with that role, which may be onerous.
  8. The above duties apply to non-executive directors as well as executive directors.
  9. There are other statutory requirements which may be relevant depending on the company's business. Directors will need to be familiar with these. For example, if the company is an investment vehicle which engages in fundraising activity, financial services legislation will apply.

### **Observer status**

10. The position of observer has no specific legal status in company or local authority law. Any person appointed as an observer should ensure that their role is clearly defined and avoid involvement in the management of the Company. If an observer acts beyond their remit and exercises real influence over the company's affairs and decision making the observer may be deemed to be a shadow director, with all the duties of an ordinary director.
11. Observers and others, such as professional advisors, may attend board meetings. Generally the minutes of the meetings will note the names of observers and the fact that they are "in attendance". Persons "in attendance" have no specific legal status and in itself the phrase does not indicate any particular level of participation in the company's affairs. The extent of the participation of a councillor described in board minutes as "in attendance" is a question of fact. They should, however, take care to avoid involvement in the management of the company so as to avoid being treated as a shadow director.
12. A director (or shadow director) may incur personal liability if they are in breach of the above duties. This may arise where:

- the company is found, in the course of winding up, to have been trading for fraudulent purposes. If a director has acted dishonestly this is also a criminal offence;
- following liquidation, a director is found liable for wrongful trading, i.e allowing the Company to continue to trade at a time when the director knew or ought reasonably to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation;
- the company commits a breach of the criminal law, for example, health and safety legislation;
- a director acts negligently or in breach of their duty to the company (including the duty to maintain confidential any confidential information relating to the company that comes into their possession).
- a director knowingly causes the company to act beyond the activities authorised by its Memorandum of Association;
- there is a breach of trust, such as the misappropriation of company funds or property;
- a director uses their powers improperly or makes a personal profit from their position as director.
- there is a failure to comply with the requirements of companies legislation, such as the making of returns to the Registrar of Companies.

## **Insurance**

13. Councillors appointed as directors should find out if the company maintains appropriate insurance cover against directors' liability. If this is not in place this should be requested, but this is a matter entirely for the board and the Council cannot insist upon this. It will be necessary to ensure that the company has the resources to maintain payment of the insurance premiums.
14. Further guidance on the responsibilities of company directors is available on the websites of the Institute of Directors and Companies House:

<https://www.iod.com/Home>

<http://www.companieshouse.gov.uk>

## **APPENDIX B**

### **Appointment of a Trustee to a Trust or Charity**

#### **Legal Status**

1. Trustees will be appointed under a Trust Deed. The role and responsibilities of a trustee will depend, therefore, upon the provisions of the trust deed and/or scheme (collectively referred to as its “governing documents”) and the general law relating to trusts and charities.
2. It is quite common for companies to be set up as trusts with charitable objects. In this case the trustees will also be directors of the company and will have the obligations set out in Appendix C below as well as the obligations set out in this section. Councillors involved with charitable companies should ensure that they understand the capacity in which they have been appointed.

#### **Duties**

3. The role of a trustee is generally to fulfil the objects of the trust and apply the income and, if appropriate, the capital of the trust in accordance with the provisions of its governing documents.
4. Trustees are subject to various duties, including the duty to:
  - act for the benefit of the charity and its beneficiaries;
  - preserve the capital of the charity (unless the trust deed gives the trustees the right to spend the capital or the charity is small and the trustees have resolved to spend the capital under the Charities Act 1993);
  - make sure income is spent only on the things authorised in the governing documents;
  - invest the capital only in authorised investments, having first taken professional advice;
  - produce annual accounts;
  - act with reasonable care and skill in administering the trust; and to act unanimously (unless the trust deed allows majority decisions).
  - comply with the Charities Acts and other legislation affecting the charity.
5. The Charity Commission’s website - [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) – contains useful guidance, in particular Publication CC3 - “Responsibilities of Charity Trustees” which outlines the basic principles that should guide trustees when administering their charity:

- the income and property of the charity must be applied for the purposes set out in the governing document and for no other purposes;
- the trustees must act reasonably and prudently in all matters relating to the charity and must always bear in mind the interests of the charity. They should not let their personal views or prejudice affect their conduct as trustees;
- trustees should exercise the same degree of care in dealing with the administration of their charity as a prudent businessman would exercise in managing his or her own affairs or those of somebody else for whom he or she was responsible; and where trustees are required to make a decision which affects a personal interest of one of their members that person should not be present at any discussion or vote on the matter.

## **Liability**

6. Trustees are jointly and severally liable to the charity for breaches of trust. They may incur personal liability for losses incurred if they:
  - act outside the scope of the trust deed;
  - fall below the required standard of care;
  - make a personal profit from the trust assets;
7. Trustees will incur personal liabilities under contracts they enter into in the name of the charity. They are, however, entitled to be reimbursed from the charity's funds for all liabilities and expenses properly incurred by them, provided this is authorised by the trustees in accordance with the trust deed.

## **Insurance and Indemnity**

8. An indemnity can be given from the trust fund provided the trustee has acted properly and within their powers. Trustees may take out insurance to protect themselves against personal liability except criminal liability. Payment of the premiums must be authorised by the trust deed if they are to be met from charitable funds.

## **APPENDIX C**

### **Unincorporated Associations**

#### **Legal Status**

1. Most societies, clubs and similar organisations (other than companies, industrial societies and trusts), are unincorporated associations. This is an informal organisation, which may arise where several people join together, with the intention of creating legal relations, to carry out a mutual purpose otherwise than for profit.
2. There is no statutory definition of an unincorporated association but it has been described by the court as “an association of persons bound together by identifiable rules and having an identifiable membership”. Unlike a company it does not have a separate legal status distinct from its members.
3. The rules of an unincorporated association are found in its constitution, which sets out the roles and responsibilities of its members.

#### **Duties**

4. An unincorporated association will typically have an executive or management committee with its powers and composition defined by the constitution. Key decisions will usually be made by the members at general meetings. The day to day administration of an association is usually undertaken by the officers and members of the executive or management committee.
5. Broadly executive or management committee members must act within the constitution and must take reasonable care in exercising their powers.
6. Where an unincorporated association is a registered charity the members of the executive or management committee may also be charity trustees. As such, their role and responsibilities will be determined not only by the association’s constitution but also by the general law relating to trusts and charities, as set out.

#### **Observer Status**

7. The Council may appoint a councillor to the executive or management committee of an unincorporated association as an observer. A councillor acting as an observer should avoid exceeding this role by becoming directly involved in the management of the association as they may be deemed to be an ordinary member for the purposes of determining liability.

## **Liabilities**

8. Members of the management committee are generally liable, jointly and severally, for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are insufficient funds the members are personally liable for the shortfall.
9. Particular care should also be taken when entering into contracts on behalf of the association. If the individual lacks the authority to do so, they may find themselves personally liable for the performance of the contract.

## **Insurance**

10. Insurance may be available, but payment of the premiums must be authorised by the constitution if they are to be met from the association's funds.



## **APPENDIX D**

### **Steering Groups, Joint Committees and Partnership Bodies, including Community Area Partnerships**

1. The responsibilities of a councillor who is appointed as a member of any of these bodies will be determined by the terms of reference, constitution or partnership agreement under which they are established and governed.
2. It is necessary to ensure that the councillor's role on the body is clear, and, in particular, whether they are acting as a delegate or representative of the Council to further the interests of the Council, or whether they are expected to exercise independent judgment in the best interests of the body concerned.
3. Liability will depend on the nature and functions of the body and the constitution or agreement under which it is established. Insurance may be available to cover certain liability.

# Appendix 20 - Code of Good Planning Practice

## Introduction

Town and Country Planning is a sensitive area of Local Government work where considerable economic returns and social and environmental consequences both positive and negative can hinge on single planning decisions. Whilst development plan making is an Executive function for the Council, all decisions on planning applications are required by law to be made outside the executive decision making framework, as part of the Council's 'regulatory' functions.

This Code of Good Practice sets out the behaviour and practices the County Council expects should be observed in deciding applications made for planning permission and for associated planning approvals. It includes the normal process for those applications which are reported to the Council's Regulatory Planning Committee, so that the Council's expectations and practices for both Members and Council Officers can be clear to all. These determinations can often be highly controversial. This Code of Practice is designed to be fair both to applicants and to other people to ensure that the Council makes impartial decisions in the interests of the community at large.

### 1. Basic Principles

- 1.1 The basis of the planning system is the consideration of development proposals in the context of the wider public interest.
- 1.2 The successful operation of the planning system relies on ensuring that officers and Members act in a way which is not only fair but is clearly seen to be so.
- 1.3 For the purpose of this Code of Practice, unless the particular context dictates otherwise: "Committee" refers to the Regulatory Planning Committee of the County Council, "Members" refers to the current elected members of the County Council, "Substitute Members" refers to any Members acting by substitution arrangement at specific Committee meetings as members of the Committee in place of members duly appointed as members of the Committee, "Committee Members" refers to the Members duly appointed as members of the Committee together with any relevant Substitute Members, and "Local Member" refers to any Member who is the member representing a County Council ward which is affected by a development proposal under a current planning application to the Council.

- 1.4 The Derbyshire County Council Code of Conduct for Members (“The Members Code of Conduct”) which is contained in Part 5 of the Constitution governs both declarations of interest and expected behaviour by Councillors generally. It must be followed scrupulously for planning applications coming before the Regulatory Planning Committee just as it must be for other items. All Councillors should review their disclosable interests regularly, and it is particularly important for Committee Members to do this.
- 1.5 Members have a responsibility for representing the communities in their constituencies as Local Members, but also an overriding duty to the wider community. They should act in the general public interest in relation to planning matters. There is no reason in principle why Local Members for particular planning applications who are also Committee Members should not participate in the Committee decision making process for those applications, provided they comply with this Code and the Members’ Code of Conduct.
- 1.6 Planning applications submitted by the County Council for its own development will be treated in the same way as those by others in terms of the assessment of the proposal in relation to the policies of the development plan and other material planning considerations.
- 1.7 Should an application be submitted to the Council by or on behalf of:
- (i) any Members or officers involved in the planning process,
  - (ii) a spouse or civil partner of such an officer or Member;
  - (iii) a person with whom such an officer or Member is living as husband or wife or as civil partner or
  - (iv) any other person with whom such an officer or Member has a close association

the Member or officer concerned will, as soon as reasonably practicable following either the submission of the application or subsequently first becoming aware of the application and connection with it, inform both the Head of Planning and the Council’s Monitoring Officer and take no part in processing or determining the application.

- 1.8 A scheme of delegation to officers is set out in Part 3 of the Derbyshire County Council Constitution. It enables most planning applications and associated submissions to be determined by the Head of Planning Services, (following consultation with the Chair of the Committee if the matter raises policy or political issues). In practice therefore the applications which need Committee decisions will quite often be controversial, and tend to involve many interrelated relevant considerations (known as “material considerations”). The normal role of the Committee Members deciding on any application before it is to reach

a collective decision in which each consideration plays some part (according to whatever 'strength' or 'weight' the members may find it should be given). In practice this often means an overall balancing exercise between competing issues of harm and benefit, guided by relevant planning policies.

- 1.9 The role of the Head of Planning Services and planning case officers in producing any report on an application for a Committee decision is to provide the Committee Members with sufficient professional and impartial advice and information and assistance to enable them to make a well informed and reasoned decision on the application which is in the public interest. They will therefore ensure that all the necessary information for a decision to be made is provided together with a clear and accurate analysis on the relevant issues including the Development Plan policies and other material considerations. All reports to Members will contain a clear recommendation which will reflect the reasoning and conclusions under the analysis. A recommendation for approval is almost always on the basis that permission would be granted subject to a set of conditions, to keep the impacts on amenity arising from the development within acceptable limits.
- 1.10 The County Council endorses the Royal Town Planning Institute (RTPI) Code of Conduct and in particular that RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions. All officers in the Authority attending to planning matters are expected to act in accordance with the RTPI Code of Practice whether or not they are RTPI members. Members of the Council should respect those professional responsibilities at all times.
- 1.11 Committee Members may raise with the relevant officers any points which they consider to be of relevance to the determination of a planning matter which the County Council is to determine. However, Members should not otherwise seek to influence officers either towards or against any potential officer recommendations on planning matters.
- 1.12 Members should not seek from officers, and officers will not normally provide, any opinion on the acceptability or otherwise of an application which might be decided on by the Committee prior to publication of a full report containing an officer recommendation

## 2 Training

- 2.1 Training sessions relating to the role of the Committee and its membership will be provided for all Members of the County Council on a yearly basis. All Committee Members (including all members eligible to serve as Substitute Members), are expected to attend these sessions to enhance their understanding of the role as members of the Committee and/or to

bring it up to date including of the Committee and Members wishing to be or remain able serve at meetings of the Committee from time to time as substitute members.

2.2 All Committee Members (including substitute members) shall before serving on the Committee have received introductory training in planning principles provided by, or to the satisfaction of, the Head of Planning Services in consultation with the Director of Legal Services, prior to serving on the Committee. Such training is generally provided for Members following a County Council election but may be arranged as necessary at other times on a bespoke basis.

2.3 Any Committee Members who have not received introductory training in the principles of planning as referred to at 2.2 above shall not participate as members on the Committee until they have received such training.

### 3 Availability of Information relating to Planning Applications

3.1 All planning applications receive publicity in accordance with legal requirements and the Council's current practices, which vary depending on the type of application and its likely impact. All publicity by the Council relating to planning applications will include clear information on how to make representations on them to the County Council

3.2 Whilst the Council will endeavour where practicable to have regard to all written representations, there is no guarantee that those received after end of the publicised period for representations will be taken into account. It will not generally be practicable for the Committee to be advised of the relevance of late representations submitted later than three working days before the Committee meeting.

3.3 Local Members will be informed of planning applications that fall to be determined by the County Council as soon as practicable following receipt of the application.

3.4 Copies of all current planning applications, subsequent amendments, relevant correspondence from consultees, planning decisions, conditions or reasons for refusal and Section 106 Agreements will be made available for public inspection on the Council's website, and at County Hall, Matlock during office hours.

### 4 Lobbying, Impartiality, and Predetermination

4.1 Committee Members shall avoid expressing an opinion which may indicate having reached a conclusion or otherwise appearing to commit the Authority on a planning application until the item is before the Committee

for a decision with all the relevant information, evidence and arguments put before it in a report by the Head of Planning Services.

- 4.2 Committee Members are not prevented from participating as normal in the Committee decision making just because an application affects land in the local area they represent as a Councillor (whether as Local member or at District or Parish level). However they cannot participate as Committee Members where, due to any local connection(s) they may have with the application, this would result in any conflict with any provisions of either this Code of Practice or the Members Code of Conduct.
- 4.3 Where they feel it is appropriate to do so, Committee Members may express an inclination or predisposition towards a particular body of opinion about an application in advance of the Committee, provided they keep an open mind regarding the application. Committee Members should in all statements of this kind also state clearly that they will not reach a final view on the proposal before all the relevant information, evidence and arguments are put before the Committee. The Localism Act 2011 has confirmed that making such a statement is not in itself evidence of any predetermination. Relevant guidance is contained in the Local Government Association and Planning Advisory Service guidance note "Probity in planning for councillors and officers", April 2013.
- 4.4 Any Committee Members who reach or express a final view on a planning application prior to the Committee meeting at which a decision is to be taken will declare this if they attend the meeting, and will be precluded from participating in the consideration and decision by the Committee on the application (see 4.1). A member in this position must withdraw from the meeting room for that particular item, unless they are also a Local Member in relation to the application in which case they may speak before the Committee at the appropriate time during the item as the local ward member, before leaving the room for the remainder of that item.
- 4.5 Committee Members will not organise support for or opposition to a proposal, or lobby other Committee Members to support or oppose a proposal (other than when addressing the Committee).
- 4.6 Letters and emails received by Members which provide information pertinent to an application received by the Council and/or are intended for consideration in the determination of the application should be passed on to the Head of Planning Services so that they can be considered in the processing of the proposal and the drafting of a report to the Committee.
- 4.7 Committee Members can expect to be approached and lobbied from time to time on development proposals by applicants and by opponents and supporters (by post, telephone, e-mail, face-to-face contact and/or other means). Whilst this is not normally a cause for concern, any Member who

is subject to significant lobbying in respect of an application should briefly record the circumstances and content of such lobbying and inform the Head of Planning Services accordingly by e-mail or letter.

- 4.8 The practice and procedure in this Code of Practice is designed to accord with and complement the Members' Code of Conduct. However whenever Members perceive any incompatibility between the respective codes they should continue to adhere to compliance with the contents of the Members' Code of Conduct, whilst requesting guidance from the Director of Legal Services on the apparent incompatibility.
- 4.9 It is particularly important in the context of planning applications, that Members follow scrupulously the Members' Code of Conduct in respect of hospitality, gifts, and declarations and registers of interests. Members should always take care to avoid placing themselves in a position that could lead to the public thinking they are seeking preferential treatment for themselves, or biased towards their friends or relatives or any firm or body with which they are personally connected.
- 4.10 At each meeting of the Committee prior to the consideration of the Report of the Head of Planning Services on the agenda, any Committee Members who have been subject to significant lobbying on any one or more of the applications referred to the Committee under the Report should declare this for each of those relevant applications.

## 5 Discussions Prior to Determination

- 5.1 Pre-application meetings between potential applicants and local planning authorities have become widely recognised as a useful opportunity for productive discussion prior to application proposals being finalised. These meetings, are encouraged by the County Council, but to avoid them being misunderstood they are generally held at officer level without Member attendance. It is always made clear at the outset of such meetings that the discussions will not bind the Council to making a particular decision.
- 5.2 For major applications for proposed developments, the Head of Planning will invite potential applicants to make "pre-application" presentations before Committee Members, which all committee members and members able to act as substitutes would be invited and encouraged to attend. These presentations will generally be arranged before the formal submission of an application for planning permission, to enable members to become engaged with the proposals from a relatively early stage by both being informed about them by the applicant and having an opportunity to raise any particular relevant issues affecting the proposals directly with applicant representatives.

- 5.3 To avoid any misunderstanding of their position or any appearance of predetermination, Members should take care that in any discussions or conversations they may have, they avoid expressing any overall opinions for or against any development proposals and should not enter into any debate over their acceptability.
- 5.4 So long as they keep within the parameters of this code, Members of the Committee are free to discuss planning applications which have yet to be considered by the Committee with other committee members and other members who are not on the Committee, including at meetings of the political party groups.
- 5.5 However, no Members or political groups should direct whip or instruct any Committee Members, or put them under any coercion potential sanction or other disincentive or incentive, regarding their voting on any applications in Committee. Such activities in respect of any Committee Members would be seeking to influence decisions of the Committee in a way that would undermine the integrity of the planning decision process, and would also be liable to be in contravention of the Members' Code of Conduct.
- 5.6 Committee Members must not under any circumstances allow their own planning judgements on any application before the Committee to be influenced by any points raised in any discussions that they would not be prepared to refer to as a material consideration during any debate on the application in Committee.
- 5.7 Committee Members are encouraged to contact the Head of Planning Services before attending or agreeing to attend any meetings about development proposals which may be arranged by anyone outside the Council (e.g. applicants objectors or lobbying groups) This may enable appropriate guidance (taking into account the nature of the proposal and the meeting arrangement) to be given to the Committee Members, to help them avoid compromising or appearing to compromise their impartiality in relation to the proposals. It may occasionally be inadvisable for Committee Members to attend a particular meeting. In other cases it may be considered helpful for the meetings also to be attended by appropriate officers and for notes to be taken. It might also be appropriate for Committee Members attending such meetings, to make it clear from the start of the meeting that they are there to become better informed about any relevant issues relating to the proposal rather than to offer any views on its acceptability. .

## 6 Declarations of Interest

- 6.1 The relevant requirements relating to declarations of interests under the Members' Code of Conduct apply to Members attending meetings of the Regulatory Planning Committee as well as other Committees of the



Council. They apply to a Councillor who is not a Member of the Committee but who attends a meeting, as well as to Members and substitute Members serving of the Committee. The provisions of the Members' Code of Practice are contained in Appendix 12 to the Constitution

- 6.2 As explained in section 4 above, any member serving on the Committee who reaches or expresses a final view on a planning application prior to the Committee meeting at which a decision is to be taken must not participate as a Committee member for that item as must normally withdraw from the meeting room for that particular agenda item.
- 6.3 A Committee Member who is also an elected member of a District, Parish or Town Council which has expressed a view on an application which is before the Committee is likely to be regarded as having a non-pecuniary interest, which is to be declared as provided by the Members' Code of Conduct. This does not by itself disqualify a Committee Member from participating in the Committee debate and decision on that application (due to bias or pre-determination) provided that the Member retains an impartial view.
- 6.4 The Director of Legal Services, as the County Council's Monitoring Officer, will give advice on whether an interest should be declared and/or the nature of the interest to be declared, in cases of any doubt. Members are welcome to request such advice initially as soon as they become aware of a potential source of interest they are unsure about.

## 7 Site Visits

- 7.1 Site visits in relation to any current applications for planning permission may be held with the aim of assisting members to acquire a clear understanding of the nature of the development proposed, its location, and potential impact.
- 7.2 The Head of Planning Services, in consultation with the Chair (or Vice Chair in his absence), normally determines whether a site visit should be arranged for an application, on the basis of:
  - the nature of the proposal, its location, its potential impact and any additional information which committee would gain from a site visit;
  - the representations which have been received;
  - the proposed recommendation of the Head of Planning on the Application (applications recommended for refusal would normally be subject to site visit);
  - any request made by a Local Member in response to consultation;
  - whether the aim could be met by other means, e.g. an officer presenting a visual projection of plans and images of the site during the Committee meeting

7.3 Normally any site visit would, if practicable, be arranged to take place on the day of the Committee meeting to consider the application. The following would normally be notified of any site visit that is arranged:

- Applicant(s)
- District/Borough Council(s)
- Parish Council(s)
- Local Member(s)
- Those members of the public and others who have made making representations in writing to the Council in support or in objection ("those making representations")

7.4 In line with the aim of the site visit, those present would normally speak on the invitation of the Chair, and only to address as points of clarification on observable features relating to the subject matter of the application and/or any representations that have been received about it. As far as practicable, those who have made representations will normally be invited to point out any significant geographical or other physical features that relate to their representations.

## 8 The Committee Decision Process

8.1 When the application is included on a Committee agenda as an item to be determined by the Committee (normally five working days before the next meeting), applicants, district/borough councils, parish councils, Local Member(s) and others who have made representations on the application are notified by the Planning Service of (1) the Committee meeting arrangements and (2) the nature of the relevant officer recommendation, and asked to inform the Planning Service no later than the two working days before the meeting if they wish to speak (for up to 3 minutes each) on their representations at the Committee meeting or to send a representative to do so. Those who are to make speeches are encouraged to arrive no later than 15 minutes before the meeting session to assist identification of speakers and briefing by the Democratic Services Officer for the meeting.

8.2 All applications referred to Committee for determination will have a full written report from the Strategic Director including a reasoned assessment of the proposal and a justified recommendation.

8.3 Where an application is recommended for refusal the reasons for that will be expressed fully in the officer's report.

8.4 Items for which there are speakers to be heard at the Committee may be brought forward from the order of items in the agenda by the Chair.

- 8.5 An officer representing the Head of Planning Services outlines the proposal and main issues together with any updating of the report. Members of the Committee are then able to ask any questions of the officer.
- 8.6 The Chair then invites each person who is attending to speak before the Committee with regard to representations on the application, to speak in the following order:
- Local Member
  - District/Borough Council
  - Parish Council
  - Action Groups or other organisations
  - Individual objectors
  - Applicants
  - Supporters
- 8.7 **As far as practicable each speaker is allowed up to 3 minutes speaking time.**
- 8.8 The speakers are not permitted to speak beyond three minutes or to enter into debate with members or officers.
- 8.9 Following each speech Members of the Committee may ask the officer any questions about any matters arising from that representation. The officers shall then endeavour to respond immediately to such questions as far as is practicable.
- 8.10 Following the completion of these representations and any questions and officers' responses arising from them, the officers may then provide any further comments or information about the matter as they may consider appropriate in the light of such representations, questions and responses.
- 8.11 The application will then be open to any debate between Members of the Committee.
- 8.12 Members of the Committee are generally free to propose motions and vote as they consider appropriate in the public interest on planning matters, provided this is having regard only to relevant planning considerations ("material considerations"), which would include the officer recommendation.
- 8.13 Immediately prior to any motion being voted on for a final determination of any matter before the Committee, the Chair shall ask the officer to indicate whether or not he/she considers that further consideration of the matter in Committee should be deferred to a subsequent meeting (this may be

considered to be advisable or necessary if new points of material relevance to the matter have become apparent at the meeting, to allow further investigation or examination in relation to such points).

- 8.14 Subject to any identification by the officers of a matter being suitable for deferral as provided for above, the Committee shall normally proceed to consider and to seek to determine the matter at the same meeting.
- 8.15 The Committee through the Chair may request clarification from officers on any relevant planning or legal issues relating to the matter at any time prior to a motion being voted on.
- 8.16 The Chair shall have full discretion (both in advance of and during the meeting but, as far as practicable, following consultation with the Director of Legal Services or his legal officer attending the meeting) to prescribe for any particular matter any changes to the usual participation procedure described above as may appear to the Chair to be necessary at any time for the fair or effective conduct of the business of the meeting,.

#### **Decisions contrary to officer recommendation**

- 8.17 From time to time the majority of Committee Members present may disagree with the professional officer recommendation. Any decisions on planning applications which are contrary to officer recommendations must be supported by a clear statement of the reasons for such a decision, for recording in the minutes of the meeting and any decision notice of refusal also requires a full statement of reasons
- 8.18 Therefore in practice, when it becomes clear during a Committee meeting that there is a significant body of opinion amongst the Committee Members present which would support a decision contrary to the officer recommendation, it may be necessary for the Committee to have an adjournment. This could involve just a short adjournment within the meeting session, or a deferral to a further committee session or meeting, depending on how quickly the Committee Members intending to propose and second such a motion are able to produce a suitably worded motion which includes a sufficient statement of reasons for taking such a decision

#### **9. Monitoring Quality of Development**

- 9.1 There will be two tours of inspection arranged each year to enable Committee Members to observe the quality of development under planning permissions granted. This will include waste management facilities, working mineral operations and the County Council's own development. These site visits will be agreed with the Chair of the Committee in advance.

- 9.2 For each site visited for observation purposes a briefing note will be prepared and any necessary permission to gain access to private land will be obtained.

## 10. Conditions and Planning Obligations

- 10.1 Officers may in advance of the production of reports to Committee on applications negotiate with the applicants and/or land owners terms to provide for draft agreements with Planning Obligations and / or draft planning conditions associated with the planning applications, in the event that the Committee decision is to approve grant of permission subject to conditions and/or completion of agreements to provide Planning Obligations.
- 10.2 Reports on applications to the Committee will whenever practicable include any Heads of Terms for any Planning Obligations and draft conditions which may be recommended in connection with the determination of the applications.
- 10.3 Copies of concluded decision notices and Legal Agreements will be available for public inspection both at County Hall and in conjunction with the statutory planning registers except to the extent that public access to any information content is restricted or prevented by Data Protection law.
- 10.4 Officer recommendations for resolutions to approve grants of planning permission that include requirements for Planning Obligations to be provided in advance of permission being granted will be restricted to matters that are sufficiently relevant to the planning application, according to prevailing case law.

## 11 Feedback and Complaints

- 11.1 Any suggestions or concerns arising from this Code of Practice can be raised with the Director of Legal Services or the Head of Planning Services. The Council also has a formal complaints system in operation which can be used if necessary and enquiries should be addressed to the Director of Legal Services.

# **Appendix 21 - Protocol for use of ICT by Members/Use of Resources**

## **1. Introduction**

The protocol sets out to support Members to carry out their role effectively with the Information Communication Technology (ICT) provided whilst protecting the Authority and its Members from the risks associated with its use.

The Protocol helps Members to stay compliant with the law and good security practise and is intended to assist and enable them in carrying out their Council activities.

This protocol must be used in conjunction with agreed policies and procedures around ICT security and use of systems such as internet and email.

Any breach of the requirements of the protocol or the agreed policies and procedures may amount to a breach of the Members' Code of Conduct and the removal of access to the Council's assets and systems.

## **2. ICT Equipment**

Members are provided with equipment to support their needs. Each Member is able to choose from a standard list of equipment detailing the type of use supported and cost of each item. Support is available from the Finance and ICT Division to help Members understand what each item can and can't support and to match the device to the Member's individual requirements. Members will be able to choose either a laptop, tablet or hybrid and a smart phone. Printers will not be supplied as standard.

All items are procured through the standard DCC procurement process and are covered by standard warranty and insurance policies.

Any equipment issued belongs to, and remains the property of the Council.

The equipment is provided to be used for all democratic work, including use at Council meetings, reading/annotating agendas, reports, minutes and accessing DDC emails and for constituent work related to the Council. It is not to be used for purely political purposes or private business purposes. Where Members are also elected to other Derbyshire bodies arrangements may be able to be made to share equipment.

All reasonable steps must be taken to ensure the equipment is kept secure and protected from theft/damage. Particular care must be taken to ensure that they are not left on view in cars or on public transport etc.

The Member will only grant access to the equipment to an authorised employee or agent of the Council for the purpose of service, repair or audit and will make

the equipment available at reasonable notice and in working hours. Use by family / friends and the like is not permitted however family members can provide assistance to Members in the use of the equipment as long as the Member remains in overall control and does not divulge their user name or password.

If a Member ceases to be a Member of the Council, the equipment must be returned to the Council within 10 working days and in such an event access to Council systems will be disabled within ten working days.

In the event of theft, loss or damage to any part of the equipment, you need to inform the ICT Service Desk immediately on 016295 37777 or complete a Security incident form using the Service Desk Online icon on the desktop.

In the event of theft of the equipment, report the incident to the Police to obtain a crime reference/lost property number and then provide this information to the ICT Service Desk

Lending any equipment to any third party is strictly forbidden.

### **3. Software**

Members ICT equipment is configured to comply with the Council's ICT Security Policy and to meet the requirements of the Governments Code of Connection to the Public Services Network. Any unauthorised changes may contravene these policies therefore configurations must not be changed and Members must not attempt to add additional hardware or software.

If any additional applications are required, these can be requested via Democratic Services initially, to establish the need on an individual and collective basis, subject to the necessary funding to cover any applications. Each request will be evaluated on its merits.

Elected Members should never delete any of the Council supplied software or Apps. It should be noted that these will be maintained, updated or changed over time and ICT can do this remotely.

If there is a suspicion of a virus infecting the equipment or any notifications of untoward activity this must be reported **immediately** to the ICT Service Desk.016295 37777. Do not ignore warnings as this could lead to more widespread infections and serious disruption to Council ICT systems.

All software provided by the Council with the computer, or subsequently, remains the property of the Council, or the licensing organisation as appropriate, and may not be shared or copied to another computer/device without written authorisation from the Director of Finance and ICT.

#### **4. Access to Systems**

Access to the Council's systems is via a username and password and individual applications may need their own username and password. Members are required to abide by the Council's password policy and persistent failure to use a sufficiently secure password may be deemed to be a breach of the Member's Code of Conduct. Regular audits of all DCC passwords are undertaken as part of the security audits of the authority.

Care must be taken to keep passwords secure and passwords must not be disclosed to anyone.

Systems and equipment must only be used for Council business. ICT equipment left unattended must be locked or logged off. Members are responsible for all activity undertaken when logged onto the equipment and must not allow any unauthorised person access to the Council's systems.

Members are allowed to connect their equipment to their home or third party Wi-Fi Networks.

#### **5. Storage**

Various places are available to store electronic data and specific guidelines will be provided as part of Member induction. All Council meeting papers will be accessible by Modern.gov and Members are discouraged from printing off meeting papers.

Any data stored locally on equipment is not backed up and will be lost in the event of loss or damage to the equipment. All data that you need to retain should be moved when possible to central storage such as EDRM. Council data should not be transferred to removable media, should it be necessary only DCC provided items that are encrypted are to be used and this must not then be transferred to personal or third party equipment without the necessary permissions.

Members are encouraged to go paperless and should print only essential material.

#### **6. Internet access**

Do not access any area that could be construed as unfit, obscene or would otherwise, be considered as inappropriate for a Member of the Council. All internet sites visited by any user (Member or officer) when connected via Council equipment are recorded, monitored and if necessary will be available for audit purposes.

If you accidentally visit any area that could be construed as, unfit, obscene or inappropriate you must leave it immediately and inform Democratic Services.



Care must be taken when downloading files via the Internet. Computer viruses may be contained in files and/or e-mails and can severely damage the operation of the equipment and the Council's systems. If in doubt, do not click on links or download files.

The equipment provided to Members must not be used to access personal social media sites such as Facebook and Twitter. It is however permissible for Members to use the equipment provided for social media for legitimate Council reasons such as communicating with residents or maintaining corporate sites. It is recommended that Members have separate social media accounts for Council business. Members are required to adhere to the Acceptable use of Social Media policy.

Any personal views expressed using Council provided equipment and access must make it clear that the views expressed are personal and may not necessarily reflect those of the Council.

## **7. Email**

Members will be allocated a Council email address for use on Council business. This email must not be used for personal or political purposes.

If you receive unsolicited e-mail (e.g. junk or chain mail), do not forward such mail items to other recipients and move them to the junk folder.

You must not use anonymous mailing services to conceal your identity when sending emails, falsify e-mails to make them appear to originate from someone else, or provide false information to any internet service which requests name, e-mail address or other details.

Members can not automatically forward email from a Council email account to a web mail account hosted on the Internet by a third party, for example Google, Yahoo, Hotmail etc. and should not manually do so as a matter of course as this could lead to Council data on insecure domains.

The full Internet and Email Acceptable Use Policy will be provided to Members and is available on the Council website. This policy must be adhered to at all times.

## **8. Cameras**

Any camera on ICT equipment must not be used to take inappropriate, illicit or sexually explicit photographs or videos, nor be used to embarrass anyone in any way. Members must use their judgement on appropriate use of cameras. Good practise is to ensure that any person to be photographed has given their consent.

Cameras must not be used in meetings without the permission of the chairperson.

## **9. Monitoring**

The Council has the capability to monitor all use of the internet and intranet, maintain logs and retains the records. The reason that monitoring takes place is to ensure compliance with legislation and the standards and rules set by the Council. We record or monitor:-

- details of websites visited or attempted to be visited
- pages accessed
- files downloaded
- graphic images examined
- any file attachments (e.g. pictures or word documents)

The Council has the capability to monitor, log and retain e-mail correspondence. Any e-mail and internet traffic being sent or received by the Council's systems are scanned for potential viruses.

## **10. Complying with legislation**

The following is a summary of areas to be aware of but cannot give full detail of all aspects of relevant legislation.

- **Data Protection**

You are responsible for complying with the Data Protection Act 2018, which covers information held in electronic and paper-based form about individuals. It is a criminal offence to collect and process personal data on your ICT equipment unless the use is registered with the Data Protection Registrar. The Director of Legal Services has copies of all the Council's Data Protection registrations and can give you advice.

- **Computer Misuse**

The Computer Misuse Act 1990 covers unauthorised or malicious use of any computer system. It is the law used to prosecute hackers and people who write and distribute computer viruses deliberately. It is a criminal offence to access, or attempt to access, any computer system you are not authorised to access. This law protects against employees and members of the public who deliberately cause damage to systems and data. The Act also makes it illegal for a person to deliberately delete data or sabotage systems to the detriment of the Council.

- **Harassment**

The Protection from Harassment Act 1997 covers harassment either by using e-mail to send a harassing message to someone or by downloading and distributing material from the Internet which constitutes harassment because it creates an intimidatory working environment.

Harassment and discrimination are unlawful under the Protection from Harassment

Act 1997, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995 and the Race Relations (Amendment) Act 2000.

As with any form of harassment under the anti-discrimination legislation, the intention of the parties is irrelevant. The problem with e-mail is that, written communication can be misinterpreted and offence may be caused where none was intended.

- **Obscene Material**

Publishing legally 'obscene' material is a criminal offence under the Obscene Publications Acts 1959 and 1964. This includes electronic storing and/or transmitting obscene materials that would tend to deprave and corrupt or paedophilic material.

- **Defamation or false statements**

The liability for defamation or false statements applies to electronic communication just as it does to more traditional forms of communication. Anyone who e-mails a libellous or false e-mail message or posts such a message on the Internet will be responsible for it and liable for any damage it causes to the reputation of the victim.

In addition to the liability of the individual who made the libellous or false statement, the Council may also be held liable. This could be either under the normal principles of:-

☐ **Indirect** liability because the Council is considered responsible - known as 'vicarious liability'; or

☐ **Direct** liability as a publisher because of providing the link to the Internet and e-mail system.

An untrue statement that damages the reputation of a person or company by causing people to think worse of them will generally be defamatory. Similarly, a false statement intended to cause damage to a person or their economic interests can bring a claim for damages.

Do not put anything on an e-mail or an attachment, which you would not put in a normal letter on Council headed paper. Treat e-mail as you would a postcard going through the open post.

- **Copyright**

Although any material placed on the Internet or in public discussion areas is generally available, the originator still has moral and, possibly, legal rights over it.

You should not copy it without acknowledging the original source and, where appropriate, gaining their permission. This applies even if you modify the content to some extent. Please note that any official material placed on a website is subject to copyright laws.

Copyright laws are different for each piece of software. In general, the copyright to every piece of software run on a system is owned by whichever company or person wrote it. The Council has a legal duty to make sure sufficient licences of the correct type are present to cover the use of all software. You must be aware of these issues and make sure that the Council has correct licences for any software you are using.

- **Contracts**

Electronic communication, such as e-mail, is generally regarded as an informal means of communication but it is, nevertheless, capable of creating or varying a contract in just the same way as a written letter. You should be careful not to create or vary a contract accidentally.

- **Disclaimer**

Despite putting confidential disclaimers and, where appropriate, personal disclaimers, on external communications, there is still nevertheless a legal connection to the Council. Always remember that any statement you make may still be construed as representing the Council.

## **11. ICT Points of Contact**

The IT helpdesk is the first point of contact for all ICT enquires, queries and support problems. Calls can be logged via the desktop icon Service Desk Online

Operating hours: Monday –Friday 08:00 – 18:00

Contact Details Tel: 01629 537777

Email: [service.desk@derbyshire.gov.uk](mailto:service.desk@derbyshire.gov.uk)

Alternatively contact the Member ICT Support officer..