

CORPORATE AFFAIRS AND AUDIT COMMITTEE

Date: Tuesday 15th August, 2023
Time: 4.00 pm.
Venue: Mandela Room

AGENDA

1. Welcome and Evacuation Procedure
2. Apologies for Absence
3. Declarations of Interest
To receive any declarations of interest.
4. Minutes - Corporate Affairs and Audit Committee - 20 July 2023 3 - 4
5. Annual Complaints Report 2021 - 2023 5 - 18
6. Review of Financial Regulations 19 - 146
7. Internal Audit Latest Audit Priorities 147 - 158
8. Internal Audit Report - Middlesbrough Development Company 159 - 176
9. Any other urgent items which in the opinion of the Chair, may be considered

Charlotte Benjamin
Director of Legal and Governance Services

Middlesbrough
Monday 7 August 2023

MEMBERSHIP

Councillors J Ewan (Chair), J Kabuye (Vice-Chair), I Blades, D Coupe, B Hubbard, S Platt and M Storey

Assistance in accessing information

Should you have any queries on accessing the Agenda and associated information please contact Susan Lightwing, 01642 729712, susan_lightwing@middlesbrough.gov.uk

CORPORATE AFFAIRS AND AUDIT COMMITTEE

A meeting of the Corporate Affairs and Audit Committee was held on Thursday 20 July 2023.

PRESENT: Councillors J Ewan (Chair), J Kabuye (Vice-Chair), I Blades, D Coupe, S Platt, M Storey and J Platt (as substitute for Councillor B Hubbard)

ALSO IN ATTENDANCE: P Jeffrey (Internal Auditor) (Veritau) and M Thomas (Internal Auditor) (Veritau)

OFFICERS: S Lightwing, A Johnstone and J Weston

APOLOGIES FOR ABSENCE: were submitted on behalf Councillor B Hubbard

23/8 **WELCOME AND EVACUATION PROCEDURE**

The Chair welcomed all present to the meeting and read out the Building Evacuation Procedure.

23/9 **DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

23/10 **MINUTES - CORPORATE AFFAIRS AND AUDIT COMMITTEE - 29 JUNE 2023**

The minutes of the Corporate Affairs meeting held on 29 June 2023 were submitted and approved as a correct record.

23/11 **HEAD OF INTERNAL AUDIT ANNUAL REPORT**

A report of the Head of Internal Audit was presented to provide Members with a summary of internal audit work undertaken in 2022/2023 and to provide an opinion on the overall adequacy and effectiveness of the Council's framework of governance, risk management and internal control and to provide a summary of counter fraud activity during the year.

A copy of the Annual Internal Audit Report was attached at Appendix 1 to the submitted report. It included a summary of the work completed during the year, findings from recently issued audit reports, and the annual internal audit opinion. The draft report on Children's Commissioning and Contract Management had been finalised since the submitted report was written.

Appendix D to the submitted report listed Priority 1 and 2 actions that had remained outstanding for more than six months.

The report also included details of Veritau's Quality Assurance and Improvement Programme (QAIP). This outlined Veritau's ongoing quality assurance arrangements and activities, and provided evidence to demonstrate that internal audit work had been carried out the expected professional standards.

The overall opinion of the Head of Internal Audit on the framework of governance, risk management and control operating at the Council was that it provided Limited Assurance. No reliance was placed on the work of other assurance providers in reaching this opinion.

The Committee's attention was drawn to the significant control weaknesses which were considered relevant to the preparation of the 2022/23 Annual Governance Statement.

Veritau also provided a counter fraud service to the Council. An annual report setting out counter fraud activity and performance was attached at Appendix 2 to the submitted report. A refreshed strategy action plan would be presented to the Committee later this year.

In response to a query regarding the internal audit report on the Middlesbrough Development Company (MDC), the final draft had been issued and it was anticipated that the report would

be finalised within the next week and would be shared with the Committee. The decision to wind up the MDC was taken by Officers and a number of factors had been taken into account. However, the decision was not made directly as a result of the internal audit work undertaken. Veritau conducted a review against CIPFA's framework and did not offer an opinion on whether or not the company should be wound up.

Concern was raised in relation to the Committee noting the report without seeing Veritau's judgement and the background to the MDC report. The Internal Auditor commented that even without the MDC report Veritau would give an opinion of limited assurance. This was the Veritau's view of the framework last year and nothing would change that opinion. Veritau had not seen the improvements in a number of areas that would enable them to change that opinion. The opinion would also feed into the Annual Governance Statement which was being prepared and had not yet been signed off and therefore there was still time to understand and reflect on the MDC report.

The delay between the issuing of draft internal audit reports and agreement and sign off by Officers was raised. It was confirmed that a summary of the priorities and the status of work being undertaken was contained in Veritau's regular progress reports and the Chair requested an update for the next meeting. The Internal Auditor commented that significant delays were escalated to the Monitoring Officer and the Section 151 Officer and the Corporate Affairs and Audit Committee when necessary.

AGREED as follows:

1. that the Committee noted the:

- results of internal audit work and counter fraud work undertaken.
- opinion of the Head of Internal Audit on the adequacy and effectiveness of the Council's framework of governance, risk management and internal control.
- significant control issues identified by internal audit which were considered relevant to the preparation of the Council's Annual Governance Statement.
- outcome of the Quality Assurance and Improvement Programme and the confirmation that the internal audit service conforms with the Public Sector Internal Audit Standards.

2. Internal Audit would provide an update on the status of internal audits at the next Committee meeting.

23/12

ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED

None.

MIDDLESBROUGH COUNCIL	
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Report of:	Director of Legal and Governance Services
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Submitted to:	Corporate Affairs and Audit Committee
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Date:	15 August 2023
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Title:	Annual Complaints Report 2021 - 2023
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Report for:	Information
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Status:	Public
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Strategic priority:	All
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Key decision:	No
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Why:	Not applicable
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Urgent:	No
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Why:	Not applicable
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Executive summary	
<p>To present an annual complaints report for 2021/2022 and 2022/23. The report sets out an overview on the Council's complaints process covering complaints statistics and trends, the outcomes, how the Council continues to learn from complaints, how the Council has worked towards the goals set within the previous annual report and planned actions to further strengthen the management of complaints during 2023/24.</p> <p>The report also outlines the governance in place to ensure complaints are managed in line with good practice and the expectations of the Local Government and Social Care Ombudsman (LGSCO), including details from the annual review of Local Authority Complaints issued by the LGSCO.</p>	

Purpose

1. The purpose of this report is to provide the committee with information about how the Council is managing complaints made by local people, summarising complaints in the period 2021/2022 alongside their outcomes and to show how the Council continues to learn from complaints and strengthen the managements complaints process.

Background and relevant information

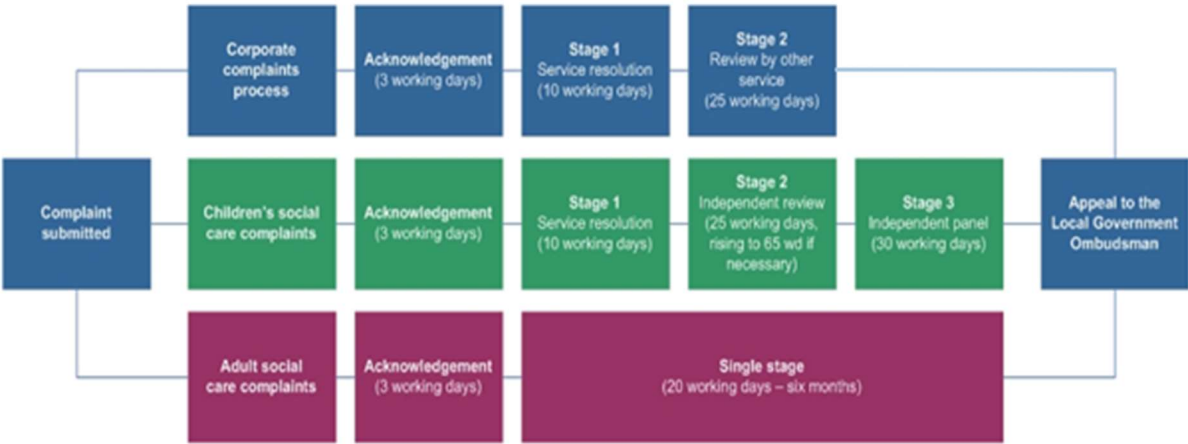
2. It is important to note receiving complaints is not a negative reflection, rather it shows the Council are open and transparent and have a willingness to listen to people, responding to their issues which is positive and can assist how we develop as a Council.
3. In addition, a statement of complaint does not mean that as a Council an error has been made, often people are displeased with a service or a decision, however that service or decision has been made or carried out correctly.
4. Monitoring of complaints and embedding lessons learned from them support the Council's commitment to a principle of continuous improvement and the achievement of compliance with the Best Value Duty.
5. Occasionally, issues will be learned from complaints that were upheld but also in some instances were no fault was found but the Council recognises that improvements to service can be made.
6. Those services accessed by all households, tend to receive the most complaints e.g. Environmental Services and Revenue and Benefits. Other services that relate to care matters tend to receive a lower volume of complaints, however investigation of those cases tends to be more complex.

What is a complaint?

7. A complaint is an expression of dissatisfaction or disquiet about the actions, decisions, or apparent failings of a local authority's service provision, and/or a decision the Council has made.

Complaints policy and procedures

8. The Council is required to operate three distinct complaints procedures:



9. Where a complainant remains dissatisfied, they can refer the complaint to the LGSCO for review and possible investigation (with this determined by the LGSCO itself).

10. Some complaints and appeals are addressed through separate procedures, including:

- a complaint about a school;
- a complaint about councillor misconduct;
- a complaint about staff misconduct;
- whistleblowing;
- a potential insurance claim;
- a potential data protection breach;
- an appeal against a parking penalty charge notice;
- an appeal relating to request for information;
- an appeal against refusal of planning permission; and
- an appeal about school admission or exclusion.

11. As set out within the Strategic Plan 2021-24, the Council is committed to providing excellent customer service and welcomes customer feedback, to help the corporate complaints team to identify and address problems for customers and to improve the service. This report shows how the Council increased customer feedback about services and how the team are responding to complaints, also how the Council is committed to learning from these to improve performance.

Complaints Data and Trends

12. The total numbers of complaints always represent a very small fraction of transactions undertaken by a Council during the year. The LGSCO advises that the number of complaints and trends are in themselves no indication of organisational health or of the performance of individual services but that high number of complaints can be a sign of an open, learning organisation, as well as sometimes being an early warning of wider problems. Conversely, low number of complaints can be a sign that an organisation is not receptive to user feedback.

13. As such, the Council does not set targets around the number of complaints, with the key point being to learn from complaints received to address any genuine performance issues raised and communicate the action taken to customers.

14. This report provides a summary of corporate and statutory complaints covering, 1 April 2021 – 31 March 2023. Appendix 1 sets out the data for this period and covers
- volumes of complaints
 - the numbers that were escalated to the LGSCO
 - volume of complaints broken down by directorate
 - the outcome of complaints investigations by department
 - the percentage of complaints that were responded to in time by each department
 - Tees Valley Local Authority comparative performance in relation to complaints.
15. The data show that while there has been an increase in the total volume of complaints received by the Council in 22/23, this did not translate into a corresponding increase in the percentage upheld after internal investigation. This dropped from 58.4% (21/22) to 50.5% (22/23).
16. Paragraphs 48 to 54 of this report set out the outcome of complaints investigated by the LGSCO and the lessons the Council has learned from them.

Compliments

17. The Council's central team does capture compliments that are submitted to the Council however they are at a lower level. From the period April 2021 to March 2023, the central team received 46 compliments. Compliments received in other services are not centrally tracked unless passed to the central team.
18. These compliments related to:
- 19 compliments thanking social care staff in children and adults for their good communication and feedback
 - 19 compliments of the work of the area care and parks team and staff attitude
 - Five compliments in response to outdoor events held in Albert Park, praising the planning and management of them.
 - Three compliments, thanking the complaints team for support in processing a complaint.

Children's statutory complaints

19. There has been an ongoing rise in the number of complaints in relation to children's services which has seen increases from 67 (2020/21) to 108 (2021/22) and rose further to 157 (22/23).
20. While the volume has increased, the percentage upheld locally has declined year on year for the past three years.
21. Services changed the way they interacted with the public during the COVID-19 period, members of the public have struggled with the lack of face-to-face interaction which has continued as services streamline the way they operate. There has been evidence that this increased the number of complaints in 2021/22 and again in 2022/23.

22. Analysis of complaints indicates that a proportion of complaints were as a result of delays in processing contacts about issues as a result of staff turnover. Complaints trends also indicate that changes of social worker have also been a trigger for complaints.

Adults statutory complaints

23. Adults statutory complaints remain low in comparison to Childrens at 16 (20/21), 32 (21/22) and then 31 (22/23).

24. the percentage of upheld and partially upheld complaints increased from 13.3% in 2020/21 to 32% (2021/22) and then 51.6% (22/23). The themes arising from those concerns were staff attitudes towards the public, along with the impact of charges for services as people have less money to fund their care where people's circumstances mean they are above the threshold for funded care.

25. In 2021/22, of the 62.5% upheld only 7% or 22 complaints were fully upheld, the remaining 41% or 13 complaints were only partially upheld. The main reason for partially upheld complaints was because the service had failed to complete investigations within the required timescales.

26. As with Children's services, one of the themes arising from complaints is the impact changes made as a result of Covid have had. The Directorate re-designed existing services since the pandemic adopting a new way of working with the public, reducing the number of home visits and increasing use of remote engagement methods.

27. In 2022/23 while complaints remained at the volumes, there was an increase in the proportion of cases that were upheld. The service has revised their management structure to increase focus on service quality and part of this has been ensuring a more robust approach to investigation of concerns.

Directorate performance

28. Appendix 1 sets out a breakdown of complaints by theme. The themes are set by the LGSCO and give a deeper indication of the types of complaints the Council receives. In both years, the highest number of complaints by volume relate to Environment and regulation services. This section sets out more detail around the themes, excluding the statutory processes as the themes around these have been set out above.

Environment and Regulation:

29. The Directorate has changed its practice around bin deliveries to improve checks to ensure bins have been received and to also sample check contacts to ensure their responses have been effective. Environment also have introduced an additional three members of staff to the team within complaints to monitor and manage the complaints, which has led to an improvement in response times and looking at issues as can be seen within the statistics over the past two years.

Corporate and other

30. The next highest volume of complaints in 22/23 was grouped under the theme of 'Corporate and other'.
31. These complaints topics include car parking, staff behaviour, issues at cemeteries and the Crematorium, resident parking, bus station usage and parks.

Benefits and Tax

32. Benefits and Tax levels of complaints are reflective of increased complaints from people who are experiencing cost of living pressures and challenging decisions in relation to their cases. Other complaint themes are around responsiveness including time to speak to operatives and delays in their cases being updated. The complaints email has been used in the absence of a Benefits and Tax public complaints email address.
33. The service has also appointed a member of staff to oversee complaints who became corporate complaints team point of contact which is more proactive and resulted in a significant improvement with response times, the quality and willingness to try and resolve issues without them progressing to the complaint stage. Having a point of contact works with the overall performance in monitoring and managing complaints, the significant improvement can be seen in the previous two years respectively.
34. Benefits and tax deal more with a service rather than complaints. It was difficult to differentiate a service from a complaint as there appears to be only one e-mail used for all issues, to segregate the service from complaints the triage process was improved allowing Benefits and Tax to deal with every day business issues from a service perspective, this allowed corporate complaints team to manage complaints directly and not create a backlog.

Highways and Transport

35. Highway and Transport usually covers major planned works, pot holes, noise from works, road closures and parking tickets. Majority of the complaints were of Increase in individuals challenging parking tickets which may have impacted due to the financial crisis. There was also a significant increase in complaints in 2022/23, a significant proportion of these related to the Linthorpe Road cycle lane.

Planning and Development

36. Planning and Development complaints could be around someone objecting to a neighbour's property where work may have been carried out, a complaint of a store operating out of its hours or dissatisfaction with a planning decision.

Timeliness of complaints handling

37. A significant percentage of complaints are partially upheld because of failures to respond within complaints timescales.
38. While overall compliance with this measure has increased year on year, a breakdown of complaints timeliness by complaint theme demonstrates that performance is variable

across the Council. While over 95% of complaints in relation to Environment and Regulation cases are responded to in time, this figure dropped to 27.1% for Education and Children's services complaints in 2022/23.

Local Government Social Care Ombudsman (LGSCO) complaints

39. The LGSCO is the Council's regulator. Some complainants remain dissatisfied after exhausting local complaints procedures and will escalate their cases to the LGSCO to seek independent investigation.
40. LGSCO case outcomes data is set out in detail at Appendix 1. Trend data shows a the number of cases considered by the LGSCO were at 35 in 2020/21, 24 in 2021/22 and 37 in 2022/23,
41. However, while there is a decrease in the total volume in 2021/22, the number of upheld complaints rose from 3 in 2020/21 to 9 in 2021/22, though this dropped back down to 5 in 2022/23.
42. The LGSCO publishes annual reports for each local authority on its website: <https://www.lgo.org.uk/your-councils-performance/middlesbrough-borough-council/annualletters/>. It should be noted that, because of differences in timing, it is not be possible to make direct comparisons between these and some of the local data set out in this report.
43. The LGSCO also publishes redacted copies of upheld decisions and service improvements agreed by the Council. Eight service improvements have been agreed in the period of this report: <https://www.lgo.org.uk/your-councils-performance/middlesbrough-borough-council/serviceimprovements>.
44. Where applicable, the council will pay remuneration as a result of the following categories that the LGSCO use:
- lost time and trouble
 - distress
 - goodwill
 - uncertainty
 - injustice
 - a refund, reimbursement, or
 - offset/waving of arrears.
45. In each of the years covered in this report the Council paid the following remuneration as directed by the LGSCO in relation to 9 of the 2,343 complaints it managed:
- 2021/22 - £1,550
 - 2022/23 - £400.
46. Payments in 2021/2022 were awarded for the following reasons:
- Lost time and trouble (£300) - awarded in response to a children's statutory complaint in relation to a complaint about a social care case
 - Injustice (£100) – failure to make reasonable adjustments in communications

- Failure to recognise injustice (£300) – the Council had delayed processing housing forms, this resulted in a delay to the complainant being rehoused
- Injustice and distress (£282) – the Council reimbursed costs incurred by a complainer as a result of failing to investigate and respond to a complaint in a timely manner in relation to pest control
- Distress (£250) – distress caused by days in transferring documentation that the complainant was entitled to a community asset transfer
- Distress and uncertainty (£300) – failure to signpost a complainant correctly following a misunderstanding
- Injustice (£250) - distress caused by days in transferring documentation that the complainant was entitled to for a community asset transfer
- Distress (£150) – failures in service delivery in relation to repeated missed assisted waste collections.

47. £100 of the monies awarded in 2022/23 was in response to distress found to be caused as a result of an error of understanding in relation to records. The remaining £300 was awarded in relation to a case regarding miscalculation of payments, the payment was for 'lost time and trouble'.

48. There were a number of lessons to be learned from these outcomes. They are set out in the next section of this report.

Themes, improvement actions and lessons to be learned

49. The Council maintains a lessons learned log to ensure lessons are learned from any investigations, this includes upheld and not upheld complaints that are internally resolved, as well as LGSCO investigations. Learning is shared across the organisation where wider lessons can be learned from an issue.

50. The top three complaints categories have continued to remain the same over the last three years. The categories with the highest number of complaints are typically those with the most contacts with customers, and as such the top three categories of complaints within the Council for the two year period are:

- Missed bin collections
- Bin not delivered
- Social Worker behaviour.

51. There is an ongoing trend in missed bin collections which remains within the top themes annually.

52. In response to the ongoing high volume of complaints, Environmental Services adopted several changes including implementation of a digital 'in cab' system to improve frontline access to data on which households require an assisted collection and tracking of whether these collections have been completed. The service has also taken action to improve timeliness of replacement/ new bin deliveries. Further changes are planned in 23/24 in relation to delivery of replacement / new bins. The remainder of the complaints relate to missed standard bin collections that have been logged because of a repeat complaint or a whole street has been missed.

53. As set out previously, complaints in relation to Education and Children's services tended to be around Social worker communication / the impact of staff turnover and behaviour from individuals. Children's Services have implemented several changes to processes in response to these issues, including the implementation of weekly clinics to review open complaints and increase focus on the early resolution of complaints. In addition, the service has a wider lessons learned document to capture lessons learned from complaints, case reviews and case audits. Analysis of this feeds through to the learning and development offer to social workers, upskilling them in areas such as communications.
54. Other organisation wide lessons that have been learned have included the need to ensure wider awareness of the statutory basis of some complaints across the organisation. Communications were issued to all staff to remind them of complaints investigations timescales. Additional training was also delivered in Children's Services.
55. A lessons learned field has also been added to the ICT system used to track complaints. This will allow highlighting of issues and trends and the monitoring of improvements and actions going forward. For ongoing complaints, training continues to be available, regular meetings are held with service leads to discuss and manage complaints.
56. Monthly performance data is also reported to support action to address compliance with complaints timescales.
57. Environmental Services had previously used a paper system to manage complaints which wasn't compliant with the Council practice, this has now been brought into line with the Council's expected digital management of complaints and has resulted in improved response times.

Planned actions for 23/24

58. The Council is committed to building on the progress that has been made to date to improve its approach to complaints, and over the next 12 months the following actions will be taken:
- Assess and review the impact of recently implemented additional measures to address the volumes of complaints about delivery of new / replacement bins
 - Improve the timeliness of children's services complaints management by implementing a new complaints process to improve use of early resolution.
 - Introduce a complainant satisfaction questionnaire to identify further opportunity to improve practice.

What decision(s) are being recommended?

That the Corporate Affairs and Audit Committee:

59. That the Committee notes the complaints statistics and trends, the outcomes and lessons learned from these, and planned actions to further strengthen the management of complaints over the next 12 months.

Rationale for the recommended decision(s)

60. To provide assurance that the Council has an effective approach to complaints management that complies with the expectation of the LGSCO.

Other potential decision(s) and why these have not been recommended

61. Not applicable.

Impact(s) of the recommended decision(s)

Legal

62. The processes and planned actions within the report are consistent with and will promote the achievement of the Council’s legal duty to achieve Best Value.

Strategic priorities and risks

63. Current and planned activity is consistent with the direction of travel set out in the Strategic Plan, and so is aligned with the Council’s Policy Framework.

64. Effective management of complaints mitigates reputational and financial risks to the Council and mitigates the strategic risk of failing to embed cultural change within the Council.

Human Rights, Equality and Data Protection

65. There will be no negative, differential impact on diverse groups and communities within Middlesbrough arising from this report. Continued improvements, including strengthening the Council’s approach to learning lessons from complaints is likely to be of potential benefit to all protected characteristics.

Financial

66. It is anticipated that all activity set out in this report is achievable within existing and planned budgets.

67. Costs arising from complaints remuneration are paid from the relevant Directorate’s budget.

68. By effectively learning the lessons that need to be taken from past complaints management, the Council will minimise these costs going forward as well as improving outcomes for its customers.

Actions to be taken to implement the recommended decision(s)

69. Not applicable.

Appendices

1	Complaints Statistics
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Background papers

Body	Report title	Date
Standards Committee	Annual Complaints Report	31/03/22

Contact: Leanne Hamer, Governance and Information Manager and Shagufta Hussain, Policy Business Partner
Email: leanne_hamer@middlesbrough.gov.uk

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Appendix 1

Complaints volume and outcomes

Procedure	2020/21		2021/22		2022/23	
	Complaints	% upheld / partially upheld	Complaints	% upheld / partially upheld	Complaints	% upheld / partially upheld
Corporate	1,016	43.6%	920	60.2%	1087	51.9%
Children's	67	49.2%	108	40.7%	157	40.1%
ASC / Public Health	16	13.3%	32	62.5%	31	51.6%
Totals	1,099	42.9%	1060	58.4%	1275	50.5%

Complaints investigated by the Local Government and Social Care Ombudsman

Year	Incomplete or invalid	Advice given	Referred back for local resolution	Closed after initial enquiries	Not Upheld	Upheld	Total	cases at this time
2019/20	4	0	10	16	3	4	37	
2020/21	2	0	9	17	4	3	35	
2021/22	0	0	0	12	3	9	24	
2022/23	0	0	3	28	0	5	37	1

Volume of complaints by Directorate

Category	2020/21		2021/22		2022/23	
	Complaints	% upheld / partially upheld	Complaints	% upheld / partially upheld	Complaints	% upheld / partially upheld
Environment and Regulation	615	53.0%	566	67%	574	59.4%
Benefits and Tax	136	28.7%	84	52.4%	164	45.7%
Education and Children's	180	39.4%	136	38.2%	176	44.6%
Corporate and other	88	28.4%	139	45.3%	168	37.5%
Highways and Transport	54	20.4%	95	61%	144	48.6%
Adult Social Care	19	5.3%	32	66.7%	35	48.6%
Planning and Development	4	25%	5	40%	14	35.7%
Public Health	3	33%	3	0%	3	33.3
Totals	1,099	42.9%	1060	58.4%	1283	50.2%

Outcome of complaints by department

Category	2020/21		2021/22		2022/23	
	Complaints	% upheld / partially upheld	Complaints	% upheld / partially upheld	Complaints	% upheld / partially upheld
Environment and Regulation	615	53.0%	566	67%	574	59.4%
Benefits and Tax	136	28.7%	84	52.4%	164	45.7%
Education and Children's	180	39.4%	136	38.2%	176	44.6%
Corporate and other	88	28.4%	139	45.3%	168	37.5%

Highways and Transport	54	20.4%	95	61%	144	48.6%
Adult Social Care	19	5.3%	32	66.7%	35	48.6%
Planning and Development	4	25%	5	40%	14	35.7%
Public Health	3	33%	3	0%	3	33.3
Totals	1,099	42.9%	1060	58.4%	1283	50.2%

Timeliness of complaints management by department¹

Category	2020/21		2021/22		2022/23	
	Complaints	% closed in time	Complaints	% closed in time	Complaints	% closed in time
Environment and Regulation	615	90%	566	88%	574	95.3%
Benefits and Tax	136	81.6%	84	96.4%	164	96.3%
Education and Children's	180	34.8%	136	33%	176	27.1%
Corporate and other	88	71.6%	139	67.6%	168	65.5%
Highways and Transport	54	81.5%	95	54%	144	79.9%
Adult Social Care	19	70.6%	32	71.9%	35	67.6%
Planning and Development	4	75.0%	5	40%	14	64.5%
Public Health	3	66.7%	3	100%	3	66.7%
Totals	1,099	77.5%	1060	78.1%	1278	79.5%²

Comparisons to Tees Valley Neighbours³

Local authority	2020/21		2021/22	
	Complaints to LGSCO	Investigations	Complaints to LGSCO	Investigations
Middlesbrough	35	7	24	12
Darlington	11	6	16	6
Hartlepool	8	4	17	6
Redcar and Cleveland	12	7	13	5
Stockton-on-Tees	14	9	23	12

¹ Timescales vary. Paragraph 8 of the report sets out the various timescales that apply to children's adults and corporate complaints.

² Please note figure will move during the year as some complaints from 2022/23 are still open.

³ 22/23 figures have not been published at this time.

MIDDLESBROUGH COUNCIL	
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Report of:	Interim Director of Finance
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Submitted to:	Corporate Affairs and Audit Committee
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Date:	15 August 2023
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Title:	Review of Financial Regulations
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Report for:	Information
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Status:	Public
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Strategic priority:	All
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Key decision:	No
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Why:	Not applicable
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Urgent:	No
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Why:	Not applicable
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Executive summary
<p>The Council is currently under a governance qualification from its external auditor (Ernst & Young) as part of its value for money assessment during the audit of its 2020/21 accounts. In addition to this, central government has issued a 'Best Value' notice meaning that governance activities in the Council need to improve substantially.</p> <p>As part of the governance improvement plan being undertaken, a key element is an update of the existing financial regulations comprising Finance Procedure Rules (FPRs and Contract Procedure Rules (CPRs). These are part of the Council's overall Constitution and represent the operating rules that Officers and Members need to follow to ensure good financial governance is in place in the organisation.</p> <p>Compliance with these rules is essential in ensuring the appropriate levels of financial probity and safeguarding are in place and that value for money is achieved in all activities undertaken.</p>

Recent work undertaken by the Council's external auditors confirm that breaches of these rules have occurred in the recent past and that these undermine the credibility of the systems in place and affect the reputation of the Council and its financial standing.

Following approval of the FPRs and CPRs by Council in September, comprehensive mandatory training will be provided to all officers involved in the financial management and procurement activity of the Council in order to improve compliance and drive a culture of robust governance. Training will also be provided to elected members in relation to their role in respect of these governance arrangements.

Purpose

1. The purpose of the report is to present an updated set of Finance and Contract Procedure Rules (F&CPR) for review and comment by the Corporate Affairs and Audit Committee and to reflect appropriate changes in the final version that will be presented for consideration and approval by the Council in September.
2. This is in the context of a refreshed Constitution, which the financial regulations are an integral part of, plus governance concerns from both the external auditor and central government regarding how the Council operates. Compliance with these rules by everyone working within the Council is the cornerstone of ensuring good governance is in place.
3. This Committee is the lead body within the Council on governance matters. The FPRs and CPRs will need to be ultimately approved by a full Council meeting, the views of this Committee are sought in relation to the development and finalisation before they are presented to Council for approval.

Background and relevant information

4. The Finance and Contract Procedure Rules provide a framework for ensuring robust financial control in the financial administration of Middlesbrough Council. They set out the framework within which business is required to be conducted in a sound and proper manner, delivering value for money and minimising the risk of legal challenge. These rules set out the principles and processes that underpin the day-to-day management of public funds. However, they are not intended to constitute a set of detailed rules to respond to every contingency. A financial management handbook will be developed to provide more detailed operational procedures to ensure compliance with these rules.
5. The F&CPRs are established in accordance with Section 151 of the Local Government Act 1972, which states that “every 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”. In Middlesbrough, this officer is the Director of Finance. All references in this document to the “Chief Finance Officer” relate to the Director of Finance post, or their approved deputies – the Head of Financial Support & Planning and the Head of Finance & Investments.
6. The current set of rules for the Council was originally produced and approved in 2016. A cosmetic update was provided in early 2020, mainly updating post titles and other key references in the document. However, a detailed review of operational procedures has not been undertaken for some time. Given the changing local government environment post Covid-19, the current financial challenges facing the organisation and the governance concerns highlighted by external regulators, this has now become essential to ensure that confidence is delivered for both internal and external stakeholders.
7. An updated set of F&CPRs is attached to this report. This has been produced with the support of the Chartered Institute of Public Finance and Accountancy (CIPFA), acting as external advisers. **Appendix 1** gives a summary of the main changes that have been made since the 2020 version. **Appendix 2** presents the updated rules for Members to consider and comment on.

8. In parallel to this work and as part of the governance improvement plan, the Constitution for the Council has also been updated. The aim is to take both the new Constitution and the F&CPR to full Council during September 2023 for approval. Any views that Members may have will be considered as part of this overall process.

What decision(s) are being recommended?

That the Corporate Affairs and Audit Committee:

- Consider the changes being made to the Council's Finance and Contract Procedure Rules and discuss any matters that they want to raise before these are taken to Council for approval in September.

Rationale for the recommended decision(s)

9. The Committee is the lead body within the Council on governance matters. The Council has received governance criticism in recent months and as a result needs to re-set its operating rules, so they are fit for purpose going forwards. Members of the Committee will play an integral role in the development of the new rule base.

Other potential decision(s) and why these have not been recommended

10. There are no other potential decisions applicable.

Impact(s) of the recommended decision(s)

Legal

11. The updated set of finance and contract procedure rules is part of the Council's overall Constitution. This is the legal basis for how the organisation operates and does business. Any activities undertaken need to be compliant with this set of rules.

Strategic priorities and risks

12. The report is a component part of ensuring that the Council has good governance arrangements in place. Having this update ensures that a robust operating platform is in place and is essential in meeting all the strategic priorities and managing any associated risks.

Human Rights, Equality and Data Protection

13. Not applicable

Financial

14. There are two financial implications to be considered in producing this report. The officer time in considering and updating the financial regulations, plus the cost of external advice from CIPFA.

15. Officer time is provided within existing budgets, whilst the cost of the CIPFA advice provided to this project is £24,000 and is met from the Corporate Contingency Budget as approved by Executive on 19 July 2023.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Any comments provided by Members of the Committee will be updated into the F&CPR document before consideration by full Council in September.	Interim Director of Finance Head of Commissioning & Procurement Head of Finance & Investments	31 August 2023

Appendices

1	Main Changes to the Finance and Contract Procedure Rules - August 2023
2	Updated Draft Finance and Contract Procedure Rules
3	

Background papers

Body	Report title	Date
Corporate Affairs & Audit Committee	Audited Statement of Accounts 2020/21 (audit results report)	22 nd July 2022

Contact: Debbie Middleton – Interim Director of Finance (s151 Officer)
Email: Debbie_middleton@middlesbrough.gov.uk

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Financial Regulations Update

- Financial Procedure Rules summary review
- Contract Procedure Rules summary review
- To be included as part of refreshed Constitution during September.
- Opportunity now to input & influence final version



Financial Procedure Rules - Updates

Objectives:

- Strengthen potential areas of improvement
- Streamline the rules to enhance understanding
- Drive compliance in known issue areas
- Achieve Value For Money
- Ensure synergy with constitution refresh and contract procedure rules

Financial Procedure Rules – update position

- Document has been refreshed to ensure:
 - Improved flow for reader – to ensure the rules are simplified and in plain English
 - Harmonised role references to give clear understanding of responsibilities
 - Elements have been removed or added to in order to ensure best fit coverage for the Council
 - Focused introductory section to promote a positive user experience and what to do if unsure
- Direction on Budgetary responsibility, allocation and controls linked to chart of accounts (section D)
- Clarity on budget virements and carrying forward under or over-spends (section E)
- More details on fees & charges and bidding for external funding (section D)
- Improved rules and guidance in relation to asset management (section E)
- Expanded instructions & requirements in relation to contract and purchasing (Section F)

Update continued

- Increased role and profile for internal audit and staff responsibilities in relation to Fraud (Section E)
- Greater focus on income and debt management given financial position (Section F)
- Inclusion of Pension Fund and Council Owned Companies for the first time (Section G)

Actions:

To date we have:

- Restricted authorised spend to key staff only so there is maximum budgetary control in place
- Tightened up the NO PO No Pay policy by introducing a supplier incentive programme
- Started to develop operational dashboards to ensure budget managers are fully engaged

In 3-6 months we will:

- Develop a Financial Management Operational Handbook and develop the staff intranet resources
- Commence roll out of face to face training on the application of the Financial Procedure Rules

In 6-12 months

- Undertake a further refresh of the Financial Procedure Rules next year as a result of training delivered and feedback from Members and Officer
- Integrate into wider job roles and responsibilities for affected staff

Contract Procedure Rules - Updates

Objectives:

- Strengthen potential areas of improvement
- Streamline the rules to enhance understanding
- Drive compliance and protect the Council from risk of challenge
- Achieve Value For Money
- Ensure synergy with constitution refresh and financial procedure rules

Contract Procedure Rules – update position

- Document has been refreshed to ensure:
 - Improved flow for reader – to ensure the rules are simplified and promote a positive user experience
 - Removal of reference to Standing Orders – links now will be Contract Procedure Rules
 - Elements have been removed i.e flow diagrams – for inclusion into a Contract Procedure Rules Management Handbook
- Direction on pre-procurement considerations has been included (section F)
- Clear links and synergy with Financial Procedure Rules – with regard to Officer levels & responsibilities – to ensure it reflects structure and aligns across the constitution (Section C)
- Stronger controls for contract extension has been included (section K)
- Stronger controls for the Provision for Exemptions to Contract Procedure Rules (section D)

Update continued

- Development of Clear tabular format which links officer responsibilities to thresholds for procurement.
- Reassignment of references to Asset Acquisition & disposal to Financial Regulations
- Stronger controls on commissioning consultants and temporary staff (Section L)

Actions:

To date we have:

- Rolled out mandatory training for all council staff on procurement – with required annual refresh
- Updated the Contract Procedure Rules

In 3-6 months we will:

- Develop a Contract Procedure Rules Operational Handbook and update the staff intranet
- Commence roll out of face to face training on the application of the Contract Procedure Rules

In 6-12months

- Undertake a further refresh of the Contract Procedure Rules next year as a result of revised Procurement legislation
- Amend mandatory training packages to reflect any refresh

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FINANCIAL PROCEDURE RULES

A – INTRODUCTION

1.1 What are the Financial Procedure Rules?

- 1.1.1 This section sets out the Council's Financial Procedure Rules (or 'Financial Regulations'), which are the financial policies and procedures of the Council.
- 1.1.2 These policies and procedures are designed to enable the Council to deliver good financial governance so that its strategic aims and objectives can be achieved in a manner that complies with applicable legislation and guidance.
- 1.1.3 This section of the Constitution sets out the rules with which anyone who makes financial decisions on behalf of the Council (including Members, Officers and others, where relevant) should comply. It also sets out the consequences of any failure to comply with the Financial Regulations.

1.2 To whom do the Financial Regulations apply?

- 1.2.1 The Financial Regulations apply to the Mayor, every Member and Officer and any other person who acts on the Council's behalf. They have a duty to uphold the highest standards of financial governance and transparency for the Council.
- 1.2.2 **Compliance with these Financial Regulations is mandatory.** Those who are required to comply with these Financial Regulations are required to maintain ongoing knowledge and awareness of their content to ensure compliance.
- 1.2.3 All Council staff have a general responsibility to take reasonable action to ensure the security of the Council assets under their control, and for ensuring that the use of Council resources is legal, properly authorised, provides Value for Money and achieves Best Value.
- 1.2.4 It will be the responsibility of Officers (including those with line management responsibility) to address non-compliance swiftly and in the most appropriate way in the circumstances. Concerns can also be reported anonymously under the Council's [Whistleblowing Policy and Procedure](#).
- 1.2.5 Failure to comply with these Financial Regulations may constitute a disciplinary matter that would be pursued under the Council's disciplinary policy.
- 1.2.6 It is the responsibility of Chief Officers to ensure that their staff are appropriately trained on the proper application of these Financial Regulations to their role. Any such training must be approved by the Chief Finance Officer.

1.3 How are the Financial Regulations organised?

The Financial Regulations are organised into the following sections:

A – Introduction

B – Defined Terms

- C – Roles and Responsibilities
- D – Financial Planning and Budgetary Controls
- E – Financial Management
- F – Financial Systems, Processes and Procedures
- G – Employee and Personnel Matters
- H – External Arrangements

1.4 **How and when are these Financial Regulations reviewed?**

- 1.4.1 The Chief Finance Officer is responsible for keeping these Financial Regulations under review and for submitting updates to them, as necessary, for approval by Full Council.
- 1.4.2 The Chief Finance Officer may make technical amendments to these Financial Regulations from time to time (with the approval of the Leadership Management Team) to ensure that they are consistent with legal requirements, changes in Council structure and personnel, and best practice.

1.5 **How does schools funding relate to these Financial Regulations?**

These Financial Regulations apply to all Council Services. However, local authorities are required to publish schemes for financing schools, setting out the financial relationship between them and the schools they maintain¹. The Financial Regulations of a school should not be contrary to these Financial Regulations and any exceptions should be reported to the Chief Finance Officer.

1.6 **Where can I find more information about the Council's financial processes and procedures?**

- 1.6.1 The Council has a range of policy and procedural documentation that supports its financial governance arrangements.
- 1.6.2 These Financial Regulations should be read in conjunction with the Constitution as a whole, including in particular the Contract Procedure Rules and the Scheme of Delegation. They should also be read in the context of supporting process and procedure documents held outside the Constitution.

¹ [School Standards and Framework Act 1998](#)

B – DEFINED TERMS

Where capitalised terms are used in this section 18, they will have the meanings set out below. For the avoidance of doubt, terms defined in section 2 of this Constitution also apply to this section 18.

“Budget Holder”	an Officer who has delegated responsibility for an allocated budget, at either directorate, sub-division of service, or cost centre level in line with the Council’s chart of accounts;
“Capital Programme”	Identifies agreed capital projects and their cost over time; linked to the Capital Strategy;
“Capital Strategy”	strategy required by CIPFA’s Prudential Code to demonstrate how the Council’s capital expenditure, capital financing and treasury management activity contribute to the provision of desired outcomes and take account of stewardship, value for money, prudence, sustainability and affordability;
“CIPFA”	the Chartered Institute of Public Finance and Accounting;
“Corporate Landlord”	the Officer designated to act as the Council’s landlord and fulfil its property management functions in relation to Council-owned land and buildings as set out in section 18.42;
“External Audit”	Independent evaluation of the Council’s financial statements and Value for Money arrangements by a third party “External Auditor”;
“Financial Limits Annex”	the Annex setting out certain limits that apply to financial decision-making by the Council and which applies to these Financial Regulations;
“Fixed Asset Register”	the register of fixed assets maintained by the Council in accordance with section 18.42.2 and which forms the basis of the Council’s accounting for capital purposes;
“Internal Audit”	independent assurance in relation to the Council’s risk management, governance and internal controls; provided by the “Internal Audit Service”;
“Key Decision Threshold”	as defined in the Financial Limits Annex;
“Medium Term Financial Plan” or “MTFP”	a rolling 3 to 5-year plan, which considers the financial climate at both the local and national level together with available resources and budgetary pressures to set a medium-term financial strategy; the MTFP focuses on both revenue expenditure and capital expenditure, as well as setting out the Council’s overall financial strategy;

“Minimum Revenue Position” or “MRP”	The minimum annual revenue charge the Council must set aside to repay the principal of the debt;
“Prudential Indicators”	mandatory indicators that local authorities are required to take into account when making capital expenditure plans, including for example, capital financing requirement and total external debt;
“Revenue Budget”	the Council’s budget for revenue spending in any financial year;
“Directorate Budget”	the budget of a particular Directorate (i.e., the area of responsibility of a Chief Officer), which forms part of the Revenue Budget and Capital Programme, and may comprise one or more sub divisions of service and cost centres;
“Statement of Accounts”	an annual statement of the Council’s accounts setting out its financial position for the financial year;
“Treasury Management Strategy”	sets out how the Council manages its money and any financial risks to ensure that the Council has sufficient money available to manage its day-to-day business; it also supports the development of the Council’s longer-term financial strategies.

Unless the context provides otherwise, where reference is made in these Financial Regulations to a Statutory Officer or a Chief Officer, that will include their deputies, representatives and/or other nominees.

C – ROLES AND RESPONSIBILITIES

This section sets out the roles and responsibilities of Council bodies, Members and individual Officers. This section should be read in conjunction with the Constitution as a whole for full details of these roles and responsibilities

Statutory Officers, in particular the Chief Finance Officer, and Chief Officers may nominate deputies to act on their behalf and/or delegate some of their responsibilities (in accordance with the Constitution). However, notwithstanding any such nomination or delegation, the relevant Officer remains ultimate responsible for the matters set out in these Financial Regulations.

COUNCIL BODIES

The table below sets out the roles and responsibilities of Council bodies, including Full Council, the Executive and Committees.

<p>Full Council (section 4 of the Constitution)</p>	<ul style="list-style-type: none"> • Adopting the Council Constitution and Member Code of Conduct • Adopting the Budget and Policy Framework • Approving and monitoring the Council’s compliance with the overall framework of accountability and control as set out in the Constitution • Monitoring compliance with agreed Council policy and related decisions • Approving procedures for recording and reporting decisions taken by or on behalf of the Council (including Key Decisions that have been delegated, and decisions made by Full Council and its Committees)
<p>Executive (section 6 of the Constitution)</p>	<ul style="list-style-type: none"> • Proposing the Budget and Policy Framework to Full Council • Discharging Executive Functions in accordance with the Budget and Policy Framework • Approving delegations of Executive decision-making to individual Executive Members, Officers and/or Joint Arrangements • Recommending protocols to ensure that individual Executive Members consult with relevant Officers (including in relation to legal and financial liabilities and risk management issues that may arise in relation to the decision) before making a decision within their delegated authority
<p>Overview and Scrutiny Committee / Scrutiny Panels (as applicable) (section 7 of the Constitution)</p>	<ul style="list-style-type: none"> • Scrutiny of Executive decisions before or after implementation (including via the Call-in procedure) • Holding the Executive to account • Recommending future policy options • Reviewing the Council’s general policy and service delivery • Reporting to Full Council on its findings

<p>Standards Committee (section 8 of the Constitution)</p>	<ul style="list-style-type: none"> • Promoting and maintaining high standards of conduct among Members • Advising the Council on the adoption and revision of the Member Code of Conduct and monitoring its operation • Conducting investigations into complaints against Members
<p>Audit Committee (section 9 of the Constitution)</p>	<ul style="list-style-type: none"> • Fulfilling the Council's statutory audit function • Delegated responsibility for monitoring and overseeing: <ul style="list-style-type: none"> ○ External Audit; ○ Internal Audit; ○ risk management and business continuity; and ○ corporate governance • Consideration of the Statement of Accounts, including the Annual Governance Statement • Reporting to Full Council on the above
<p>Other Regulatory Committees (section 9 of the Constitution)</p>	<ul style="list-style-type: none"> • Responsibility for planning, conservation and licensing matters under powers delegated by Full Council

STATUTORY OFFICERS

The table below sets out the roles and responsibilities of Statutory Officers in relation to financial matters. A full role profile for each Statutory Officer can be found in Appendix 3 to the Constitution.

<p>Head of Paid Service</p>	<ul style="list-style-type: none"> • Responsibility for corporate and overall strategic management of the Council as a whole • Reporting to and providing information to the Executive, Full Council, the Overview and Scrutiny Board / Scrutiny Panels and other Committees • Establishing a framework for management direction, style and standards • Monitoring the performance of the Council • Responsibility, with the Monitoring Officer, for record keeping in relation to decisions made by Full Council
<p>Monitoring Officer</p>	<ul style="list-style-type: none"> • Promoting and maintaining high standards of conduct among Officers and Members • Providing support to the Standards Committee • Reporting any actual or potential breaches of the law or maladministration to Full Council and/or the Executive • Ensuring that procedures for recording and reporting Key Decisions are operating effectively • Ensuring that decisions and the reasons for them are published, as appropriate • Ensuring that Members are aware of decisions made by the Executive, individual Executive Members and Officers under delegated authority • Advising Members and Officers about who has authority to make a particular decision • Advising the Executive or Full Council whether a decision is likely to be considered to be contrary to or not wholly in accordance with the Budget and Policy Framework
<p>Chief Finance Officer</p>	<ul style="list-style-type: none"> • Acting as the Council's Officer appointed under section 151 of the Local Government Act 1972 and making such decisions as are necessary for the proper administration of the Council's financial affairs² • Responsibility for: <ul style="list-style-type: none"> ○ the proper administration of the Council's financial affairs; ○ setting and monitoring compliance with financial monitoring standards; ○ advising on the corporate financial position and on the key financial controls necessary to secure sound financial management of the Council; ○ providing financial information to Members, Officers and third parties;

² [Local Government Act 1972, section 151](#)

	<ul style="list-style-type: none"> ○ preparing the Revenue Budget and Capital Programme; ○ preparing the Council's annual Statement of Accounts; ○ treasury management, pension and trust funds; and ○ providing advice on the safeguarding of assets including risk management and insurance <ul style="list-style-type: none"> • providing financial advice and information relating to the financial implications of decisions being taken as part of the Council's governance and formal decision-making arrangements • Setting and monitoring standards (which involves links with professional staff throughout the Council but does not interfere with normal line management arrangements) • Involvement (at their discretion) in the appointment of all staff employed in posts designated as requiring a qualified accountant or auditor, wherever located within the Council • Maintaining and reviewing these Financial Regulations and submitting any necessary additions or changes to the Executive and for approval by Full Council • Reporting, where appropriate, breaches of these Financial Regulations to the Council and/or the Executive • Issuing advice and guidance to underpin these Financial Regulations and to be followed by Members, Officers and others acting on behalf of the Council, including determining what constitutes a material effect on the Council's finances • Approving all financial procedures, records, systems and accounts operated throughout the Council, including approving any changes that are proposed • Advising on effective systems of internal control, which should ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice, and that public funds are properly safeguarded and used economically, efficiently and in accordance with the statutory and other authorities that govern their use • Making technical amendments to these Financial Regulations from time to time (with the approval of the Leadership Management Team) to ensure that they are consistent with legal requirements, changes in Council structure and personnel, and best practice • In compliance with section 114 of the Local Government Finance Act 1998, reporting to Full Council, Executive and the External Auditor if the Council or one of its Officers: <ul style="list-style-type: none"> ○ has made, or is about to make, a decision which involves, or would involve, the Council in incurring expenditure which is unlawful;
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	<ul style="list-style-type: none"> ○ 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 ○ is about to enter an item of account, the entry of which is unlawful³ ○ Making a report if it appears that the Council's proposed expenditure in a financial year is likely to exceed the resources available to meet that expenditure⁴ <ul style="list-style-type: none"> • Nominating a properly qualified member of staff to deputise should they be unable to perform their duties personally⁵ • Ensuring that Internal Audit is appropriately resourced to enable it to review the adequacy and compliance of internal controls <p>The Council is required to provide the Chief Finance Officer with sufficient staff, accommodation, and other resources (including legal advice, where necessary), to carry out their duties under section 114 of the Local Government Act 1972.</p> <p>In order to comply with all statutory duties and with the requirements and instructions of the Council, the Chief Finance Officer shall be given access to any information that is necessary.</p>
<p>Chief Officers</p>	<ul style="list-style-type: none"> • Ensuring all members of staff within their Directorate are aware of the existence and content of these Financial Regulations and any other internal regulatory document, and that they comply with them • Consulting the Chief Finance Officer before introducing, amending or discontinuing any arrangements, guidelines and procedures for the proper administration of the financial affairs of their Directorate • Ensuring that the Chief Finance Officer and/or their representative is engaged in the consideration and reporting of the financial implications of all formal decisions taken within the Council's governance arrangements and that any such financial implications are agreed with the Chief Finance Officer before a report is submitted to the Executive and/or Full Council • Consulting the Chief Finance Officer on any matter within their responsibility which is liable materially to affect the finances of the Council before any commitment is made and before submitting policy options or recommendations • Consulting with and obtaining the agreement of the Chief Finance Officer or their representative before

³ [Local Government and Finance Act 1988, section 114](#)

⁴ [Local Government and Finance Act 1988, section 114](#)

⁵ [Local Government and Finance Act 1988, section 114](#)

	<p>submitting an application for a grant which would require the Council to commit its own resources in the current or subsequent years</p> <ul style="list-style-type: none"> • With regard to any report or information for members of the public which relates to budget planning and / or monitoring or upon which policy decisions or consultation are to be based, consulting the Chief Finance Officer about any information to be included concerning the finances of the Council, its Services and activities, giving adequate time for the Chief Finance Officer to comment in advance of the agenda / deadline date. • Bringing to the attention of the Chief Finance Officer and the Monitoring Officer any uncertainty as to the legality of proposed, or already incurred, expenditure as soon as reasonably practicable after such uncertainty becomes apparent. <p>If a Chief Officer, having regard to the Chief Finance Officer's views, does not wish to amend their report, the Chief Finance Officer may require inclusion of their comments within the report before it is finalised.</p> <p>Reports shall only be submitted jointly by a Chief Officer and the Chief Finance Officer if the Chief Officer has validated and agreed the financial aspects of the report with the Chief Finance Officer. The onus is on the Chief Officer to obtain the agreement of the Chief Finance Officer.</p>
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The Head of Paid Service and all Chief Officers should maintain a written record of all decision-making powers that have been delegated to other members of staff (including seconded staff). All such delegations will be recorded as part of the Council's Budget monitoring and closure processes.

Where a decision has been delegated by the Head of Paid Service, a Statutory Officer, or another Chief Officer, references in these Financial Regulations to such Officer will be read as referring to the Officer to whom the delegation has been made.

OTHER COUNCIL FUNCTIONS

<p>Internal Audit</p>	<ul style="list-style-type: none"> • Reviewing, appraising and reporting on the Council’s control framework, including risk management, internal controls and governance arrangements • Reviewing and reporting on: <ul style="list-style-type: none"> ○ the extent of compliance with, and effectiveness of, relevant financial policies, plans and procedures; ○ the adequacy and application of financial and other related management controls; ○ the suitability of financial and other related management data; and ○ the extent to which Council assets and interests are accounted for and safeguarded against loss of any kind from: <ul style="list-style-type: none"> ▪ fraud and other offences; ▪ waste, extravagance and inefficient administration; ▪ inefficient Value for Money or other causes
<p>External Audit</p>	<ul style="list-style-type: none"> • Reviewing and reporting on the financial aspects of the Council’s corporate governance arrangements • Reviewing and reporting on the Council’s financial statements • Issuing an opinion on the Council’s Statement of Accounts to confirm that the External Auditor is satisfied that it gives a “true and fair view” of the Council’s financial position and its income and expenditure for the relevant year and complies with the legal requirements. • Issuing an opinion in relation to whether the Council has achieved Value for Money from its use of resources

C – FINANCIAL PLANNING AND BUDGETARY CONTROLS

The Council is required to set a balanced Revenue Budget each year, which sets out how its financial resources are to be allocated and utilised. The Revenue Budget sets out the Council's financial plan for the coming year in relation to the delivery of statutory services, and its local aims and objectives.

The Council sets an overall Revenue Budget (which covers the costs of day-to-day running of the Council) and Capital Programme (which covers the Council's long-term investment in infrastructure and assets that enable service delivery) each year. Individual Directorate Budgets, set by Chief Officers with the support of the Chief Finance Officer, form part of the Council's annual Revenue Budget and Capital Programme.

1.7 What are the key elements of financial planning for local authorities?

The key elements of financial planning are:

- (a) Medium Term Financial Plan;
- (b) Annual Revenue Budget;
- (c) Capital Strategy and Capital Programme;
- (d) Treasury Management Strategy and Prudential Indicators;
- (e) Flexible Use of Capital Receipts Strategy (as applicable);
- (f) Minimum Revenue Provision policy;
- (g) Reserves Policy; and
- (h) Charging Policy and associated fees and charges.

BUDGET SETTING PROCESS

1.8 How is the Budget and Policy Framework developed?

The detailed procedure for how the Council develops its Budget and Policy Framework is set out in section 17 of the Constitution.

RESPONSIBILITIES IN RELATION TO BUDGETS

1.9 What are Full Council's responsibilities in relation to financial planning?

Full Council is responsible for:

- (a) agreeing the Council's Budget and Policy Framework, which will be proposed by the Executive;
- (b) setting the procedures for agreeing in-year variations to approved budgets, plans and strategies;
- (c) determining when a decision will be deemed to be contrary to the Budget or Policy Framework in accordance with sections 17.3.2 and 17.4.1 of the

Constitution; any such decision should be referred to Full Council by the Monitoring Officer;

- (d) setting the level at which the Executive may reallocate Budget funds from one Directorate to another.

1.10 What are the Executive's responsibilities in relation to financial planning?

1.10.1 The Executive will propose a Budget and Policy Framework for approval by Full Council in accordance with section 17 of the Constitution.

1.10.2 The Executive is responsible for taking in-year decisions on resources and priorities in order to deliver the Budget and Policy Framework within the financial limits set by the Council.

1.10.3 Each year, the Chief Finance Officer shall report to the Executive on the general financial situation of the Council and on future financial scenarios in relation to the coming year's Budget prospects and long-term trends to inform the Budget process. Having regard to the Chief Finance Officer's reports and advice, the Executive shall recommend the general Budget strategy to be adopted with regard to preparation by Directorates of their annual Directorate Budget submissions.

1.11 What are the Chief Finance Officer's responsibilities in relation to financial planning?

1.11.1 The Chief Finance Officer must report to Full Council⁶ that the spending plans identified in the Budget and the Council Tax calculation for the Budget year and comment on the robustness of estimates that:

- (a) direct resources towards Council priorities in an achievable way;
- (b) reflect the best estimates of pay and price increases available at the time;
- (c) consider and recognise the major financial risks facing the Council; and
- (d) contain proposals for increased income or reduced expenditure that are achievable.

1.11.2 The Chief Finance Officer must also comment on the adequacy of the level of Council reserves and their sufficiency to meet the known financial risks facing the Council over the medium term.

1.11.3 The Chief Finance Officer will ensure that Chief Officers are provided with guidance to support them in preparing their draft Directorate Budgets. This guidance will cover:

- (a) legal requirements;
- (b) medium-term planning prospects;

⁶ [Local Government Act 2003](#)

- (c) available resources;
- (d) spending pressures;
- (e) Best Value and other relevant government guidelines;
- (f) other internal policy documents; and
- (g) cross-cutting issues (where relevant).

1.12 What are Chief Officers' responsibilities in relation to financial planning?

Chief Officers must prepare detailed draft revenue and capital budgets for their Directorate, in consultation with the Chief Finance Officer, and in accordance with the guidance and timetable set by the Chief Finance Officer, for consideration by the Executive. This shall include budget proposals for investment, demand growth and savings, and income growth to achieve improved economy, efficiency and effectiveness of services.

REVENUE BUDGET PREPARATION

1.13 How is the Revenue Budget prepared?

- 1.13.1 The Council operates within an annual cash limit, approved when the Budget is set each year. The Chief Finance Officers is responsible for ensuring that a Revenue Budget is prepare on an annual basis for consideration by the Executive, before submission to Full Council. The draft Revenue Budget should include allocations to different services and projects, proposed taxation levels and contingency funds.
- 1.13.2 Full Council may amend the Budget, or ask the Executive to reconsider it, before approving it. The process for this is set out in section 17 of the Constitution.

1.14 How is the Medium Term Financial Plan prepared?

- 1.14.1 The Medium Term Financial Plan brings together the key assumptions about financing resources (including Council Tax, non-domestic rates and general government grants) and spending pressures over the medium to longer term. The Medium Term Financial Plan covers a period of three (3) to five (5) years.
- 1.14.2 This enables the Council to plan for financial risks and monitor and control the way resources are allocated and spent to meet the Council's objectives and to secure value for money and informs the setting of Directorate financial targets for the annual revenue budget and capital payments guidelines that gives authority to Budget Holders to incur expenditure to meet service standards and targets.
- 1.14.3 It is the responsibility of the Chief Finance Officer to ensure that reports are presented to Council, as part of the annual budget setting process, on the medium-term budget prospects and the resource constraints set by the Government.
- 1.14.4 Detailed processes for the preparation of the Medium Term Financial Plan (including Directorate Medium Term Financial plans), Revenue Budgets and the Capital Programme shall be issued by the Chief Finance Officer. These will take into account:

- (a) the need for Directorates to demonstrate value for money, efficiency and effectiveness in current services and proposals for change;
- (b) the service impact on national and local policy priorities, including statutory requirements;
- (c) policy choices available to the Council, including the implementation of statutory requirements;
- (d) the risks and opportunities in implementing changes;
- (e) the impact of proposals in the medium term; and
- (f) exit strategies related to one-off or time limited funding.

CAPITAL BUDGET PREPARATION

1.15 When will the Council prepare the Capital Programme?

- 1.15.1 A Capital Programme is prepared by the Council each year, setting out the capital projects the Council has agreed. Save as set out in section 18.19, capital projects will only be added to the Capital Programme as part of the annual Budget setting process.
- 1.15.2 The Capital Programme covers a period of three (3) to five (5) years in line with the Medium Term Financial Plan period. Approval of the Capital Programme includes approval of the financing of the capital spend associated with each of the projects within the Capital Programme.

1.16 What is the process for preparing the Capital Programme?

- 1.16.1 The Chief Finance Officer is responsible for ensuring that the Capital Programme is prepared each year for consideration by the Executive before submission to Full Council. They will also ensure that the financial implications of the Capital Programme are reflected in the Revenue Budget.
- 1.16.2 The Executive will recommend the policy guidelines within which a forward Capital Programme should be prepared each year through the Council's Capital Strategy report. This will define affordability, sustainability and prudence in the context of the Council's MTFP.
- 1.16.3 The Chief Finance Officer will report to the Executive on the current and planned Capital Programme each quarter. New capital projects recommended for Executive approval will be subject to a capital project appraisal, the format of which is to be agreed by the Executive.

1.17 How is capital expenditure authorised?

- 1.17.1 Capital expenditure involves the creation, acquisition or enhancement of assets (for example, buildings and highways) to provide a long-term benefit to the Council in the delivery of services. Capital assets are integral to how services are delivered and

create long-term financial revenue commitments in the form of life cycle costs and financing costs (if funded by borrowing).

- 1.17.2 The definition of capital expenditure will be determined by the Council in accordance with relevant statutory provisions, the local authority accounting code of practice issued annually by CIPFA and the advice of the Chief Finance Officer.
- 1.17.3 The Chief Finance Officer and Directors have a responsibility to provide a framework to ensure that Council resources are applied effectively to meet the priorities and objectives of the Council and that the delivery of new capital projects, and significant changes to existing capital projects are reported appropriately.
- 1.17.4 A business case should be prepared for each capital project and this should be submitted to the Chief Finance Officer for review before approval by the Executive. Business cases should comply with the principles of HM Treasury's Green Book and Business Case Guidance and the guidance provided by the Chief Finance Officer. Where a capital project is expected to change significantly (as defined above), either in cost or outcome, a revised business case must be submitted to the relevant Chief Officer before any such change is agreed. Where the change is likely to be material (as determined by guidance set out by the Chief Finance Officer), the Chief Officer should seek approval from the Executive.
- 1.17.5 Every capital project should have a designated project manager and project owner who is responsible for overseeing progress of that project, ensuring that project milestones are met, and that the project complies with the Council's project governance procedures.
- 1.17.6 Capital projects may only be approved if they are included in the Capital Programme.
- 1.17.7 Finance functions delegated to Officers, including spending limits in respect of capital expenditure, are set out in the Scheme of Delegation.

1.18 What happens if a capital project is being funded by external funding?

Where capital expenditure is to be met in part or whole by a grant, contribution from another party (e.g., a government department) or from Council-wide resources (external borrowing or capital receipts), no expenditure shall be incurred until all necessary approvals have been obtained, including from the Executive.

1.19 When may a capital project be added to the Capital Programme in-year?

Capital projects may be added to the Capital Programme in-year where they are wholly funded from external sources, and they are in accordance with the Budget and Policy Framework. The approval of the Executive is required for any such addition, and the Executive will consider such additions on a quarterly basis.

RESERVES

1.20 What are the requirements on the Council to maintain reserves?

- 1.20.1 The Council is required to maintain a reserve balance so that it can cope with unpredictable financial pressures and plan its future spending commitments.

1.20.2 A general strategic reserve is maintained to cover unforeseen strategic, operational and financial risks, and earmarked reserves are held for identified spending commitments. The Chief Finance Officer will ensure that there are clear protocols for the establishment and use of reserves.

1.21 **When may reserves be used?**

1.21.1 The creation of, or addition to, any reserve will be subject to the approval of the Executive on the recommendation of the Chief Finance Officer and shall be in accordance with the purpose for which the reserve was established. For each reserve established, the purpose, usage (including the timeframe for usage) and basis of transactions will be clearly articulated.

1.21.2 The withdrawal of funds from a reserve will require the approval of the Chief Finance Officer and shall be applied for the purpose that the reserve was established. In the case of balances held by schools, the relevant Board of Governors is responsible for giving authorisation.

1.22 **How are reserve requirements set?**

The level of reserves will be reviewed twice annually by the Chief Finance Officer at budget setting and in closing the accounts. The Chief Finance officer will advise on prudent levels of reserves and balances for the Council. In developing a reserve strategy, the Chief Finance Officer will ensure that the level of reserves:

- (a) is sufficient to ensure that the Council can comply with its statutory financial duties of setting a balanced Revenue Budget;
- (b) takes into account the known risks over the life of the Medium Term Financial Plan; and
- (c) is capable of covering the estimated financial risk of the Council, including contingent liabilities and insurance exposure risks.

1.23 **When must the Chief Finance Officer report on the level of reserves?**

1.23.1 The Chief Finance Officer must report to the Council if there is, or is likely to be, unlawful expenditure or an unbalanced Budget. This would include situations where reserves have become seriously depleted and it is forecast that the Council will not have the resources to meet its expenditure in a particular financial year⁷.

1.23.2 The Chief Finance Officer must also assess and report on of the robustness of the Budget and adequacy of reserves under Section 25 of the Local Governance Finance Act 2003⁸.

FEES AND CHARGES

1.24 **How are fees and charges increased each year?**

⁷ [Local Government Finance Act 1988, section 114](#)

⁸ [Local Government Finance Act 2003, section 25](#)

- 1.24.1 Fees and charges will normally be reviewed and revised as part of the annual Budget setting process and will normally apply with effect from 1 April each year.
- 1.24.2 The Chief Finance Officer will include in the Medium Term Financial Plan the relevant assumptions and requirements applicable to setting fees and charges.
- 1.24.3 The Chief Finance Officer will keep fees and charges under periodic review and will refer any in-year revisions to the Executive for approval, as required.

EXTERNAL FUNDING

The Council may receive external funding in the form of grants or other financial support from the government or other funding bodies. Funding conditions should be considered carefully to ensure that they are compatible with the Council's strategic aims and objectives and available resources.

1.25 When may the Council seek external funding?

The Chief Officers may only seek external funding to meet the priorities approved in the Policy Framework. Chief Officers must ensure that:

- (a) the key conditions of any external funding are understood and can be complied with, including the ability to provide match funding, as required;
- (b) any statutory requirements relating to external funding are complied with;
- (c) the Council's responsibilities are fully understood and deliverable;
- (d) there is a feasible exit strategy aligned to the expiry of the period of grant funding with respect to ongoing resource requirements and any long-term financial obligations on the Council to maintain service levels and/or assets;
- (e) the impact on the Revenue Budget and the Capital Programme is fully considered and reflected; and
- (f) the Chief Finance Officer is consulted and has agreed to a bid before it is submitted.

1.26 What are the Chief Finance Officer's responsibilities in relation to external funding?

The Chief Finance Officer will ensure that:

- (a) all funding notified to external bodies is received and properly recorded in the Council's accounts;
- (b) appropriate arrangements are made to ensure that the Council complies with external funding conditions in order to avoid the grant paying body having cause to clawback all or part of the original funding amount received;

- (c) the match-funding requirements are considered before entering into any external funding agreements and that future Revenue Budgets and the Capital Programme reflect these requirements;
- (d) details of new funding streams are routinely reported to the Executive as part of quarterly budget monitoring reports;
- (e) any funding application for an amount above the limit set out in the Financial Limits Annex is approved by the Executive; and
- (f) audit requirements are met in relation to external funding.

For the avoidance of doubt, applications for external funding up to the limit set out in the Financial Limits Annex will be subject to the approval of the Chief Finance Officer.

1.27 **What are Chief Officer's responsibilities in relation to external funding?**

Chief Officers will ensure that:

- (a) the Chief Finance Officer is informed of, and has agreed to, all external funding arrangements;
- (b) all claims for funding are approved by the Chief Finance Officer or an Officer nominated by them;
- (c) all claims for funds are made by the due date;
- (d) the match-funding requirements are considered before entering into the funding agreements and are approved by the Chief Finance Officer;
- (e) the project for which external funding has been sought progresses in accordance with the agreed project plan and funding conditions and that all expenditure is properly incurred and completely and accurately recorded;
- (f) if the funding is to support capital investment, the appropriate approval process is followed as set out in section 18.17;
- (g) notification of a successful application for external funding is obtained in writing stating the amount and conditions relating to its receipt; and
- (h) subject to 18.26(e) above, the Executive is made aware of any application, and any successful bid, for funding from an external body;

1.28 **What information should be included in a bid for external funding?**

- 1.28.1 All bids for external funding should include a full financial appraisal with the appropriate level of support from Finance staff. Directors shall submit to the Directorate Finance Business Partner bids for external funding and claims for validation and certification prior to submission. All grant claims should be completed in conjunction with the relevant Finance Business Partner.

1.28.2 Directors should ensure that any bid for external funding meets the requirements set out in the application form. Where a bid is made for discretionary external funding, particular attention should be paid to the criteria on which a funding award will be based and the bid should be appropriately focused.

1.29 Who may approve a bid for external funding?

1.29.1 A bid for external funding should be approved in accordance with the financial thresholds set out in the Scheme of Delegation.

1.29.2 All grant bids with a value up to the Key Decision Threshold should be submitted to the Chief Finance Officer's nominated deputy for approval and should be signed by that deputy and the relevant Director.

1.29.3 Grant bids above the Key Decision Threshold should be submitted to the Leadership Management Team for consideration and should be approved and signed by the Chief Finance Officer.

1.30 What happens if a bid for external funding needs to be submitted urgently?

Where the timeframe to submit a bid for external funding is urgent or does not allow for the process set out above to be followed in full, Directors may submit the bid without following the process in full, provided that they:

- (a) gain approval from the Chief Finance Officer or an Officer nominated by them before submitting the bid;
- (b) if submission of the bid is a Key Decision, ensure that this is brought to the Executive (or the person with relevant delegated authority) at the earliest opportunity for noting;
- (c) take all reasonable steps to consider the matters set out in section 18.25 above before submission;
- (d) complete any necessary documentation as soon as reasonably practicable after the submission is made.

D – FINANCIAL MANAGEMENT

BUDGET MONITORING

Budget monitoring ensures that, once Full Council has approved the Budget, the resources allocated under that Budget are used for their intended purpose and are properly accounted for. Budget monitoring allows the Council to oversee its Budgets throughout the financial year, ensure that all relevant controls are being used effectively, and make adjustments to respond to in-year changes. It also enables the Council to hold Budget Holders and Directorates to account for their management of the budgets allocated to them.

1.31 What are Officers authorised to spend?

Approval by Full Council of the Budget constitutes authority for the Council to incur the agreed expenditure, save to the extent that a reservation has been placed on the Revenue Budget or Capital Programme.

1.32 What are the Executive's responsibilities in relation to Budget monitoring?

The Executive is responsible for keeping under review the financial performance of each Directorate and the Council as a whole during the financial year.

1.33 What are the Chief Finance Officer's responsibilities in relation to Budget monitoring?

1.33.1 The Chief Finance Officer will establish an appropriate framework of budgetary monitoring and control which ensures that:

- (a) budgetary management is exercised within the limits set in the Budget unless agreed otherwise by Full Council;
- (b) each Chief Officer and Budget Holder has access to timely, relevant and accurate information on receipts and payments on each budget, which is sufficiently detailed to enable Budget Holders to fulfil their budgetary responsibilities;
- (c) expenditure is only committed against an approved budget head in line with the chart of accounts;
- (d) all Officers responsible for committing expenditure comply with relevant guidance and these Financial Regulations;
- (e) each cost centre has a single named Budget Holder, determined by the relevant Chief Officer; as a general principle, budget responsibility should be aligned as closely as possible to the decision-making process that commits expenditure; and
- (f) variances from approved budgets are investigated and reported by Budget Holders in accordance with guidance set annually by the Chief Finance Officer.

1.33.2 The Chief Finance Officer will make arrangements to ensure that effective monitoring and control of expenditure against Budget allocations takes place and will report to the Executive on the overall position of the Council's finances as a minimum on a quarterly basis.

1.34 What are Chief Officers' responsibilities in relation to Budget monitoring?

1.34.1 It is the responsibility of Chief Officers to control income and expenditure within their Directorate and to monitor performance, taking account of financial information provided by the Chief Finance Officer and/or their own systems.

1.34.2 It is the responsibility of each Chief Officer to identify Budget Holders under their direct control and to ensure that Directorate Budgets are not overspent. They should also take any action necessary to avoid exceeding their Directorate Budget allocation and alert the Chief Finance Officer to any problems at the earliest opportunity.

1.34.3 Each Chief Officer shall work with the Chief Finance Officer to report to the Leadership Management Team on a monthly basis. They will be required to present:

- (a) actual performance and variances against Directorate Budgets;
- (b) all significant variances (as defined in the Financial Limits Annex) substantiated with justifiable explanations and management actions being taken to address them;
- (c) progress of delivery of savings against any applicable savings plan;
- (d) a forecast of projected outturn performance and variance, including details of budget pressures, risks and issues.; and
- (e) a financial recovery plan to address adverse variances to bring the net expenditure within the approved budget.

1.35 What are Budget Holders' responsibilities in relation to Budget monitoring?

1.35.1 Chief Officers should ensure that there is a designated Budget Holder for each cost centre heading who is responsible for income and expenditure within their influence and control. They should ensure that all financial transactions are properly recorded and accounted for.

1.35.2 Budget Holders should be held accountable for their budgets and the level of service to be delivered and should understand their financial responsibilities. They will report on a monthly basis to their Directorate Management Team to enable the relevant Chief Officer to report to the Leadership Management Team as set out in section 18.34.3 above. Budget Holders must monitor the performance levels and take necessary action to align service outputs with their approved budget.

1.35.3 Budget Holders are responsible for:

- (a) reporting actual performance and variance against to their profiled budget on a monthly basis;

- (b) providing a justifiable explanation for any significant variance to their budget and management actions being taken to bring expenditure within the approved budget and
- (c) complying with guidance set out annually by the Chief Finance Officer on tolerance of variances.

1.35.4 **All Officers will take any action necessary to avoid exceeding their budget allocation and alert the Chief Finance Officer as soon as practicable if this cannot be achieved.**

REVENUE BUDGET OVER / UNDER SPENDING

1.36 **Who is responsible for ensuring that spending does not exceed the Budget?**

Chief Officers shall ensure that capital and revenue spending are each contained within their approved Budget.

1.37 **What happens if a Directorate Budget is overspent?**

1.37.1 If any line at the level of a Directorate Budget agreed by the Council becomes, or is expected to become, overspent the appropriate Director must take action to correct the position.

1.37.2 In some circumstances, it will be permissible to transfer a budget either between directorates or between Directorates, or between budget headings within a directorate, subject to approved service plans and Council priorities. Any such transfer is known as a 'virement'. The rules contained in section 18.37.3 below (and section 17.5 of the Constitution) will apply to any virement.

1.37.3 Virement between one line in the Revenue Budget and another is allowed in accordance with the rules and limits currently prescribed by the Council, as follows:

- (a) all proposed virements must be reported to the Chief Finance Officer or an Officer nominated by them;
- (b) any virement involving a change in policy that, in the opinion of the Monitoring Officer and the Chief Finance Officer is contrary to or not wholly in accordance with the Budget and Policy Framework, will be subject to Executive approval;
- (c) any virement proposing a permanent change in staffing establishments requires the approval of the Leadership Management Team;
- (d) no proposed virement shall be used to justify additional resource allocation in following years;
- (e) once a proposed virement has been agreed / approved, the Chief Finance Officer shall ensure that the appropriate changes are made to the Council's computerised accountancy system at the earliest opportunity;

- (f) Executive approval is required for any virement where it is proposed to vire between service level budgets agreed by Council in setting the annual Revenue Budget;
- (g) Chief Officers may vire within the overall Directorate Budget allocated to them by the Council in the annual Budget setting report, within the virement rules below;
- (h) each Chief Officer will keep a record of any virement made within their allocated budget and the Chief Finance Officer will keep a central record of all virements made across the Council; and
- (i) virements will be reported in accordance with guidance provided by the Chief Finance Officer.

1.37.4 The financial limits applicable to virements are as set out in the Financial Limits Annex.

1.37.5 For the avoidance of doubt, where section 18.37.3(b) of the Financial Regulations applies, Executive approval will be required, regardless of the value of the virement.

1.38 When may a Chief Officer carry forward an underspend to their Directorate Budget?

1.38.1 Directorates shall not be permitted to carry forward underspends against revenue budgets unless there are exceptional circumstances specifically agreed by the Chief Finance Officer who shall provide guidance as part of the annual accounts closure process.

1.38.2 Unless otherwise approved by the Chief Finance Officer or their nominated deputy, carry forward of underspend against revenue budgets shall only be permitted where:

- (a) that expenditure is directly linked and dependent on a specific grant which can also be carried forward to meet the expenditure incurred; or
- (b) there is a contractual commitment for goods, works and/or services that exists before the year end and, due to exceptional circumstances, the Council has been unable to obtain receipt or delivery before 31 March.

MANAGING CAPITAL EXPENDITURE

1.39 How is capital expenditure managed?

1.39.1 The Capital Programme is a multi-year programme to which resources are allocated to fund agreed capital projects. Not all capital projects will progress in line with their planned project timeline and delays of and acceleration to capital projects against their original plan are likely to occur across the period of the Capital Programme. This provides the Council with flexibility to manage capital projects over the medium term and ensure that desired outcomes are achieved in the most efficient and cost-effective way.

1.39.2 The Executive is able to agree in-year changes to the profile of capital spending and to either delay a capital project to a future year or bring a capital project forward to the current year, in order to meet this objective.

1.40 What happens if a capital project exceeds its budgetary provision?

1.40.1 Where the actual or estimated cost of a capital scheme is forecast to exceed its original budgetary provision, the relevant Chief Officers shall, where required by guidance provided by the Chief Finance Officer, prepare a report for the Executive outlining the proposed management actions to address the overspend. The Executive will consider and approve management actions this may include the use of virement powers contained in section 18.40.2 below or the reduction of overall expenditure within the Capital Programme.

1.40.2 Virement between one capital project and another is allowed in accordance with the rules and limits prescribed by the Council, as follows:

- (a) virements between capital projects are subject to approval by the Executive;
- (b) all necessary approvals must be obtained from external funding bodies, where necessary;
- (c) the virement must not increase the need for Council financial resources above the level approved in the Capital Programme; and
- (d) the diversion of expenditure should not increase the Council's eventual revenue costs.

1.40.3 The relevant Chief Officer will keep a record of any virement made within a project for which they are responsible, and the Chief Finance Officer will keep a central record of all virements made across the Council.

1.40.4 The Chief Finance Officer will maintain a contingency within the Capital Programme to be applied to virements between capital projects. Any such application of this contingency for virements up to the Key Decision Threshold will be subject to the approval of the Chief Finance Officer and the virement will be reported to the next meeting of the Executive. Any application of the contingency for a virement above the Key Decision Threshold will be subject to Executive approval.

1.41 What happens if there are changes to a capital project?

1.41.1 Any proposal to add, delete, substitute or substantially amend any capital project shall be subject to approval by the Executive.

1.41.2 Any in-year underspend on a capital project, whether resulting from slippage or cost savings, shall be reported to the Executive and shall not be used by services to fund additional capital expenditure unless agreed by the Executive.

ASSETS, SECURITY AND RISK MANAGEMENT

The Council's assets represent a significant resource, which must be protected against loss or misuse. The need for effective measures to reduce losses has led the Council to adopt a positive strategy towards the management of risk.

1.42 What is the role of the corporate landlord?

1.42.1 The Head of Paid Service will nominate an Officer to act as Corporate Landlord on its behalf. The Corporate Landlord will:

- (a) hold the title deeds for all Council properties;
- (b) oversee and co-ordinate central records of Council assets and will liaise with the Chief Financial Officer to ensure an up to date Fixed Asset Register for accounting and valuation purposes;
- (c) ensure the proper security and maintenance of all premises occupied and/or owned by the Council;
- (d) develop an asset management strategy to include plans for the acquisition, disposal and maintenance of Council assets to secure Best Value over the course of the Medium Term Financial Plan;
- (e) arrange for the valuation of land and building assets for accounting purposes in accordance with the Local Government Act 1989 and associated professional codes of practice; and
- (f) maintain the Council's property asset management systems.

1.42.2 The Chief Finance Officer will maintain a Fixed Asset Register of all of the Council's assets, which will identify each Director's responsibilities in relation to assets that sit within their Directorate.

1.42.3 To support the Corporate Landlord in executing their duties, Chief Officers will:

- (a) advise the Corporate Landlord of any situation where the security of Council premises is thought to be defective or where it is considered that special security arrangements may be needed;
- (b) ensure that no Council asset is subject to personal use by an employee without proper authority;
- (c) ensure the safe custody of vehicles, equipment, furniture, inventory, stores and other property belonging to the Council;
- (d) ensure that cash holdings on Council premises are kept to a minimum; and
- (e) ensure that keys to safes and similar receptacles are carried on the person of those responsible at all times; loss of any such keys must be reported to the corporate landlord and the Chief Internal Auditor.

1.43 **What are Chief Officers' responsibilities in relation to inventory of Council assets?**

1.43.1 All Chief Officers shall maintain an inventory for each establishment within their control, recording an adequate description of readily portable items of furniture, fittings, equipment, tools, plant and machinery in a form approved by the Chief Finance Officer.

1.43.2 All Chief Officers shall arrange for regular physical checks (at least annually) to be carried out of equipment, stores etc. against the relevant records. Any surplus, deficiency or deterioration revealed as a result of such checks shall be identified, investigated, pursued to a satisfactory conclusion and the inventory updated accordingly. All changes shall be reported to the Chief Finance Officer in accordance with the annual accounts closure process, for which guidance is issued annually.

1.43.3 The Council's property shall not be removed other than in accordance with the ordinary course of business, or used other than for the Council's purposes, except where the relevant Director has given specific written directions.

1.43.4 Assets owned by the Council shall, as far as possible, be effectively marked as Council property.

1.44 **When may surplus / obsolete stock be disposed of?**

1.44.1 Before Chief Officers take any action on the disposal of surplus or obsolete stock, they should consult other Chief Officers to determine if there is a continuing need for the item(s) within the Council. Where there is no internal need for the item(s), Directors shall arrange for the items to be offered for sale by competitive tender or public auction, except as agreed otherwise by the Chief Finance Officer and in accordance with the Contract Procedure Rules.

1.44.2 The Chief Finance Officer shall be notified of the intention to dispose of any item which might be regarded as a capital asset, or which was originally obtained via a leasing agreement.

1.45 **What are the competition requirements for disposals made by the Council?**

1.45.1 Assets for disposal must be sent to public auction except where better value for money is likely to be obtained by inviting Quotations and Tenders.

1.45.2 Where Quotations or Tenders are used, the method of disposal of surplus or obsolete stocks / stores or assets other than land must be determined as follows:

1.45.3 The financial thresholds applicable to disposals made by the Council and the disposal methods to be adopted are set out in the Financial Limits Annex.

1.45.4 The Council's Asset Acquisition and Disposal Policy applies to disposals of land assets.

1.46 Who must approve leasehold interests?

Any acquisition, extension or variation by the Council of a leasehold interest in land or buildings must be approved by the Chief Finance Officer. Such arrangements must represent Value for Money and be accounted for appropriately.

1.47 How are leased assets managed?

1.47.1 All leased assets shall be identified and recorded separately in any inventory (section 18.43).

1.47.2 No leased asset shall be disposed of without the written agreement of the Chief Finance Officer.

1.47.3 Assets leased by the Council must be maintained in full working order in accordance with the terms of the lease and shall not be adapted for any alternative use without the prior written agreement of the Chief Finance Officer.

1.48 What are the Council's arrangements for asset security?

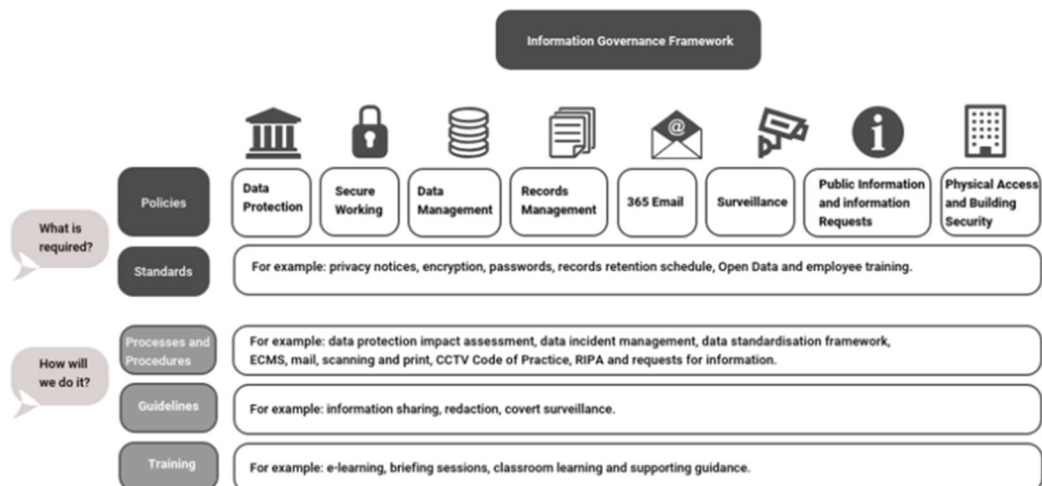
1.48.1 All Directors shall be responsible for introducing and maintaining adequate arrangements for all aspects of security of assets under their control, including personnel, stores, equipment, cash, data, and confidential information. The Chief Finance Officer shall be consulted in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.

1.48.2 The Chief Finance Officer shall be responsible for ensuring that secure arrangements are made for the preparation and holding of pre-signed cheques, stock certificates, bonds and other financial documents.

1.48.3 All Directors should ensure that contingency plans are in place for the security of assets and continuity of service in the event of disaster or system failure.

1.49 What are the Council's arrangements for information governance?

1.49.1 All employees of the Council have a personal responsibility to protect and maintain the confidentiality of information, whether held in paper-based or computerised records. Information may be classified as sensitive, or may possess some intrinsic value, and its disclosure or loss could result in a cost to the Council in some way. Officers should ensure that operational activity complies with the policies that comprise the Information Governance Framework.



1.49.2 All Chief Officers shall ensure their staff have an awareness of safety and security issues in relation to information, and an appreciation of the individual responsibilities of staff under the Health and Safety at Work Act 1974 and otherwise to ensure the safety of individuals and the security of the Council's assets.

1.49.3 The Council has adopted a Computer Security Code of Practice. All Chief Officers should ensure that their staff are familiar with this document, and that effective controls and security routines are operated to protect data against the hazards listed (e.g., computer viruses; unauthorised access; loss of data etc.).

1.49.4 It is the responsibility of Chief Officers to ensure that all computerised systems within their responsibility are properly registered and operated in accordance with requirements of applicable data protection legislation.

1.50 What are the Council's arrangements in respect of insurance?

1.50.1 The Chief Finance Officer shall ensure that adequate insurance protection is maintained for the Council's assets and operations where it is considered to be cost-effective and appropriate. Such protection may, on advice, be arranged by way of external insurance cover, or by way of an internal 'Insurance Fund' established for that purpose, or a combination of such measures.

1.50.2 The Chief Finance Officer shall be responsible for the negotiation of all the Council's insurance contracts, and Chief Officers shall provide all such information and assistance as is required to facilitate such negotiations. No insurance contracts may be entered into by Chief Officers other than through the Chief Finance Officer.

1.50.3 Each Chief Officer shall give prompt notification to the Chief Finance Officer of all new insurable risks and all changes in operations, responsibilities, contractual arrangements, indemnities, or ownership or occupation of properties in which the Council has an interest whenever such changes may have a bearing on any of the Council's insurance arrangements.

1.50.4 Each Chief Officer shall be responsible for providing prompt notification to the Chief Finance Officer of all incidents likely to give rise to an insurance claim by or against

the Council. In the case of accidents involving death or serious injury to any party, such notification shall in the first instance be by way of an immediate oral report.

- 1.50.5 Each Chief Officer shall ensure full and prompt co-operation of their Service and individual staff in the investigation, defence and negotiation of claims.
- 1.50.6 Chief Officers may arrange with the Chief Finance Officer for the provision of insurance cover additional to those arranged generally for the Council when they judge such additional cover to be appropriate based on the risk involved.
- 1.50.7 Fortuitous accidents and losses, which arise in a wide variety of ways, may have a very significant impact both in humanitarian terms, and in terms of financial cost to the Council. It is the responsibility of every Chief Officer to manage the operations of their Directorate in such a way as to reduce, as much as reasonably practicable, both the humanitarian and financial costs of risks. To this end, all Chief Officers must consider the risk and insurance implications of all existing and new operations undertaken, and contracts and indemnities entered into; where appropriate consulting with specialist Health and Safety, Risk Management, Insurance, Legal or other technical staff within the Council in order to minimise the attendant risks.

1.51 What are the Council's arrangements for risk management?

- 1.51.1 The Chief Finance Officer is responsible for risk management.
- 1.51.2 The Council has a [Risk and Opportunity Management Policy](#), agreed by the Executive, which articulates the Council's risk appetite and how it manages risks and opportunities.
- 1.51.3 The Head of Policy, Governance and Information shall, in consultation with the Chief Finance Officer, provide advice on risk management and the risks facing the Council in relation to the development and operation of the Council's Risk and Opportunity Management Policy. Each Chief Officer has a responsibility to support these initiatives with the aim of improving risk management throughout the organisation.

INTERNAL AUDIT

1.52 What is Internal Audit?

- 1.52.1 Internal Audit systematically monitors the Council's objectives and, through an examination of system and management controls, attempts to ensure that those objectives are being met in the most efficient, economic and effective manner.
- 1.52.2 Every local authority is required to maintain adequate and effective Internal Audit⁹. The Council has delegated this statutory responsibility to the Chief Finance Officer.

1.53 What is the scope of the Internal Audit Service's role?

- 1.53.1 As a service to management, the Internal Audit Service shall provide an independent appraisal of all the Council's activities, reporting on the adequacy and effectiveness of the systems of internal control, including management controls and arrangements.

⁹ [Accounts and Audit Regulations 1996](#)

1.53.2 The Internal Audit Section's appraisal has the following objectives:

- (a) to review and appraise the soundness, adequacy and application of accounting, financial and other internal controls;
- (b) to ascertain the extent to which systems of control ensure compliance with established policies and procedures;
- (c) to ascertain the extent to which assets and interests entrusted to or funded by the Council are properly controlled and safeguarded from losses of all kinds;
- (d) to ascertain that accounting and other information is reliable as a basis for the production of accounts and other returns;
- (e) to ascertain the integrity and reliability of financial and other information provided to management, including that used in decision making; and
- (f) to ascertain that systems of control are laid down and operate to promote the most economic, efficient and effective use of resources.

1.53.3 The Chief Finance Officer shall ensure that Internal Audit is adequately resourced to perform its role effectively.

1.54 **What is the Chief Finance Officer authorised to do in connection with Internal Audit?**

1.54.1 For the purposes of Internal Audit, the Chief Finance Officer or their authorised representative(s) shall have authority on production of identification to:

- (a) enter any Council property or land at all reasonable times;
- (b) have access to all assets, staff, records, computer files, documents and correspondence relating to any financial and other transactions;
- (c) require and receive such explanations as are necessary concerning any matter under examination;
- (d) require any employee holding or controlling cash, stores or any other Council property to produce such items;
- (e) access records belonging to third parties, such as contractors and partners, when required; and
- (f) have direct access to the Head of Paid Service and the Executive.

1.54.2 In relation to these rights of access, the Internal Audit Service is regarded as having a personal responsibility to observe the highest standards of confidentiality and personal integrity. Any breach of this could give rise to disciplinary proceedings.

1.55 What happens if there is irregularity or suspected irregularity?

- 1.55.1 Whenever any matter arises which involves, or is thought to involve, irregularities concerning cash, stores or other property of the Council or any suspected irregularity in the exercise of the functions of the Council, the Chief Officer concerned shall immediately notify the Chief Finance Officer or Internal Audit (as appropriate), who shall investigate and report as necessary. Pending any investigation and reporting, the appropriate Chief Officer should take all necessary steps to prevent further loss and secure records and documentation against removal or alteration.
- 1.55.2 Individuals may also report any matter of concern under the [Whistleblowing Policy and Procedure](#).
- 1.55.3 Chief Officers shall ensure that any agreed actions arising from audit recommendations are carried out in a timely and efficient fashion.

1.56 What is the role of the Audit Committee in relation to Internal Audit?

The role of the Audit Committee in relation to Internal Audit is set out in section 9.6.3 of the Constitution.

TAXATION

- 1.56.1 The Chief Finance Officer is responsible for ensuring compliance with all relevant taxation regulations and guidance that affects the Council either directly, as a consequence of its own activities, or indirectly, as a result of service delivery through external partners.
- 1.56.2 To enable the Chief Finance Officer to fulfil the requirements of this role, Chief Officers will:
- (a) Ensure that the Chief Finance Officer is consulted on all proposals that may alter or affect the Council's tax liability.
 - (b) Ensure that the VAT guidance issued by the Chief Finance Officer is complied with (i.e., to ensure that the correct liability is attached to all income due and that all amounts recoverable on purchases can be claimed).
 - (c) Ensure that, where construction and maintenance works are undertaken, the sub-contractor fulfils the necessary construction industry tax scheme requirements (as advised by the Chief Finance Officer).
 - (d) Ensure that the Head of Strategic Commissioning & Procurement's guidance on fee payments to consultants, individuals or partners is complied with.
- 1.56.3 The Chief Finance Officer will maintain the Council's tax records, make all tax payments, receive tax credits and submit tax returns by their due date, as appropriate.

PREVENTING FRAUD AND CORRUPTION

1.57 What are the Council's Anti-Money Laundering Policy and Procedures?

1.57.1 The Council has an effective Anti-Money Laundering Policy and Procedures and maintains a culture that will not tolerate fraud or corruption. It is the responsibility of the Chief Finance Officer to maintain the Council's Anti-Money Laundering Policy and Procedures.

1.57.2 Chief Officers must ensure that this policy and associated procedures that sit behind it are adhered to and that all appropriate action is taken to prevent money laundering. This includes reporting all suspected irregularities to the Chief Internal Auditor (see section 18.55).

1.58 **When must Officers declare an interest?**

To avoid giving rise to suspicion about the honesty and integrity of the Council or its employees, or giving the impression of corruption or improper behaviour, all interests of a personal and/or financial nature with external bodies or persons who have dealings with the Council, or any other interests which could conflict with an officer's duties, must be declared in accordance with the Officer Code of Conduct.

1.59 **When may gifts and hospitality be accepted?**

1.59.1 Officers must be cautious regarding offers of gifts and hospitality as acceptance can easily give the impression of improper behaviour or favour.

1.59.2 The Council's Gifts and Hospitality Policy explains how offers of gifts and hospitality are to be dealt with, including what can be accepted, what cannot be accepted, and what must be declared.

1.60 **How does the Council deal with its anti-money laundering obligations?**

1.60.1 Money laundering is defined as:

- (a) Concealing, disguising, converting, transferring or removing criminal property from the Country.
- (b) Being concerned in an arrangement which a person knows of, suspects or facilitates the acquisition, retention, use or control of criminal property.

1.60.2 In accordance with the Council's Anti Money Laundering Policy, all suspected attempts to use the Council to launder money must be reported to the Chief Internal Auditor who is the Council's Money Laundering Reporting Officer.

1.60.3 Chief Officers must ensure that their staff understand what money laundering is and their obligations under the anti-money laundering legislation, so that they can recognise situations that might lead to suspicions of money laundering.

1.60.4 When a person knows or suspects that money laundering activity is taking place (or has taken place) or becomes concerned that their involvement in a matter may amount to a prohibited act under the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2011, they must disclose this as soon as practicable or risk prosecution.

1.60.5 To mitigate the risks of the Council being used to launder money:

- (a) cash receipts exceeding £1,000 will not be accepted other than with the prior approval of the Section 151 Officer; and
- (b) receipts and payments unrelated to the Council's own activities will not be paid into or from a Council bank account without the prior approval of the Section 151 Officer.

1.61 How does the Council deal with its anti-bribery obligations?

1.61.1 Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage. The Bribery Act has been enacted to enable robust action against such activity.

1.61.2 In accordance with the Council's Anti-bribery Policy, the detection, prevention and reporting of bribery and other forms of corruption are the responsibility of all those working for the Council or under its control.

DRAFT

E – FINANCIAL PROCESSES

Sound financial systems and procedures are essential to providing an effective framework of accountability and control for the Council's financial governance.

The main accounting system should provide data that is accurate and adequate for the published final accounts and management in the conduct of their business. Secure and reliable systems are essential to ensure that individual transactions are processed and recorded accurately.

FINANCIAL SYSTEMS

1.62 What are the Chief Finance Officer's responsibilities in relation to financial systems?

1.62.1 The Chief Finance Officer is responsible for the provision of a corporate system for the preparation of the Council's accounts and for recording managing and reporting expenditure and income. This is currently provided by means of the Council's financial system.

1.62.2 The Chief Finance Officer is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any changes made by Chief Officers to existing financial systems, or the establishment of new systems, must be approved by the Chief Finance Officer. Any changes to agreed financial procedures by Chief Officers to meet their own specific Directorate needs should be approved by the Chief Finance Officer.

1.63 What are Chief Officers' responsibilities in relation to financial systems?

1.63.1 Chief Officers are responsible for the proper operation of financial processes in their own directorates.

1.63.2 Chief Officers are responsible for ensuring that the financial system accurately records the financial transactions of their functions, and for complying with guidance issued by the Chief Finance Officer on the uses of such systems and the information to be recorded.

1.63.3 Chief Officers shall ensure that all income and expenditure, regardless of its source, is processed through the financial system and that all transactions are recorded in a manner that complies with proper accounting practices, enables returns to be made to taxation authorities, and complies with other legal requirements. The Chief Finance Officer shall give guidance and training as necessary to enable Chief Officers to fulfil this obligation.

1.63.4 Chief Officers shall use the financial system as the main method of monitoring expenditure and income in their Directorates and for comparing spending against Directorate Budget. Chief Officers shall keep such subsidiary information and records as are necessary to monitor effectively expenditure, income and commitments, and to support any required returns.

1.63.5 Chief Officers shall provide all relevant information deemed necessary to compile the Council's annual accounts in accordance with guidance issued by the Chief Finance Officer.

1.64 When should Chief Officers discuss changes to systems and procedures with Internal Audit?

Chief Officers shall ensure that new systems and procedures for maintaining financial and non-financial records or records of assets, or changes to such arrangements, are discussed with and agreed by the Head of Internal Audit prior to implementation.

FINANCIAL PROCEDURES

1.65 What are Chief Officers' responsibilities in relation to financial procedures?

Chief Officers are responsible for promoting the financial management standards set by the Chief Finance Officer in their service areas and monitoring adherence to the standards and practices, liaising as necessary with the Chief Finance Officer. All Chief Officers shall promote sound financial practices in relation to the standards, performance and development of staff in their Directorates.

1.66 What are the Chief Finance Officer's responsibilities in relation to financial administration?

1.66.1 The Chief Finance Officer shall be responsible for keeping the principal accounting records for all Directorates of the Council.

1.66.2 The Chief Finance Officer shall ensure that the accounts and accompanying reconciliations are properly prepared and presented for audit in accordance with relevant guidelines and statutes.

1.66.3 All accounts, financial records, including computerised records and financial administration procedures shall be kept in a form approved by the Chief Finance Officer.

1.66.4 After conferring with relevant Chief Officers, the Chief Finance Officer shall issue instructions as are deemed necessary to carry out the day-to-day financial work of the Council.

1.66.5 Prior to introducing, amending or discontinuing any record or procedure relating to financial transactions or accounting in their Directorate, Chief Officers shall consult the Chief Finance Officer.

1.67 What are Officers' responsibilities in relation to financial administration?

Chief Officers and Budget Holders shall comply with accounting guidance provided by the Chief Finance Officer and will supply them with information when required to support proper financial administration.

UNOFFICIAL (TRUST) FUNDS

1.68 What is an 'unofficial fund'?

An 'unofficial fund' is any fund where the income and expenditure does not form part of the Council's accounts, but which is controlled wholly or in part by an Officer due to their employment by the Council or by, for instance, the Governors of a school or other semi-autonomous body.

1.69 How are unofficial funds managed?

1.69.1 Relevant Chief Officers shall be responsible for the immediate control of unofficial funds within or relating to their Directorate.

1.69.2 The Chief Finance Officer shall be informed of the existence of all unofficial funds and shall issue and update accounting instructions for them where necessary.

BANKING, INCOME AND TREASURY MANAGEMENT

Proper administration of bank accounts is fundamental for financial control. All income collection systems must provide for prompt recording of both cash and credit and the prompt banking of all receipts. Income is vulnerable if not adequately and effectively controlled.

BANKING

1.70 What are the Council's banking arrangements?

1.70.1 All arrangements concerning the opening, closing and operation of the Council's bank accounts shall be notified to the Chief Finance Officer. All bank Mandates shall be signed by the Chief Finance Officer or their nominated representative.

1.70.2 All banking arrangements, including automatic debiting or payments, and additional banking services (for example, credit/debit cards) will be under the control of the Chief Finance Officer and their Directorate.

1.70.3 Each bank account operated by the Council shall bear an official title and in no circumstances shall an account be opened in the name of an individual except in respect of an account in the name of the Returning Officer for the Middlesbrough Constituency.

TREASURY MANAGEMENT

Treasury management involves the management of the Council's cash flows, borrowings and treasury investments, and the effective control of the risks associated with those activities.

1.71 What are the treasury management requirements for the Council?

1.71.1 The Council is required to have regard to CIPFA's Treasury Management Code ('TM Code'). Accordingly:

- (a) The Council will create and maintain, as the cornerstones for effective treasury and investment management:

- (i) a treasury management policy statement stating the policies, objectives and approach to risk management of its treasury management activities;
- (ii) suitable treasury management practices (TMPs) setting out the manner in which the Council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities;
- (iii) investment management practices (IMPs) for investments that are not for treasury management purposes.

The content of the policy statement, TMPs and IMPs will follow the recommendations contained in sections 6, 7 and 8 of the TM Code, subject only to amendment where necessary to reflect the Council's particular circumstances. Such amendments will not result in the Council materially deviating from the TM Code's key principles.

- (b) The Executive and the Audit Committee will receive reports on the Council's treasury and investment management policies, practices and activities, including an annual strategy and plan in advance of the year, a mid-year review and an annual report after its close in the form prescribed in the TMPs and IMPs.
- (c) The Council delegates responsibility for the implementation and regular monitoring of its treasury management policies and practices to the Executive, and for the execution and administration of treasury management decisions to the Chief Finance Officer, who will act in accordance with the organisation's policy statement, TMPs and IMPs, and if they are a CIPFA member, CIPFA's Standard of Professional Practice on treasury management.
- (d) The Council nominates the Audit Committee to be responsible for ensuring effective scrutiny of the treasury management strategy and policies. Audit Committee will review and comment on the Council's Treasury Management Strategy before it is submitted to Full Council for approval.

1.71.2 All money received by the Council shall be aggregated for the purpose of treasury management and shall be under the control of the Chief Finance Officer.

1.72 In what name are the Council's borrowings to be effected?

All borrowings and investments shall be effected in the name of Middlesbrough Borough Council.

1.73 Who is the registrar for stocks, bonds and mortgages?

The Chief Finance Officer shall be the registrar for all stocks, bonds and mortgages of the Council and shall maintain records of all transactions relating thereto, and of all borrowings of money by the Council.

INCOME

1.74 What are the Council's arrangements for income collection?

- 1.74.1 Notwithstanding that income may be collected by another Officer, all arrangements for the collection of income due to the Council shall be agreed with the Chief Finance Officer. Chief Officers shall maintain records of all income transactions in a form agreed by the Chief Finance Officer.
- 1.74.2 The Chief Finance Officer shall set out the arrangements necessary to ensure that all monies due to, and received by, the Council are banked promptly.
- 1.74.3 The Chief Finance Officer will set the requirement for all receipt forms, books, tickets and other such items, with which Officers must comply. Every issue of any such document shall be acknowledged by the signature of the Officer to whom the issue is made. No Officer shall give a receipt for any money received on behalf of the Council on any form other than an official receipt form or ticket.
- 1.74.4 All sums received by Officers shall be paid over promptly to the Chief Finance Officer, or by arrangement, to the Council's bankers. No deduction should be made from such money, unless specifically authorised by the Chief Finance Officer. Personal cheques must not be cashed out of collections.
- 1.74.5 The Chief Finance Officer shall be notified as early as possible of all money due to the Council under contracts, or any other arrangements which would involve the receipt of money by the Council and shall have access to the original documents or relevant particulars.

DEBT MANAGEMENT

1.75 What is the Council's process for managing debts?

- 1.75.1 Where the Council is delivering works, goods or services, Chief Officers should, in the first instance, seek payment in advance or at the point of delivery. Only where this is not possible should an invoice be raised.
- 1.75.2 Where income is due to the Council in respect of work done, goods supplied, or services rendered but not paid for in advance or at the point of service provision, Chief Officers must ensure that invoices are issued promptly and accurately in respect of any amount due. Chief Officers should ensure that full details of the debtor and the work, goods or services are recorded accurately.
- 1.75.3 The Chief Finance Officer will establish performance management systems to monitor the recovery of income and flag instances of delayed or non-recovery.
- 1.75.4 Evidence of any debt shall be retained by Chief Officers for an appropriate period in accordance with the Council's document retention policies.
- 1.75.5 All Chief Officers have a responsibility to collect debts which they have originated by providing any further information requested by the debtor, and pursuing the debt on the Council's behalf.

1.75.6 Where Chief Officers are unable to collect debts as set out above, the Chief Finance Officer and the Monitoring Officer shall take all reasonable steps to obtain recovery of debts (involving debt collection agencies and / or Court proceedings as appropriate).

1.76 When will bad debts be written off?

If, in the course of collecting debt, it becomes apparent that:

- (a) full payment or repayment is unlikely to be made;
- (b) continued recovery action is ineffective or not economic; and/or
- (c) any possible arrangement will not lead to the debt being settled within a realistic and reasonable timeframe,

the Council will write off the debt to reflect income prudently within its accounts. This does not necessarily mean that the Council will stop pursuing the debt. In the event that a written off debt is subsequently recovered, it will be written back as income into the Council's accounts upon receipt.

1.77 Who has authority to write off a debt?

1.77.1 The Chief Finance Officer (or their nominated deputy) has the authority to approve write offs of unpaid debts up to the limit set out in the Financial Limits Annex per individual debt subject to agreement from the relevant Budget Manager, Legal Services and the relevant Finance Business Partner that:

- (a) there is no realistic chance of recovering the debt; or
- (b) it is considered uneconomical to attempt debt recovery.

The Chief Finance Officer has the overriding authority to approve or reject write offs if agreement cannot be reached between the various parties.

1.77.2 Any individual debts over the limit set out in the Financial Limits Annex must be approved by the Executive, subject to the recommendation of the Chief Finance Officer.

1.78 Where are bad debts allocated?

Write off of irrecoverable debts will be charged to the relevant budget code where the debt was first raised, unless otherwise agreed by the Chief Finance Officer or their delegated representatives.

1.79 What happens if a debt is not recovered within three (3) years?

Credit balances, which are over three (3) years old, and which cannot be substantiated or justified, will be released to the relevant fund after the closure of accounts of each year, subject to formal approval by the Chief Finance Officer.

1.80 How are bad debts accounted for?

- 1.80.1 The Chief Finance Officer will determine the criteria for calculating how much to provide for outstanding debts in relation to their age and type in consultation with the relevant Budget Holders and Legal Services, and in line with relevant accounting standards.
- 1.80.2 Bad debt provisions will be recalculated based on the latest debt levels and types on at least a quarterly basis. The impact of increases or decreases required to the general bad debt provision will be charged to the General Fund.
- 1.80.3 Each year, consideration will be given as to whether any budget provision should be made to account for the potential impact of bad debt on the Council's Revenue Budget in the coming year. This will be approved as part of the annual Budget setting process. Any savings realised against this budget provision will be transferred to reserves.

1.81 How are bad debts reported?

The year-end financial outturn report will provide a summary of all irrecoverable debt written off during the year.

CLOSING OF ACCOUNTS

1.82 What is the process for closing the Council's accounts?

- 1.82.1 The Chief Finance Officer shall be responsible for the production and publication of the Council's year-end accounts and financial statements in the form, and according to the timetable, required by applicable legislation and guidance.
- 1.82.2 The Chief Finance Officer shall provide all relevant Officers with guidance on the production of year-end accounts and financial statements. This guidance shall detail the timetable for production of the final accounts, the information and action required from each Directorate and any other details necessary to ensure that Officers are able to discharge their responsibilities under this section 18.82.
- 1.82.3 The Chief Finance Officer shall present the Statement of Accounts for the year in question to the Audit Committee and the Council's External Auditors as early as possible.
- 1.82.4 Chief Officers and Budget Holders must comply with accounting guidance provided by the Chief Finance Officer and supply information when required in relation to the closing of accounts.
- 1.82.5 The Chief Finance Officer shall retain, in safe custody, copies of the audited Statement of Accounts including the External Auditor's signed certificate and opinion. The Statement of Accounts will be published as soon as possible on the Council's website, following certification by the Chief Finance Officer, and then made available for public inspection in line with applicable legislation.

CONTRACTS AND PURCHASING

Officers authorised to commit the Council to current or future expenditure are expected to act responsibly and demonstrate that the arrangements and procedures followed comply with the Council's instructions.

1.83 What are the rules that apply to contracts and purchasing?

- 1.83.1 All contracts, agreements and purchases are subject to the requirements of the Contract Procedure Rules in section 19 of the Constitution, and the procedures and financial limits which they prescribe.
- 1.83.2 Before entering into purchasing commitments, Chief Officers and Budget Holders shall ensure that the estimated cost is covered by financial provision in the budget to which it relates.
- 1.83.3 Official orders and official purchasing/procurement cards must not be raised for any personal or private purchases, nor must personal or private use be made of Council contracts.

ORDERS FOR WORK, GOODS AND SERVICES

1.84 What form should orders for work, goods and services take?

Official orders shall be in a form approved by the Chief Finance Officer and released only by Officers authorised by the appropriate Chief Officer. All official orders issued by a Directorate shall be the responsibility of that Chief Officer. An up to date list of authorised Officers shall be maintained by Chief Officers and a copy sent to the Chief Finance Officer. Any changes to the list of authorised officers shall be notified to the Chief Finance Officer immediately.

1.85 When are official orders required?

- 1.85.1 Official orders shall be issued for all goods, work and services except where the Council enters into a formal contract with a supplier made for supplies of utility services, periodic payments such as rents or rates, for petty cash purchases or such other exceptions as the Chief Finance Officer may approve.
- 1.85.2 All goods, equipment etc. ordered on official order forms should be for the Council's own use.

1.86 How may official orders be amended?

Any subsequent variations or amendments to official orders shall be approved by an authorised Officer, linked to the original record.

CONTRACTS

These regulations with regard to contracts shall be read in conjunction with the Contract Procedure Rules in section 19 of the Constitution.

All Chief Officers should ensure that adequate and effective systems and procedures are operated for arranging and managing contracts and agreements having regard to advice and

guidance from the Chief Finance Officer on financial aspects. This includes the financial vetting of contracts where appropriate.

1.87 What specific issues relate to contracts for the provision of social care by independent providers?

Contractual agreements for the provision of social care between the Council and independent sector providers shall take into account the following specific issues:

- (a) the need to reflect a high degree of client, carer and client's family's involvement in contracting arrangements;
- (b) The need for a long term service relationship avoiding regular changes in service provider, particularly in the case of long term residential care; and
- (c) the involvement of potential providers, such as small charities or voluntary organisations, who may have limited experience and resources to cope with complex contracting and tendering arrangements.

1.88 What are the requirements for contracts in relation to borrowing, leasing and property etc.?

1.88.1 Any contract or agreement involving a charge upon assets or property must be forwarded to the Monitoring Officer for signature on behalf of the Council.

1.88.2 Except on the instruction of the Chief Finance Officer, no other Officer shall enter into any agreement or contract involving the borrowing of funds, leasing of equipment, credit arrangement, hire purchase agreement, insurance contract, or the investment of Council monies; nor the authorising of any direct debit to be charged against the Council's bank accounts (except as agreed and authorised by the Chief Finance Officer).

1.88.3 Except as agreed by the Executive, no officer may raise money by securing any legal charge or claim upon the buildings, property or any other asset or interest of the Council.

1.89 What form should contracts take?

The content and form of contracts and agreements are to be agreed by the Monitoring Officer before finalising by any Director on behalf of the Council.

1.90 What are the insurance and risk management requirements for contracts?

Prior to entering into any contract, Directors will fully consider all Insurance and risk management implications, and where necessary seek appropriate advice from the Chief Finance Officer.

PAYMENT OF ACCOUNTS

1.91 Who is authorised to make payments on account?

1.91.1 The Chief Finance Officer has authority to pay all amounts to which the Council is legally committed out of the Council's bank account, after authorisation of invoices for

payment by the appropriate Budget Holder in accordance with these Financial Regulations.

- 1.91.2 Payments on account to contractors shall be made only on a certificate issued by the appropriate Chief Officer (or private architect, engineer or consultant where they are engaged by the Council) or other Officer nominated in writing for the purpose.
- 1.91.3 Before the appropriate Chief Officer or duly authorised person issues a final certificate of payment under a contract, the Chief Finance Officer shall be notified and have the right to examine the contractor's final account, together with other such documents as the Chief Finance Officer may consider necessary. The appropriate Chief Officer shall notify the Chief Finance Officer in writing on the satisfactory completion of the maintenance period under a contract so that any performance bonds may be released.

1.92 **Who should authorise invoices?**

Unless alternative arrangements have been agreed and approved by the Chief Finance Officer, the appropriate Chief Officer responsible for issuing an order, or an Officer nominated by them, shall authorise all invoices.

1.93 **When may the Council make payments in advance?**

- 1.93.1 As a general rule, the Council will not make payment in advance of works, goods or services being delivered and/or received. The only circumstances where payment in advance may be appropriate are as follows:
- (a) for software licenses or IT arrangements;
 - (b) for bonds or rent payable in advance;
 - (c) where specifically advised by Legal Services or Strategic Commissioning & Procurement as part of the contractual arrangements.
- 1.93.2 If there is any uncertainty as to whether a payment may be made in advance, the advice of the Chief Finance Officer must be sought. If payments in advance cover multiple financial years, then a financial appraisal of the relevant supplier should be undertaken and kept under periodic review as part of contract management arrangements.

PURCHASE CARDS

1.94 **How and when are purchase cards used by the Council?**

- 1.94.1 Purchase cards allow goods and services to be purchased and charges made to the Council electronically. These must be minor in nature. Any purchase of over £100 should be made via the normal purchasing route in accordance with the Contract Procedure Rules, unless there is a pre-determined reason otherwise which has been agreed with the Chief Finance Officer or their nominated representatives.
- 1.94.2 Purchase cards are for business use only and must not be used by staff for personal purchases. Officers and Members must arrange the use of a purchase card with

Strategic Commissioning & Procurement and must comply with the Purchase Cards Scheme, as determined by Chief Finance Officer, in relation to its use.

- 1.94.3 All purchases made with a Council purchase card must demonstrate Value for Money and should be supported by a VAT receipt, where relevant. If there is any doubt about whether a VAT receipt is required, clarification should be sought from the Council's VAT Officer.
- 1.94.4 Any purchases made using a purchase card will be reviewed by relevant Finance Business Partners and any items purchased with a purchase card that do not comply with the Purchase Cards Scheme, will be raised with the appropriate Budget Holder.

DRAFT

EMPLOYEE AND PERSONNEL ASPECTS

The largest element of Council expenditure is the cost of staff. Reliable and timely information is required to ensure that only genuine employees are paid in accordance with their proper entitlement. Failure to apply taxation and national insurance regulations correctly to all payments could incur significant financial penalties.

1.95 Who is responsible for making arrangements for paying employees?

1.95.1 The payment of salaries, wages, pensions, compensation and other emoluments to all employees or former employees of the Council and allowances to Members shall be made by the Chief Finance Officer or under arrangements approved and controlled by the Chief Finance Officer.

1.95.2 For the avoidance of doubt, the Chief Officer with responsibility for HR is responsible for operational matters in relation to employees, and is responsible for the Council's payroll function.

1.96 What are Chief Officers' responsibilities in relation to employees?

1.96.1 All Chief Officers shall ensure appointments are made in accordance with the regulations of the Council and approved establishments, grades and scale of pay and that adequate budget provision is available.

1.96.2 All Chief Officers shall ensure that salaries, wages, pensions etc. are processed only through the payroll system. Careful consideration should be given to the employment status of individuals employed on a self-employed, consultant or sub-contract basis. The Inland Revenue applies a tight definition for employee status, and in cases of doubt, advice should be sought from the Chief Officer with responsibility for HR and the Chief Finance Officer.

1.96.3 All timesheets and other pay documents shall be submitted through the Council's electronic HR system and will be approved by the relevant Chief Officer, or their representative Budget Holder.

1.96.4 All Chief Officers shall determine which Officers from within their Directorate are authorised to certify salaries and wages documents. These delegations must be kept up to date on the Council's electronic HR system.

1.96.5 All relevant records and other pay documents shall be submitted to HR in accordance with timetables and deadlines determined by the Council.

1.97 What is the process for approving expenses and allowances?

1.97.1 The Chief Finance Officer shall be responsible for making arrangements for the administration and regulation of claims for expenses and allowances to employees and members of the Council and its committees and other approved bodies. The Monitoring Officer shall be responsible for monitoring the budget for Member's expenses.

1.97.2 Certification of Officers' travel and subsistence claims, by or on behalf of a Directorate, shall be taken to mean that the certifying officer is satisfied that the journeys were

authorised, expenses properly incurred and that the allowances are payable by the Council.

DRAFT

EXTERNAL ARRANGEMENTS

PARTNERSHIPS AND EXTERNAL BODIES

Partnerships and other external bodies are likely to play a key role in delivering community strategies and in helping to promote and improve the well-being of the area. The Council works in partnership with others: public agencies, private companies, community groups and voluntary organisations. It still deliver some services, but its distinctive leadership role is to bring together the contributions of the various stakeholders.

1.98 How are Council functions delegated to external bodies?

1.98.1 The Executive is responsible for approving delegations of Executive Functions, including frameworks for partnerships. The Executive is the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.

1.98.2 The Executive can delegate functions, including those relating to partnerships, to Officers. These delegations are set out in the Scheme of Delegation. Where functions are delegated, the Executive remains accountable for them to Full Council.

1.99 Who represents the Council on external bodies?

Save as otherwise set out in this Constitution, the Head of Paid Service represents the Council on partnership and external bodies, in accordance with the Scheme of Delegation.

1.100 What are the financial governance arrangements for external bodies?

1.100.1 The Monitoring Officer is responsible for promoting and maintaining the same high standards of conduct with regard to financial administration in partnerships that apply throughout the Council.

1.100.2 The Chief Finance Officer must ensure that the accounting arrangements to be adopted for partnerships and joint ventures are satisfactory. They must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies. The Chief Finance Officer must ensure that the risks have been fully appraised before agreements are entered into with external bodies.

1.100.3 Chief Officers are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies.

COUNCIL-OWNED COMPANIES

The Council recognises that a mix of different service delivery and business models are necessary to improve services and maximise value for money. Different service delivery models are available to the Council including the establishment of trading companies.

Further information in relation to Council-owned companies is contained in section 20 of the Constitution.

1.101 When may the Council establish a Council-owned company?

1.101.1 The Council will not establish a Council-owned company without the approval of the Executive. Any proposal to the Executive in support of establishing a Council-owned company must set out:

- (a) the short- and long-term financial implications of setting up the company;
- (b) a comprehensive risk assessment;
- (c) an explanation of how setting up the company contributes to the Council's strategic aims and objectives;
- (d) the legal basis for establishing the company;
- (e) the proposed governance arrangements for the company, including how the Council will manage the client-side arrangements;
- (f) a business plan for the company; and
- (g) the exit strategy for the arrangement.

1.101.2 Regard must always be had in relation to such proposals to any State Aid implications that might arise as a result of the provision of such benefits.

1.102 **What are the financial arrangements for Council-owned companies?**

1.102.1 The Chief Finance Officer is ultimately responsible for the financial management of all Council-owned companies, and will set the financial governance and accounting procedures for Council-owned companies.

1.102.2 Where the Council owns shares, or in some cases the share, in an external entity a shareholder representative will ordinarily be appointed. Currently the power to appoint the shareholder representative rests with the Mayor.

1.102.3 Council Officers, **with the exception of the Chief Finance Officer, the Monitoring Officer, and their deputies**, may serve as directors on the board, or as company secretary of a Council-owned company.

1.102.4 The principal responsibility for the financial management of Council owned and controlled entities is of the finance director, board of directors and other staff and officers of the entities. However, given the requirement for the Council to prepare and publish consolidated accounts referencing such entities and the responsibilities of the Chief Finance Officer as to proper accounting practices and protection of the Council's financial position, the Chief Finance Officer is authorised to exercise such control as is appropriate and lawful in relation to the proper financial management of such entities. This includes recommending to such entities the embedding of and compliance with appropriate accounting arrangements and the adoption

1.102.5 of appropriate Financial Regulations.

1.102.6 No grant, loan, credit or other form of assistance, financial or otherwise, shall be provided to any owned or controlled entities outside the approved business plan other

than with the prior agreement of the Chief Finance Officer and, where the transaction represents a key decision, Executive approval.

- 1.102.7 The Council will comply with all applicable legislation and guidance in relation to any Council-owned company, including the CIPFA local authority owned companies good practice guide.

PENSION FUND

1.103 What is the Pension Fund?

1.103.1 The Local Government Pension Fund is the pension scheme for local government employees. It is administered locally by 86 local pension funds in England and Wales. The Council is an 'Administering Authority' for the Pension Fund.

1.103.2 As an Administering Authority, the Council is responsible for managing and administering the Pension Fund in relation to those people for whom it is the Administering Authority.

1.104 What are the Chief Finance Officer's delegated powers in relation to the Pension Fund?

The Chief Finance Officer is authorised to manage the Pension Fund on a day-to-day basis, including the exercise of the Council's functions as Administering Authority, the power to seek advice from professional advisers, and to devolve the handing of the Pension Fund's investment to appropriate fund managers.

1.105 What is the role of the Teesside Pension Fund Committee?

The role of the Teesside Pension Fund Committee is set out in section 23 of the Constitution.

FINANCIAL LIMITS ANNEX

This Financial Limits Annex sets out the limits that apply to certain financial decisions made by the Council. The financial limits set out in this Annex apply to the Financial Regulations as if they were written out into those Regulations.

If there is any doubt as to the application of the financial limits in this Annex, advice should be sought from the Chief Finance Officer or their nominated representatives. Note that the financial limits set out in this Financial Limits Annex may change over time and advice should be sought from Finance on the current applicable financial limits.

KEY DECISION THRESHOLD

The financial threshold for Key Decisions is £200,000.

For the avoidance of doubt, any decision that will have a financial impact in terms of expenditure or savings in excess of £200,000 will be a Key Decision.

Provisions relating to Key Decisions are set out in section 13 of the Constitution.

SIGNIFICANT FINANCIAL IMPACT

Where the Financial Regulations refer to a decision or other action having a “significant” impact on a capital project or otherwise, this means that the financial impact is:

- in excess of £200,000; or
- 10% or more of the total project budget / relevant financial amount; and/or
- would represent a change in the anticipated outcomes.

EXTERNAL FUNDING

The following financial limits apply to approval of external funding applications:

Value of external funding	Approval
Up to £200,000	Chief Finance Officer
Above £200,000	Executive

VIREMENTS

The following financial limits apply to virements under section 18.37.4 of the Financial Regulations.

Virement category	Below £200,000	£200,000 or more
Virement or reallocation of budgets between Directorates	Relevant Chief Officer OR If the virement crosses Portfolios, the Chief Finance Officer in consultation with relevant Portfolio Holders	Executive
Virements or reallocation of budgets within Directorates	Relevant Chief Officer in consultation with the Chief Finance Officer's nominated deputy	Executive
Virements or reallocation of budgets within a Division of service	Head of Service in consultation with the Chief Finance Officer's nominated deputy	Executive
Virement or reallocation of capital budgets from one capital project to another (including underpends)	Relevant Chief Officers in consultation with the Chief Finance Officer	Executive

DEBT WRITE OFF

For the purposes of section 18.77 of the Financial Regulations, the following thresholds apply to the writing off of bad debts:

Value of debt to be written off	Approval
Up to £10,000	Chief Finance Officer, with the agreement of Legal Services, the relevant Budget Holder and the relevant Finance Business Partner Chief Finance Officer has ultimate say if agreement cannot be reached
Above £10,000	Executive, on the recommendation of the Chief Finance Officer

DISPOSAL OF ASSETS

The following thresholds apply to the disposal of assets by the Council for the purposes of section 18.45.3 of the Financial Regulations:

Total value or stocks / stores or assets	Disposal procedure
Up to £1,000	Two (2) written Quotations or public auction
Above £1,000 and up to £100,000	At least three (3) written Quotations or public auction
Above £100,000	Invitation to Tender to at least four (4) Bidders

DRAFT

1 CONTRACT PROCEDURE RULES

This section 19 sets out the Council's Contract Procedure Rules, which govern how the Council purchases goods and services.

Capitalised terms used in this section 19 are as defined in section 2.2 of the Constitution and, where applicable, in the Financial Procedure Rules in section 18.

1.1 What are the Contract Procedure Rules?

1.1.1 The Contract Procedure Rules outline the process to be followed to promote good purchasing practices within the Council, ensure public accountability, secure value for money, and deter corruption. Following the Contract Procedure Rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently and the best way to demonstrate cost-effectiveness.

1.1.2 A Responsible Officer must comply with these Contract Procedure Rules when making any purchase. These Contract Procedure Rules lay down the minimum requirements applicable to a purchase and Responsible Officers should note that a more thorough procurement procedure may be appropriate for a particular purchase. Strategic Commissioning & Procurement will provide advice on when this is the case.

These Contract Procedure Rules form an essential part of the Council's Constitution, and where these Contract Procedure Rules apply, compliance is mandatory. All Responsible Officers should ensure that they are familiar with these Contract Procedure Rules. Non-compliance with these Contract Procedure Rules is a disciplinary matter.

1.1.3 Where reference is made in these Contract Procedure Rules to the Procurement Regulations¹⁰, those regulations should be referenced and complied with. The Procurement Regulations are not explicitly written into the Constitution. Responsible Officers should seek further guidance from Strategic Commissioning & Procurement and/or Legal Services if they are unsure about the application of the Procurement Regulations.

1.1.4 **These Contract Procedure Rules apply to all purchases (i.e., all spend) made by the Council, whether a formal contract is entered into or not.**

1.2 How are the Contract Procedure Rules organised?

The Contract Procedure Rules are organised into the following sections:

A – Introduction

Purpose of Contract Procedure Rules

Breach of Contract Procedure Rules

Emergency Situations

¹⁰ [The Public Contracts Regulations 2015](#)

Amendment and Further Information

B – Defined Terms

C – Roles and Responsibilities

Officer Responsibilities

Responsibilities of Specific Members and Officers

D – Application of Contract Procedure Rules

Relevant Contracts

Exemptions

E – Procurement Thresholds

F – Preparing for Procurement

Procurement Pipeline

Pre-procurement Process

Make or Buy

Market Research and Consultation

Equality Impact Assessments

Choice of Procurement Route

G – Procurement Process

Approved Lists

Selective Tendering

Open Tendering

Frameworks

Direct Award

Route to Market

Light Touch Regime

Standards and Award Criteria

H – Mechanisms for Formal Tendering

Open Procedure

Restrictive Procedure

Competitive Procedure with Negotiation

Competitive Dialogue

Innovation Partnership

I – Tenders and Quotations

Invitations to Tender

Invitations to Quote

Submission of Tenders and Quotations
(Electronic Tendering)

Clarification of Tenders and Quotations

Evaluation of Tenders

Contract Award

Contract Records

Withdrawal of Tender

Nominated Sub-contractors

J – Contract and Other Formalities

Contract Documents

Execution of Contracts

Liquidated Damages

Bonds

Parent Company Guarantees

Prevention of Corruption

Declaration of Interests

K – The Life of the Contract

Contract Management

Contract Extensions and Variations

Termination of Contracts

L – Other Types of Contracts

Commissioning a Consultant

Procurement of Agency Staff

Concession Contracts

ANNEX 1 – Roles and Responsibilities of Officers and Members

ANNEX 2 – Letting of School Based Contracts

DRAFT

A – INTRODUCTION

PURPOSE OF CONTRACT PROCEDURE RULES

1.3 What is the purpose of these Contract Procedure Rules?

- 1.3.1 The Council is required to set out Contract Procedure Rules that govern how they procure contracts for the supply of goods and services and for the execution of works, which provide for a mechanism by which the Council will ensure that contracts are tendered competitively, and that the Procurement Regulations, and other applicable legislation, is complied with .
- 1.3.2 The intention of these Contract Procedure Rules is to ensure that the Council:
- a obtains Value for Money and Best Value;
 - b avoids and prevents corruption or the suspicion of it;
 - c is fair and equitable in the treatment of all suppliers;
 - d is transparent in how it conducts its procurement activities in accordance with the Procurement Regulations;
 - e seeks to reduce disadvantage, advance equality and promote community cohesion as defined in the Equality Act 2010;
 - f makes every effort to promote local businesses, including small and medium-sized enterprises (SME);
 - g promotes Social Value¹¹; and
 - h supports the Council's corporate and service aims and policies (to the extent compatible with the above).
- 1.3.3 Where a person who is not an Officer is required to make purchasing decisions or manage contracts on behalf of the Council (for example, agency staff), the contract engaging that person should include a condition that these Contract Procedure Rules apply to that person as if they were an Officer.
- 1.3.4 Unless specific grant terms require otherwise, these Contract Procedure Rules apply to any procurement made using funds received from external sources. Where grant conditions prescribe a particular procurement route, that route will be followed (provided that it is compliant with the Procurement Regulations and other applicable legislation).
- 1.3.5 Any breach or non-compliance with these Contract Procedure Rules should be dealt with in accordance with section 19.4.

BREACH OF CONTRACT PROCEDURE RULES

¹¹ [Public Services \(Social Value\) Act 2012](#)

1.4 What are the consequences of breaching these Contract Procedure Rules?

- 1.4.1 Breach of these Contract Procedure Rules is very serious and will constitute a disciplinary matter. Save where a valid waiver or exemption has been applied, any failure to comply with these Contract Procedure Rules will be treated as a breach.
- 1.4.2 It will be the responsibility of all Officers to address non-compliance swiftly and in the most appropriate way according to the circumstances.
- 1.4.3 Any breach of, or non-compliance with, these Contract Procedure Rules must, on discovery, be reported immediately to the Internal Audit Manager acting on behalf of the Chief Finance Officer. The Internal Audit Manager shall, after taking legal advice and consulting Strategic Commissioning & Procurement, decide whether each reported breach or non-compliance presents a significant risk of harm to the Council's interests and, if satisfied that such risk exists, shall undertake any necessary investigation and report the findings to the Chief Finance Officer.
- 1.4.4 Officers may also raise concerns relating to breach or suspected breach of, and non-compliance with, these Contract Procedure Rules anonymously in line with the Council's [Whistleblowing Policy and Procedure](#).
- 1.4.5 Officers should remain alert to fraud throughout the procurement life cycle and any concerns of fraud or corruption must be reported at the earliest opportunity to the Head of Strategic Commissioning & Procurement by emailing procurement@middlesbrough.gov.uk. They will decide whether the matter should be escalated to the Internal Audit Manager, acting on behalf of the Chief Finance Officer.
- 1.4.6 Officers must follow the Officer Code of Conduct in respect of any procurement activity. Failure to comply with the Officer Code of Conduct or these Contract Procedure Rules may constitute a disciplinary matter that may be pursued, as appropriate, in accordance with the Council's disciplinary policy.

1.5 What is the role of Councillors in procurement activities?

- 1.5.1 Councillors are not permitted to take part in the procurement process, and they must ensure that their actions do not compromise or impact on due process in relation to any Council procurement.
- 1.5.2 Concerns related to Councillor intervention in procurement activities may be subject to Standards Committee investigation.

1.6 How are breaches of these Contract Procedure Rules reported?

Reports on the number of confirmed breaches of these Contract Procedure Rules are to be sent by the Head of Strategic Commissioning & Procurement to the Chief Finance Officer on a quarterly basis.

EMERGENCY SITUATIONS

1.7 How do these Contract Procedure Rules apply in emergency situations?

- 1.7.1 Where the Chief Executive exercises their power under section 6.40.1 of the Constitution in an emergency, and a contract cannot be awarded under a competitive process pursuant to these Contract Procedure Rules, **and the emergency has not arisen due to an act or omission of the Council**, the emergency process set out in this section 19.7 may be applied.
- 1.7.2 This section 19.7 also applies where, in the opinion of the Chief Executive, there is an immediate and extreme risk which could not have reasonably been foreseen, including (but not limited to):
- a a major disaster involving immediate risks to persons or property; and/or
 - b an event or occurrence which is creating serious disruption to Council services; and/or
 - c an event or occurrence resulting in significant financial loss to the Council.
- 1.7.3 In an emergency, the Contract Procedure Rules will be temporarily disapplied for a proportionate period of time (to be determined by the Chief Executive in consultation with the Mayor) so that the Council may respond to the immediate risk. Once the immediate risk has been mitigated, these Contract Procedure Rules will apply to any follow-up actions.
- 1.7.4 A report must be prepared for the Chief Finance Officer setting out the justification for the action taken. If they consider it necessary, the Chief Finance Officer may require that report to be submitted to the next meeting of the Executive for approval.

AMENDMENT AND MORE INFORMATION

1.8 How are these Contract Procedure Rules amended to reflect changes in legislation?

The Chief Finance Officer shall have the power to make technical amendments from time to time to make these Contract Procedure Rules consistent with legal requirements, changes in Council structures and personnel, and best practice, after consultation with the Head of Paid Service, the Monitoring Officer, and the Chair of the Council.

1.9 Where can I find more information and guidance about the Council's procurement procedures?

In addition to these Contract Procedure Rules, the Council has in place further information and guidance about its procurement procedures.

B - DEFINED TERMS

Where capitalised terms are used in this section 19, they will have the meanings set out below. For the avoidance of doubt, terms defined in section 2 of this Constitution also apply to this section 19.

“Above Threshold Procurement”	a procurement that is above the relevant Procurement Threshold;
“Award Criteria”	the criteria by which the successful Quotation or Tender is to be selected (see section 19.48);
“Award Procedure”	the procedure for awarding a contract;
“Best Value”	the duty placed on the Council to obtain a competitive price for goods, services and works of appropriate quality, in line with statutory duties ¹² ;
“Bidder”	any person who asks or is invited to submit a Quotation or Tender;
“Bond”	an insurance policy. If the Contractor does not do what is promised under contract with the Council, the Council can claim from the insurer the sum of money specified in the Bond (often 10% of the contract value). A Bond is intended to protect the Council against a level of cost arising from the Contractor’s failure;
“Competitive Dialogue”	a procurement process that allows the Council to enter into a dialogue with Bidders until a solution is found to the Council’s requirement ¹³ ;
“Competitive Procedure With Negotiation”	a procurement process that allows the Council to negotiate with Bidders after an Invitation to Tender is issued, which also allows the Council to reserve the right not to negotiate where a Bidder meets its requirement ¹⁴ ;
“Concession Contract”	as defined in section 19.92;
“Contracting Decision”	any of the following decisions: <ul style="list-style-type: none">• composition of Approved Lists;• withdrawal of Invitation to Tender;• whom to invite to submit a Quotation or Tender;• Shortlisting;• Contract Award; or

¹² [Local Government Act 1999](#)

¹³ [The Public Contracts Regulations 2015, Regulation 30](#)

¹⁴ [The Public Contracts Regulations 2015, Regulation 29](#)

- any decision to terminate a contract;

“Contractor”		a successful Bidder with whom the Council has or intends to enter into a contract;
“E-tendering Portal”		the Council’s electronic tendering system used for publishing Invitations to Tender and Invitations to Quote and for submission of bids by suppliers;
“Exemptions Annex”		the Annex held by Strategic Commissioning & Procurement which sets out the application of exemptions to these Contract Procedure Rules;
“Framework”		an agreement under which a long-term relationship is established between local authorities (or other public sector bodies) and approved suppliers;
“Government Procurement Agreement”		the successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are: USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore;
“In-house Test”	Preferred	the Council’s internal measure for determining if the Council’s requirement would be best delivered by an internal mechanism, e.g., internal Service area or Council owned company, rather than through a competitive process;
“Innovation Partnership”		a procurement process that allows the Council to procure research and development and a product or service in a single procurement ¹⁵ ;
“Invitation to Quote”		invitation to submit a Quotation in the form required by these Contract Procedure Rules;
“Invitation to Tender”		invitation to submit a Tender in the form required by these Contract Procedure Rules;
“Low Value Contracts Threshold”		the threshold specified in Regulation 109(2)(c)(ii) of the Procurement Regulations ¹⁶
“M.E.A.T.”		award criteria that considers more than just price; which could include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales service, technical assistance and any other relevant matters;
“Sub-contractor”		a person engaged by a Contractor to discharge any part of a contract with the Council;

¹⁵ [The Public Contracts Regulations 2015, Regulation 31](#)

¹⁶ [The Public Contracts Regulations 2015, Regulation 109](#)

“NEPRO Solution”	a managed service solution that provides a cost-effective and compliant route for the procurement of professional services by the public sector;
“Non-Commercial Considerations”	<ol style="list-style-type: none"> 1. The terms and conditions of employment of a Bidder’s workers or the composition of, arrangements for the promotion, transfer or training of, or other opportunities afforded to, their workforce; 2. Whether the terms on which Bidders contract with their Sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self employed persons of their services only; 3. Any involvement of the business activities or interests of Bidders with irrelevant fields of Government policy; 4. The conduct of Bidders or their workers in industrial disputes between them or any involvement of the business activities of Bidders in industrial disputes between other persons; 5. The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, Bidders; 6. Any political, industrial or sectarian affiliations or interests of Bidders or their directors, partners or employees 7. Financial support or lack of financial support by Bidders for any institution to or from which the Council gives or withholds support; 8. Use or non-use by Bidders of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959;
“Responsible Officer”	the Officer designated by the relevant Head of Service to deal with a particular contract and/or spend;
“Open Procedure”	a procurement process where any Bidder may submit a Tender and there is no pre-qualification process ¹⁷ ;
“Parent Company Guarantee”	a contract which binds the parent company of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, it can require the parent company to do so instead;
“Procurement Regulations”	The Public Contracts Regulations 2015 ¹⁸ as supplemented and amended from time to time;

¹⁷ [The Public Contracts Regulations 2015, Regulation 27](#)

¹⁸ [The Public Contracts Regulations 2015, Regulation 5](#)

“Procurement Threshold”	the thresholds set out in the Procurement Thresholds Annex;
“Prospective Bidder”	any persons who asks or is invited to submit a Quotation or Tender;
“Quotation”	an indication by any person of a price for the execution of work or the supply of goods, materials or services (without the formal issue of an Invitation to Tender);
“Quotation System”	the E-tendering Portal quotation system;
“Relevant Contract”	contracts to which these Contract Procedure Rules apply (see section 19.12);
“Restricted Procedure”	a procurement process where any Bidder that meets the pre-qualification criteria may submit a Tender ¹⁹ ;
“Shortlisting”	where Bidders are selected: <ul style="list-style-type: none"> • to submit a Quotation or Tender; or • to proceed to final evaluation;
“Social Value”	the duty on the Council to consider economic, social and environmental well-being when commissioning a public service ²⁰ ;
“Standing List”	a list of approved suppliers able to perform contracts to supply goods or services of particular types;
“Tender”	a written offer made by any person (following an invitation from the Council) which can be accepted by the Council to form a binding contract;
“Total Value”	The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal, whether or not it comprises several lots or stages, to be paid or received by the Council or a Service within the Council. The Total Value shall be calculated as follows: <ul style="list-style-type: none"> • where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period; • where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months; • for feasibility studies: the value of the scheme or contracts which may be awarded as a result;

¹⁹ [The Public Contracts Regulations 2015, Regulation 28](#)

²⁰ [Public Services \(Social Value\) Act 2012](#)

- for Sub-contractors: the Total Value shall be the value of that part of the main contract to be fulfilled by the Sub-contractor;

“Value for Money”

the optimal use of resources to achieve the intended outcomes based on economy, efficiency and effectiveness.

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C – ROLES AND RESPONSIBILITIES

This section sets out the specific roles and responsibilities of Officers and Members in relation to procurement.

OFFICER RESPONSIBILITIES

1.10 What are the responsibilities of Officers in relation to purchasing?

1.10.1 Officers must ensure that:

- a they comply with:
 - i these Contract Procedure Rules;
 - ii the Financial Procedure Rules;
 - iii the Officer Code of Conduct; and
 - iv all applicable legal requirements in force from time to time.
- b any purchasing activity they undertake supports the Council's strategic aims and objectives;
- c appropriate records of procurement activities are kept as required by section 19.69.
- d advice is sought from Strategic Commissioning & Procurement;
- e appropriate supplier due diligence is completed;
- f proper Tender processes are followed in accordance with procedures set out in Invitations to Tender;
- g they have declared any relevant conflict of interest in relation to a purchase;
- h the correct authorisation and approvals are obtained in accordance with the Scheme of Delegations and the Council's formal decision-making processes; and
- i where appropriate, any agent, consultant or contractual partner acting on behalf of the Council complies with the above.

1.10.2 Chief Officers must ensure that their staff comply with section 19.10.

1.10.3 Chief Officers must ensure that their staff complete the Council's Corporate Contract Register for all contracts entered into by their Service Area. Heads of Service must ensure that their staff notify Strategic Commissioning & Procurement of all contracts progressed by their Service to enable Strategic Commissioning & Procurement to enter the relevant information on the Council's contracts register.

RESPONSIBILITIES OF SPECIFIC MEMBERS AND OFFICERS

1.11 What are the specific responsibilities of Officers and Members?

The specific responsibilities of Officers and Members in relation to these Contract Procedure Rules are set out in Annex 1 to this section 19.

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D – APPLICATION OF CONTRACT PROCEDURE RULES

RELEVANT CONTRACTS

1.12 To which Council contracts do these Contract Procedure Rules apply?

1.12.1 **These Contract Procedure Rules apply to every Relevant Contract entered into by or on behalf of the Council** (e.g., by agency staff, agents or consultants), which includes contracts for:

- a the purchase of all goods or materials;
- b the purchase of services, including professional services, interim and agency staff;
- c the purchase/order of works; and
- d contract management of third party spend.

1.12.2 Where a contract or sub-contract covers works and the supply of goods, services and/or material, it will be treated as a works contract if more than 50% of its total value relates to works.

1.13 When do these Contract Procedure Rules not apply?

1.13.1 These Contract Procedure Rules do not apply to the following:

- a procurement activity carried out by Council maintained school under their own delegated budget and/or a school's own formal procurement and contractual rules;
- b legal charges, awards and disbursements (including all associated costs and fees) in connection with any and all legal proceedings governed by Civil Procedure rules;
- c contract offers of employment which make an individual an employee of the Council;
- d settlement of insurance claim compensation;
- e treasury transactions as outlined in the Council's Treasury Management Strategy;
- f non-contractual funding arrangements (including grant agreements under which the Council makes a grant to a third party, provided that the terms of the funding arrangements do not constitute a contract, and a direct award can be made following approved Council grant processes). For the avoidance of doubt, where the Council is using grant monies itself or passing them onto a third party, these Contract Procedure Rules will apply (along with any applicable grant conditions);
- g specific licensing requirements (for example, a television licence or public entertainment licence) or subscriptions to national organisations (for example, the Local Government Association);
- h contracts for the execution of either works (or provision of goods, services or material) where the Council has no discretion whether the works are required or who must deliver them (for example, works to be provided by a statutory undertaker);

- i services with a national remit where there are requirements to comply with purchasing arrangements set out by a funding body;
- j appointment of external auditors outside the Council's control;
- k appointment of barristers or legal firms where, in the opinion of the Monitoring Officer, urgent advice is required to protect the interests of the Council;
- l disposal goods and/or materials deemed surplus to the Council's needs.

1.13.2 The above list is not exhaustive. If an Officer is unsure whether these Contract Procedure Rules apply in any specific circumstances, they should seek advice from Strategic Commissioning & Procurement.

1.13.3 Officers should seek advice from Strategic Commissioning & Procurement on the application of these Contract Procedure Rules to any proposed direct award of a contract to a Council-owned Company.

EXEMPTIONS

1.14 When may the provisions of these Contract Procedure Rules be waived?

1.14.1 Chief Officers may request authorisation from the Chief Finance Officer to waive, suspend or change any provision of these Contract Procedure Rules in accordance with this section 19.14. Where an exemption applies, section 1.43 will not apply, and the Council will be permitted to negotiate directly with one or more suppliers.

1.14.2 Full details of how exemptions apply are contained in the Exemptions Annex.

1.15 What is the process for requesting an exemption?

1.15.1 The relevant Chief Officer must complete a Request for Exemption from Procurement Procedures Form, which must be signed by the relevant Head of Service, the Chief Finance Officer and the Monitoring Officer, and then submitted to the Head of Strategic Commissioning and Procurement.

1.15.2 Before completing a Request for Exemption from Procurement Procedures Form, Chief Officers / Heads of Service should agree with Strategic Commissioning & Procurement the basis on which they are applying for an exemption.

1.15.3 The Chief Finance Officer and the Head of Strategic Commissioning & Procurement reserve the right to refuse any application for an exemption. Where an exemption relies on an exception in the Procurement Regulations, it will be rejected unless evidence is provided to demonstrate that the exception applies.

1.16 How are exemptions recorded?

The Head of Strategic Commissioning & Procurement will maintain a register of all approved exemptions and will monitor and report the use of exemptions for management control purposes.

1.17 When may an exemption not be used?

1.17.1 An exemption may not be used for Above Threshold Procurements.

1.17.2 **Any attempt to seek retrospective approval of an exemption will be rejected and will be treated as a potential breach of these Contract Procedure Rules.**

1.17.3 **Exemptions should not be used to circumvent these Contract Procedure Rules.**

1.18 What action must be taken in respect of an approved exemption?

If an exemption is approved, Chief Officers must:

- a ensure that a formal contract is entered into;
- b undertake appropriate due diligence on the relevant supplier and proportionate contract management during the life of the contract;
- c ensure that appropriate approval to award the contract has been given in accordance with the Scheme of Delegations;
- d ensure that the value of the contract does not exceed the financial threshold for an Above Threshold Procurement and that no contract extension is sought.

E – PROCUREMENT THRESHOLDS

This section sets out how Procurement Thresholds apply in relation to the Council's procurement activities.

1.19 What are Procurement Thresholds?

- 1.19.1 The Procurement Regulations set out certain legislative financial thresholds, above which specific procurement rules apply.
- 1.19.2 Procurement Thresholds are calculated based on the estimated Total Value of a contract over the contract term.
- 1.19.3 The Procurement Thresholds in force from time to time are set out in the Procurement Thresholds Annex.

1.20 How are estimated contract values calculated?

- 1.20.1 Estimated contract values should be calculated on the basis of the whole life value (or estimated whole life value) for any purchase, including any anticipated contract extension. This value should be calculated as follows:
 - a Fixed term contract – the total price to be paid, or which could be paid, during the fixed term period.
 - b Contract for recurring transactions of the same type – aggregated total value of those transactions over the expected life of the contract.
 - c Contracts for an uncertain duration – monthly payment multiplied by 48.
- 1.20.2 Any estimated contract value must be a genuine pre-estimate that factors in all associated costs (for example, any repair and maintenance required).
- 1.20.3 Similar contracts with the same supplier should be aggregated across the Council. There must be no artificial disaggregation to avoid meeting a Procurement Threshold.
- 1.20.4 Where a contract is being awarded as lots under a Framework, the Total Value of the contract is the Framework value and not the value of the individual lot. **Contracts must not be sub-divided into smaller lots so as to avoid the requirements of these Contract Procedure Rules.**

F – PREPARING FOR PROCUREMENT

PROCUREMENT PIPELINE

1.21 What is the procurement pipeline?

- 1.21.1 The Council requires all upcoming procurements that meet Key Decision thresholds to be recorded in a procurement pipeline, which forms part of the Forward Plan. At the start of each financial year, the procurement pipeline is presented to the Executive for approval.
- 1.21.2 Chief Officers and Responsible Officers should be mindful of the need to plan their procurements in advance and take reasonable steps to ensure that their required procurement activities are included in the Forward Plan.

1.22 When can a procurement not in the Forward Plan be added?

- 1.22.1 If a procurement has not been approved by the Executive for inclusion in the Forward Plan, it will require separate in-year approval from the Executive to proceed.
- 1.22.2 Responsible Officers should factor the timeframe for gaining such approval into their procurement planning.

PRE-PROCUREMENT STAGE

1.23 What steps must be taken before the Council makes a purchase?

Before beginning a purchase, the Responsible Officer must:

- a in a manner commensurate with the complexity and value of the purchase a Procurement Request Form should be completed, which includes the following considerations:
 - v ensure there is a service specification that clearly articulates the outcomes to be achieved;
 - vi take into account the requirements from any review;
 - vii appraise the need for the expenditure and its priority;
 - viii ensure there are no existing contract arrangements already in place that cover the requirement;
 - ix define the objectives of the purchase;
 - x assess the risks associated with the purchase and how to manage them;
 - xi consider what procurement method is most likely to achieve the purchasing objectives, including external or internal sourcing or accessing an existing contract, collaboration with other purchasers, partnering and long term relationships;
 - xii consider any data protection implications to the proposed purchase;

xiii adhere to the provisions of the Social Values Act 2012 for eligible contracts and/or any associated charters; and

xiv consult users as appropriate about the proposed procurement method, contract standards, and performance and user satisfaction monitoring; and

b confirm that:

i there is Member or delegated approval for the expenditure (and the Responsible Officer must ensure that a copy of that approval is retained on file);

ii there is Executive approval for significant new proposals as required by the Financial Procedure Rules; and

iii prior information notices, if required, have been sent²¹.

MAKE OR BUY

1.24 What is “make or buy”?

1.24.1 A “make or buy” decision relates to a choice of whether to manufacture or produce something in-house, or to procure it from an external third party.

1.24.2 Before undertaking a new procurement, the following should be explored, and used as first choice where fit for purpose, available for use and able to demonstrate Best Value, in relation to the procurement:

a Use of internal Council Service(s) or establishment of such Service(s) where they don't currently exist.

b Use of an existing compliant Council Framework.

c Award of a contract to a Council-owned Company with Teckal status, establishing or implementing a public contract with another public sector entity or using another public sector body's Framework or contract.

1.24.3 Responsible Officers should only instigate a procurement process (Invitation to Tender or Invitation to Quote) if the following conditions are met:

a The “make or buy” process outlined above should have been followed to ensure that the In-house Preferred Test does not apply.

b It can be demonstrated that Best Value can be achieved through a competitive procurement process.

c Sufficient time has been allowed to ensure required outcomes are achieved via a competitive procurement.

²¹ [The Public Contracts Regulations 2015, Regulation 48](#)

For the avoidance of doubt, where sufficient time has not been allowed due to the actions or omissions of Officers, this will not be a valid reason for disapplication of these Contract Procedure Rules.

MARKET RESEARCH AND CONSULTATION

1.25 When should the Council carry out pre-market research?

1.25.1 Preliminary market research is permitted where relevant and proportionate. Market research is encouraged in order to inform the procurement process and potential suppliers. Where market research or consultation takes place, this should be in accordance with the Procurement Regulations.

1.25.2 Responsible Officers should seek advice from Strategic Commissioning & Procurement if they are unsure about whether to carry out market research and/or how this should be done.

1.26 What pre-Tender market research and consultation is permitted?

Responsible Officers:

- a may consult potential suppliers prior to the issue of an Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided that this does not prejudice any potential Bidder; and
- b must not seek or accept technical advice on the preparation of an Invitation to Tender or Invitation to Quote from anyone who may have a commercial interest in it, if this may prejudice the equal treatment of all potential Bidders or distort competition; and

EQUALITY IMPACT ASSESSMENT

1.27 What is an Equality Impact Assessment?

An "Equality Impact Assessment" is a tool that helps the Council to consider equality, diversity, cohesion and integration in its strategies, policies, services and functions. An Equality Impact Assessment involves assessing the likely (or actual) effects of policies on people in respect of protected equality characteristics including age, disability, race and sexual orientation.

1.28 When must an Equality Impact Assessment be carried out?

1.28.1 An Equality Impact Assessment should be carried out before commencing any procurement activity, where appropriate.

1.28.2 Responsible Officers must complete an Equality Impact Assessment form setting out the impact of the procurement on equality, diversity, cohesion and integration. Further guidance on Equality Impact Assessments can be obtained from Strategic Commissioning & Procurement.

CHOICE OF PROCUREMENT ROUTE

1.29 What procurement routes are available to the Council?

Depending on the nature and value of a contract, the Council has the following options for procuring works, goods, services and materials:

- a Approved List – suppliers on a list previously compiled by the Council are invited to bid for contracts within a specific category, value or amount.
- b Quotations – only suppliers invited by the Council may bid for the contract.
- c Open tendering (Above Threshold Procurements) – a contract opportunity is published, and all interested suppliers are invited to bid.
- d Framework – a contract is awarded to a supplier who has pre-qualified to provide services under a framework agreement.
- e Direct award – a contract is awarded directly to a supplier who is on a framework, without a competition stage.

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G – PROCUREMENT PROCESS

This section sets out the procurement routes open to the Council and how they are used. The Procurement Thresholds Annex sets out the applicable thresholds at which each procedure may be used.

DIRECT AWARD

1.30 What is a direct award?

Direct award allows the Council to award a contract to a contractor without a competition, or to make a material change to an existing contract without carrying out a new procurement.

1.31 How is direct award used?

1.31.1 Direct award can be used for all types of contracts and is particularly relevant for minor projects and the procurement of professional services.

1.31.2 The following criteria apply to direct awards:

- a all the terms governing the provision of the works, services and supplies concerned must be set out in the Framework; and
- b the objective conditions for determining which of the suppliers on the Framework shall perform them must be set out in the procurement documents.

APPROVED LISTS

1.32 What is an Approved List?

An Approved List is a list of approved suppliers that has been compiled by the Council for specified categories of work, or for the supply of specified categories of goods, materials or services within specific contract values or amounts.

1.33 When can an Approved List be used?

1.33.1 Approved Lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise.

1.33.2 An Approve List may not be used where the value of the contract exceeds the relevant Procurement Threshold.

1.34 How are Approved Lists compiled?

1.34.1 When compiling Approved Lists, the Council shall:

- a follow the procedure stipulated in this section 1.32;
- b include in the Approved List the names and addresses of all suppliers whose requests to be included have been approved by the relevant Head of Service in consultation with the Strategic Commissioning & Procurement Team;

- c not enter suppliers on an Approved List until there has been an adequate investigation into both their financial and technical ability to perform the contract, unless such matters will be investigated each time Tenders are invited from that Approved List;
- d not preclude suppliers from inclusion on an Approved List other than for good reasons;
- e indicate whether a supplier whose name is included in an Approved List is approved for contracts of all, or only some of, the specified categories, values or amounts;
- f ensure that the relevant Head of Service is responsible for their Approved List(s) and will co-ordinate all enquires in respect of those Approved List(s).

1.34.2 Opportunities to join an Approved List must be advertised, and suppliers should be invited to apply for inclusion on the relevant Approved List. The advertisement must be placed to secure widest publicity amongst relevant suppliers and not less than four (4) weeks before the Approved List is first compiled.

1.35 What are the review requirements for Approved Lists?

1.35.1 Approved Lists and their Shortlisting criteria must be reviewed at least annually and readvertised at least every three (3) years. Review means:

- a the reassessment of the financial, technical ability and performance of those suppliers on the Approved List unless such matters will be investigated each time Bidders are invited from that list; and
- b the deletion of those suppliers no longer qualified, with a written record kept justifying the deletion.

1.35.2 Suppliers may be entered on an Approved List between the initial advertisement and any readvertisement provided that the requirements of section 19.34.1 are met.

1.35.3 When an Approved List is re-advertised, a copy of the advertisement must be sent to each supplier on the Approved List, inviting them to confirm that they wish to remain on the Approved List at least four (4) weeks before the advertisement is published. If they wish to remain on the Approved List, they will be reviewed as described in section 19.35.1 above.

1.35.4 All Approved Lists must be open to public inspection.

1.36 How are Approved Lists used?

Where an Invitation to Tender for a contract is limited to suppliers whose names appear on an Approved List maintained, the Invitation to Tender for that contract shall be sent to at least four (4) suppliers on the Approved List. Each supplier invited to Tender must be approved for a contract for the category, value or amount selected. If there are insufficient suitably qualified suppliers to meet the competition requirement, all suitably qualified suppliers must be invited.

QUOTATIONS

1.37 What is the Quotation process?

The Council will issue Invitations to Quote for procurements within the relevant Procurement Thresholds set out in the Procurement Thresholds Annex.

1.38 How are Quotations used?

The process for issuing and evaluating a Quotation is set out in sections 19.56 to 19.62.

OPEN TENDERING

1.39 What is open tendering?

Open tendering applies in accordance with the requirements of the Procurement Regulations.

1.40 How is open tendering used?

All open Tender opportunities will be advertised via Contracts Finder and the advert shall:

- a Set out the nature and purpose of the contract;
- b indicate how tender documents may be obtained;
- c invite tenders;
- d state the closing date and time by which valid tenders must be returned via the E-tendering Portal; and
- e evaluate the Tender and award the contract in compliance with the Procurement Regulations.

FRAMEWORKS

1.41 How are Frameworks established?

1.41.1 The Council may establish its own Frameworks, which may be single-supplier or multi-supplier.

1.41.2 Any Framework must be established in accordance with the Procurement Regulations.

1.41.3 When setting up a framework, consideration should be given to whether the contract can be sub-divided into lots. The reasoning should be recorded by Strategic Commissioning & Procurement where a contract is not sub-divided in this way.

1.42 How are frameworks used?

1.42.1 The Council may call off from its own Frameworks, or from those established by other public bodies and Crown Commercial Service.

- 1.42.2 The Council may call off from a Framework directly or hold a call off competition among suppliers on the Framework.
- 1.42.3 Where a Framework has been validly approved and established by the Council. Chief Officer's may (in accordance with the Scheme of Delegations and the Procurement Thresholds Annex) issue orders under that Framework, provided that they comply with the scope of the Framework and any conditions applicable to the Framework.
- 1.42.4 The Framework will set out the terms of any call off competition, and the terms on which a successful supplier will be engaged.
- 1.42.5 Frameworks should be monitored by Strategic Commissioning & Procurement to ensure that the total spend under any Framework does not exceed the total permitted.
- 1.42.6 Contracts to be concluded by a call off from a Framework established by another public body shall be carried out in accordance with the rules for the operation of that Framework. Responsible Officers should ensure that the Council is eligible to participate in the Framework, taking advice from Strategic Commissioning & Procurement as necessary.

ROUTE TO MARKET

1.42.7 What are the pre-requisites for a procurement process to start?

1.42.8 A procurement process should not be commenced unless:

- a a genuine and timely pre-estimate of the Contract value has been completed in accordance with section 19.20;
- b in the case of a contract for the execution of any works, a business case has been prepared, or Executive approval has been given;
- c there is an approved budget, or relevant approval by the relevant Chief Officer;
- d a strategy report (where applicable) has been approved;
- e a contract manager has been identified for the contract; and
- f a Procurement Request Form has been completed.

1.42.9 Consideration of the appropriate route to market shall include options for the Council to undertake its own procurement process or consider awarding contracts in line with the conditions of a compliant Framework available to the Council to use. Before considering the route to market, Responsible Officers should ensure that "make or buy" has been considered, as appropriate, in accordance with section 19.24.

1.42.10 Responsible Officers shall, in conjunction with Strategic Commissioning & Procurement, consider the procurement procedures available to the Council with due regard to the Procurement Regulations. For an Above Threshold Procurement, the requirements set out in the Procurement Regulations must be followed strictly when selecting a route to market.

1.42.11 For audit and transparency purposes, proportional details and records on justification of the chosen route to market should be kept by Strategic Commissioning & Procurement.

1.43 What are the competition requirements for purchases made by the Council?

1.43.1 The competition requirements for any contract are determined by the Procurement Thresholds set out in the Procurement Thresholds Annex. The procurement route for any contract will be as described in the Procurement Thresholds Annex.

1.43.2 All Relevant Contracts must be subject to competition, unless an exemption applies in accordance with the Exemptions Annex or in an emergency situation, as described in section 19.7.

1.43.3 **An Officer must not enter into separate contracts, nor select a method of calculating the Total Value of a contract in order to minimise the application of these Contract Procedure Rules.**

1.43.4 Where services are currently purchased internally, i.e., from within the Council, for internal provision, the requirement to obtain other Quotations or Tenders does not apply. However, Services may choose to seek alternative Quotations / Tenders for the purpose of market testing.

1.43.5 The sale of goods and materials to staff must be approached with caution and the tendering procedures set out in these Contract Procedure Rules must be used. Advice should be sought from Strategic Commissioning & Procurement to ensure that any such sale is compliant with these Contract Procedure Rules and relevant legislation.

1.44 What are the requirements for services provided by the Council to external purchasers?

Any provision of services by the Council to external purchasers must comply with the Local Authority (Goods and Services) Act 1970²². Advice should be sought from Strategic Commissioning & Procurement on any such provision of services.

1.45 What are the requirements for Partnership Arrangements entered into by the Council?

1.45.1 Partnership Arrangements must comply with these Contract Procedure Rules and applicable legislation. If in doubt, Officers must seek the formal written advice of the Chief Finance Officer and Strategic Commissioning & Procurement before entering into any Partnership Arrangement.

LIGHT TOUCH REGIME

1.46 What is the Light Touch Regime?

²² [Local Authority \(Goods and Services\) Act 1970](#)

The Procurement Regulations allow the Council to apply the Light Touch Regime, which gives greater flexibility in the procedure the Council must use, to procure certain services²³.

1.47 When does the Light Touch Regime apply?

1.47.1 The Light Touch Regime only applies to Above Threshold Procurements.

1.47.2 Although the use of the flexibility permitted by the Light Touch Regime is encouraged, the principles in relation to public procurement, as outlined in these Contract Procedure Rules, still apply. Application of the Light Touch Regime does not negate requirements to comply with these Contract Procedure Rules and follow the Council's formal decision-making process.

STANDARDS AND AWARD CRITERIA

1.48 What standards and award criteria apply to the award of contracts by the Council?

1.48.1 A Responsible Officer must ascertain which standards (UK and/or international) apply to the subject matter of the contract they are seeking to procure. The Responsible Officer must include in the award criteria for a purchase those standards that are necessary to properly describe the required quality of the subject matter of the contract, and with which the supplier will be expected to comply.

1.48.2 The Responsible Officer must define the Award Criteria for a purchase so as to ensure that M.E.A.T. is secured.

1.48.3 Award Criteria must not include:

- a Non-Commercial Considerations²⁴;
- b matters which are contrary to the terms of the UK-EU Trade and Co-operation Agreement or the Government Procurement Agreement; or
- c matters which are anti-competitive within the meaning of the Local Government Act 1988.

²³ [Public Contracts Regulations, Schedule 3](#)

²⁴ [Local Government Act 1988, section 17](#)

H – MECHANISMS FOR FORMAL TENDERS

The Procurement Regulations set out five options for the procurement of Above Threshold Procurements. This section sets out, in brief, the requirements of each route. When choosing a procurement route, Responsible Officers should always discuss this with Strategic Commissioning & Procurement and Legal Services to ensure that an appropriate and compliant option is used.

OPEN PROCEDURE

1.49 What is the Open Procedure and when is it used?

- 1.49.1 The Open Procedure²⁵ allows any interested Bidder to submit a response to a contract notice issued by the Council.
- 1.49.2 This procedure is suitable for simple procurements where the requirement is straightforward, for example, the purchase of goods where the requirement can be clearly defined, and the Council is seeking the lowest price for those goods.
- 1.49.3 There is no pre-qualification stage for Bidders, and Responsible Officers should be aware that this could lead to a large number of responses being received.

RESTRICTED PROCEDURE

1.50 What is the Restricted Procedure and when is it used?

- 1.50.1 The Restricted Procedure²⁶ allows the Council to set pre-qualification criteria which must be met by Bidders before they can submit a response.
- 1.50.2 The Council may wish to use the Restricted Procedure to ensure that only Bidders of a particular financial standing and/or with specific technical or professional capability are able to respond.
- 1.50.3 The Restricted Procedure requires that the Council has a fully defined requirement so that Bidders can submit a fully priced Tender without the need for subsequent negotiation.

COMPETITIVE PROCEDURE WITH NEGOTIATION

1.51 What is the Competitive Procedure with Negotiation and when is it used?

- 1.51.1 The Competitive Procedure with Negotiation²⁷ allows the Council to negotiate with Bidders after they have submitted a Tender. This procedure includes a pre-qualification stage to ensure that appropriate Bidders respond.
- 1.51.2 This procedure may be used where it is not possible for the Council to fully define its requirement. The following conditions apply to the use of the Competitive Procedure with Negotiation²⁸:

²⁵ [Public Contracts Regulations 2015, Regulation 27](#)

²⁶ [Public Contracts Regulations 2015, Regulation 28](#)

²⁷ [Public Contracts Regulations 2015, Regulation 29](#)

²⁸ [Public Contracts Regulations 2015, Regulation 26\(4\)](#)

- a the Council's needs cannot be met without adaptation of readily available solutions; or
 - b the Council's requirement includes design or innovative solutions; or
 - c the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity, or the legal and financial make-up of the requirement, or because of risks attaching to them; or
 - d the technical specifications cannot be established with sufficient precision by the Council with reference to a standard, common technical specification or technical reference; or
 - e an Open or Restrictive Procedure procurement has been run but only irregular or unacceptable Tenders have been submitted.
- 1.51.3 The Invitation to Tender should set out the requirement in sufficient detail so that Bidders are clear about the subject matter of the contract, the minimum requirements, and the Award Criteria.
- 1.51.4 The use of this procedure should be justified, and the Responsible Officer should ensure that the reasons for its use are recorded.
- 1.51.5 Under the Competitive Procedure with Negotiation, the Council does not have to negotiate with Bidders. If an appropriate Tender is received, the Council may award the contract on the basis of that Tender.

COMPETITIVE DIALOGUE

1.52 What is a Competitive Dialogue and when is it used?

- 1.52.1 A Competitive Dialogue²⁹ is similar to the Competitive Procedure with Negotiation. It includes a pre-qualification stage and allows the Council to negotiate with Bidders. The requirements set out in section 1.51.2 to 1.51.4 above will also apply to a Competitive Dialogue.
- 1.52.2 A Competitive Dialogue allows more flexibility around negotiation with Bidders and negotiation can take place without submission of initial Tenders. The Council can use dialogue with suppliers to define the best way of meeting its requirement.

INNOVATION PARTNERSHIP

1.53 What is an Innovation Partnership and when is it used?

- 1.53.1 An Innovation Partnership³⁰ allows the Council to procure the research and development and product / service aspects of a contract in a single procurement. This procedure can be used where there is no appropriate solution already available on the market.

²⁹ [Public Contracts Regulations 2015, Regulation 30](#)

³⁰ [Public Contracts Regulations 2015, Regulation 31](#)

1.53.2 An Innovation Partnership has a pre-qualification stage to ensure that appropriate Bidders respond. It requires the Council to set out the need for innovation and the Award Criteria for the contract in the Invitation to Tender.

DRAFT

I – TENDERS AND QUOTATIONS

INVITATIONS TO TENDER

The Council is required, in certain circumstances, to issue an Invitation to Tender to potential Bidders for a contract. The Council may also wish to issue an Invitations to Tender in other circumstances. This section sets out the requirements for an Invitation to Tender and the process the Council must follow when inviting Tenders.

1.54 When will the Council use an Invitation to Tender?

Invitations to Tender are used when the Council wishes, or is required, to invite Tenders from suppliers. The Procurement Thresholds Annex sets out when Tenders must be invited for contracts at specified values.

1.55 What information should an Invitation to Tender contain?

1.55.1 An Invitation to Tender should state that a Tender will not be considered unless it is received by the date and time stipulated. Tenders delivered after the deadline will not be considered.

1.55.2 All Invitations to Tender must include the following:

- a a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- b a requirement for Bidders to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the Bidder to any other party (except where such disclosure is made in confidence for a necessary purpose);
- c a requirement for Bidders to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion;
- d a notification that Tenders are to be prepared at the Bidders expense;
- e a description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria;
- f details of how Bidders should submit their Tender;
- g a stipulation that any Tenders submitted by fax or e-mail are not allowed; and
- h the method by which arithmetical errors discovered in the submitted Tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.

1.55.3 All Invitations to Tender must specify the goods, services or works that are required, together with the terms and conditions of contract that will apply (see section J)

1.55.4 The Invitation to Tender must state that the Council is not bound to accept any Tender and can stop the Tender process at any time.

1.55.5 All Bidders invited to Tender must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

INVITATIONS TO QUOTE

For lower value contracts where an Invitation to Tender is not required, the Council will issue an Invitation to Quote to potential Bidders for a contract. An Invitation to Quote is a simpler process than an Invitation to Tender. This section sets out the requirements for an Invitation to Quote and the process the Council must follow when inviting Quotations.

1.56 When will the Council use an Invitation to Quote?

Invitations to Quote are used when the Council wishes, or is required, to invite Quotes from suppliers. The Procurement Thresholds Annex sets out when Quotes must be invited for contracts at specified values.

1.57 What information should an invitation to Quote contain?

1.57.1 An Invitation to Quote should state that a Quote will be considered unless it is received by the date and time stipulated. Quotes delivered after the deadline will not be considered. A minimum of two (2) weeks must be given for the return of Quotations except in exceptional circumstances to be agreed with Corporate Procurement

1.57.2 All Invitations to Quote must include the following:

- a a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- b a requirement for Bidders to declare that the Quotation content, price or any other figure or particulars concerning the Quotation have not been disclosed by the Bidder to any other party (except where such disclosure is made in confidence for a necessary purpose);
- c a requirement for Bidders to complete fully and sign all Quotation documents including a form of Quotation and certificates relating to canvassing and non-collusion;
- d a notification that Quotations are to be prepared at the Bidders expense;
- e a description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria; and
- f details of how Bidders should submit their Quotation;
- g a stipulation that any Quotation submitted by fax or e-mail will be rejected unless it has been specifically requested by the Council (see section 19.60.2 below).

1.57.3 All Invitations to Quote must specify the goods, services or works that are required, together with the terms and conditions of contract that will apply (see section J).

1.57.4 The Invitation to Quote must state that the Council is not bound to accept any Quotation and can stop the Quotation process at any time.

SUBMISSION OF TENDERS AND QUOTATIONS (ELECTRONIC TENDERING)

1.58 How should Tenders be submitted?

1.58.1 All Tenders must be submitted using the Council's electronic tendering system, i.e., the E-tendering Portal.

1.58.2 Tenders submitted by electronic means shall ensure that:

- a evidence that the transmission was successfully completed is obtained and recorded through the system; and
- b Tenders are not opened until the deadline for submission has passed.

1.58.3 Tenders received by fax or e-mail will be rejected.

1.59 What are the time periods allowed for submission of a Tender?

The time periods applicable to submission of Tenders will be as set out in the Procurement Regulations.

1.60 How should Quotations be submitted?

1.60.1 Where Invitations to Quote are published on the E-tendering Portal, the provisions of section 19.58.2 shall apply.

1.60.2 Where the E-tendering Portal is not used for an Invitation to Quote:

- a Bidders are permitted to submit their Quotation via email to the email address provided in the Invitation to Quote;
- b an audit trail shall be put in place in order to uphold the principles set out in these Contract Procedure Rules; and
- c a record shall be made of the Quotations received, including names and addresses of Bidders and the date and time of opening.

CLARIFICATION OF TENDERS AND QUOTATIONS

1.61 When may Bidders and the Council seek clarification in relation to a Tender?

1.61.1 The Council is permitted to provide clarification to an Invitation to Tender to potential and actual Bidders. Clarification questions should be submitted through the E-tendering Portal.

1.61.2 The Council may seek clarification from a Bidder in relation to a Tender in writing or in a meeting.

1.62 When may the Council seek clarification in relation to a Quotation?

The Council may seek clarification from a Bidder in relation to a Quotation in writing.

EVALUATION OF TENDERS

1.63 How are Tenders evaluated and awarded?

Tenders must be evaluated and awarded in accordance with the Award Criteria.

1.64 What happens if there are arithmetical errors in a Tender?

1.64.1 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the Bidder, who should be requested to confirm the correct arithmetic, or withdraw their Tender.

1.64.2 Alternatively, if the Bidder has provided contract rates in their Tender and these are stated to prevail over the overall contract price, the Council may request that the Bidder submits an amended Tender with a contract price based on the rates in the Tender.

1.65 How are Tenders based solely on price evaluated?

1.65.1 If the Award Criteria for a Tender are solely based on contract price, the Council may only select the lowest price (if payment is to be made **by** the Council) or the highest price (if payment is **to** be made to the Council), unless otherwise approved by:

- a the Executive, after considering a report from the appropriate Head of Service; or
- b a duly authorised Officer, following consultation with the appropriate Executive Member.

A record of the reason for accepting a different Tender must be made, as appropriate.

1.66 With whom may information be shared in relation to Tenders?

1.66.1 Save as otherwise set out in this section 19.66:

- a confidentiality of Tenders and the identity of Bidders must be preserved at all times; and
- b information about one Bidder's response must not be given to another Bidder.

1.66.2 The Responsible Officer should debrief in writing all those Bidders who submitted a Tender about the reasons why they were unsuccessful and the characteristics and relative advantages of the successful Bidder. This debrief should normally include:

- a how the Award Criteria were applied; and
- b the prices or range of prices submitted, in either case not correlated to Bidders' names.

1.66.3 The same information may be given to those who responded in any pre-Tender selection process. No other information should be given without taking the advice of the Chief Finance Officer and the Head of Strategic Commissioning & Procurement.

CONTRACT AWARD

1.67 What are the formalities for publishing information about a Contract Award?

1.67.1 Where a contract with a value above the Low Value Contracts Threshold (as defined in the Procurement Thresholds Annex) is awarded, the following information shall be published on Contracts Finder:

- a name of contractor;
- b date on which the contract is entered into;
- c value of the contract; and
- d whether the Contractor is a SME or voluntary and community vector enterprise (VCSE).

1.67.2 For all contracts subject to the Procurement Regulations, Contract Award Notices shall take into account any requirements and conditions around standstill period³¹, and an individual contract report is to be completed³².

1.68 When and how should Bidders be notified of a Contracting Decision?

Prospective Bidders must be notified in writing at the same time, and as soon as possible, of any Contracting Decision. If a Bidder requests, in writing, the reasons for a Contracting Decision, the Responsible Officer must give the reasons in writing as soon as possible.

CONTRACT RECORDS

1.69 What records must be kept in relation to contracts?

1.69.1 Where the Total Value of a contract is below the Procurement Threshold (as set out in the Procurement Threshold Annex) for supplies of goods, materials, consultants or services the Responsible Officer must ensure that the following documents are kept:

1.69.2 Invitations to Quote and any Quotations received;

- a a written record of:
- b any exemption and reasons for it; and
- c if the lowest price is not accepted, the reasons for this; and
- d written records of any communication with the successful Contractor.

1.69.3 Where the Total Value of a contract is above the Procurement Threshold (as set out in the Procurement Threshold Annex) the Responsible Officer must record and retain records of:

³¹ [Public Contracts Regulations 2015, Regulation 87](#)

³² [Public Contracts Regulations 2015, Regulation 84](#)

- a any pre-Tender market research undertaken;
- b the method for obtaining bids;
- c any Contracting Decision and the reason for it;
- d any exemption that has been applied, together with the reasons for it;
- e the Award Criteria;

1.69.4 Tender documents sent to and received from Bidders;

- a the contract documents;
- b clarification questions submitted and answers provided to Bidders
- c any post-Tender negotiation (to include minutes of meetings);
- d written records of any communication with Bidders during the Tender process;
- e written records of any communication with the successful Contractor throughout the life of the contract; and
- f post-contract evaluation and monitoring.

1.69.5 Written records required by this section 19.69 must be kept for six (6) years (twelve years if the contract is under seal) after the final settlement of the contract. However, documents which relate to unsuccessful Bidders may be electronically scanned or stored by some other suitable method after twelve months from award of contract, provided there is no dispute about the award.

1.70 What are the Freedom of Information requirements in relation to contracts?

The Freedom of Information Act 2000 gives a general right of public access to all types of 'recorded' information held by public authorities, sets out exemptions from that general right, and places a number of obligations on public authorities with regard to the disclosures of information. The Council will, as a general rule, allow public access to recorded information where possible and the Contractor shall agree to the Council making any disclosures in accordance with the Act.

WITHDRAWAL OF TENDER

1.71 What happens if a successful Bidder withdraws their Tender?

If a Bidder withdraws their Tender after being awarded the contract, the Council will not (unless the Executive resolves otherwise) accept future Tenders from that Bidder for a period of two (2) years from the date of withdrawal.

NOMINATED SUB-CONTRACTORS

1.72 What is the process for the Council to nominate a Sub-contractor?

- 1.72.1 The following provisions shall have effect where the Council proposes to enter into a contract for the execution of work with a person (the “Main Contractor”) and also proposes to nominate to the Main Contractor one or more Sub-contractors for the execution of work or the supply of goods, materials or services within the contract with the Main Contractor.
- 1.72.2 The Council will issue an Invitation to Tender to potential Sub-contractors in accordance with the relevant provisions of section I, and:
- a the terms of the Invitation to Tender shall include a requirement that the successful Bidder will enter into a contract with the Main Contractor, under which the Main Contractor will be indemnified by the Sub-contractor in respect of its obligations to the Council which relate to the delivery / discharge of the work or goods, materials or services to be provided by the Sub-contractor; and
 - b the relevant Head of Service (or their authorised representative) shall nominate to the Main Contractor the most appropriate Bidder as Sub-contractor. Provided that, where the successful Tender is other than the lowest price received by the Council, the circumstances shall be reported appropriately.
- 1.72.3 Tenders received under this section 19.72 must comply with the relevant provisions of section I.

J – CONTRACT AND OTHER FORMALITIES

This section sets out the contract requirements for purchases made by the Council, including provisions that must be included in certain contracts, signing formalities, and the role of Legal Services.

CONTRACT DOCUMENTS

1.73 What is the role of Legal Services in relation to contracts?

All contracts should be sent to Legal Services for preparation and registration. Legal Services will be responsible for ensuring that contracts are appropriately executed by the Council.

1.74 When must a contract be entered into?

1.74.1 With the exception of minor cash transactions made in accordance with the Financial Procedure Rules, every contract for the execution of work or the supply of goods, materials or services shall be created only by:

- a the issue of an official order raised via the Council's financial system; or
- b where an Invitation to Tender has been issued, the completion of a formal written contract.

1.74.2 Section 19.74.1(b) above does not apply if the relevant Head of Service or their authorised representative) certifies that, owing to the nature of the proposed contract, the interests of the Council will be adequately protected by the issue of an official order form as in section 19.74.1(a) above.

1.74.3 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances (as agreed in writing by the Chief Finance Officer)the Chief Finance Officer.

1.75 What are the requirements for contracts entered into by or on behalf of the Council?

1.75.1 Every Relevant Contract over the Low Value Procurement Threshold purchases, for works, supplies of goods, materials, consultants or services must also as a minimum state clearly:

- a that the Contractor may not assign or sub-contract without the prior written consent of the Council;
- b any insurance(s) the Contractor is required to have;
- c any health and safety requirements the Contractor is required to follow;
- d any relevant ombudsman requirements;
- e the requirements for ensuring compliance with data protection legislation;

- f that charter standards are to be met, if relevant;
- g the Council's requirements in respect of Freedom of Information and Human Rights;
- h if relevant, that agents used to let contracts must comply with these Contract Procedure Rules;
- i a right of access for the Council to relevant documentation and records of the Contractor for monitoring and audit purposes; and
- j whistleblowing arrangements.

1.75.2 All contracts must include the following paragraph:

“The Contractor recognises that the Council is under a duty to act in a manner which is compatible with the Convention rights as defined by Section 1(1) of the Human Rights Act 1998 (‘Convention Rights’). This duty includes a positive obligation on the Council to ensure that contractors providing services on the Council’s behalf act in a way which is compatible with the Convention Rights. The Contractor therefore agrees to provide the Services and comply with its other obligations under this contract in a manner which is compatible with the Convention Rights.”

1.75.3 Where payment in advance is required under a contract, the formal written approval of the Head of Strategic Commissioning & Procurement, following due diligence of the organisation, is required. In the event of industry standards leading to a common accepted practice of advance payments (e.g., software licences) this would only need to be sought once.

1.76 When must the advice of Legal Services be sought in relation to a contract?

1.76.1 Notwithstanding that all contracts should be sent to Legal Services for review, the formal advice of Legal Services must be sought for a Contract that includes one or more of the following features:

- a the Total Value of the procurement is above the Key Decision threshold;
- b it involves financial lease arrangements;
- c it is proposed to use a contractor's own terms; or
- d it is particularly complex or high risk.

EXECUTION OF CONTRACTS

1.77 What are the execution formalities for Council contracts?

1.77.1 All Contracts shall be executed by an Officer with authority to do so under the Council's Scheme of Delegations.

1.77.2 The use of electronic signatures is permitted provided a process has been established and approved by Legal Services.

1.77.3 The Officer responsible for securing the signature of the Contractor must ensure that the person signing for the Contractor has authority to bind it. If the Officer is uncertain, this must be referred to Legal Services.

1.77.4 Where contracts are completed by each side adding their formal seal, the fixing of the Council's seal must be witnessed by an Officer on behalf of the Monitoring Officer. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.

1.77.5 The Council's seal must not be affixed without the authority of the Council, the Executive or a Chief Officer / Head of Service acting under delegated powers.

1.78 When must a contract be sealed?

1.78.1 A contract must be sealed where;

- a the Council wishes to enforce the contract for more than six years after it ends;
- b the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
- c there is any doubt about the authority of the person signing for the Contractor; or
- d the Total Value of the contract is expected to exceed the Procurement Threshold for works, goods, services or materials, consultancy, or a Concession Contract as set out in the Procurement Thresholds Annex.

1.78.2 Notwithstanding the above, there is no requirement for a contract to be sealed if the Monitoring Officer has determined that this is not required.

LIQUIDATED DAMAGES

1.79 When should a liquidated damages provision be included in a contract?

Every formal written contract, which exceeds the Low Value Contract Threshold set out in the Procurement Thresholds Annex and is for the execution of works shall provide for liquidated damages to be paid by the Contractor in case the terms of the contract are not duly performed.

BONDS

1.80 When is a Bond required?

1.80.1 The Responsible Officer must consult the Chief Finance Officer about whether a Bond is needed where:

- a the Total Value of a contract exceeds £200,000; or
- b it is proposed to make stage payments or other payments in advance of receiving the whole of the subject matter of the contract.

PARENT COMPANY GUARANTEES

1.81 When is a parent company guarantee required?

1.81.1 The Responsible Officer must consult the Chief Finance Officer about whether a parent company guarantee is required where a Bidder is a subsidiary of a parent company and:

- a the Total Value of the contract exceeds £200,000;
- b the Contract Award is based on evaluation of the parent company; or
- c there is concern about the financial stability of the Bidder.

PREVENTION OF CORRUPTION

1.82 What measures must be taken to prevent corruption?

1.82.1 High standards of conduct are obligatory for all Officers. A Responsible Officer must comply with the Officer Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Responsible Officer to prove that anything received from a Bidder or Contractor was not received corruptly. Corrupt behaviour will lead to dismissal and is a crime under statutes referred to in section 19.82.2.

1.82.2 The following clause must be included in every written contract entered into by the Council:

“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:

- a ***offer, give or agree to give anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or***
- b ***commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or***
- c ***commit any fraud in connection with this or any other Council Contract whether alone or in conjunction with Members, Contractors or employees.”***

Any clause limiting the Contractor’s liability shall not apply to this clause.

1.83 How is suspected corruption investigated?

Any suspected irregularity shall be referred to the Internal Audit Manager who shall notify the Chief Finance Officer and Monitoring Officer where necessary. Any examination of Contractors’ or Bidders’ books and records undertaken because of any such suspected irregularity shall be conducted by the Internal Audit Manager. If, in the investigation of any irregularity, the Chief Finance Officer considers that disciplinary procedures may need to be invoked, the appropriate Head of Service, Head of Legal & Democratic Services and Head of HR Client Services shall also be notified.

DECLARATION OF INTERESTS

1.84 When must Members and Officers declare in interest in relation to a contract?

- 1.84.1 If it comes to the knowledge of a Member or an Officer that a contract in which he or she has a pecuniary interest has been, or is proposed to be, entered into by the Council, they shall immediately give written notice to the Monitoring Officer.
- 1.84.2 Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest arises in respect of a contract to which the member or employee is not directly a party.
- 1.84.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this section 19.84.
- 1.84.4 The Monitoring Officer shall maintain a record of all declarations of interests notified by Members and Officers.
- 1.84.5 The Monitoring Officer shall ensure that the attention of all Members is drawn to the national code of local government conduct.
- 1.84.6 For the avoidance of doubt, the Member Code of Conduct, the Officer Code of Conduct and relevant provisions in the Constitution relating to declarations of interests shall apply to Members and Officers, as applicable.

K – THE LIFE OF THE CONTRACT

CONTRACT MANAGEMENT

1.85 What are the Council's contract management requirements?

- 1.85.1 Proportionate contract management, taking into account the risks to the Council in relation to a contract, must be an integral part of considerations when planning a procurement. Responsible Officers should ensure that there is a dedicated contract manager who is suitably qualified and experienced, and who will have detailed knowledge of the contract, and that appropriate contract management systems that are aligned to contract and corporate objectives, Value for Money / Best Value and performance improvement are in place.
- 1.85.2 Payments should be made in accordance with relevant contract terms and the Procurement Regulations and in a timely manner to avoid the payment of any interest charges.
- 1.85.3 The Council has a Contract Monitoring Framework, which sets out how contracts should be monitored during their life. Responsible Officers must comply with the Contract Monitoring Framework in respect of contracts for which they are responsible.
- 1.85.4 Strategic Commissioning & Procurement will ensure that:
- a there is compliance with the specification, pricing and contract terms for any procurement;
 - b contract performance and key performance indicators (where applied) are monitored and enforced on a regular basis with any reduction in performance addressed;
 - c regular budget monitoring and cost reconciliation of payments takes place to ensure that the contract sum is not exceeded; and
 - d contract risk assessments are conducted at regular intervals.

1.86 What happens if a Contractor fails to comply with the contract?

- 1.86.1 If a Contractor fails to comply with any of the provisions of a contract, the contract manager must try to secure compliance in accordance with the terms of the contract. Proper records must be kept regarding contract failings and any corrective measures put forward.
- 1.86.2 If this is not successful, the matter should be referred promptly to Strategic Commissioning & Procurement and their advice should be sought as to what action should be taken to protect the Council's interests.

1.87 How are disputes with Contractors managed?

Where practicable, all Contracts should contain a dispute resolution procedure. If there is a contract dispute, the contract manager must follow the dispute resolution

provisions contained in the contract and seek legal advice from Legal Services where necessary. Advice should also be sought from the Chief Finance Officer regarding the financial implications of any dispute.

CONTRACT EXTENSIONS AND VARIATIONS

1.88 When and how may contracts be extended and/or varied?

1.88.1 Contracts may only be extended or varied where:

- a the contract permits the extension or variation;
- b the extension or variation complies with the Procurement Regulations and any other applicable legislation;
- c the extension or variation is approved by Chief Finance Officer and the Monitoring Officer.

1.88.2 Guidance should be sought from Strategic Commissioning & Procurement, with confirmation sought from Legal Services (where required) in relation to any proposed extension or variation of a contract to ensure that it is compliant. Crown Commercial Service also provides guidance on this³³.

1.88.3 Any extension or variation of an Above Threshold Procurement must be made in accordance with the Procurement Regulations.

1.88.4 Any approval of an extension or variation to a contract must be notified to Strategic Commissioning & Procurement to be recorded in the Contracts Register .

1.88.5 Any contract extension entered into that is not envisaged by the original contract for the relevant procurement will be considered a breach of these Contract Procedure Rules and section 19.4 will apply. Where such an extension is deemed to be required, advice should be sought from Strategic Commissioning & Procurement on how to procure the required services in a compliant way.

TERMINATION OF CONTRACTS

1.89 What termination provisions should contracts include?

1.89.1 Every contract entered into should include appropriate provisions for its termination. Responsible Officers should seek advice from Legal Services on the termination clause(s) that should be included in a particular contract.

1.89.2 Termination provisions should include:

- a the circumstances in which the Council and the Contractor may terminate the contract;
- b any notice requirements for termination; and
- c the consequences of termination, including (where appropriate), the exit provisions that will apply.

³³ [Guidance on Amendments to Contracts During their Term](#)

1.89.3 In any event, every contract in respect of an Above Threshold Procurement should include a provision that allows the Council to terminate the contract if:

- a the contract is subject to a modification that would have required a new procurement under the Procurement Regulations; or
- b at the time of the Contract Award, the Contractor should have been excluded from the procurement for one of the reasons set out in the Procurement Regulations³⁴.

1.89.4 Legal Services will provide advice to Responsible Officers on the appropriate wording to be included in relevant contracts.

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³⁴ [Public Contracts Regulations, Regulation 73](#)

L – OTHER TYPES OF PROCUREMENT

COMMISSIONING A CONSULTANT

1.90 What is the process for commissioning a Consultant?

1.90.1 The engagement of consultant architects, engineers and surveyors or other professional consultants shall be subject to the process outlined in the Commissioning a Consultant Policy.

1.90.2 In summary, the following process shall apply:

- a a business case must be produced evidencing:
 - i the need for the consultant;
 - ii the outcome to be achieved;
 - iii how the work will be managed; and
 - iv the mechanism for funding the work; and
- b the engagement will, in the first instance, be undertaken through the NEPRO Solution.

PROCUREMENT OF AGENCY STAFF

1.91 How are agency staff procured?

1.91.1 Approval to appoint short-term agency staff must be obtained through a Vacancy Control Form.

1.91.2 Once approval has been obtained, confirmation of the approval and a job description must be sent to agencyprocurement@middlesbrough.gov.uk.

1.91.3 The vacancy will, in the first instance be posted to agencies through the Neutral Vendor Framework. Only in circumstances where recruitment is unsuccessful via the Neural Vendor Network will an alternative procurement solution be undertaken.

1.91.4 Candidates will be identified and interviewed. The recruiting manager will appoint and manage the successful agency staff member and be the Responsible Officer for timesheet approval and recording.

1.91.5 Senior or specialist roles will be sought from the Local Government Resourcing Partnership or other associated frameworks. In these circumstances, the Responsible Officer should seek the advice of Strategic Commissioning & Procurement on the procurement of such agency staff after a Vacancy Control Form has been approved.

1.91.6 In all cases, agency positions will be considered to be inside IR35, unless specifically determined otherwise by HR and/or Legal Services.

CONCESSION CONTRACTS

1.92 What is a Concession Contract?

- 1.92.1 A “Concession Contract” is one under which the Council provides an opportunity to a supplier to exploit the delivery of works, goods or services and the supplier receives benefit or payment for those directly from a third party rather than the Council paying for them directly.
- 1.92.2 A Concession Contract must involve the transfer of an operating risk to the supplier, the risk transferred must involve real exposure to the market, and the services must be for the benefit of the Council or its residents.
- 1.92.3 The advice of Legal Services and Strategic Commissioning & Procurement should be sought to confirm whether a contract is a Concession Contract.

1.93 How is the value of a Concession Contract determined?

The value of a Concession Contract is the estimated total turnover that the supplier can generate in consideration for the works, goods or services over the duration of the contract, net of VAT, as estimated by the Council.

1.94 What are the rules that apply to procurement of Concession Contracts?

There are specific requirements for the procurement of Concession Contracts that are Above Threshold Procurements³⁵. Advice should be sought from Strategic Commissioning & Procurement in relation to any such Concession Contract.

³⁵ [Concession Contracts Regulations 2016, Regulation 9](#)

ANNEX 1 – ROLES AND RESPONSIBILITIES OF OFFICERS AND MEMBERS

Role	Responsibility
Chief Officer	<ul style="list-style-type: none"> • Ensuring own compliance with these Contract Procedure Rules and applicable legislation and guidance. • Ensuring compliance of staff for which responsible for compliance with these Contract Procedure Rules and applicable legislation and guidance. • Approval of commercial business case, route to market strategy and contract management arrangements in accordance with these Contract Procedure Rules. • Ensuring that Contract Award decisions are made in accordance with the Council's Constitution and the Scheme of Delegations. • Engaging in a timely manner with Strategic Commissioning & Procurement to develop a procurement pipeline, maintain the contracts register and identify a named contract manager for each contract awarded.
Head of Service (Strategic Commissioning & Procurement)	<ul style="list-style-type: none"> • Ownership of these Contract Procedure Rules. • Ensuring that the governance and assurance framework for commercial considerations is complied with robustly and effectively across the Council.
Responsible Officers	<ul style="list-style-type: none"> • Ensuring that projects involving procurement are managed effectively to ensure compliance with these Contract Procedure Rules. • Ensuring there is a genuine and legitimate business requirement for the spend and an approved budget. • Ensuring that appropriate governance is exercised over decisions to approve expenditure. • Drafting a fit for purpose specification that includes appropriate contract management arrangements. • Supporting the definition of an appropriate route to market for each contract and ensuring that it is followed and that any deviation from the approved approach is justified. • Making a genuine estimate of total contract value over the contract term before commencing any procurement activity. • Conducting procurement activities and contract modifications and extensions for contracts under the financial threshold set out in the Procurement Thresholds Annex. • Engaging with Strategic Commissioning & Procurement for any Above Threshold Procurement. • Seeking guidance from Strategic Commissioning & Procurement on the application of these Contract Procedure Rules and applicable legislation to contracts.

	<ul style="list-style-type: none"> • Where appropriate, applying exemptions to these Contract Procedure Rules.
Executive Members	<ul style="list-style-type: none"> • Making strategic decisions in line with the Constitution, including the Budget and Policy Framework within which procurement plans are developed and implemented. • Complying with these Contract Procedure Rules to the extent that they have specific procedural responsibilities. • Ensuring compliance with the Member Code of Conduct, including in relation any interest they may have. • Ensuring that they are not involved in the commissioning and/or procurement processes that operate in the Officer domain.
Strategic Commissioning & Procurement	<ul style="list-style-type: none"> • Overall strategic ownership of procurement and commercial activity on behalf of the Council. • Engaging proactively with Service Areas to determine the procurement pipeline and how this is facilitated in a proportional and timely manner. • Supporting Service Areas in assessing the commercial considerations of planned procurements at the design stage, including drafting of the route to market strategy and contract management arrangements. • Working with Service Areas to develop proportional and informed category strategies. • Exploring options for using pre-existing public sector compliant contractual arrangements where this represents Best Value, including available Frameworks • Exploring opportunities for collaboration with other public sector bodies where appropriate. • Ensuring compliance with all applicable procurement processes, including under the Procurement Regulations. • Seeking to develop strategic opportunities for synergy between contracts to enable the Council to meet its Best Value duty.

ANNEX 2 – LETTING OF SCHOOL BASED CONTRACTS

This section outlines the Department for Education & Skills (DfES) regulations ensuring compliance with the requirements of the Fair Funding Scheme when letting contracts. The Fair Funding Scheme has been drawn up in consultation with schools and is approved by the Secretary of State. The Scheme sets out the financial relationship of schools under delegation with the Council and the areas it covers are required by regulations made under the School Standards and Framework Act 1988.

1. What are the considerations for letting school-based contracts?

- 1.1 Section 2.9 of the Fair Funding Scheme requires that Governing Bodies maintain a register of business interests of governors and Head teachers. This does not preclude participation in discussions about the relative merits of Quotations and Tenders but does mean those with a declared interest cannot vote on the final decision on the award of a contract. Those with declared interests must not be given any information about the Quotations or Tenders of other Contractors until after the deadline for submission of all Quotations and Tenders has passed.
- 1.2 Governing Bodies are acting as agents of Middlesbrough Council when they enter into contracts using funds delegated by the Authority. This means that Governing Bodies enter into contracts on behalf of Middlesbrough Council. Schools must adhere to the terms and conditions within the contract. Section 6.2.3 of the Fair Funding Scheme enables the Authority to charge any costs to a school's delegated budget awarded against it by a court for breach of contract by a school where they have failed to heed LEA advice.
- 1.3 The status of Governing Bodies of aided and foundation schools gives them additional responsibilities. Governing Bodies of these schools are not acting as agents of the LEA and are not bound by the Financial Scheme when exercising their additional powers or discharging additional responsibilities.
- 1.4 The provision of services and facilities by the LEA are covered by Section 8 of the Fair Funding Scheme. Although not a legally binding contract the terms and conditions of the Service Level Agreement set out the respective responsibilities of schools and the LEA. The Executive Director of Children Families & Learning will act as arbiter should a dispute arise.
- 1.5 Section 1.5 of the Fair Funding Scheme suggests the appropriate delegation to Head teachers. This includes delegation to enter into contracts. Governing Bodies are free to determine their own levels of delegation to Head teachers. In exercising delegated powers Head teachers must abide by the contracting processes referred to in this document.
- 1.6 Section 2.10 of the Fair Funding Scheme does not restrict schools to selecting Contractors from Approved Lists. However, where schools choose Contractors who are not on Middlesbrough Council's approved list they must satisfy themselves as to the health and safety competence and insurance cover of the Contractor. Schools should also have regard to Child Protection legislation and satisfy themselves that Contractors have made adequate arrangements to monitor the activities of employees where they will have access to children during the course of their work. It is essential that schools record their reasons for assessing and selecting a Contractor when they let a contract. This is not only considered good practice but also provides essential evidence to safeguard schools and the LEA from litigation claims.

- 1.7 Schools are advised that selecting Contractors from Middlesbrough Council's approved list is the preferred method of obtaining quotes and Tenders. Details of Contractors on the approved list are available, including the type and value of work for which each Contractor is approved and their status for tax deduction under the Construction Industry Taxation Scheme (CITS) (see section 7.2 of the Finance Scheme and Annex 5 of the Fair Funding Scheme).
- 1.8 Schools are required to seek at least three written Quotations for any contract for goods, materials, services & consultants valued between £16,000 and £53,099. For works at least three written Quotations are required for any contract valued between £16,000 and £106,099.
- 1.9 Schools are required to seek Tenders for any goods, materials, services or consultants valued over £53,100 and works valued over £106,100.
- 1.10 In all cases where Quotations or Tenders are sought schools should accept the bid that is most economically advantageous Tender. The reasons for accepting a Quotation or Tender must always be recorded in the minutes of Governing Body meetings where Head teachers have used delegated powers referred to above.
- 1.11 All Tenders should be accepted by the full Governing Body (subject to the withdrawal from the decision-making process by those with business interests (see above) and delegation to the Head teacher by the Governing Body (see above)). In exceptional circumstances where the lowest Tender is not accepted the Governing Body must record its decision in the minutes of the meeting.

Governing Bodies (or Head teachers with delegated powers) must ensure that Bidders have adequate public liability insurance cover of at least £5m for the work or goods and services covered by the contract before Contractors are appointed.

PROCUREMENT THRESHOLDS ANNEX

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PROCUREMENT THRESHOLDS ANNEX

1. Introduction

The Procurement Regulations set out statutory Procurement Thresholds (i.e., financial limits) for different types of procurement. Any Above Threshold Procurement must be conducted in accordance with the requirements set out in the Procurement Regulations. Procurements that are below a statutory threshold should be conducted as set out in the tables in this Procurement Thresholds Annex.

2. Interpretation

Capitalised terms used in this document shall have the meanings given to them in the Council's Constitution.

This Procurement Thresholds Annex should be read in conjunction with the Contract Procedure Rules set out in section 19 of the Constitution.

3. Procurement Thresholds

The current statutory Procurement Thresholds are as follows:

Goods and Services	Up to £213,477
Works	Up to £5,336, 937
Light Touch Regime	Up to £663,540

When applying the thresholds in this Procurement Thresholds Annex, contract values should be calculated on the basis of the whole life of the contract and should **include VAT**. No deduction should be made for any available VAT recovery and the standard rate of VAT (currently 20%) should be used.

When advertising a contract, and for contract award notices, the estimated contract value should be provided **exclusive of VAT**.

Note that the Procurement Thresholds in the Procurement Regulations are subject to change and should be confirmed with Legal Services and Strategic Commissioning & Procurement.

4. Key Decisions

Notwithstanding the rules set out in this Procurement Thresholds Annex, where any procurement requires a Key Decision to be made, that Key Decision must be given and recorded before an Invitation to Quote or an Invitation to Tender is issued.

A Key Decision will be required in respect of any procurement that will:

- (a) incur expenditure of £200,000 or more; or
 - (b) have a significant impact on two or more Wards,
- (“Key Decision Threshold”)

5. Exemptions

Any exemption to the Contract Procedure Rules and/or the requirements set out in this Procurement Thresholds Annex must be in accordance with sections 19.14 to 19.18 of the Contract Procedure Rules and the Exemptions Annex. An exemption may not be used for an Above Threshold Procurement.

6. Frameworks

There are a number of procurement organisations that provide a number of Frameworks that have been compliantly procurement under the Procurement Regulations that the Council can call off. The Framework will have its own call-off process which could be a mini-competition or direct award. Strategic Commissioning & Procurement will offer support on finding suitable frameworks and support you through the process to award via the Framework.

Any procurement that uses a Framework must be compliant with the terms of the Framework and the Procurement Regulations.

7. Local suppliers

Up to certain contract values (as set out in this Procurement Thresholds Annex), local suppliers are to be used where possible. Local suppliers are suppliers who are located within the Borough or Teesside and/or whose office or premises has a TS postcode.

GOODS AND SERVICES

The following table sets out the procurement procedures that apply to the purchase of goods and services by the Council.

For the avoidance of doubt, goods and services includes the procurement of consultancy and other professional services, and the procurement of agency staff.

Value	Process	Exemption from Rules by	Decision to Award	Formalities	Authority to sign or seal contract	Other
Up to £10,000	Direct Award unless an appropriate contract already exists	Not applicable	Budget Manager, Head of Service or Chief Officer approval given.	Order raised on the Council's financial system (section 19.74.1 of the CPR)	Legal signature if contract if not then Chief Officer approval	Must demonstrate Best Value Local suppliers to be used where possible
Above £10,000 and up to £213,477	At least 3 Quotations (section 19.56 of the CPR) Option to issue Invitation to Tender (section 19.54 of the CPR)	Exemption process approved in line with section 1.14 to 1.18 of the CPR	Quotation evaluation outcome	Order raised on the Council's financial system (section 19.74.1 of the CPR) Minimum contract requirements as set out in section 19.75.1 of the CPR	Legal memo submitted to legal with Chief Officer approval	Local suppliers to be used where possible To be published on: <ul style="list-style-type: none"> • E-tendering Portal • Contracts Finder • Find a Tender (if Invitation to Tender issued)
Above £213,477 (an Above Threshold Procurement)	At least 5 Tenders	Exemptions cannot be made for contracts with	Tender evaluation outcome and Tender award briefing note	Formal contract	Legal memo submitted to legal with Chief Officer approval	Procurement Regulations apply

Value	Process	Exemption from Rules by	Decision Award to	Formalities	Authority to sign or seal contract	Other
		a value over this threshold.	approved by appropriate DMT			To be published on: <ul style="list-style-type: none"> • E-tendering Portal • Contracts Finder • Find a Tender

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LIGHT TOUCH REGIME

The Light Touch Regime applies to the procurement of public service contracts for social care services and certain other specified contracts pursuant to Regulation 5 of the Procurement Regulations as follows:

Value	Process	Exemption from Rules by	Decision to Award	Formalities	Authority to sign or seal contract	Other
Up to £10,000	Direct Award unless an appropriate contract already exists	Not applicable	Budget Manager, Head of Service or Chief Officer approval given.	Order raised on the Council's financial system (section 19.74.1 of the CPR)	Legal signature if contract if not then Chief Officer approval	Must demonstrate Best Value Local suppliers to be used where possible
Above £10,000 and up to £663,540	At least 3 Quotations (section 19.56 of the CPR) Option to issue Invitation to Tender (section 19.54 of the CPR)	Exemption process approved in line with section 1.14 to 1.18 of the CPR	Quotation evaluation outcome	Order raised on the Council's financial system (section 19.74.1 of the CPR) Minimum contract requirements as set out in section 19.75.1 of the CPR	Legal memo submitted to legal with Chief Officer approval	Local suppliers to be used where possible To be published on: <ul style="list-style-type: none"> • E-tendering Portal • Contracts Finder • Find a Tender (if Invitation to Tender issued)

Value	Process	Exemption from Rules by	Decision to Award	Formalities	Authority to sign or seal contract	Other
Above £663,540 (an Above Threshold Procurement)	At least 5 Tenders	Exemptions cannot be made for contracts with a value over this threshold.	Tender evaluation outcome and Tender award briefing note approved by appropriate DMT	Formal contract	Legal memo submitted to legal with Chief Officer approval	Procurement Regulations apply To be published on: <ul style="list-style-type: none"> • E-tendering Portal • Contracts Finder • Find a Tender

WORKS

The following table sets out the procurement procedures that apply to the purchase of goods and services by the Council.

For the avoidance of doubt, these rules also apply to Concession Contracts (see section 19.92 of the CPR).

Value	Process	Exemption from Rules by	Decision to Award	Formalities	Authority to sign or seal contract	Other
Up to £10,000	Direct Award unless an appropriate contract already exists	Not applicable	Budget Manager, Head of Service or Chief Officer approval given.	Order raised on the Council's financial system (section 19.74.1 of the CPR)	Legal signature if contract if not then Chief Officer approval	Must demonstrate Best Value Local suppliers to be used where possible
Above £10,000 and up to £250,000	At least 3 Quotations (section 19.56 of the CPR) Option to issue Invitation to Tender (section 19.54 of the CPR)	Exemption process approved in line with section 1.14 to 1.18 of the CPR	Quotation evaluation outcome	Order raised on the Council's financial system (section 19.74.1 of the CPR) Minimum contract requirements as set out in section 19.75.1 of the CPR	Legal memo submitted to legal with Chief Officer approval	Local suppliers to be used where possible To be published on: <ul style="list-style-type: none"> • E-tendering Portal • Contracts Finder Find a Tender (if Invitation to Tender issued)

Value	Process	Exemption from Rules by	Decision to Award	Formalities	Authority to sign or seal contract	Other
Above £250,000 and up to £5,336, 937	At least 5 Tenders	Exemption process approved in line with section 1.14 to 1.18 of the CPR	Tender evaluation outcome and Tender award briefing note approved by appropriate DMT	Formal contract	Legal memo submitted to legal with Chief Officer approval	To be published on: <ul style="list-style-type: none"> • E-tendering Portal • Contracts Finder • Find a Tender
Above £5,336,937 (an Above Threshold Procurement)	At least 5 Tenders	Exemptions cannot be made for contracts with a value over this threshold.	Tender evaluation outcome and Tender award briefing note approved by appropriate DMT	Formal contract	Legal memo submitted to legal with Chief Officer approval	Procurement Regulations apply To be published on: <ul style="list-style-type: none"> • E-tendering Portal • Contracts Finder • Find a Tender

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MIDDLESBROUGH COUNCIL	
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Report of:	Head of Internal Audit, Veritau
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Submitted to:	Corporate Affairs and Audit Committee
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Date:	15 August 2023
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Title:	Internal Audit latest audit priorities
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Report for:	Information
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Status:	Public
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Strategic priority:	All
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Key decision:	No
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Why:	Not applicable
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Urgent:	No
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Why:	Not applicable
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Executive summary
<p>This report provides the committee with information on the latest priorities for internal audit work including audits currently at draft report stage.</p>

Purpose

1. To provide Members with an update on latest internal audit priorities. This follows a request at the previous committee meeting in July 2023 for further information on ongoing work.

Background and relevant information

2. Internal audit provides independent and objective assurance and advice on the Council's operations. It helps the organisation to achieve overall objectives by bringing a systematic, disciplined approach to the evaluation and improvement of the effectiveness of risk management, control and governance processes.
3. The work of internal audit is governed by the Accounts and Audit Regulations 2015 and relevant professional standards. These include the Public Sector Internal Audit Standards (PSIAS), CIPFA guidance on the application of those standards in Local Government and the CIPFA Statement on the role of the Head of Internal Audit
4. The purpose of this report is to provide an update on internal audit priorities including audits currently at draft report stage.
5. The current internal audit priorities are included at annex 1. This includes details of ongoing work ("do now") and those audits at draft report stage. Future work planned is also included in the "do next" and "do later" categories.

What decision(s) are being recommended?

That the Corporate Affairs and Audit Committee:

- Notes the latest priorities for internal audit work including audits currently at draft report stage

Rationale for the recommended decision(s)

6. Internal audit professional standards require that progress in delivering internal audit work, and the findings and outcomes from audit work are reported to the committee.

Other potential decision(s) and why these have not been recommended

7. This report is for information. There are no other options available.

Impact(s) of the recommended decision(s)

Legal

8. There are no specific impacts or implications.

Strategic priorities and risks

9. There are no specific impacts or implications.

Human Rights, Equality and Data Protection

10. There are no specific impacts or implications.

Financial

11. There are no specific impacts or implications.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
n/a	n/a	n/a

Appendices

1	Internal audit priorities August 2023
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Background papers

Body	Report title	Date
n/a	n/a	n/a

Contact: Phil Jeffrey
Email: phil.jeffrey@veritau.co.uk

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Appendix 1: CURRENT PRIORITIES FOR INTERNAL AUDIT WORK

Audit / Activity	Rationale / Comments on progress	Actual / Expected start	Expected finish
Corporate & cross cutting			
Category 1 (do now)			
Procurement cards	Requested by Children's DMT as an area of high risk and spend. Fieldwork underway.	April 2023	August 2023
Category 2 (do next)			
Agency staff	The Council has significant issues with recruitment and retention and subsequent spend on agency staff, particularly within Children's and Adult's Services	August 2023	October 2023
Health and safety	Proper arrangements for managing health and safety risks, and incident management, are essential. This area has not been audited for some time.	September 2023	Q3 2023/24
Procurement	Procurement is a key function of the Council and is high inherent risk.	September 2023	December 2023
Category 3 (do later)			
	These are audits which are under consideration for Q3 onwards:		
Information governance including FoI	Key governance area and weaknesses in relation to responding to FoI Act requests have been identified by EY as part of their annual work.		

Audit / Activity	Rationale / Comments on progress	Actual / Expected start	Expected finish
Savings plans and delivery	The Council has significant budget pressures and has agreed a further set of savings plans. The audit will review progress against these plans and the reasonableness of assumptions made in calculating savings.		
Decision making and Council governance	The Council has had several governance related issues in recent years that have been reviewed by internal audit. We will allocate time to review any emerging issues and to ensure previously agreed actions have been implemented.		
Risk management	This is a key area of governance for the Council and has not been audited for some time.		
Information security	Considered high risk due to external threats and the continuing pace of technological change. The Council has also recently moved into new offices at Fountains Court.		
Corporate complaints	Essential for effective governance. This area has not been audited for some time.		
Project management	Sound project management arrangements are important because it helps every part of the Council run more efficiently and effectively. When done correctly, it enables the leadership team to plan and manage projects so that objectives and deliverables are completed on time and within budget. The Council has several projects in development or underway including Boho X and regeneration projects including the old Southlands Centre, Captain Cook Square, the former Crown site and housing regeneration in Gresham. This audit may include a follow-up of actions relating to Boho X.		
Performance management	A key assurance area reflecting its significant contribution to the achievement of the Council's objectives		

Audit / Activity	Rationale / Comments on progress	Actual / Expected start	Expected finish
Financial / Corporate systems			
Category 1 (do now)			
Council Tax/NNDR	This is a key financial system requiring effective internal controls. Fieldwork is underway.	February 2023	August 2023
Debtors	This is a key financial system requiring effective internal controls. The specification has been agreed and fieldwork is underway.	April 2023	August 2023
Teesside Pension Fund – Administration	This is a key financial system for the Teesside Pension Fund requiring effective internal controls. Planning is underway; there has been a delay in starting the work due to other priorities.	July 2023	September 2023
Main accounting	This is a key financial system requiring effective internal controls.	August 2023	November 2023
Treasury management	Risks have increased in this area due to a number of factors including the tightening of PWLB lending criteria, increases to borrowing rates and ongoing concerns about the stability of some banks and money market funds. Planning has commenced.	August 2023	November 2023
Category 2 (do next)			
Benefits & Council Tax Support	This is a key financial system requiring effective internal controls. This audit will commence following the conclusion of the Council Tax / NNDR audit.	September 2023	December 2023
VAT accounting	This area has not been reviewed for some time.	Q3 2023/24	Q4 2023/24
Teesside Pension Fund – Investments	This is a key financial system for the Pension Fund requiring effective internal controls.	Q3 2023/24	Q4 2023/24

Audit / Activity	Rationale / Comments on progress	Actual / Expected start	Expected finish
Category 3 (do later)			
	These are audits which are under consideration for Q3 onwards:		
Payroll	This is a key financial system requiring effective internal controls.		
Creditors	This is a key financial system requiring effective internal controls.		
ICT			
Category 1 (do now)			
IT business continuity and disaster recovery	This is a key risk area for IT and there have been no recent audits in the area. Fieldwork is now complete.	May 2023	August 2023
IT asset management	There has been no recent audit coverage of this area. It contributes to the maintenance of information security but the risks have increased due to homeworking and the use of mobile assets. This audit will commence following the business continuity audit.	September 2023	December 2023
Category 2 (do next)			
Category 3 (do later)			
	These are audits which are under consideration for Q3 onwards:		
IT Applications	This audit will review the clarity of system ownership for a selection of IT applications. If ownership is not clear, then risks may not be managed effectively.		
Cyber security	Cyber threats are a high risk for all organisations and it's therefore essential that controls are in place to manage the risks they present.		

Audit / Activity	Rationale / Comments on progress	Actual / Expected start	Expected finish
Operational audits			
Category 1 (do now)			
Tees Community Equipment Service	A review of the service along with compliance with financial procedures. Fieldwork is now complete.	October 2022	August 2023
Homecare	A review of homecare payments was identified as an area for audit following other work; we have also identified issues at other Councils. Fieldwork is now complete.	November 2022	August 2023
Regeneration projects	An action from the Boho X audit report was to review the project management of other regeneration projects. This is at the draft report stage (issued 5 July 2023)	January 2023	August 2023
Domestic abuse	The number of domestic abuse-related crimes recorded with the Police has increased by 7.7% in the year to 31 March 2022 according to the Office for National Statistics. It is therefore a priority area for the Council. Fieldwork is currently underway.	May 2023	August 2023
Public health governance	This area has not been reviewed for some time. Fieldwork is ongoing.	May 2023	September 2023
Supporting families	Quarterly review of grant claims. Q1 is complete.	Ongoing	Ongoing
Selective landlord licensing	This has been raised as an area for review by the DMT. Fieldwork is ongoing.	July 2023	October 2023

Audit / Activity	Rationale / Comments on progress	Actual / Expected start	Expected finish
Early years funding	High potential risk due to the volume and value of transactions. No audit work has been undertaken in this area recently.	September 2023	December 2023
Ofsted Improvement Plan	This remains a high risk for the Council and progress is regularly reported to the Executive. We have completed work on the Improvement Plan in the past. We've agreed with DMT that it would be timely to undertake a further review to assess progress.	September 2023	December 2023
Use of residential care	The Council has a significant over-65 population. The audit will review the use of residential care and the decision-making processes.	September 2023	December 2023
Category 2 (do next)			
Youth Justice Service (Turnaround scheme)	The South Tees Youth Justice Service is a multi-agency partnership serving the local authority areas of Middlesbrough and Redcar and Cleveland. The scheme receives funding from central government for early intervention for young people.	Q3 2023/24	Q4 2023/24
Commercial property income	The Council has a portfolio of commercial property which it leases out. This was identified as an area of risk by DMT due to the increasing number of tenants. The audit will review the processes involved to onboard tenants, manage income and undertake debt recovery.	Q3 2023/24	Q4 2023/24
Direct payments	High inherent risk due to potential fraud and the complexity of care packages. The area has not been reviewed for some time.	Q3 2023/24	Q4 2023/24
Continuing healthcare (CHC)	CHC is a key area for adult social care budget management. This includes the pressures caused by hospital discharges.	Q3 2023/24	Q4 2023/24
Social care transitions (Children's to Adult's)	This was identified as a significant risk at DMT due to the pressures on resources, the increasing number and the complexity of the individual cases. This audit may include several different aspects including financial and non-financial.	Q3 2023/24	Q4 2023/24

Audit / Activity	Rationale / Comments on progress	Actual / Expected start	Expected finish
Category 3 (do later)			
	These are audits which are under consideration for Q3 onwards:		
Schools themed audit	We allocate time as part of the audit programme to look at aspects of governance and financial management across schools, as part of a themed audit. Priorities for themed audits will be agreed with officers. One area being considered is management of school exclusions.		
Children's Services demand / budget management	The Council continues to face significant budget pressures within Children's Services. This audit would look at overall arrangements for managing demand for services and costs.		
Housing development	A review of the arrangements to regenerate housing provision in the Council area.		
Regeneration projects (including Captain Cook Square)	The Council has a number of high-profile regeneration projects underway including Captain Cook Square which are of strategic and reputational importance to the Council. Audit work is currently ongoing on regeneration projects, and we will consider further work later in the year.		
Financial assessments (Adult's)	In the context of increasing financial pressure on care services, robust assessments can help the Council to accurately determine charges for care and work within financial constraints. This area has not been reviewed for some time.		
Climate change	Climate change is a Council priority in the Strategic Plan and the Council has a 2-year Green Strategy (2021-2023) with 3 overarching aims including to ensure the Council is a lead authority on environmental issues.		

Audit / Activity	Rationale / Comments on progress	Actual / Expected start	Expected finish
Anti-social behaviour management	Reducing anti-social behaviour (and crime) is a Council priority in the Strategic Plan. We have conducted a recent audit and this audit would follow-up previously agreed actions.		
Homelessness	This is a high risk nationally with 271,000 people recorded as homeless in England. Middlesbrough has the highest rates of homelessness in Teesside according to the charity Shelter.		
Burials (follow-up)	An audit of the burials service was carried out in 2022/23 which resulted in the need for various service improvements being identified. A follow-up review will be due towards the end of 2023/24 or early 2024/25.		
Transporter Bridge (follow-up)	This audit will follow-up the outstanding actions which remain to be implemented in relation to the maintenance of the Transporter Bridge. Implementation will depend on whether the bridge is returned to operational use.		

MIDDLESBROUGH COUNCIL



Report of:	Director of Legal and Governance Services
Submitted to:	Corporate Affairs and Audit Committee
Date:	15 August 2023
Title:	Internal Audit Investigation – Middlesbrough Development Company Governance review
Report for:	Information
Status:	Public
Strategic priority:	All
Key decision:	No
Why:	Not applicable
Urgent:	No
Why:	Not applicable

Executive summary

This report sets out the findings of a completed investigation that assessed the governance of the Middlesbrough Development Company.

The arrangements were assessed against recently issued best practice guidance on the governance structures that should be in place for partly and wholly owned Council Companies.

Actions taken to date and the planned actions within this covering report will ensure that the Council learns lessons from this review to ensure corporate governance is strengthened going forwards.

Purpose

1. The purpose of this report is to set out the findings of a recently finalised investigation by the Council's Internal Audit service, Veritau.

Background and relevant information

2. The purpose of the investigation was to review governance arrangements against best practice guidance that had been developed by the Chartered Institute of Public Finance and Accountancy (CIPFA), following a number of high-profile failures of Council owned companies nationally.
3. During completion of the audit, an Executive decision was taken to endorse a proposal to close down the company and put in place alternative arrangements within the Council to manage or dispose of any assets.
4. A copy of the full final report is attached to this report at Appendix One. The report contains one recommendation in light of the Executive decision to close down the company. It states that the Council should ensure the findings of the report inform future decisions around the creation of Council owned companies and their governance arrangements.
5. The Council has now developed a policy and supporting minimum standard which sets out the requirements for any Council company. This was agreed by the Executive Member for Finance and Governance on 25 July 2023.
6. The Council has made a number of changes to the governance of the Middlesbrough Development Company that will be in place during the wind up procedure for the company. A separate report on this will be brought forward to Executive by the Director of Regeneration who is leading this process. This will set out the changes in detail, the actions taken to date and the planned actions that will be taken during the wind up period to ensure the Council is assured that value for money is being achieved and its financial risks are mitigated. This report will be presented to Executive in the Autumn.
7. In addition to the development company, there is one partly owned Council company in existence, Veritau (Tees Valley) which provides Internal Audit services to both Middlesbrough Council and Redcar and Cleveland Council. During 2023/24 a review of the governance arrangements for this company will be undertaken to ensure it complies with this policy. This will be conducted by the Section 151 Officer as the Leadership Management Team officer with responsibility for Internal Audit and tracked as an action within the Annual Governance Statement covering the 2022/23 period, for action in 2023/24.

What decision(s) are being recommended?

That the Corporate Affairs and Audit Committee:

- Notes the content of the internal audit review appended to this report
- Notes the action taken to date to address the concerns raised in that report
- Notes the further planned actions in relation to the governance of partly and wholly owned Council companies.

Rationale for the recommended decision(s)

8. The report and the actions associated with it will ensure lessons are learned in relation to this subject.

Other potential decision(s) and why these have not been recommended

9. Not applicable.

Impact(s) of the recommended decision(s)

Legal

10. The report is for information only. There are no legal implications arising out of its recommendations that the content is noted.

Strategic priorities and risks

11. The report, actions taken to date, and planned actions will ensure the Council’s corporate governance arrangements in relation to partly and wholly owned companies are strengthened, positively impacting on the following strategic risk:

‘If the Council’s Corporate Governance arrangements are not fit for purpose and appropriate action is not taken to rectify this at pace, this could result in government formal intervention including removal of powers from officers and members and direction of council spend.’

Human Rights, Equality and Data Protection

12. Not applicable.

Financial

13. Not applicable.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Present a report to Executive that sets out how the revised governance of the company will align with the Council’s policy on the governance of companies and to also present the action plan for the winding up of the Middlesbrough Development Company to Executive	Director of Regeneration	30 September 2023
Complete a review of the governance arrangements of Veritau (Tees Valley) against the requirements of the Partly and Wholly Owned Council Companies policy	Section 151 Officer	30 March 2024

Appendices

1	Middlesbrough Development Company – Veritau Internal Audit report
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Background papers

Body	Report title	Date
Executive	Middlesbrough Development Company	24 January 2023
Executive Member for Finance and Governance	Wholly and Partly Owned Council Companies Policy and supporting Minimum Standard	25 July 2023

Contact: Charlotte Benjamin, Director of Legal and Governance Services

Email: charlotte_benjamin@middlesbrough.gov.uk



Internal Audit Report Middlesbrough Development Company Middlesbrough Council

For: Director of Legal and Governance Services and Monitoring Officer
Director of Finance

Status: Final

Date: 25 July 2023

Where information resulting from investigation and/or audit work is made public or is provided to a third party by the client or by Veritau then this must be done on the understanding that any third party will rely on the information at its own risk. Veritau will not owe a duty of care or assume any responsibility towards anyone other than the client in relation to the information supplied. Equally, no third party may assert any rights or bring any claims against Veritau in connection with the information. Where information is provided to a named third party, the third party will keep the information confidential.



Introduction and scope

- 1 The majority of local authorities own or have an interest in one or more companies. These include companies established for a specific purpose or as a result of government policy, companies set up to deliver services as an alternative to in-house provision, and companies set up for commercial reasons to generate a profit or return on investment. Many of these companies have been successful in delivering improved services, savings and innovation. They can also enable collaboration with other organisations, provide a vehicle for inward investment and help to address market failures.
- 2 However, there have also been a number of high profile corporate failures¹. These cases have resulted in the councils concerned suffering reputational damage and, in some cases, significant financial losses. In a few cases, these failures have resulted in the council's external auditors issuing public interest reports. This experience has meant increased scrutiny of council owned companies and the governance structures in place to manage risk and provide oversight.
- 3 Review of arrangements for overseeing council owned companies and ensuring they have appropriate governance arrangements in place is therefore a key priority for internal audit. It was agreed that an audit of arrangements for the Middlesbrough Development Company Limited (MDC) would be undertaken on behalf of the Council, as part of the 2022/23 internal audit programme. This was also an area where the Monitoring Officer had specifically requested a review.
- 4 MDC was established as MHomes (Middlesbrough) Limited on 22 February 2019. It was registered as a private company limited by shares, with Middlesbrough Council as the sole shareholder. The company's name was changed in December 2019 to the Middlesbrough Development Company Limited. The company is managed by a board of directors. This comprises councillors and officers appointed by the Council, and the Managing Director of MDC as an executive director.
- 5 Fact finding work by both internal audit and council officers had identified a number of potential areas around company governance and decision-making arrangements that required further review. The Council also recognised the need to review its arrangements for overseeing the operation of the company in light of recently published guidance on the operation of local authority owned companies (as reported in the 2020/21 Annual Governance Statement).

¹ Examples include Robin Hood Energy (Nottingham City Council), Brick by Brick (Croydon LBC) and Together Energy (Warrington Borough Council).

Scope and objectives

- 6 The purpose of this audit was to establish whether the Council had established:
- a robust, transparent and effective governance framework, including client management relationships and the management of potential conflicts of interest, which had been adopted by all relevant stakeholders
 - roles and responsibilities for both MDC and the Council which were clearly defined, and effective arrangements were in place for the appointment of company directors or other company officers
 - effective, embedded project and risk management processes
 - a framework to ensure performance was adequately monitored, and outcomes assessed against MDC's Strategic Plan and the Council's aims and objectives including demonstrating value for money.
- 7 The review was based on relevant good practice guidance including that recently issued by CIPFA on local authority controlled companies². The guidance sets out principles that councils should consider in deciding whether to set up companies and determining how they should be operated. But it does not set out specific requirements – it recognises that each council must determine what is appropriate in individual circumstances. The findings of this review reflect that approach, highlighting areas for the council to consider rather than representing a definitive list of weaknesses to be addressed.
- 8 The following areas were considered as part of this review:
- the adequacy, consistency and timeliness of performance reports by the company, and the arrangements for considering reports by the Council (including KPI's, business plans, budgets, accounts and annual reports)
 - Council arrangements for appointing directors or other company officers, and for their roles and responsibilities
 - the arrangements for ensuring key governance requirements have been established for the company, including the management of potential conflicts of interest
 - the arrangements for periodic review of the company, to ensure it continues to support Council strategic objectives.
- 9 The work was undertaken through a review of key documentation (for example reports, governing documents, and information registered with Companies House) and discussions with members of the Board of Directors and other Council officers involved with MDC, including:
- Board of Directors :
- the MDC Managing Director - executive director

² Local authority owned companies: a good practice guide – CIPFA (2022)

- the Mayor - non-executive director
- Head of Finance & Investments (Deputy s151 Officer) - non-executive director and current chair of the Board
- Councillor Arundale - non-executive director
- Councillor Polano - non-executive director

Key Council officers:

- Director of Regeneration
- Head of Development
- Head of Legal Services - Places (Deputy Monitoring Officer)
- Development Services Manager
- Finance Business Partner

Findings

Background

- 10 In June 2018, the Council's previous administration took the decision to directly intervene in the housing market in order to exert greater control over the pace and quality of housing development across the town. An option appraisal was undertaken by a Shadow Board to identify a preferred delivery model. On 18 December 2018 the Executive approved the creation of a housing development company, the associated business plan, and funding of up to £10m. On 22 February 2019, MHomes (Middlesbrough) Limited was created.
- 11 In December 2019, the name of the company was changed to Middlesbrough Development Company Limited. A report to the Executive on 20 December 2019 requested approval to develop a new business plan for the company, to reflect emerging priorities. The report highlighted the new Mayor's ambition to attract people to live in the town centre and a shift in strategic priority for MDC towards facilitating urban living.
- 12 On 1 September 2020, a new strategic plan for MDC was presented to the Executive for approval. The new company objectives reflected a significant change in focus, from direct development of residential accommodation, to a facilitating role with the aim to stimulate the property and development market in Middlesbrough.
- 13 MDC has one person working for it (the Managing Director) who is engaged through a consultancy based contract. He was appointed in September 2020.

Roles, responsibilities and oversight

- 14 CIPFA guidance highlights distinct responsibilities that exist where local authorities are members or shareholders of companies, and outlines structures that may be appropriate. For example:
- The company board, which is responsible for managing and leading the company.
 - Company directors who are personally responsible for ensuring the company complies with the law and have a duty to act in the best interests of the company. This can create conflicts of interests for officers or councillors nominated as directors.
 - A shareholder representative – who is delegated responsibility to take decisions on behalf of the council in its role as shareholder.
 - Shareholder boards – which advise the shareholder representative (or may act as the decision maker itself), provide oversight of company operations from the council's perspective as shareholder, and hold the companies to account. The shareholder board's role is to ensure objectives and policies a council has established for its companies are being adhered to. Its role will include monitoring company performance against the business plan and agreed KPIs, and scrutinising the company's accounts. Its independence from the

management of companies helps to provide assurance to the council and other stakeholders that there is independent and objective oversight of company operations.

- 15 The Council has established a board of directors for MDC. A shareholder representative has also been appointed, however this role is no longer independent from management of the company. When MDC was created in December 2018, the Executive approved delegation of the shareholder role to the Mayor. However, in December 2019, the current Mayor became a director of the company, effectively removing their independence. There is no other dedicated independent shareholder oversight role for MDC. For example no specific committee or board has been given responsibility for independently overseeing company operations.
- 16 It was noted that some expected oversight functions – such as review of company business plans – are undertaken independently of the company, by the Executive³. We also noted that a number of senior officers, who are not directors, regularly attend meetings of the board as observers, on behalf of the Council. The observers have expertise in a range of areas such as finance, law, and regeneration. They can provide advice to the board when required, and they contribute to communication about company activity to the Council. We discussed the observers’ roles with them during the audit. Overall, they felt that they helped the Council to exercise control of company activities, but that this was in an informal way. They felt the absence of formal oversight represented a potential risk for the Council. Most of the observers felt that their roles were not well defined. Some also commented that they did not feel able to challenge decisions made by the board. More generally, there appears to be a lack of clarity on the roles of different attendees at board meetings. For example some of the directors when interviewed, were not clear about who was attending board meetings as a director and who was an observer.
- 17 The lack of any formally defined independent responsibility within the Council for holding the company to account is a significant departure from recommended practice set out by CIPFA in their recently released guidance.

Conflicts of interest

- 18 This is a complex area for councils who own or are shareholders in companies. There are a number of issues to consider when appointing officers or councillors to be directors of companies. The law does not prohibit councillors or officers being appointed as non-executive directors of companies. Although guidance suggests it is good practice to have some distance between key authority decision makers and company decision makers. When acting as a director, councillors and officers have a duty to act in the best interests of the company and this can conflict with their substantive role. Conversely, acting as a director could prevent

³ Although it was also noted that some directors are also members of the Executive. The reporting arrangements are also not well defined, with no consistent schedule of reports to be presented.

officers or councillors being able to take part in some decisions or carry out elements of their responsibilities due to a conflict of interest arising from their role as a director. The potential pros and cons of officers and councillors acting as directors are set out in detail in the CIPFA guidance.

19 At a basic level, we found that MDC has mechanisms in place for directors to record interests and to declare these where appropriate, for example during board meetings. We also saw some evidence that more fundamental issues around conflicts of interest for councillors and officers acting as directors had been considered. For example, in June 2019 a special resolution was registered with Companies House authorising actual or possible conflicts for the officers and councillors initially appointed as directors, for the purposes of the articles of association. However, it does not appear that full consideration has continued to be given to this issue. Potential issues noted included:

- the appointment of the Mayor and other key council decision makers (members of the Executive) as directors of the company
- the appointment of the Mayor, who is designated as the Council's shareholder representative, as a director
- the appointment of the deputy s151 officer as a director and chair of the board; decisions on funding to be given to MDC are taken by the Executive, but also fall under the responsibility of the s151 officer in ensuring the proper administration of the Council's financial affairs⁴.

The board composition

20 It is good practice to ensure that company boards include directors with sufficient skills and experience to run them. There should also be arrangements to ensure clarity regarding the scope of directors' authority (including provision of training on directors' legal duties), transparent decision making and compliance with company governance arrangements. Good practice suggests that the optimum size of the board is between five and ten directors with a mix of executive and non-executive directors.

21 Details held at Companies House confirm that MDC has five current directors, who are:

- Andrew Preston (the Mayor) appointed 13 December 2019
- Ron Arundale (Councillor) appointed 21 August 2020
- Anthony John Dodds (MDC Managing Director) appointed 16 September 2020
- Justin Weston (the Council's Head of Financial Investments and Deputy s151 Officer) appointed 22 October 2020
- Eric Polano (Councillor) appointed 3 November 2021

22 Overall, we found that in terms of experience and composition the arrangements in place for MDC were generally in line with recommended

⁴ As an example of potential issues, in December 2019 the executive approved funding up to £3.5m for a company scheme, subject to further sign off from the Council's Section 151 Officer.

practice. This is based on discussions with the directors, and consideration of the wider expertise and knowledge the directors could draw on from the board observers. It was noted, however, that there are no formal arrangements in place to ensure board composition remains appropriate over time. For example clear arrangements to assess the skills and knowledge needed by the board when making new appointments and a lack of training for new directors. CIPFA guidance recommends induction training for new directors covering:

- the requirements of the shareholder(s) and the relevant company documents and policies
- the requirement for directors to make an annual statement of compliance and assurance
- the expected time commitment per annum and fees if applicable (non-executive directors)
- code of conduct, confidentiality and data usage
- a declaration of other interests at appointment and through the register of interests and at meetings of the board, and
- the duties of directors – reminding them to act in the best interests of the company.

Business planning and performance management

23 CIPFA guidance suggests that councils must ensure they have the organisational capacity to maintain oversight of their companies. Risk and financial performance should be assessed and monitored, and it is important that a company's performance can be objectively measured through KPIs.

24 As noted above, the Council does not have any clearly defined independent shareholder oversight role, with responsibility for monitoring company performance. Reports have been taken to the Executive providing an update on business plans. However, these contain little information about overall company financial performance or risk. No performance indicators for MDC as an entity have been defined.

25 A revised business plan was drawn up for MDC, following the change in objectives in 2019/20. This is referred to as the "Strategic Plan". This is a high-level document outlining the company objectives, an overview of work being undertaken, and operational methods. In relation to measuring performance the document states (at 9.1):

"MDC can be monitored and assessed periodically to ensure it is satisfying the Council's aims and objectives for the company. It can also be measured against:-

- Contributing to wider Council policies and objectives
- Income and expenditure as predicted
- Projects delivered in accordance with timescales
- Policies and procedures followed

- Problems and issues dealt with efficiently and effectively
- Did the management, administration and governance systems work?"

However, no actual performance indicators have been developed, and little evidence was seen of reporting against each of these areas.

- 26 The primary focus for management of the business at both board level, and within the Council, appears to be on the delivery of individual projects. Detailed project plans are drawn up for each scheme and these are discussed by the board. This includes discussion of progress and decision making at board level relating to management of projects. Cashflow and drawdown of funding from the Council is also discussed at monthly board meetings. However, there is little focus on overall company performance or financial activity (other than funding for projects). For example, overall profit and loss and future projections. A balance sheet is only prepared annually.
- 27 Business plan updates presented to the Executive primarily focus on projects to be delivered by MDC, and funds allocated and drawn down. No reference is made to overall company performance, or financial management of MDC as an entity. The shareholders agreement for MDC sets out specific requirements for business plans and the annual company budget at clause 6. These reflect normal practice for council owned companies. Clause 6 includes a requirement for annual shareholder approval of the business plan and budget produced by the Company, which must include:
- an estimate of working capital requirements incorporated into a cashflow forecast
 - a projected profit and loss account
 - an operating budget (including estimated capital expenditure requirements) and balance sheet forecast
 - a review of projected business
 - a summary of business objectives
 - a financial report for the previous year showing a comparison to the business plan for the year, and variances in sales, revenues, costs and other material items.

We saw no evidence to indicate these requirements were being followed.

- 28 We have also seen no evidence during the audit to show the Council has defined arrangements for measuring and reviewing value for money provided by the company as a whole.
- 29 There are no clearly defined arrangements for considering company related risks and how they will be managed. The company has not established a risk register, setting out risks at an organisational level. No evidence was seen that risks at the organisational level are regularly considered by the board (risks relating to individual projects are

considered regularly). Business plan updates to the Executive contain no information about risks relating to MDC as an entity⁵.

- 30 Overall, we saw little evidence that the MDC business plan was actively used to manage the business or monitor performance. The primary focus for both the board and the Council is the management of individual projects.

The business case

- 31 The Council fulfilled its responsibility⁶ to consider and approve the business case for establishing a trading company, when setting up MHome Limited, in December 2018. CIPFA guidance states that it is good practice for councils to review their companies on a regular basis. This includes reconsidering the reasons for establishing the company. For example to consider whether:

- the council understands why it continues to participate in a particular company
- the company continues to meet a particular need or solve a particular issue for the council
- the company's business plan continues to contribute to council strategic objectives.

- 32 MHome Limited was established to develop residential housing, in accordance with the following objectives.

- Deliver homes to buy or rent, that meet the needs of our aspiring population
- Accelerate delivery of the housing required to support population and economic growth
- Create quality places to live that act as a catalyst for further regeneration and investment
- Increase long-term income streams that support the Council's Medium Term Financial Plan (MTFP)

- 33 in 2019/20 the council made a decision to change the overall aims and objectives of the company. The new overarching aim for the renamed Middlesbrough Development Company was to stimulate the property and development market in Middlesbrough. Its new objectives were to:

- accelerate and facilitate the delivery of new homes and commercial premises to buy or rent that meet the needs of our aspiring population and business community
- help create quality places to live and work that act as a catalyst for further regeneration and growth

⁵ Reports to the Executive include risks under the implications section of reports, however these are relatively high level and do not provide detailed information about management of risks for MDC as an entity.

⁶ Under part V of the Local Government and Housing Act 1989.

- attract inward investment into Middlesbrough and work closely with developers and investors
- promote the councils urban living aspirations.

34 This was a significant change, from a focus on actively developing residential accommodation, to primarily acting as a facilitator for development in Middlesbrough. Although we understand the new objectives to include undertaking some development work such as projects that are unlikely to be commercially viable or attractive to private developers.

35 Good practice suggests that the Council should have undertaken a review of the business case for the company at the point its objectives were changed. However, we saw no evidence to indicate that consideration was given to whether a trading company remained the most appropriate vehicle to deliver the new objectives on behalf of the Council, or whether it would be sustainable as a commercial entity. We also saw no evidence that governing documentation (such as the shareholder agreement and articles of association) were reviewed to assess whether they remained appropriate following the changes to the company's objectives⁷.

36 We saw little to indicate that the company was acting as an independent trading company in practice. The company undertakes projects on behalf of the Council within an overall agreed funding envelope. The company develops plans for individual projects to be undertaken on behalf of the Council. However, the ideas for most projects appear to originate from within the Council and the Council makes decisions (through the Executive) about whether to approve funding for each project. In one case we were unable to verify whether a project in progress had been approved by the MDC board at all. It is not clear whether MDC has effective control over the work it undertakes on behalf of the Council and ultimately on the overall management of the business. Our overall impression was that MDC operates largely as an in-house service, although sitting outside normal Council governance arrangements.

37 In finalising this audit, we note that the Council has now undertaken a more fundamental review of the case for MDC. In January 2023, the Executive approved a decision to close the company.

Preparation and audit of accounts

38 The CIPFA guidance notes that because council companies involve the use of public money and potentially put taxpayers' money at risk, the presumption therefore might be that all local authority company accounts would be subject to external audit.

39 The original business plan approved for MHome Limited in December 2018 says that the Council will require it to have its accounts audited annually. It states that this audit "will give an additional level of checks

⁷ Good practice guidance suggests that it is good practice to review the shareholder agreement from time to time to ensure it remains fit for purpose.

that can be used to monitor the HDV and feedback on issues which may need action”.

- 40 Audits of MDC’s accounts were arranged through an independent firm of accountants. Draft accounts were reviewed and approved by the board of directors. However, there was a lack of formal documentation and sign off of the audited accounts.
- 41 Abbreviated accounts have been filed at Companies House, making use of exemptions under the Companies Act 2006. These include only very limited information. It was noted that the accounts for the period ending 31 March 2022 were not filed until 31 March 2023 – outside of the Companies Act requirement to file the accounts within nine months of the accounting period end.
- 42 It was confirmed to us during the audit that financial information for MDC was included as part of the Council group accounts and that some scrutiny by the Council’s external auditors has therefore taken place (the draft Statement of Accounts is also published on the Council’s website). However, there was no separate consideration of the MDC accounts by the Council, as part of its arrangements for overseeing governance arrangements and performance of the company. Overall, there was a general lack of transparency around, and formal review of, the accounts for MDC.

Other issues noted

- 43 There were a number of other areas noted where practices for MDC do not appear to follow best practice for local authority owned companies, or other good practice. These are summarised below.
- 44 There is no code of conduct for MDC board members and employees (although the company currently only employs one person through a consulting contract as noted at paragraph 13). There are also no formal arrangements for reviewing the performance of the Managing Director. Through discussions with directors and officers, we understand that some discussions of performance were held – for example as part of pay reviews for the MD. However, these were undocumented (details of the pay reviews were included in confidential papers but these do not refer to a review of performance).
- 45 Board meetings are held monthly, which is consistent with good practice. Generally, the quorum for meetings is met although we noted three occasions between January 2020 and October 2022 when it was not. There were some inconsistencies in minutes, for example there was sometimes insufficient detail of discussions, and decisions (and challenges) are not always recorded. This made it difficult to assess

whether the lack of quorum represented a significant issue on the occasions noted⁸.

- 46 MDC does not use any standard framework or model for project management. It was noted that the Managing Director oversees all projects and has a significant amount of experience in this role. However, application of a more formal methodology should be considered – particularly if the number of projects, their complexity, or the personnel involved in projects were to increase.
- 47 There appears to be an absence of separation of duties and appropriate internal controls in relation to payroll, payments and income as MDC has only one person working for it (the Managing Director). Although the chairperson counter-authorises large value payments above £50k and has access to the bank accounts, any payments or income below this threshold are the responsibility of the Managing Director alone.

⁸ For example, one of these meetings was on 12 August 2020 and included discussion of the new MDC Strategic Plan, and project plans for two projects in advance of referral to the Council's Executive. But it's not clear whether this discussion represented a key decision-making stage, or whether board approval was needed given that control of work to be undertaken by MDC ultimately reflects the Council's requirements and projects are approved by the Executive.

Conclusions & recommendations

- 48 In finalising this report, we note that the Council has recently reviewed the business case for MDC and has decided to close down the company. We are therefore making no specific recommendations in relation to MDC. However, we would suggest that the findings are used to inform any possible future decisions about the creation of Council owned companies, and their governance arrangements.