



Epping Forest District Council

CONSTITUTION AND MEMBERS SERVICES SCRUTINY STANDING PANEL

Monday, 11th January, 2010

Place: Civic Offices, High Street, Epping

Room: Committee Room 1

Time: 7.30 pm

Democratic Services Officer M Jenkins - The Office of the Chief Executive
Tel: 01992 564607 Email: mjenkins@eppingforestdc.gov.uk

Members:

Councillors Mrs M McEwen (Chairman), J Philip (Vice-Chairman), Mrs P Brooks, Ms J Hedges, J Knapman, J Markham, G Mohindra, R Morgan, D Stallan, Mrs M Sartin and Mrs J H Whitehouse

1. APOLOGIES FOR ABSENCE

2. NOTES OF THE LAST MEETING (Pages 3 - 6)

Attached.

3. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

(Assistant to the Chief Executive) To report the appointment of any substitute members for the meeting.

4. DECLARATION OF INTERESTS

(Assistant to the Chief Executive). To declare interests in any items on the agenda.

In considering whether to declare a personal or a prejudicial interest under the Code of Conduct, Overview & Scrutiny members are asked pay particular attention to paragraph 11 of the Code in addition to the more familiar requirements.

This requires the declaration of a personal and prejudicial interest in any matter before an OS Committee which relates to a decision of or action by another Committee or Sub Committee of the Council, a Joint Committee or Joint Sub Committee in which the Council is involved and of which the Councillor is also a member.

Paragraph 11 does not refer to Cabinet decisions or attendance at an OS meeting purely for the purpose of answering questions or providing information on such a matter.

5. TERMS OF REFERENCE / WORK PROGRAMME (Pages 7 - 10)

(Chairman/Lead Officer) The Overview and Scrutiny Committee has agreed the Terms of Reference of this Panel and associated Work Programme. This is attached. The Panel are asked at each meeting to review both documents.

The OSC is about to formulate next years OS work plan incorporating a programme for this Panel. In view of this, the Panel may wish to bring forward suggestions/ideas on topics for inclusion in its work programme for next year.

6. MEMBER TRAINING REVIEW - INTERIM REPORT (Pages 11 - 16)

(Assistant to the Chief Executive). To consider the attached interim report.

7. ANNUAL REVIEW OF CONTRACT STANDING ORDERS (Pages 17 - 40)

(Assistant to the Chief Executive). To consider the attached report.

8. ROLE OF MONITORING OFFICER - DRAFT PROTOCOL (Pages 41 - 50)

(Monitoring Officer). To consider the attached report.

9. REPORTS TO BE MADE TO THE NEXT MEETING OF THE OVERVIEW AND SCRUTINY COMMITTEE

To consider which reports are ready to be submitted to the Overview and Scrutiny Committee at its next meeting.

10. FUTURE MEETINGS

The next programmed meeting of the Panel will be held on 22 March 2010 at 7.30 in Committee Room 1 and then on:

**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION AND MEMBERS SERVICES SCRUTINY
STANDING PANEL
HELD ON MONDAY, 2 NOVEMBER 2009
IN COMMITTEE ROOM 1
AT 7.30 - 9.00 PM**

Members Present: Mrs M McEwen (Chairman), J Philip (Vice-Chairman), Mrs P Brooks, J Knapman, G Mohindra, R Morgan, D Stallan and Mrs J H Whitehouse

Other members present: Mrs P Smith

Apologies for Absence: Ms J Hedges, J Markham and Mrs M Sartin

Officers Present I Willett (Assistant to the Chief Executive), S G Hill (Senior Democratic Services Officer) and M Jenkins (Democratic Services Assistant)

19. NOTES OF THE LAST MEETING

RESOLVED:

That the notes of the last meeting of the Panel, held on 14 September 2009, be agreed.

20. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

There were no substitute members at the meeting.

21. DECLARATION OF INTERESTS

(i) Pursuant to the Council's Code of Member Conduct, Councillor J Knapman declared personal interest in the following item of the agenda by virtue of having been a Chairman of Council. The Councillor had determined that his interest was not prejudicial and would stay in the meeting for the consideration of the item:

- Item 7 Civic Events – Chairman of Council's Guidelines

(ii) Pursuant to the Council's Code of Member Conduct, Councillor Mrs P Smith declared a personal interest in the following item of the agenda by virtue of being the current Chairman of Council. The Councillor had determined that her interest was not prejudicial and would stay in the meeting for the consideration of the item:

- Item 7 Civic Events – Chairman of Council's Guidelines

22. TERMS OF REFERENCE / WORK PROGRAMME

The Panel were advised of the following update regarding the Work Programme:

- Item 4 Member Training Review was put back to January 2010. There was an opportunity of external funding for training with seconded staffing support, it was felt better to conduct a more thorough review of training when this funding was agreed and further consultation conducted with councillors.

RESOLVED:

That the changes in the Work Programme be agreed.

23. OSC REVIEW

Each Panel member had been provided with two local authority websites and a proforma and were tasked with evaluating the scrutiny sections of the websites. From this the members made the following suggestions for improvement:

- Scrutiny needed more publicity;
- Scrutiny reports needed to be more digestible for public consumption;
- Introducing an opportunity for the public to ask questions, to Cabinet and Council meetings;
- Ways of obtaining public suggestions of issues for scrutiny;
- Direct scrutiny of the Cabinet;
- Encouragement of more public involvement in Overview and Scrutiny;
- Public speaking at Standing Panels; and
- Electronic feedback facility for guests/witnesses at meetings

Members were interested in any relationship between scrutiny topics and FOI requests this would determine whether FOI requests could be used to help the annual scrutiny programme. Officers confirmed that a new database was being installed shortly for collating all FOI requests and from this it was possible to evaluate any such relationships which emerged.

RESOLVED:

That a full report on the Overview and Scrutiny Review be submitted to the Overview and Scrutiny Committee in December 2009 with draft to all Panel members.

The District Council's website was being re-designed which provided an opportunity for wider explanations of scrutiny. The annual report needed heavy editing. A public suggestions facility on the website would need an amendment to the Council's constitution.

24. CIVIC EVENTS - CHAIRMAN OF COUNCIL'S GUIDELINES

The Panel received a report and draft guidelines from Mr S Hill, Senior Democratic Services Officer, regarding the Chairman's Guidance on Civic Events. At the meeting of the Panel in April 2009 concern had been raised that comments at the Chairman's Civic Awards Ceremony had been construed as a criticism of another local council. Members had requested that guidance was established setting out the Chairman's responsibilities for events which would be inserted into the current guidance document provided to the Chairman at the start of each year.

RECOMMENDATION:

That the Proposed Guidance to the Chairman of Council in relation to Civic Events be endorsed.

25. FINANCIAL REGULATIONS - ANNUAL REVIEW 2009/10

The Assistant to the Chief Executive, Mr I Willett, presented a report to the Panel regarding Financial Regulations – Annual Review 2009/10.

Each year a cross directorate working party of officers carried out a review of Financial Regulations, Contract Standing Orders and officer delegation ensuring that these documents were updated and reflected statutory requirements.

External Funding

The proposed change to external funding related to “Responsibilities of Chief Officers.” Currently Chief Officers complied with the external funding strategy including obtaining and acting upon advice on legal or financial aspects of external funding applications from the Solicitor to the Council and the Chief Finance Officer.

Comparison work with other Councils had shown that all external funding applications should be signed by the Chief Finance Officer before being submitted. This had not been included in EFDC’s Financial Regulations, but it was felt best to implement this change. Other proposed changes were reflect changes in job titles and minor wording improvement.

RECOMMENDATIONS:

- (1) That the amendments to Financial Regulations relating to external funding applications (as set out in part B of the Appendix to these notes) be approved; and
- (2) That the adoption of those minor changes as set out in Appendix 2 to these notes be approved

26. DEMONSTRATION OF E-CALL-IN SYSTEM

The Senior Democratic Services Officer, Mr S Hill, gave a presentation to the Panel regarding the E-Call-In system.

The current call-in system for decisions made by the Cabinet or by individual Portfolio Holders required that three members of the Overview and Scrutiny Committee or five members of the Council could call-in a decision.

The identity of the Councillors making the call-in can be validated with the VPN token. However officers would check identities as a matter of course.

RECOMMENDED:

That the Electronic Call-In System be activated from April 2010 and any changes to the Constitution be approved by the Council.

27. FUTURE MEETINGS

The next meeting of the Panel was scheduled for 11 January 2010.

28. REPORTS TO BE MADE TO THE NEXT MEETING OF THE OVERVIEW AND SCRUTINY COMMITTEE

It was noted that the following reports were being put before the December 2009 meeting of the Cabinet:

- (1) Overview and Scrutiny Review; and
- (2) Financial Regulations

Agenda Item 5

TERMS OF REFERENCE - STANDING PANEL

Title: Constitution and Member Services
Status: Standing Panel
Terms of Reference: <ol style="list-style-type: none">1. To undertake reviews of constitutional, civic, electoral and governance matters and services for members on behalf of the Overview and Scrutiny Committee. 2. To report to the Overview and Scrutiny Committee, the Council and the Cabinet with recommendations on matters allocated to the Panel as appropriate.
Chairman: Cllr Mrs M McEwen

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Constitution and Member Services Standing Panel (Chairman – Cllr Mrs M McEwen)			
Item	Report Deadline / Priority	Progress / Comments	Programme of Future Meetings
(1) Review of June 2009 Elections	Completed – June 2009 meeting		29th June 2009
(2) Overview and Scrutiny Review (completion from last meeting of Panel) including Government White Paper on Empowerment	Completed – June 2009 meeting		14th September 2nd November
(3) Planning applications – comments by Parish Councils	Completed – June 2009 meeting	Referred to Planning Services Scrutiny Panel.	11 th January 2010 22 nd March
(4) Member Training Review	January 2010 March 2010	Interim Report Final Report	
(5) Annual Review of Financial Regulations.	Completed - November 2009		
(6) Annual Review of Contract Standing Orders	January 2010		
(7) Annual Review of Officer Delegation – including Call In Rights for Councillors in respect of planning matters	March 2010		

(8) Protocol on Civic Events	November 2009	Completed	
(9) Review of Internal Audit Report - External Partner Organisations -	September 2009	Completed	
(10) Licensing Committee – Review of Membership	March 2010	New item	
(11) Review of Area Plans Sub-Committees	March 2010	Subject to informal consideration with EFDC members via Council Bulletin.	
(12) Monitoring Officer (Draft Protocol)	January 2010		

Report to the Constitution and Member Services Standing Scrutiny Panel

Date of meeting: 11 January 2010

Portfolio: Leader

Subject: Member Training Programme 2010/11

Responsible Officer: Ian Willett (01992 56 4243)

Democratic Services Officer: Mark Jenkins (01992 56 4607)



Recommendations:

- (1) To receive a preliminary report on the outcome of the presentation to members on 17 December 2009 concerning a new approach to member training and development;
- (2) To note that personal development interviews with Councillors who have put themselves forward will be held on 11, 12 and 14 January 2010 with the consultant from IDeA;
- (3) That the outcome of the personal development interviews is expected to be:
 - (a) a situation report on members' training needs for the authority;
 - (b) an action plan based on member development charter requirements; and
- (4) To note that steps are being taken to develop a training course for candidates or prospective candidates for District Council elections in time for the March 2009 meeting, further details of which are given in this report; and
- (5) That further work be undertaken on the member training and development programme for next year once the report of the Consultant is to hand but that in the meantime certain training courses (e.g. planning, code of conduct, planning protocol etc) be covered in the outline programme which will be submitted to the next meeting of the Panel.

Report:

1. Introduction

1.1 The work programme for the Scrutiny Panel specifies that at this meeting, consideration should be given to the member training programme for next year. However, because a new approach is being attempted in relation to member training, the main details of the proposed programme will not be available until the Panel's meeting in March.

1.2 The purpose of this report is to update the Panel on recent developments with a view to detailed consideration being given to the training programme at the next meeting.

2. Personal Development Interviews

2.1 Two consultants working with IDeA visited the Council on 17 December 2009 and

gave a presentation on the IDeA charter approach to member training and development. The presentations were given by an IDeA consultant from Kent County Council who is also a Cabinet member with that authority and an IDeA consultant who has been engaged on a temporary basis, at no cost, to assist the Council in moving towards a new basis on which member training needs are determined. This latter consultant will be involved in individual member development interviews for those Councillors wishing to take part.

2.2 The consultant has agreed three complete days for personal development interviews with members. These are 11, 12 and 14 January 2010 and at the session on 17 December, it was hoped that a number of members would volunteer to take part. This work is being undertaken at no cost to the Council as resources are being provided through the East of England Regional Assembly..

2.3 The outcome of the presentation and the personal interviews will hopefully be an action plan on how the Council can progress its member training and development arrangements and some indications from those members who are interviewed of the kind of development needs being sought for the training programme. It is obvious that the more members participate in the personal interviews the better grasp the authority will have as to what should be included. However, certain courses can be taken as read; e.g. Code of Conduct, member induction, the various planning training courses, Planning Protocol and Finance training. Work will proceed in order to find dates for those sessions and these can then be integrated with those which arise from the personal development interviews.

2.4. It is anticipated that an increasing feature of the member training and development arrangements will be more one to one support for members where sought. This might include individual mentoring This is an aspect of training which has been underplayed within the Council but can offer real benefits to members who will respond to this kind of approach. Likewise various types of e-training can also be relevant to members who prefer that method.

3. Budgets and Organisation of the Programme

3.1 The training budget for 2009/10 totals £13,000. However, as a result of contacts with the East of England Regional Assembly additional funding has been made available both on member and officer training. With this in mind, that budget is likely to be underspent in the current year and it is planned to carry forward the budget at that level, namely £8,000 for the year as part of the savings plan being sought by the Cabinet..

3.2 As a response, it is planned to try to integrate member and officer training much more than hitherto which will result in members and officers attending the same courses. This in turn will avoid duplication of resources and gain better value for money out of existing budgets. By the same token the Council is actively participating in various Essex-based networks dealing with HR and training issues. It is hoped that this may result in more collaborative courses between different Councils which will once again save costs.

4. Candidates' Training

4.1 Last year members asked for a session to be included in the member training programme relating to candidates. The feeling was that potential candidates or actual candidates may have a better idea what to expect if they are elected, thus making their transition into the role of Councillor easier to achieve. There is another school of thought which says that candidates could easily be put off when they realise the scope of their responsibilities and the time commitment that this would entail.

4.2 A consultancy has been found that has experience in running such courses and arrangements have been made for one course to be held on Saturday 20 March 2009 at the Council Offices, Epping at which all candidates will be invited to attend. It will be appreciated that this is a new venture for the Council and does require a degree of support from Group Leaders and the local political parties. The event could be advertised more widely through the media in order to attract those candidates who are independent of the political group. A reserve date of 6 March 2009 has also been put aside in case the demand for the event proves greater than anticipated.

4.3 A copy of the course programme is attached as Appendix 1 to this report. There have been representations about the course being too long at one day and it is planned to reduce it to a half day or thereabouts. The programme is therefore submitted as a guide only.

Resource Implications:

To be met from existing budgets and external funding.in 2009/10.

Legal and Governance Implications:

None.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

Group Leaders and independent members.

Impact Assessment:

Risk Management

There are no identifiable risks in a fully trained Council. There are potential risks that some potential candidates or actual candidates may not seek to stand for election if they attend a training course specifically designed for them. By the same token, some of those who are undecided may decide to opt in.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
N/A.

N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

All training will be provided irrespective of political affiliation or the lack of them.

Z:/C/CONSTITUTION & MEMBERS SERVICES SCRUTINY STANDING PANEL\2010\11 JANUARY 2010 MEMBER TRAINING PROGRAMME 2010-11.doc



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Becoming a councillor

Who is it for?

Prospective councillors who wish to enhance their understanding of their role within modernised local government and to improve their effectiveness as an elected representative.

What are the objectives?

To aid prospective councillors in understanding the best approach to operating as a councillor within modernised local government.

What will it achieve?

At the end of the session, colleagues will have:

- ◆ Enhanced their understanding of modernised local government
- ◆ Reviewed the duties of a local councillor
- ◆ Developed their skills for effective operation within a council.

What does it involve?

This short interactive workshop will cover the following aspects:

09.00-09.30 – Arrival & coffee

Introduction as a councillor

Learning aims & peer networking:

What are the major barriers and concerns regarding becoming a councillor?

The election process

11.00-11.15 – Coffee break

Know your council

The way that the Cabinet & Executive works

Overview & scrutiny

Regulatory duties—licensing & planning

Standards & code of conduct

12.00-12.30 – Lunch

Leadership & development:

Political skills framework

Working with schools to reach children & young people

Engaging 'hard to reach' groups

15.00-15.10 – Tea break

How the Council is financed—how the District gets its money

Local Government Ombudsman

Representing the future: The report of the Councillors' Commission

16.30 – Review & close

For further details please contact us:

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Report to Constitution and Members' Services Standing Scrutiny Panel

Date of Meeting: 11 January 2010

SCRUTINY



Portfolio: Leader and Finance and Economic Development Portfolios

Report of: Assistant to the Chief Executive

Subject: Contract Standing orders - Annual Review 2009/10

Officer contact for further information: I Willett (01992 56 4243)

Democratic Services Assistant: M Jenkins (01992 56 4607)

Recommendations:

- (1) That the revisions to contract standing orders set out in Appendix 1 to this report be recommended to the Overview and Scrutiny Committee and the Council for approval;**
- (2) That, once agreed, the revised contract standing orders be published in the Constitution; and**
- (3) That the Assistant to the Chief Executive be authorised to update Standing Order C33 with the revised EU thresholds after 31 January 2010 and before adoption by the Council.**

Report:

1. Introduction

1.1 Each year a cross-directorate working party of officers carries out a review of financial regulations, contract standing orders and officer delegation with a view to ensuring that these documents are up to date and reflect current statutory requirements and operational needs. This report concerns contract standing orders which have now been discussed by the Officer Working Party.

... 1.2 The proposed changes are set out in Appendix 1 in bold type. The more significant changes are outlined below. Any not listed in the covering report can be summarised as being simple changes in post titles and clerical amendments.

2. Main Changes

2.1 These are as follows:

Standing Order Reference	Proposal/Reason
C1(9) (Compliance)	Amended to refer to the term of a contract (line 2) and by the addition of EU Regulations (last line)

C1(10) (Compliance)	Last sentence has been amended to emphasise the duty of Chief Officers to monitor costs.
C4(3) (Notification of Contracts to Internal Audit), C10(1) and (2) (Contractor Selection)	References to “£20,000” have been amended to “£25,000” to rectify an error.
C6(2) (Restricted Tendering) C10(2) and (3) (Contractor Selection)	Contract Compliance Officer has changed. It is now with the Senior Finance Officer – Procurement and Administration rather than the Director of Environment and Street Scene.
C6(4) (Restricted Tendering)	“Four Contractors” amended to “Five Contractors” to comply with EU regulations.
C7(3), (4) and (5) (Restricted Tendering – EU Regulations)	No major changes have been made but the layout has been clarified.
C8(1) (Open Tendering)	Revised wording is designed to ensure that Directors are clear that open tendering is the exception rather than the rule, is only carried on the direction of the Director of Finance and ICT and that all tenders have to be assessed.
C10(2) (Contractor Selection)	Sub paragraph (ii) has been amended to tighten the rules on use of a previously successful tenderer.
C20(3) (Quality Considerations)	The existing paragraph takes no account of quality/value for money considerations, merely specifying acceptance of a lowest tender on financial grounds. The amendment seeks to bring quality considerations into the authorising Cabinet or portfolio holder decision.
C34 (EU Procurement Thresholds)	An update to the thresholds is expected on 31 January 2010. The draft contract standing order is proposed to be amended prior to final adoption by the Council on 16 February 2010.

3. Next Steps

3.1 The changes require the approval of the Overview and Scrutiny Committee and adoption by the Council. The revised contract standing orders will then be published in the Constitution.

Z:\C\CONSTITUTION AND MEMBERS SERVICES\2010\11 JANUARY 2010 CONTRACT STANDING ORDERS

CONTRACT STANDING ORDERS

TENDER AND BID RIGGING – IMPORTANT NOTICE

DURING EACH STAGE OF THE CONTRACT PROCESS CHIEF OFFICERS SHOULD BE AWARE OF THE PRINCIPLES IN THE GUIDELINES FOR FIGHTING BID RIGGING IN PUBLIC PROCUREMENT, ISSUED BY THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) AND THE OFFICE OF FAIR TRADING AND THE CHECK LIST PROVIDED WITHIN THESE GUIDELINES. THE GUIDELINES CAN BE FOUND IN THE PROCUREMENT SECTION OF THE COUNCIL'S INTRANET.

C1 Compliance with Standing Orders

(1) Every contract made by the Council or on behalf of the Council except as hereinafter provided shall comply with:

- Standing Orders
- Financial Regulations
- The Local Government Act 1972
- The Local Government Act 1988, Part 2
- The Local Government Planning and Land Act 1989, and supporting documentation.
- Local Government Acts 1999, 2000, 2003
- Common-hold and Leasehold Reform Act 2003
- The Local Government (Contracts) Act 1997
- The EU Regulations
- Any relevant European Council Directive and any other current legislation for the time being in force
- Asset Management Plan

Where there is a conflict between Standing Orders, Financial Regulations and any statutory requirements, the Council must comply with statutory requirements.

(2) Before seeking quotations or inviting tenders in respect of any contract, a Chief Officer must establish whether a central contract exists which meets the requirement. If a central contract does exist then it must be used unless the appropriate Chief Officer in consultation with the Cabinet or Portfolio Holder if authorised under the general scheme of delegation or specific regulation is able to demonstrate that there are specific advantages to be obtained via alternative arrangements. In such circumstances consideration shall be given to whether a new/revised central contract would be advantageous and appropriate.

- (3) Where the Council is acting as agent for a Government Department, or for another authority under the terms of an agency agreement, nothing in these Standing Orders shall be taken to authorise or require any departure from the instructions or requirements of those departments or the terms of any Agency Agreement.
- (4) No exception from any of the provisions of these Standing Orders other than those provided for within the Standing Orders themselves, shall be made otherwise than by direction of the Council, the Cabinet, or a Portfolio Holder where satisfied that the exception is of necessity and justified in special circumstances where a Portfolio Holder seeks to waive any provisions in these Contract Standing Orders, they may do so only on the recommendation of the relevant Chief Officer and after consultation with the Monitoring Officer and the Chief Financial Officer and subject to the financial consequences not exceeding £250,000 or not constituting a departure from existing Council policy.
- (5) The reasons for any exception so made by the Council, or the Cabinet shall be made only pursuant to a report of the relevant Chief Officer and the reasons for such an exception shall be recorded both in the report of the Chief Officer and in the minutes of the appropriate meeting.
- (6) For the purposes of these Standing Orders, the expressions
- (a) "Chief Officer" means the Chief Executive, the Deputy Chief Executive or a Service Director;
 - (b) "Cabinet" means a duly constituted and convened meeting of those Councillors appointed to serve as Cabinet members;
 - (c) "Cabinet Committee" means a duly constituted and convened meeting of those Councillors appointed by the Council to the Cabinet Committee concerned;
 - (d) "Portfolio Holder" means a Councillor appointed by the Council as a member of the Cabinet with responsibility for particular portfolio of services.
- (See also C15 (appointment of consultants))
- (7) Unless otherwise specifically provided, where a value or an estimated value is given in these Contract Standing Orders, this refers to the aggregate payable in pounds sterling exclusive of VAT over the entire contract period.
- (8) Chief Officers must ensure that a pre-tender estimate for a contract of a value in excess of £50,000 of anticipated costs is prepared and recorded in writing. Where the EU Public Procurement rules apply, Chief Officers must also ascertain the value of a contract in accordance with those rules.
- (9) **The value of orders which can be combined in one contract, must be added together over a period of four years when deciding which tendering or quotation method is to apply. Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid the application of Contract Standing Orders and/or EU Regulations.**

- (10) **Where the aggregate sum payable within a single service directorate to one supplier of goods, works or services in a financial year is likely to exceed the limits of authority referred to in these Contract Standing orders, the Chief Officer must report to the Portfolio Holder (in respect of contracts up to £250,000) and the Cabinet (in respect of contracts if over £250,000 in value) and seek a waiver of the Standing Order. It is the responsibility of the Chief Officer to ensure that such a report is submitted prior to the limit of authority being breached. In exercising their responsibilities under this paragraph, Chief Officers are required to have regard to the overall cost (including any management costs and those which extend over longer than a single financial year).**
- (11) If any officer is made aware of or becomes aware of an actual or potential breach of the procedures contained in these Contract Standing Orders or any other statutory requirement, that officer shall report the breach immediately to the Chief Officer or the Chief Internal Auditor as appropriate. It shall be a further requirement that any instances of serious non-compliance shall be reported by the Chief Officer concerned or the Chief Internal Auditor to the Cabinet at the first available meeting if the value of the contract exceeds £50,000.
- (12) **These Contract Standing Orders apply to procurement of goods and services outside the Essex Procurement Hub (EPH). Use of these Contract Standing Orders for procurement purposes shall only be used where Chief Officers can demonstrate that procurement through the EPH is not possible.**
- (13) Chief Officers are required to ensure that, whichever procurement method is selected, they obtain the appropriate approval from a Portfolio Holder or the Cabinet in accordance with the value thresholds for contracts as set out in these Contract Standing Orders.
- (14) The provisions of Contract Standing Orders relating to competitive quotations or tenders and use of the Essex Procurement Hub shall not apply to the procurement of goods or services from its own works organisations or equivalent unless in the opinion of the relevant Head of Service there are clear value for money reasons for doing otherwise.
- (15) The Contract Standing Orders are part of the Constitution of the Council and may only be varied at a Council Meeting.

C2 Selection of Tendering Method

- (1) A Chief Officer is required, prior to the invitation of tenders or quotations, to determine the correct procurement procedure in accordance with the provisions of Standing Orders, based on the best estimate available at that time, of the contract sum.
- (2) Chief Officers are also required to select alternatives to the Essex Procurement Hub only where this can be demonstrated as being more appropriate to the Council's procurement requirements and the Hub has been notified of this view and has confirmed that it is unable to provide appropriate alternatives within existing framework agreements. In all other circumstances, Chief Officers are required to utilise the Essex Procurement Hub for advising on tender specifications, and for managing the procurement process. The Council remains

responsible for the drafting of tender and quotation specifications together with the evaluation and acceptance of tenders.

- (3) In the event that the value of tenders or quotations received exceeds the upper financial limit prescribed by the relevant Standing Order, the Chief Officer concerned shall report the circumstances to the Cabinet where the acceptance of any such tender or quotation, will be considered.

C3 Contracts Not Exceeding £25,000

- (1) Each Chief Officer may, in respect of the service or services for which they are responsible, by the issue of an official order in accordance with Standing Order C23 (1) enter into a contract not exceeding £25,000 in value or amount other than a contract for consultancy services. In the case of a contract for consultancy services, the form of agreement is available on the Council's intranet unless the Director of Corporate Support Services otherwise directs. Each Chief Officer shall at all times have regard to best value requirements in the procurement of services and entering into contracts which are set out in Financial Regulations and if best value considerations result in a quotation other than the lowest in financial terms being accepted, the reasons for so deciding shall be documented by the Chief Officer making that decision.
- (2) Written quotations must be obtained for contracts which have a value of up to £25,000. The minimum number of quotations needed is:

Contract Value:	Number of Quotations
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Up to £10,000	One, unless the price and terms are known in advance
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£10,001 - £15,000	Two
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£15,001 - £25,000	Three
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- (3) Where the supply of goods, works and/or services are of a repetitive and regular nature and not covered by a central contract as referred to in Standing Order C1(2), a contract shall be entered into for the supply of such goods, works or services in accordance with Standing Orders C11 (Serial Contract) or C13 (Exceptions for Consortia, Public Supply Agencies etc).
- (4) The terms of the delegation set out in (1)-(3) above shall not be applicable if the requirements of Standing Order C10 (Contractor Selection) apply.

C4 Contracts Exceeding £25,000 but not exceeding £50,000

- (1) In respect of contracts exceeding £25,000 but not exceeding £50,000 in value or amount the appropriate Chief Officer may, subject to the provisions of Standing Order C15 (Receipt and Custody of Quotations and Tenders), enter into a contract, provided that:
 - (a) at least three quotations (plus any 'in-house' bid) are obtained from those companies included on Constructionline;
 - (b) where the required trade or profession is not served by Constructionline, at least three quotations are obtained from sources considered appropriate by the relevant Chief Officer;

- (c) the proposed contract forms a continuation of an existing contract which is based on rates and prices obtained in accordance with these Standing Orders and the achievement of best value procurement can be demonstrated.
 - (d) all quotations under (a) and (b) above being invited in such a way as to allow sufficient time, as determined by the Chief Officer, to enable those companies to submit competitive quotations or tenders;
 - (e) the receipt, custody and opening of such quotations or tenders being carried out as prescribed in Standing Orders C16 (Receipt and Custody), C16 (Opening) and C17 (Late Receipt);
 - (f) a register being maintained by Chief Officers of the selection criteria employed to obtain a tender list; and
 - (g) Where the Council has procured services, supplies or works through a competitive process, and the service, supplies or works that are being provided is considered to represent best value in terms of quality and price, then the relevant Chief Officer should be enabled to continue for a period of no more than four years in accordance with Standing Order C11 (2) to appoint that service provider, supplier or contractor through a negotiated process subject to the Chief Officer being satisfied that the negotiated price represents best value, based on a value assessment each year based on market conditions.
- (2) Where the goods and/or services are of a repetitive and regular nature and not covered by a central contract as referred to in Standing Order C1(2) (Central Contracts) an annual contract or contract for such other period as the Chief Officer shall consider appropriate shall be entered into for the supply of such goods/services and be in accordance with Standing Orders C11 (Serial Contracts) or C13 (Exceptions for Consortia).
- (3) **Chief Officers will notify the Chief Internal Auditor of all individual purchases and contracts for goods, works and services over £25,000 in value whatever the period of the contract. Similarly, the Chief Internal Auditor should be notified of goods, works and services purchased from one supplier which total over £25,000 in value during one financial year.**

C5 Contracts Exceeding £50,000

Where the estimated value or amount of a proposed contract for the supply of goods or services exceeds £50,000 or where the conditions of Standing Orders C3(3) (Repetitive or Regular Contracts) or C4(2) (Repetitive or Regular Contracts) apply, tenders shall be invited in accordance with Standing Orders C6 (Restricted Tendering), C7 (Ad Hoc Lists), C8 (Open Tendering), C9 (Negotiated Tendering), C10 (Contractor Selection) or C11 (Serial Contracts). Standing Order C4(3) (Notification to Chief Internal Auditor) shall also apply.

C6 Restricted Tendering: For Contracts Exceeding £50,000 in Value

- (1) This Standing Order shall apply to projects with an estimated value not exceeding the limits specified in the EU Regulations and mentioned in Standing Order C33 (EU Procurement Thresholds). A Chief Officer will resolve that

invitation to tender for a contract be limited to those persons or bodies whose names are on Constructionline, the national qualification system, unless the trade or profession is not served by Constructionline.

- (2) **The system will be administered by the Director of Finance and ICT via the Senior Finance Officer – Procurement and Administration designated as the Contract Compliance Officer to whom comprehensive details shall be provided in respect of the contractor selection criteria applied, tenders invited and contracts awarded. All Chief Officers are placed under a duty to provide this information to the designated Contract Compliance Officer.**
- (3) If any Chief Officer considers that any contractor should no longer be considered for any future invitation to tender, a report shall be made to the relevant Portfolio Holder. If approved, a report shall also be made to Constructionline.
- (4) Invitations to tender shall be:
 - (a) **sent to not less than five contractors selected from Constructionline if the contract exceeds £50,000 unless the trade or profession is not served by Constructionline in which case the contractors selected in accordance with Standing Orders C7, C8 or C9 may be invited to tender;**
 - (b) **where fewer than five are available, to all such contractors.**

C7 Ad Hoc List - Contracts over £2 million

- (1) This Standing Order shall apply to projects;
 - (a) with an estimated value in excess of £2 million; or
 - (b) where the Council has resolved that invitation to tender be made to persons who have replied to a public notice; or
 - (c) where the EU regulations specified in C1(1) (Contract Compliance) or C35 (EU Procurement Thresholds) apply.
- (2) This Standing Order shall apply also to the provision of goods and services of an ad hoc nature that cannot be accommodated by Standing Order C6 (Restricted Tendering).
- (3) **Where the EU Regulations apply, the Chief Officer shall send:**
 - (a) **as soon as possible after the decision to approve any works; or**
 - (b) **in the case of services and supplies, as soon as possible after the commencement of the Council's financial year, to the Official Journal of the European Union (OJEU) a Prior Information Notice (PIN) via the Essex Procurement Hub in the form prescribed by the appropriate EU Regulations to alert prospective tenderers to the availability of contracts during the next financial year.**
- (4) **In order that applicants will have a reasonable opportunity of expressing an interest, at least ten days public notice shall be given in trade journals circulating among persons who undertake such contracts.**

- (5) **Where required a contract notice must be placed in the OJEU stating the nature and purpose of the contract. Where the Notice is not being placed by the Hub the content of European Union Notices shall be agreed in advance with the Director of Finance & ICT through the Essex Procurement Hub or in exceptional circumstances by any method approved by the Director of Finance & ICT by the appropriate Chief Officer and shall be published in the official journal at such a date prior to the letting of the contract which complies with EU public procurement regulations.**
- (6) After the expiry of the period specified in the public notice and the contract notice invitations to tender for the contract shall be sent to:
- (a) not less than four persons or bodies who have applied for permission to tender and who have been selected as suitable by the appropriate Portfolio Holder;
 - (b) If this is a contract to which the EU regulations apply, to the number specified in the advertisement as the minimum number of tenderers to be invited apply; and
 - (c) where fewer than four have applied, all those applicants considered suitable.

C8 Open Tendering - Contracts in Excess of £50,000

- (1) **This Standing Order shall apply only in exceptional circumstances where the Director of Finance & ICT determines that the opportunities for real competition are limited and the Council, the Cabinet, a Cabinet Committee, or Portfolio Holder have resolved that tenders for a contract are to be obtained by open competition. When open tendering is adopted, all tenders received must be reviewed in accordance with the requirements of EU regulations.**
- (2) For the purposes of this Standing Order procedures should comply with the requirements of Standing Orders C7(2), (3), (4)(Contracts over £2 million), and other Standing Orders as appropriate (e.g. C10 (Contractor Selection), C15 (Receipt and Custody of Tenders), C16 (Opening of Tenders), C17 (Late Receipt of Tenders) etc).

C9 Negotiated Tendering - Contracts in Excess of £50,000

- (1) This Standing Order shall apply where the Council, the Cabinet, a Cabinet Committee or a Portfolio Holder have resolved that tenders need not be invited and that a contract may be negotiated in the following circumstances:
- (a) the subject matter of the contract is urgently required and that loss, injury or damage would result from a delay whilst advertising takes place and the requirements of Financial Regulations relating to urgent expenditure are followed;
 - (b) the subject matter of the contract is of such a specialised nature that no advantage would accrue by inviting competitive tenders;
 - (c) there is no effective competition for the subject matter of the contract because payment is fixed under statutory authority or because the subject

matter is a patented or proprietary article or is available from only one source;

- (d) other tendering procedures have been used and resulted in:
 - (i) unacceptable or irregular tenders; or
 - (ii) no tenders being received;
 - (e) where the tender sought is in respect of a continuation contract and the preceding contract was won in competition, subject to the tenderer's satisfactory performance on the previous phase and to the approval not resulting in a contract which is for more than a four year period; or
 - (f) where the tender sought is in respect of specialist works or services, and the Council is satisfied that it is fair and reasonable in view of an existing relationship with a contractor to extend that relationship in regard to a new project, and the reasons for proceeding by means of a negotiated tender shall be recorded in the minutes of the appropriate meeting.
- (2) If the value of the contract is such that EU regulations apply, then the negotiated tender procedure or competitive dialogue procedure may only be used in the circumstances permitted by the regulations and public notice shall be given in accordance with EU requirements where applicable.

C10 Contractor Selection

(a) All Contracts Valued at More than £25,000

- (1) **For contracts in excess of £25,000, under no circumstances shall an invitation to quote be given to any person or body:**
- (i) whose name does not appear on Constructionline unless the trade required is not included on Constructionline; or
 - (ii) who has given advice to the Council on any matter relating to the proposed contract either in their own right, jointly with another firm or company or as agent, consultant or employee of such company; or
 - (iii) who has not met the requirements mentioned in the Contract Notice where the contract is one to which the EU Regulations apply.
- (b) **Contracts in Excess of £50,000 only**
- (2) **Subject to Standing Order C7 (4) (Invitations to Tender) invitations to tender (other than those in accordance with the EU Regulations) shall –**
- (i) **be agreed in consultation with the Director of Finance & ICT unless the contract is let in accordance with Standing Orders C3 (Contracts not Exceeding £25,000), C5 (Contracts Exceeding £50,000), C6 (Restricted Tendering), C7 (Ad Hoc Lists), C8 (Open Tendering), C9 (Negotiated Tendering) or if not previous contract has been let for this type of work, service or goods;**

- (ii) **include the Housing Repairs Service and the previously successful contractor unless deemed to be inappropriate;**
 - (iii) **be subject to a report to the appropriate Council body if a contractor succeeds in winning more than two successive contracts in the same financial year as lowest tenderer;**
 - (iv) **be subject to the EU Procurement Regulations procedures for letting contracts if the contract exceeds the value thresholds prescribed by those regulations**
- (3) **The results of all tenders received together with details of any contract awarded shall be notified in writing to the Director of Finance & ICT and to the Chief Internal Auditor prior to the commencement of the contract. All Chief Officers are placed under a duty to provide this information to the Senior Finance Officer - Procurement Administration, the designated Contract Compliance Officer.**
- (4) **In respect of a contract to which the EU Regulations apply, a Contract Award Notice must be sent via the Essex Procurement Hub to OJEU in the form prescribed by the EU Regulations within 48 days of the award of the contract.**
- (5) As part of the tender process, the pre-qualification information held on Constructionline (or obtained from other sources), should be in conjunction with pre-contract checks on any contractor as follows:
- (i) the contractor's background and competence to carry out the task in question;
 - (ii) evidence of satisfactory Employers and Public liability Insurance cover, the amount and terms of which are to the satisfaction of the Head of Finance;
 - (iii) acceptable Health and Safety and Equal Opportunities policies;
 - (iv) details of any registration with a nationally recognised regulating body or its European equivalent as appropriate to the work and any guarantee schemes attached are satisfactory;
 - (v) the qualification of the workforce and supervisors in relation to the proposed works is satisfactory;
 - (vi) the contractor's previous work record for the Council is considered satisfactory;
 - (vii) obtaining satisfactory banking references, statements of account (which should be no more than 18 months old) or similar references by referees of sufficient standing. An entry in Constructionline may count as one reference; and
 - (viii) asking the contractor to attend for interview if considered necessary.
- (6) Chief Officers may reduce any Long List produced by Constructionline to a Short List; using a priority rating system provided documentary justification is held.

Priorities should include locality to the District, extent of relevant experience, previous working relationships with the Authority and any other relevant factors at the discretion of Heads of Service (e.g. qualification awards).

C11 Serial Contracts

- (1) This Standing Order shall apply where the Council has resolved that the proposed contract forms part of a serial programme.
- (2) The terms of such contract shall be negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to tender in accordance with the provisions of Standing Orders C6 (Restricted Tendering) or C7 (Ad Hoc Tendering) and any such serial programme shall continue for a maximum of four years following the end of the financial year in which rates and prices are first obtained.
- (3) Where tenders or quotations for works, supplies or services are based on a schedule of rates or hourly rates, then a reasoned pre-estimate of quantities for each of the rates contained in the tender are to be quantified at the point of tender, and recorded at the tender opening. When evaluating the tenders, the rates contained in the tender or quotation must then be multiplied by the pre-estimate of quantities to reach an estimated tender sum. The estimated tender is the contract sum that is to be reported, and the tender evaluation report is to be held as a record of the tender analysis.

C12 Sub-Contractors and Nominated Suppliers

- (1) Tenders for sub-contracts to be performed or goods or materials to be supplied by nominated sub-contractors or suppliers shall be invited in accordance with the methods prescribed in these Standing Orders.
- (2) The Chief Officer concerned is authorised to nominate to the main contractor the sub-contractor, or supplier whose tender, obtained in accordance with the preceding sub-paragraph, is in his opinion, the most satisfactory; provided that, where the tender is not the lowest received or where the tender it is proposed to accept, exceeds by 10% the prime cost sum included in the main contract sum, the circumstances shall be reported to the next meeting of the Council or the Cabinet, as appropriate.

C13 Exception for Consortia, Public Supply Agencies etc.

The procedures for invitation of tenders by the Council need not apply where special arrangements have been entered into by any consortium, collaboration or similar body of which the Council is a member or under which the Council is entitled to benefit by virtue of its status as a public authority. The terms and conditions of any proposed contract must be acceptable to the Council's Chief Financial Officer and its Director of Corporate Support Services. Where, however, tenders are invited by an officer of the Council, which includes any consortia or public supply agency as one of those invited to tender, then the delivery, opening and acceptance of tenders shall comply with the provisions of these Standing Orders.

C14 Appointment of Consultants

- (1) It shall be a condition of the appointment of any architect, engineer, quantity surveyor or other consultant (not being an officer of the Council) who is to be responsible to the Council for the supervision of a contract on its behalf, that in relation to that contract there shall be compliance with the requirements of these Standing Orders relating to contracts as though the Consultant was a Chief Officer. The Council's standard forms of appointment for consultants shall apply in all cases unless the **Director of Corporate Support Services** directs otherwise. These are set out on the Council's intranet.
- (2) The engagement of consultants shall be in accordance with Standing Orders C3 (Contracts not Exceeding £25,000), C4 (Contracts Exceeding £25,000 but not Exceeding £50,000), C5 (Contracts Exceeding £50,000), C6 (Restricted Tendering), C7 (Ad Hoc List - Contracts over £2 million), C8 (Open Tendering), C9 (Negotiated Tendering - Contracts over £50,000) or C11 (Serial Contracts), dependant on the estimated amount of the fees and disbursements to be paid to them.
- (3) The procurement of consultants as defined in paragraph (5) below shall be exempt from the requirements of paragraph (2) above if appointments are sought and made through the Essex Procurement Hub or the Capita system. In the event that the Procurement Hub and the Capita system cannot secure a suitable appointment, paragraph (2) above will apply.
- (4) The appointment of any consultant to the Council in respect of duties performed or services rendered on projects with an estimated or potential scheme value in excess of £250,000 shall be under seal. The appropriate Chief Officer may however, require that any contract in respect of a scheme of less than £250,000 in value or amount shall be under seal if it is considered that this would be in the Council's best interests.
- (5) For the purposes of this Contract Standing Order, "consultant" is defined as an appointment of a non-established person (ie not employed by the Council or included on the Council's payroll or covering an establishment post) which is procured directly, through a company or similar commercial undertaking or through an agency and engaged to perform a specific task over a predetermined period.
- (6) Any appointment which does not meet the definition of consultant shall be deemed to be an appointment of a temporary member of staff, being a person included on the Council's staffing establishment and payroll, whether procured directly, through a company, or similar commercial undertaking or through an agency. Such a temporary appointment shall be deemed to be for the purpose of covering establishment posts within the Council. Such appointments shall be made by the relevant chief officer under delegated authority subject to the following conditions:
 - (a) appointments being funded from the existing salary budget for the service or Directorate concerned;
 - (b) appointments being made at a salary within the appropriate salary scale for the post being covered;
 - (c) delegated authority being exercisable by the relevant chief officer within a salary level equivalent to 20% above the highest scale point in the salary scale concerned;

- (d) such temporary appointments being made for no more than six months.
- (7) The engagement of Counsel (or similar legal adviser) is exempted from the requirement to place orders through the Essex Procurement Hub or the Capita system but the Director of Corporate Support Services is required to demonstrate value for money has been obtained provided that the nature of the legal advice concerned makes competitive arrangements realistic.

C15 Receipt and Custody of Quotations and Tenders

- (1) All specifications for the provision of goods and services by tender or quotation shall include a statement advising potential bidders that details of their tender may be published in the public agenda or minutes of the Council or may become available as a background paper or by means of Freedom of Information Act (FOI) request in response to which the Council would provide any information which is not covered by any of the Statutory Exemptions.
- (2) All quotations and tenders invited in accordance with standing orders shall be sent out by Special Delivery. The instruction shall include 'T&T' or equivalent system so that the progress of the documentation will be traced.
- (3) Quotations and tenders invited in accordance with these Standing Orders will not be considered unless contained in a plain envelope which shall be securely sealed and shall not bear any distinguishing matter or mark intended to indicate the identity of the sender, such envelope to be marked and returned in one of the following ways:
 - (a) in respect of contracts with an estimated value up to £50,000 the envelope shall bear the word "Quotation", followed by the subject to which the quotation relates, the closing date for receipt and shall be addressed impersonally to the relevant Chief Officer, or
 - (b) in respect of contracts with an estimated value in excess of £50,000 the envelope shall bear the word "Tender" followed by the subject to which the tender relates, the closing date for receipt, and shall be addressed impersonally to the **Assistant to the Chief Executive**, who shall maintain in a secure location a record of tenders and the dates and times of receipt.
- (4) Any tender or quotation submitted to the Council by electronic means shall be disqualified from consideration.
- (5) **All tenders shall be in the custody of the Assistant to the Chief Executive and shall be kept in a secure location until required to be opened.**
- (6) The provisions of Standing Orders C15(1) (Delivery of Tenders) and C15(2) (Envelopes etc) shall not apply in relation to Standing Order C3. (Contracts Not Exceeding £25,000).
- (7) Specifications for tenders and quotations shall include a statement regarding the Council's policy of paying invoices within 20 days of receipt and a requirement for the following:

- (a) the submission of a statement of the policies of tenderers regarding payment of sub contractors and suppliers and the timescales which apply to such payments; and
- (b) a statement by the Council that the statement under (a) above will be taken into in the Council's assessment of all tenders and quotations."

C16 Opening of Tenders and Quotations - Contracts in Excess of £25,000

Quotations and tenders received in accordance with these Standing Orders shall be opened at one time, as follows:

- (a) in respect of contracts with an estimated value exceeding £25,000 but not exceeding £50,000, the relevant Chief Officer in the presence of at least one of his principal or senior officers, shall open the quotations received, and shall maintain a record of all such quotations;
- (b) in respect of contracts with an estimated value in excess of £50,000 the Portfolio Holder concerned, in the presence of authorised representatives of the Assistant to the Chief Executive and the relevant Chief Officer, shall open the tenders which in the normal course of events will not be less than three working days after the closing date for receipt of those tenders; and
- (c) the Assistant to the Chief Executive shall maintain and his authorised representative sign a record of all tenders opened which shall also be signed by a member of the Cabinet and the representative of the Chief Officer concerned.

C17 Late Receipt of Quotations and Tenders

Quotations and tenders invited in accordance with these Standing Orders which are received after the date stipulated for their return shall be examined unopened by the relevant chief officer and shall be dealt with as follows:

- (a) where other quotations or tenders have been received but not opened and the Chief Officer is satisfied that there is evidence of posting in time for delivery, a late tender shall be noted in the record kept by the Chief Officer and retained for opening in accordance with Standing Order C16 (Opening of Tenders and Quotations - Contracts in Excess of £25,000) and the circumstances reported to the body or individual responsible for approval;
- (b) where other tenders have been opened or there is no evidence in the opinion of the Chief Officer of posting of the tender in time to reach the Council by the closing date, the tender will be opened by the Assistant to the Chief Executive or the relevant Chief Officer for the purpose of advising the tenderer of their disqualification from consideration, the record of tenders received being annotated accordingly.

C18 Alterations

- (a) Quotations and tenders shall not be altered after the date stipulated for their return, save that the relevant Chief Officer shall permit correction of arithmetical errors if he is satisfied that such errors were made inadvertently.
- (b) If an error is identified before the closing date for the return of tenders, all the tenderers shall be informed of the error and invited to adjust their tenders.
- (c) If an error in the specification is identified after the closing date for the return of tenders, all tenderers shall be given details of the error and afforded the opportunity of withdrawing the offer or submitting an amended tender.

C19 Acceptance of Quotations and Tenders - Contracts exceeding £25,000 but not exceeding £50,000

- (1) A Chief Officer may, subject to the provisions of Standing Order C4 (Contracts exceeding £25,000 but not exceeding £50,000) accept the lowest quotation received in respect of a contract not exceeding £50,000 in value or amount; a quotation other than the lowest received shall not be accepted until the relevant Portfolio Holder has considered a report from the appropriate Chief Officer or other person.
- (2) **Paragraph (1) above shall not apply where:**
 - (a) **the tender documentation prepared by the Chief Officer and submitted to prospective tenderers specifies that the acceptance of any tender will be not only based on consideration of price but also on an assessment of quality; and**
 - (b) **Where sub-paragraph (a) above applies, the methodology for assessing tenders on the basis of price and quality shall be documented and signed by the Chief Officer prior to the opening of tenders and retained as part of the contract documentation.**

C20 Acceptance of Tenders – Contracts Exceeding £50,000

- (1) No tender valued in excess of £1 million shall be accepted unless approval by the Council or the Cabinet has been given.
- (2) Tenders of value between £50,000 and £1 million may be accepted by the relevant Portfolio Holder provided that the tender sum is within the approved budget provision for the contract and all other requirements of Contract Standing Orders have been met. In the event that the amount of the tender exceeds the approved budgetary provision, the acceptance of that tender shall stand referred to the next Cabinet meeting.
- (3) **This standing order shall not apply to tenders where the Cabinet or a Portfolio Holder has determined prior to the invitation of tenders that they will be assessed on the basis of quality considerations or on the most economically advantageous proposal to the Council.**
- (4) Acceptance of tenders for the disposal of land or property and proposals for acquisition of interests in land or property shall be dealt with in accordance with the (1) – (4) above and Standing Order 32 below.

References in this Standing Order to "budget provision" shall be deemed to be the Council's pre-contract valuation estimate in relation to land and property matters.

C21 Acceptance of Tenders – Certificates of Bona Fide Tendering

Each Chief Officer shall ensure that a certificate of bona fide tendering is completed by every tenderer before a tender valued in excess of £50,000 is accepted. This certificate shall be in a form prescribed by the Director of Finance & ICT.

C22 Post Tender Negotiation

- (1) Where procurement is conducted through either the open or restricted procedure, and the EU (UK) Regulations apply, no post tender negotiations are permitted unless the contract has been advertised and tendered under the competitive dialogue procedure where the **Director of Corporate Support Services** determines that the procedure is appropriate to the nature of the contract concerned. The Council may seek clarification from suppliers where appropriate and this does not constitute post-tender negotiation.
- (2) Where procurement is conducted through the open or restricted procedures and the EU (UK) Regulations do not apply, post tender negotiations are only permitted to the extent indicated in the tender documentation. Any negotiation will be in strict compliance with the tender documentation. Proper and sufficient records of any negotiation shall be maintained.
- (3) Should negotiations be required because the lowest tender exceeds the budget available, or the Council's requirements have changed since the tenders were invited, all tenderers must be given the opportunity to submit revised tenders based on a revised specification.

C23 Contract Documentation

- (1) **Contracts placed in accordance with Standing Order C3 (Contracts not Exceeding £25,000) may be dealt with by the use of an official order, providing that the relevant Chief Officer is satisfied there is no need for more extensive terms and conditions in order to protect the interests of the Council. An official Council purchase order is required, in conjunction with all contracts.**
- (2) Contracts for the execution of works placed in accordance with Standing Orders C4 (Contracts Exceeding £25,000 and not Exceeding £50,000) and C5 (Contracts Exceeding £50,000) shall be in writing and be in a standard format such as ICE, PPC 2000 or similar partner contracts or JCT as approved by the Director of Corporate Support Services.
- (3) Every contract for the supply of goods, materials or services or for the execution of works for an amount in excess of £50,000 shall be under seal as should any other contract where it is desired that the period of liability for breach of contract should be extended from six to twelve years.
- (4) Every contract for the execution of works shall contain a provision affording the relevant Chief Officer, the Chief Internal Auditor or their authorised

representatives access to the site and the relevant documentation for audit purposes during the construction of the works.

- ... (5) All contracts shall include standard contract terms, which are available on the Council's Intranet, unless the Director of Corporate Support Services agrees an amended clause in substantially the same term or agrees that it would not be relevant to a particular contract.

C24 Retention of Documents

The relevant Chief Officer shall ensure that:

- (a) all appropriate contract documentation must be retained for a minimum of six years, or if a contract is executed as a deed under seal, twelve years, following the date of the final payment;
- (b) unsuccessful tenders should be retained in a secure location for a period of two years; and
- (c) tender opening records should be retained indefinitely in a secure location.

C25 Liquidated Damages, Performance Bonds and Insurance

- (1) Contracts (including contracts under PPC 2000 or similar partnering contracts) for the execution of works for an amount in excess of £50,000 shall provide for liquidated damages. These should be calculated by using the standard formulae drawn up by the Chief Society of Quantity Surveyors in Local Government as a basis. Advice regarding the calculations may be obtained from the Internal Audit Unit.
- (2) The Council shall not require security for the due performance for any contract below £2m, unless there are special circumstances which in the opinion of the relevant Chief Officer would warrant this provision.
- (3) For every contract of £2m and above, a performance bond shall be obtained for its due performance.
- (4) **In exceptional circumstances, a Chief Officer may, subject to the agreement of the Chief Financial Officer, require a parent company guarantee or a deposit with the Council, as security. The precise form of any parent company guarantee must be agreed with the Director of Corporate Support Services.**
- (5) Notwithstanding the fact that Constructionline does include insurance details of contractors and consultants, there shall be a requirement to insert in every written contract which places upon the contractor liability to effect insurance in respect not only of the works to be carried out or goods to be supplied but also in respect of its employees and third parties. The insurance shall have the interest of the Council noted and the contractor shall be required to supply evidence of insurance cover effected and premiums paid as and when required for the approval of the Chief Financial Officer. The minimum third party insurance cover shall be £5,000,000 or such other sum as may be determined by the Chief Financial Officer. The contractor shall also be required to show evidence of

a level of employer liability cover which is considered appropriate by the Chief Financial Officer.

- (6) In contracts for professional services, confirmation of Professional Indemnity Insurance with a minimum cover of £1,000,000 for any one claim or such other sum as may be determined by the Chief Financial Officer, shall be additionally provided when required.

C26 Retentions

A contractually specified retention must be held on all contracts where there is a defects liability or maintenance period. The monies held must not be finally released until the end of these periods. Retention clauses shall also be included in other forms of contract where the Chief Officer considers it appropriate.

C27 Assignment

- (1) Every written contract shall contain a provision which prohibits the contractor from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of the contract without the written permission of the Council.
- (2) Whenever a contractor is unable to conform with C26 (Retentions), and every alternative measure has been evaluated, then the Chief Officer responsible shall request approval to proceed from the relevant Portfolio Holder.

C28 Cancellation

Every written contract shall include a provision for cancellation in the terms specified in the annex unless the Director of Corporate Support Services agrees an amended clause in substantially the same terms.

C29 Final Account

- (1) The Chief Officer responsible for every contract for the provision of works, goods and services in excess of £50,000 shall provide at the end of the contract, a final account. This account will include details of the tender sum, contract variations, final account sum, any deducted liquidated damages, any extension of time awarded and any claims agreed with the contractor.
- (2) The Chief Officer responsible is fully accountable for the agreement of the final account and is authorised to sign off the final payment.
- (3) **At the time the final account is agreed, a Final Account Certificate where applicable should be completed by the Chief Officer responsible and copied to the Chief Internal Auditor.**
- (4) For contracts in excess of £500,000, the Chief Officer responsible should advise the Chief Internal Auditor of all details relating to the contract at the time of practical completion. If considered necessary, any contract could be subject to examination by Internal Audit.

C30 Contract Monitoring

- (1) All contracts let in excess of £1 million in value shall be the subject of monitoring reports to the relevant Portfolio Holder every three months, as should any other contract where the Portfolio Holder so requests.
- (2) On completion of contracts in excess of £1 million, a review should be carried out and reported to the Council, the Cabinet, or a Portfolio Holder in order to:
 - (a) provide a means of accountability, in showing how far the authority has done what it set out to do, and how much it cost; and
 - (b) enable the Council to learn from experience; this covers identifying how well projects met client and user requirements, recording issues that might require changes to procedures and transferring lessons between different services and types of project.
- (3) The relevant Chief Officer shall prepare and submit jointly with the Chief Financial Officer reports to the Cabinet on completion of all contracts where the final expenditure exceeds the approved contract sum by more than the lesser of 10% or £50,000 as required by Section 2 of Financial Regulations (Budgeting).

C31 Contract Monitoring - Quality Considerations

It shall be the responsibility of all Chief Officers to monitor the quality aspects of any tender or contract (including any contract to which Contract Standing Order 19(2) or 20(3) under their control applies) so as to ensure:

- (a) **that quality requirements in the tender specification are met by any tenderer before a contract is let; and**
- (b) **that those quality standards are consistently achieved throughout the lifetime of the contract.**

C32 Special Market Conditions

- (1) **Chief Officers may (with the approval of the Cabinet) place an order for the purchase or disposal of goods or materials which in their opinion would take advantage of any special conditions in the market or any other special conditions which they consider would be to the benefit of the Council; any case in which this Standing Order is utilised shall be the subject of a written report to the next meeting of the Cabinet.**
- (2) This Standing Order shall not apply where EU Procurement legislation is applicable.

C33 Acquisition and Disposal of Interests in Land

- (1) For the purposes of these Standing Orders, any acquisition or disposal of land and property or interest in land and property shall be dealt with as follows:
- (2) The Director of Corporate Support Services may negotiate, agree terms and complete any lease, assignment, underletting, change of use or alterations to premises leased (irrespective of term) with a rental or premium not exceeding £25,000 per annum, subject to the exercise of this delegated authority being

exercised:

- (a) only up to a limit of £250,000 (or ten years) for any single transaction;
 - (b) after consultation with the relevant Portfolio Holder in the case of any transaction which involves a material change of use or conflicts with any other Council policy in order to determine whether a decision is to be made by the Director of Corporate Support Services, by the Portfolio Holder or by the Cabinet.
- (3) The Director of Corporate Support Services is further authorised to negotiate terms for land and property transactions within the categories set out in C32(1) (Special Market Conditions) in excess of £20,000 in value but unless otherwise required by statute shall treat such offers as tenders or quotations.
- (4) The procedures set out in Standing Order C4(1) (a) (3 quotations from Constructionline) and C5 (Contracts Exceeding £50,000) and C20 Acceptance of Tenders valued between £50,000 and £1 million which apply to tenders and quotations for works, goods and services are applied to this Standing Order. Any Cabinet terms of reference shall be adhered to regarding transactions of £250,000 in value or more, or of 0.25 hectares or more, or of land or property of strategic importance to the district, and any other terms and conditions shall be subject to confirmation by the Cabinet, including the acquisition and disposal of dwellings within the Housing Revenue Account, which shall be dealt with by the Cabinet.
- (5) Any acquisition or disposal of land or property or interest in land or property shall comply with:
- (a) all governance arrangements set out elsewhere in Contract Standing Orders; and
 - (b) all procedures set out in the Office of Government Commerce (OGC) Guide for the Disposal of Surplus property.
- (6) It shall be competent for the Cabinet (in respect of transactions for the disposal of land where the pre-contract valuation estimate is in excess of £250,000 or for a Portfolio Holder (in respect of pre-contract valuation estimates of between £50,000 and £250,000) to determine the most appropriate method of disposal which achieves the Council's statutory duty of obtaining best consideration.
- (7) Pursuant to (5) above, the appropriate disposal methods are prescribed as follows:
- (a) formal tendering (providing for an initial deposit and binding contract if tender is successful);
 - (b) formal tendering (providing for no initial deposit and no binding contract if bid is successful);
 - (c) private treaty; and
 - (d) public auction.
- (8) Paragraphs 5(c) and (d) above shall only be approved in exceptional circumstances if the decision-maker has considered a statement prepared by the

Director of Corporate Support Services which justifies the proposed procedure as the most suitable method of achieving best consideration.

- (9) The Cabinet or a Portfolio Holder (as appropriate) may also determine that sale particulars should make provision for a two stage offer process that provides the Council with the option of inviting best and final offers after receipt of initial offers where this is demonstrated by them to be appropriate, this procedure being subject to the following conditions:
- (a) the Director of Corporate Support Services having so recommended;
 - (b) the Cabinet having considered the case for adopting this method of disposal based on an assessment of the risks involved and concluding that this procedure is the most appropriate for achieving best value; and
 - (c) the sale particulars including the option for inviting best and final offers after the receipt of initial offers.
- (10) The provisions contained in this Standing Order shall not apply to any land or property transaction (including transactions in relation to interests in property land) where the pre-contract valuation estimate is less than £50,000.
- (11) The Director of Corporate Support Services may agree on behalf of the Council to the grant of any of the following licences in respect of existing leases where the appropriate enquiries have been carried out and is satisfied that to grant the licence would be in accordance with good estate management and would not adversely affect the premises concerned:
- (a) licences to assign the lease;
 - (b) licences to underlet;
 - (c) licences to change the use of the premises; and
 - (d) licences to carry out alterations.

provided that there is no prohibition contained in the lease in respect of these matters.

- (12) Where there is a prohibition against any of the matters mentioned in paragraph (c) above or the Director of Corporate Support Services considers that it is appropriate then the application for the appropriate licence will be referred to the relevant Portfolio Holder.

C34 EU Procurement Thresholds - 31 January 2008

SUPPLIES	SERVICES	WORKS
£139,893	£139,893	£3,497,313 ¹

NOTE:

These thresholds are regularly updated. Officers should check with the Director of Finance & ICT on the current thresholds. The Director of Finance & ICT will also update this Standing Order from time to time on the Council's intranet.

¹ Including subsidised services contracts under regulation 34 of the Public Works Contracts Regulations 2006.

C35 LOCAL BUSINESSES

Chief Officers are required to obtain, where possible, at least one quotation or tender from a business located in the Epping Forest District (including those with headquarters elsewhere) for any contract or official order being placed by the Authority, provided that in awarding the contract to a local business, the Council's duty to achieve value for money and to comply with legal duties and any other requirements of Contract Standing Orders is not compromised.

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Report to the Constitution and Member Services Standing Scrutiny Panel



Date of Meeting: 11 January 2010

Subject: Role of Monitoring Officer - Draft Protocol

Responsible Officer: Colleen O'Boyle (01992 56 4475)
(Monitoring Officer)

Democratic Services Officer: Mark Jenkins (01992 56 4607)

Recommendations:

- (1) To consider the attached draft Monitoring Officer Protocol; and
- (2) To consider recommending that the Protocol be approved by the Council as part of the Constitution.

Executive Summary:

This report responds to a request made by the Chairman of the Audit and Governance Committee for a report on the need for a Protocol between the Council and the Monitoring Officer regarding the roles and responsibilities of that statutory officer. This was with a view to managing the relationship between the authority and the Monitoring Officer on a mutually agreed basis. The Audit and Governance Committee has now referred the protocol to this Panel for consideration.

Reason for Proposed Decision:

The report has been submitted to this meeting at the request of the Audit and Governance Committee.

Other Options for Action:

None.

Report:

1. The Monitoring Officer is a designation which was introduced in the Local Government and Housing Act 1989. The functions of the Monitoring Officer are set out in Article 13 (Officers) of the Council's Constitution (Pages B36-B40).
2. The functions of the Monitoring Officer may be summarised below:
 - (a) maintaining the Council's Constitution;
 - (b) ensuring lawfulness and fairness of decision making;
 - (c) supporting the Standards Committee;

- (d) receiving reports on the results of investigations as part of the ethical framework;
- (e) conducting investigations on behalf of the Standards Committee;
- (f) acting as Proper Officer for access to information matters;
- (g) advising on Executive decisions and whether these are within the budget and policy framework of the Constitution; and
- (h) providing advice on the scope of powers and authority to take decisions, on maladministration, on financial impropriety, on probity and budget and policy framework issues to all Councillors.

3. The Monitoring Officer cannot also be the Chief Finance Officer or the Head of Paid Service. The latter positions are held by Mr R Palmer and Mr P Haywood respectively in their roles as Director of Finance and ICT and Chief Executive.

Need for Protocol

4. The request by the Chairman of the Audit and Governance Committee for a report to its meeting on 30 November 2009 was occasioned by concerns expressed at an extraordinary Council meeting held in August 2009 at which a private session item concerning the contractual position of a member of staff was discussed. The specific issue which arose related to the rights (or otherwise) of the Monitoring Officer to attend any meeting of the Council, the Cabinet or any other body for the purpose of advising the authority regarding lawfulness and fairness of decision making (see above). On that occasion, the Monitoring Officer had decided to issue a report under Paragraph 13.03(b) of Article 13 and had indicated that in order to present that report and answer questions, it was necessary for her to attend the meeting both for the purpose of presentation of the report, answering queries from Councillors and advising on any suggested decision that was going to be made.

5. The discussion on this item was held in private session and, for the most part, in the absence of all officers except an external legal adviser who had been appointed by the Leader of Council. At the meeting, the Monitoring Officer made a presentation, answered questions about the report and about her own role in presenting it and, by agreement, withdrew from part of the meeting so that the Council could receive its legal advice from the external Solicitor who remained in the meeting throughout. The Monitoring Officer returned to the meeting once the Council had completed its private discussions and was present during the formulation of the resolutions concerned.

6. As the ability of the Monitoring Officer to remain present at a meeting had been questioned, the need for a Protocol governing relations between the Monitoring Officer and the Council has been identified. It should be stressed that at the Council meeting in question the Deputy Monitoring Officer advised on the position concerning the Monitoring Officer's powers and responsibilities and advised on good practice advice which had been received from the Audit Commission which indicates that the Monitoring Officer is entitled to attend all meetings and see all documents relating to any forthcoming Council decision.

The Protocol

7. The enclosed Protocol has been based on the statutory requirements of Section 5 of the Local Government and Housing Act 1989, the advice from the Audit Commission and good practice examples obtained from other authorities. The Panel is invited to consider this document and determine how it should be progressed.

8. The Protocol was discussed by the Audit and Governance Committee which suggested that the pronoun referring to the Monitoring Officer should be de-personalised. This change has been made in the revised draft now submitted.

Resource Implications:

None.

Legal and Governance Implications:

Although receipt by the Council of a Monitoring Officer's report has been a very rare event since the designation took effect, the Council's governance framework needs to take account of the statutory role of the Monitoring Officer and that, to avoid any misunderstandings of those rights, a Protocol of the kind now being proposed would benefit all parties.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

There has been consultation with the Council's Corporate Governance Group and the Audit and Governance Committee which both support the need for a protocol.

Impact Assessment:

Risk Management

With clear guidelines for managing the relationship between the Monitoring Officer and the Council, risk of unfair or illegal decisions being made will be reduced.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?

N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

The role of the Monitoring Officer places on the designated postholder a responsibility to ensure the Council's decision making and governance framework is based on the requirements of probity, legality and fairness and as such embrace the Council's duties in respect of equalities. These principles are applied in the proposed Protocol.

Z:/C/CONSTITUTION & MEMBERS SERVICES SCRUTINY STANDING PANEL\2010\11 JANUARY 2010 ROLE OF MONITORING OFFICER REPORT.doc

MONITORING OFFICER PROTOCOL

1. INTRODUCTION TO STATUTORY RESPONSIBILITIES

- 1.1 The Monitoring Officer is a statutory appointment pursuant to Section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged in Epping Forest District Council.
- 1.2 The current responsibilities of the Monitoring Officer role rest with the Director of Corporate Support Services, Colleen O'Boyle, who undertakes to discharge the statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so, the Monitoring Officer will provide appropriate and, if necessary, strong advice to Members so as to protect and safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
- 1.3 A summary list of the statutory responsibilities appears in the table annexed to this document. In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:
- (a) complying with the law of the land (including any relevant Codes of Conduct);
 - (b) complying with any general guidance issued, from time to time, by the Standards Committee and/or advice of the Monitoring Officer;
 - (c) making lawful and proportionate decisions; and
 - (d) generally, not taking action that would bring the Council, their offices or professions into disrepute.

2. WORKING ARRANGEMENTS

- 2.1 It is important that Members and Officers work together to promote the corporate health of the Council. The Monitoring Officer plays a key role in this and it is vital therefore, that Members and Officers work with the Monitoring Officer (and staff of the Monitoring Officer) to enable the discharge of the statutory responsibilities and other duties.
- 2.2 The following arrangements and understandings between the Monitoring Officer, Members and Chief Officers (Management Team) are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:
- (a) be alerted by Members and Officers to any issue(s) that may become of concern to the Council, including, in particular issues around legal powers to do something or not, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
 - (b) have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council at which a binding decision of the Council may be made (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, a

Portfolio Holder, Committee meetings and/or Chief Officers (or equivalent arrangements);

- (c) have the right to attend and be present throughout the debate on any item relevant to the Monitoring Officer's functions at any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, a Portfolio Holder, Committee meetings and/or Chief Officers (or equivalent arrangements);
- (d) in carrying out any investigation(s) have unqualified access to any information held by the Council and to any Member or Officer who can assist in the discharge of the Monitoring Officer's functions;
- (e) ensure the other statutory officers (Head of Paid Service and the Chief Finance Officer) are kept up-to-date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (f) meet regularly with the Chief Executive and Head of Paid Service, the Chief Finance Officer, the Deputy Chief Executive, the Deputy Monitoring Officer and the Chief Internal Auditor (Corporate Governance Group) to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (g) report to the Council, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Leader, Head of Paid Service and Chief Finance Officer;
- (h) in accordance with statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resource required to discharge the Monitoring Officer's statutory functions;
- (i) have a special relationship of respect and trust with the Leader, Deputy Leader and the Chairmen of the Standards, Overview and Scrutiny and regulatory Committees with a view to ensuring the effective and efficient discharge of Council business;
- (j) develop effective working liaison and relationship with the Standards Board for England, the External Auditor and the Local Government Ombudsman (including having the authority, on behalf of the Council, after consultation with the Chairman of the Standards Committee, if appropriate, to complain to the same, refer any breaches to them or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary);
- (k) maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
- (l) give informal and, if necessary, strong advice to Members and Officers and undertake relevant enquiries into allegations of misconduct and, if appropriate, make a written report to the Standards Committee;

- (m) in consultation, as necessary, with the Leader and the Chairmen of the Standards Committee, defer the making of a formal report under Section 5 of the Local Government and Housing Act 1989 where another investigative body is involved;
 - (n) make arrangements to ensure effective communication between the Monitoring Officer's office and the Clerks of Parish/Town Councils in the District on Monitoring Officer and Standards Committee issues;
 - (o) have sufficient resources to enable any matters concerning the Monitoring Officer functions to be addressed;
 - (p) subject to the approval of the Standards Committee, be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues;
 - (q) appoint a deputy and keep the deputy briefed on any relevant issues that the deputy may be required to deal with in the absence of the Monitoring Officer; and
 - (r) deal with any formal complaints for local assessment, investigation and/or determination.
- 2.3 To ensure the effective and efficient discharge of the arrangements set out in paragraph 2.2 above, Members and Officers will report any breaches of statutory duty or Council policies or procedures and other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.
- 2.4 The Monitoring Officer will seek to resolve potential reportable incidents by avoiding the illegality etc., or by identifying alternative and legitimate means of achieving the objective of the proposal.
- 2.5 Where the Monitoring Officer receives a complaint of a potential reportable incident, the Monitoring Officer shall in appropriate cases seek to resolve the matter amicably, by securing that any illegality, failure of process or breach of code is rectified, that the complainant is informed of the rectification, with or without a compensation payment and/or apology. However, it is recognised that the Monitoring Officer may determine that the matter is of such importance that a statutory report is the only appropriate response.
- 2.6 In appropriate cases, the Monitoring Officer may rely upon existing processes within the authority (such as internal appeals procedures or insurance arrangements) to resolve any potential reportable incident, but may intervene in such processes to identify that the particular matter is a potential reportable incident and to ensure the satisfactory resolution of the issue.
- 2.7 In appropriate cases, and to secure the rapid resolution of a potential reportable incident or avoid a separate statutory report, the Monitoring Officer shall be entitled to add written advice to the report of any other officer of the authority.
- 2.8 Notwithstanding the above, the Monitoring Officer retains the right in all cases to make a statutory report where, after consultation with the Head of Paid Service and the Chief Finance Officer, the Monitoring Officer is of the opinion that this is necessary in order to respond properly to a reportable incident. In addition, in

appropriate cases, the Monitoring Officer may refer matters to the Police for investigation.

- 2.9 The Monitoring Officer is available for Members and Officers to consult on any issues of the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (e.g., Standing Orders, policy framework, terms of reference, scheme of delegations).
- 2.10 The Monitoring Officer will ensure that executive decisions, together with the reasons for these decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- 2.11 The Monitoring Officer cannot be the Head of Paid Service or the Chief Finance Officer.
- 2.12 To ensure the effective and efficient discharge of this Protocol, the Chief Finance Officer will ensure adequate insurance and indemnity arrangements are in place to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer role.

SUMMARY OF MONITORING OFFICER FUNCTIONS		
	Description	Source
1	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 Local Government and Housing Act 1989
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5 Local Government and Housing Act 1989
3	Appointment of Deputy	Section 5 Local Government and Housing Act 1989
4	Report on resources	Section 5 Local Government and Housing Act 1989
5	Establish and maintain registers of members interests and gifts and hospitality	Section 81 LGA 2000 and Code of Conduct for Members (and Employees, once introduced)
6	Advice to members on interpretation of Code of Conduct	Code of Conduct for Members
7	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Statutory Guidance
8	Liaison with Standards Board and Adjudication Panel for England	New ethical framework
9	New ethical framework functions in relation to Parish Councils	Section 83(12) LGA 2000
10	Compensation for maladministration	Section 92 LGA 2000
11	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members	DCLG guidance
12	Investigate and report on any misconduct	Local Government Act 2000 and Regulations

13	Refer relevant matters to Standards Committee for initial assessment, review and hearing	Local Government Act 2000 as amended and Regulations
14	Advise on any indemnities and insurance issues for Members/Officers	Regulations under LGA 2000