



Date: **22 February 2024**  
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## **CONSTITUTIONAL REVIEW WORKING PARTY**

**27 FEBRUARY 2024**

A meeting of the Constitutional Review Working Party will be held at **7.00 pm on Tuesday, 27 February 2024** in the Council Chamber, Cecil Street, Margate, Kent.

### **Membership:**

Independent Members: Peter Tucker (Chair);

Councillors: Austin, Britcher, Everitt, W Scobie and Scott

## **A G E N D A**

**Item**  
**No**

**Subject**

4. **CONTRACT PROCEDURE RULES** (Pages 3 - 26)
5. **COUNCILLOR/OFFICER PROTOCOL** (Pages 27 - 60)

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## Refresh of Contract Standing Orders

**Constitutional Review Working Party**      27 February 2024

<b>Report Author</b>	Chris Blundell, Director of Corporate Services - Section 151
<b>Portfolio Holder</b>	Cllr Rob Yates, Portfolio Holder for Corporate Services
<b>Status</b>	For Decision
<b>Classification:</b>	Unrestricted
<b>Key Decision</b>	No
<b>Ward:</b>	All Wards

### Executive Summary:

The purpose of this report is to propose revisions to Contract Standing Orders (CSO's) to CRWP

### Recommendation(s):

- 1) CRWP are asked to support revised content of CSO's and recommend changes contained to the Standards Committee.

### Corporate Implications

#### Financial and Value for Money

There are no financial implications arising directly from this report and the proposed changes will help improve the efficient and effective use of resources.

#### Legal

Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972. Local authorities have some discretion as to the form of their Contract Standing Orders and the proposed revisions are within the scope of that discretion.

#### Corporate

Corporate priorities can only be delivered with robust finances and this report gives Members the opportunity to review the Council's current position.

#### Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the

decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

There are no direct equality implications arising from this report, however the delivery and implementation of and budgetary changes will consider this as part of the budget setting process and be reported to members in due course.

It is important to be aware of the Council's responsibility under the Public Sector Equality Duty (PSED) and show evidence that due consideration has been given to the equalities impact that may be brought upon communities by the decisions made by Council.

There are no particular equalities considerations arising.

## Corporate Priorities

This report relates to the following corporate priorities: -

- *To create a thriving place*
- *To work efficiently for you*

### 1. Introduction and background

- 1.1 Section 135 of the Local Government Act 1972 requires Local Authorities "to make standing orders with respect to the making by them or on their behalf of contracts for the supply of goods or materials or for the execution of works".
- 1.2 Contract Standing Orders form part and are included within the Council's Constitution and set out the minimum obligations and minimum requirements to be followed by officers when making purchases.
- 1.3 The format and general content for Contract Standing Orders originates from their review in 2018. In general the formatting has largely been maintained and continues to provide a level of standardisation across the Kent authorities. Standardisation had especially beneficial across East Kent as this provided consistency of rules for shared service providers (i.e. East Kent Services) and also provides ease of approach when undertaking joint or collaborative procurements with other local authorities.
- 1.4 A requirement of the existing Contract Standing Orders (CSO's) is that they are reviewed and updated as necessary with any such recommendations made by the Procurement Manager being considered by the Constitutional Review Working Party and recommended to the Standards Committee. Following which, they are to be presented to Full Council for adoption.

### 2.0 Reasons necessitating review and changes undertaken

- 2.1 The Council's Contract Standing Orders have been reviewed in the light of changes to current levels of projected spend across the organisation on what are seen to be key

# Agenda Item 4

Regeneration and Housing projects over the Medium Term along with a high inflation environment over a number of years. Whilst there are a number of subtle amendments, the main changes of significance are to formally implement changes to the PCR2015 spend thresholds, CCR2016 thresholds, as notified by Cabinet Office which came into force 1st January 2024, an increase to the values of the thresholds for below thresholds contracts and an update to organisational changes in job titles.

An increase in quotation threshold was considered following recommendation contained in the outcome report of independent review of Financial Management Governance (June 2021). The recommendation was made that the lower limit (threshold) of £10k for quotations in relation to procurement appears to be too low and that this could be increased to improve autonomy and timeliness of operational decisions. Whilst this recommendation was looked to be progressed, the Council's Corporate Restructure took precedence. A further independent review was undertaken of the Procurement process following the Corporate restructure completion, in consultation with the Procurement Team and Officers across the organisation who are involved in undertaking Procurements, and the recommendations included a desire for CSO thresholds to be increased.

List of CSO Refresh amendments below:

- Reference to EU Rules has been updated to Public Procurement Rules throughout the document.
- Reference to OJEU has been updated to Find a Tender Service (FTS) throughout the document, to reflect the current service for higher-value, public contract opportunities (tenders) within the UK.
- **Under CSO 4 General Principles applying to All Contracts**
  - **CSO 4.2** Contract value increased to £50,000.00
  - **CSO 4.3** Contract value increased to £50,000.00
  - **CSO 4.7** Contract value increased to £50,000.00
  - **CSO 4.8** Value removed and wording updated.
- **Under CSO 5 Responsibilities of Chief Executive, Deputy Chief Executive, Corporate Directors, Directors and Responsible Officers - Update to Role titles**
  - **CSO 5.1** Update to Role titles
  - **CSO 5.2** Update to Role title
  - **CSO 5.3** Update to Role title
  - **CSO 5.4.1** Update to Role title
  - **CSO 5.4.7** Contract value increase to £140,000.00
  - **CSO 5.4.8** Updated values from Euros to GDP
  - **CSO 5.5** Update to Role titles
- **Under CSO 6 Thresholds and Procedures**
  - **CSO 6.3** Contract value increased to £50,000.00
  - **CSO 6.5.1** - Value updated to reflect PCR2015 Reg.109
  - **CSO 6.6** Table of financial thresholds amended to reflect changes to PCR2025 Regulations and CCR2016 thresholds implemented from 1 January 2024, and amendments to the thresholds/procedures for below thresholds contracts.
- **Under CSO 7 Financial Thresholds and Processes Applying to Approval and Execution of Contracts**
  - **CSO 7.1** Update to Role title
  - **CSO 7.2** Update to Role title
  - **CSO 7.3** Contract value increased to £50,000.00
  - **CSO 7.5** Contract value increased to £140,000.00
  - **CSO 7.6** Contract value increased to £50,000.00

- **Under CSO 10 Submission and Opening of Tenders**
  - **CSO 10.1** Contract value increased to £140,000.00
  - **CSO 10.4** Contract value increased to £140,000.00
- **Under CSO 12 Waivers**
  - **CSO 12.1** Contract value increased to £25,000.00
  - **CSO 12.1.2** - Update to regulation being used.
  - **CSO 12.1.6** Update to Role title
  - **CSO 12.3.2** Update to Role title
  
- **Under CSO 13 Extensions and other Variations to Existing Contracts**
  - **CSO 13.5** Update to wording

### **3.0 Roles & Responsibilities**

- 3.1 Part of the Procurement Managers role is to acknowledge and understand best practice, building on existing working practices and to encourage a culture of continuous improvement ensuring a robust, effective and accountable delivery within all procurement activity.
- 3.2 This approach is continuing to be taken ready for the implementation of the Procurement Act 2023 anticipated to take effect from 1 October 2024, which will be implemented along with a training programme for all Officers across the Council who are in position of making purchasing decisions. Procurement would seek to ensure the benefits of existing local knowledge and service delivery/expertise applied to tendering processes is complimented by consistent, proportionate controls, processes and procedures across procurement activity as a whole.
- 3.3 The CSOs have been reviewed to ensure that Officers work in partnership with the Procurement Team which in essence maintains Services as the delivery experts, whilst Procurement (& Legal) ensure that all procurement activity is effective, legal and not open to challenge, reducing and mitigating any potential risk to officers and the authority. With recent reviews undertaken of the Procurement process and CSOs further amendments are anticipated to be put forward for review and decision later this year, however, have not been included at this time due to a full rewrite of CSOs being required for the new Procurement Act 2023 anticipated to come in October 2024 and these changes are better placed to be incorporated at that time.

### **4.0 Options**

- 4.1 CRWP endorse the proposed changes and content of CSO's and make recommendation to the Standards Committee
- 4.2 CRWP do not endorse the proposed changes and content of CSO's and provide further instruction in this regard to the Procurement Manager.

### **5.0 Planned Changes in Procurement Legislation**

- 5.1 The new Procurement Act 2023 is anticipated to come into force in October 2024. This will require a number of changes to be incorporated into CSOs to reflect the requirements that are captured under the new Procurement Act 2023 going forward and those requirements that will still sit under PCR2015. It is anticipated that a full review and rewrite of CSOs will be required due to the number of changes being made, transparency and contract management requirements to be met. At this time

full guidance on the implementation is limited and therefore is unable to be incorporated within this refresh of CSOs. Regular training is continuing to be undertaken by Procurement and Legal on information available.

Contact Officer: Matthew Sanham, Head of Finance and Procurement  
Reporting to: Chris Blundell, Director of Corporate Services - Section 151

## **Annex List**

Annex 1 Contract Standing Orders

## **Background Papers**

Procurement Contract Regulations 2015

<https://www.legislation.gov.uk/ukxi/2015/102/contents/made>

Local Government Transparency Code 2015

<https://www.gov.uk/government/publications/local-government-transparency-code-2015>

Government issued Procurement Policy Notes

<https://www.gov.uk/government/collections/procurement-policy-notes>

Procurement Act 2023

<https://www.legislation.gov.uk/ukpga/2023/54/contents/enacted>

## **Corporate Consultation**

**Finance:** N/A

**Legal:** Ingrid Brown (Head of Legal and Democracy & Monitoring Officer)

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# Thanet District Council Contract Standing Orders

**October 2018**

**Amended February 2024**

## TABLE OF CONTENTS

1	Introduction – Purpose of the Contract Standing Orders	3
2	Regulatory Framework in Context	3
3	General Principles – Application and Compliance with Contract Standing Orders	4
4	General Principles applying to All Contracts	4
5	Responsibilities of Chief Executive, Directors, Heads of Service and Responsible Officers	6
6	Financial Thresholds and Procedures	8
7	Financial Thresholds & Processes Applying to Approval and Execution of Contracts	11
8	Calculating the Contract Value	12
9	Principles Underlying Tendering Processes and Tender Evaluation	12
10	Submission and Opening of Tenders	12
11	Evaluation of Quotations and Tenders	13
12	Waivers	13
13	Extensions and other Variations to Existing Contracts	14
14	Purchasing Schemes	15
15	Review and Changes to these Contract Standing Orders	15
16	Standard Clauses	16

# Contract Standing Orders

## 1 Introduction – Purpose of the Contract Standing Orders

- 1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders (CSOs) is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Council:
  - 1.1.1 Furthers its corporate objectives
  - 1.1.2 Uses its resources efficiently
  - 1.1.3 Purchases fit for purpose goods, services and works
  - 1.1.4 Safeguards its reputation from any implication of dishonesty or corruption
  - 1.1.5 Improves the economic, social and environmental wellbeing of the district
- 1.2 Purchasing by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costing and cost savings.
- 1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 1.4 These Contract Standing Orders do not provide guidelines on what is the best way to purchase works, supplies (goods), services and the granting of service or works concessions. They set out **minimum** requirements to be followed. Further information and guidelines are set out in the Council's Purchasing Guide that accompanies this document.
- 1.5 It is a disciplinary offence to fail to comply with these Contract Standing Orders. All employees have a duty to report breaches of Contract Standing Orders to the Section 151 Officer or the Council's Monitoring Officer.
- 1.6 Any Officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council must refer to the Council's Whistleblowing Code and following the guidance contained. The Whistleblowing Code can be found on the Council's intranet @ <https://tom.thanet.gov.uk/corporate/policies/whistleblowing-policy> or a copy is available from the Council's Monitoring Officer

## 2 Regulatory Framework in Context

- 2.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:
  - 2.1.1 The relevant Public Procurement Rules and EC Treaty Principles which are defined in the Council's Purchasing Guide.
  - 2.1.2 Relevant UK legislation.
  - 2.1.3 The Council's Constitution including these Contract Standing Orders, the Council's Financial Regulations and Scheme of Delegation.

- 2.2 In the event of conflict between the above, the Public Procurement Rules will take precedence, followed by UK legislation, then the Council's Constitution as stated at 2.1.3

### **3 General Principles – Application and Compliance with Contract Standing Orders**

- 3.1 These Contract Standing Orders apply to the purchase by or on behalf of the Council of works, supplies (goods), services and the granting of service or works concessions.
- 3.2 These Contract Standing Orders apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, but there are exemptions from part of the stated CSOs for specific types of contracts and purchasing methods which are listed in 3.3.
- 3.3 Contract Standing Orders 1.1 - 1.4 apply, all other Contract Standing Orders do not apply to the following contracts:
- 3.3.1 which are employment contracts,
  - 3.3.2 for acquisition or rental of land, existing buildings or other immovable property, or which concern interests in or rights over any of them;
  - 3.3.3 for arbitration or conciliation
  - 3.3.4 for the retention of legal counsel and the appointment of expert witnesses in legal proceedings.
  - 3.3.5 Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies provided these arrangements comply with the guidance on grant agreements set out in the Council's Purchasing Guide.

### **4 General Principles applying to All Contracts**

- 4.1 All purchases however small shall be evidenced in writing and (with the exception of purchases transacted on a Government Procurement Card) shall include the Council's Standard Clauses\* (Ref CSO 16)
- 4.2 All contracts of a value of £50,000 or more shall be made using one of the following as applicable to nature and size of contract\*:
- 4.2.1 the Council's Official Purchase Order conditions accompanied by the Council's Standard Clauses\* (Ref CSO 16)
  - 4.2.2 the Council's Standard Clauses\* (Ref CSO 16) available on intranet @ <https://sites.google.com/thanet.gov.uk/tom/financial-services/procurement-flexibility/quotation-and-tender-templates-toolkit>
  - 4.2.3 the Council's General Conditions of Contract\* available on intranet @ <https://sites.google.com/thanet.gov.uk/tom/financial-services/procurement-flexibility/quotation-and-tender-templates-toolkit>

# Agenda Item 4

## Annex 1

4.2.4 a standard form of contract (e.g. NEC, JCT etc) using the latest edition as published accompanied by the Council's Standard Clauses\* (Ref CSO 16) or

4.2.5 the Suppliers Terms & Conditions (in exceptional circumstances only) accompanied by the Council's Standard Clauses\* (Ref CSO 16)

Advice and agreement must be sought from Legal Services prior to issue and award in respect of 4.2.4 and prior to award in respect of 4.2.5. **N.B.** In respect of 4.2.2 – 4.2.5 an Official Purchase Order must be raised relating to contract spend and budgetary commitment, as required under the Council's Financial Procedure Rules.

*\*Contract clauses are maintained by Legal Services and are subject to amendment from time to time. Officers must therefore check via the intranet that they are using the latest version/s.*

4.3 As a minimum, all contracts of a value of £50,000 or more shall include clauses which set out:

4.3.1 The works, supplies (goods), services, material, matters or things to be carried out or supplied

4.3.2 Specify the price to be paid, the estimated price or the basis on which the price is to be calculated

4.3.3 The time within which the contract is to be performed

4.3.4 Quality requirements and/or standards which must be met

4.3.5 Requirements on the contractor to hold and maintain appropriate insurance

4.3.6 Adequate contract management and audit provisions

4.3.7 What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part)

4.3.8 Inclusion of the Council's Standard Clauses (Ref CSO 16) placing a duty on the contractor to comply with all relevant legislative requirements and discharge of obligations under said legislation.

4.4 Additional termination clauses are required for contracts over the relevant Public Procurement threshold in accordance with the Public Contracts Regulations 2015 (Reg 73) enabling termination for the following events:

4.4.1 the contract has been subject to a substantial modification (change) which would have required a new procurement process.

4.4.2 the contractor has been, at the time of the contract award, in a situation which amounts to a mandatory exclusion and should have been excluded from participating in the procurement process.

4.5 Contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council or are included in accordance with the Public Services (Social Value) Act 2012. In this context, "non-commercial" means requirements unrelated to the actual performance of the contract.

# Agenda Item 4

## Annex 1

- 4.6 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability, whole life costings, cost saving and efficiency (as appropriate).
- 4.7 All contracts of a value of £50,000 or more which are assessed as involving a substantial risk to the Council must be subject to a written risk assessment, which should be kept on the contract file. Responsible Officers should use the assessment methodology set out in Attachment 1 of the Council's Purchasing Guide and take the follow-up actions set out there.
- 4.8 The Procurement Section shall be made aware at [procurement@thanet.gov.uk](mailto:procurement@thanet.gov.uk) of all proposed variations when value is 20% or more of the initial contract value by submission of a Contract Variation form available from Procurement.

Where officers require:

- 4.8.1 legal advice on a procurement; or
- 4.8.2 terms of contract; or
- 4.8.3 award/sealing of the procured contract,

they should send to Legal Services a completed 'Contract Instructions' form which can be found on the intranet @ <https://sites.google.com/thanet.gov.uk/tom/corporate/legal>

### **5 Responsibilities of Chief Executive, Directors, Heads of Service and Responsible Officers**

- 5.1 The Chief Executive, each Director and each Head of Service shall have overall responsibility for the purchasing undertaken by his or her Directorate.
- 5.2 Each Head of Service shall be responsible for the purchasing undertaken by his or her service and shall
  - 5.2.1 be accountable to the Council for the performance of his/her duties in relation to purchasing
  - 5.2.2 comply with the Council's decision making processes including, where appropriate, implementing and operating a Scheme of Delegation
  - 5.2.3 attend training in relation to these Contract Standing Orders and ensure that any Responsible Officer to whom he or she appoints under CSO does the same
  - 5.2.4 take immediate action in the event of breach of these Contract Standing Orders, which will include as a minimum promptly informing their line manager (unless that person is suspected of being involved) and the Monitoring Officer and the Section 151 Officer of such breach.
- 5.3 A Responsible Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services as authorised by their Head of Service on behalf of the Council.
- 5.4 A Responsible Officer's duties in respect of purchasing are to ensure:

# Agenda Item 4

## Annex 1

- 5.4.1 act within the scope of their responsibility and authority, as authorised by their Head of Service
  - 5.4.2 compliance with all Regulatory Provisions (see CSO 2.1)
  - 5.4.3 that all relevant officers are reminded of the relevant statutory provisions and the Council's requirements relating to declarations of interest and confidentiality undertakings affecting any purchasing process in order for them to comply with these requirements
  - 5.4.4 that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used
  - 5.4.5 the purchasing process, from planning to delivery incorporates (where appropriate) principles of best value, sustainability, efficiency, whole life costing and cost savings
  - 5.4.6 that all contracts of a value of £5,000 or more are included on the Council's Contract Register, maintained by the Procurement Section to meet transparency obligations of quarterly publication
  - 5.4.7 that proper records are maintained of all contract award procedures, waivers, exemptions, extensions and other variations and contract management activities, regardless of contract value, with separate files for each purchase of a value of £140,000 or more
  - 5.4.8 that proper records to justify decisions taken in all stages of the procurement process, as required under the Public Contracts Regulations 2015 (Reg 83/84), are maintained for every contract or framework agreement with a value of or exceeding £884,720.00 for supply (goods) or services contracts and £8,847,200.00 for works contracts. A Contract Report for this purpose is available on the intranet @ <https://tom.thanet.gov.uk/directorates/corporate-resources/financial-procurement-services/procurement/quotation-and-tender-templates-toolkit>
  - 5.4.9 that value for money is achieved
  - 5.4.10 that adequate and appropriate security (such as a bond or guarantee) is taken to protect in the event of non-performance as deemed necessary to the nature of the contract
- 5.5 In considering how best to procure works, supplies and services, the Chief Executive, Directors, Heads of Service and/or Responsible Officers (as appropriate in the context), shall take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-procurement/purchasing methods, and in-house and/or commercial opportunities that may be available to the council, for which Legal guidance must be sought.
- 5.6 The Responsible Officer, if procuring services under the Public Contracts Regulations 2015, has obligations under the "Public Services (Social Value) Act 2012" namely "a duty to consider" at the pre-procurement planning stage, the following considerations:
- 5.6.1 how what is proposed to be procured might improve the economic, social and environmental well-being of the "relevant" local area.

- 5.6.2 how in conducting a procurement process it might act with a view to securing that improvement and whether to undertake a consultation with stakeholders on these matters.

## 6 Financial Thresholds and Procedures

- 6.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values. The table now separates out, concession contracts (services/works) previously falling within the scope of the Public Contract Regulations, however these arrangements are now subject to their own Regulations contained within The Concession Contracts Regulations 2016 (CCR 2016).
- 6.2 There is a general presumption in favour of competition. Wherever possible, Contract Notices should be advertised by way of a public notice. The Council must consider the potential effect of a contract on interstate trade (at a European level). If a contract may be of interest to contractors from other member states then this may result in a need to advertise in a manner which ensures that potential contractors from other member states are aware of the opportunity, even for small value contracts or contracts under the Public Procurement Threshold levels outlined below.
- 6.3 Sourcing of all Contracts of £50,000 or over must be undertaken in conjunction with the Procurement Section using the Council's e-tendering system **\*\*\***(unless agreed in advance as identified in table 6.6).
- 6.4 The public notice referred to at 6.2 must take the form of a notice or advertisement on an easily accessible website or other electronic media and/or in the press, trade journals or Find a Tender Service ("FTS") (as appropriate). The Responsible Officer may choose to place one or more public notices in different media.
- 6.5 In accordance with Part 4 of the Public Contracts Regulations 2015 and guidance issued by the Cabinet Office and, The Local Government (Transparency Requirements) Regulations 2015
- 6.5.1 All contract opportunities with a value (inclusive of VAT) estimated to be £30,000.00 and above must be published on 'Contracts Finder' where the Council has advertised such opportunity in the form of a notice or advertisement as set out in 6.3 above.
- 6.5.2 All contract opportunities for which a Contract Notice was sent to the FTS for publication must also be published on 'Contracts Finder'.
- 6.5.3 Contracts awarded of £25,000 and above must be published on Contracts Finder. This includes awards made following a call-off/s from a Framework Agreement **and contracts that may not have been openly advertised.**
- 6.5.4 Under the Local Government Transparency Code 2015, contracts of £5000 and over and spend of £500 and above must be published quarterly. Local authorities must also publish details of **every transaction undertaken using a Government Procurement Card** regardless of



# Agenda Item 4

## Annex 1

value.

6.5.5 Provision is to be made to require contractors to pay the National Living Wage, see Standard Clause (Ref CSO16 [16.1.3]) being a legal requirement

### 6.6 Table setting out financial thresholds and procedures:

Total value £	Type of contract	Procedure to be used
1,000 to 24,999.99	Works, supplies and services	Local CSO rules apply - At least one quote in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
25,000 to 49,999.99	Works, supplies and services	Local CSO rules apply - At least three quotes in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
50,000 to 139,999.99	Works, supplies and services	Local CSO rules apply - At least three written quotes in advance using the Council's Invitation to Quote documents, sourced and receipted electronically using the Council's e-procurement system (**or an alternative electronic method agreed with Procurement in advance) – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
140,000 to 179,085.99** Works, supplies and services	Works, Supplies and Services	Local CSO rules apply - At least three written tenders in advance using the Council's Invitation to Tender documents, sourced and receipted electronically using the Council's e-procurement system and advertisement by public notice
179,086.00** plus  <b>** PCR2015 Threshold for Supplies and Services</b>	Supplies and Services	PCR2015 & CSO apply – full competitive process using the Council's Invitation to Tender documents, sourced and receipted electronically using the Council's e-procurement system following advertisement in the FTS for supplies and Part A* services  For Light Touch * services reduced requirements apply under the Public Procurement Rules and the threshold is £663,540** including VAT. but there is a presumption in favour of advertising and a competitive process.
179,086 to 4,477,173.99 **	Works	Local CSO's rules apply - At least three written tenders in <b>advance</b> using the Council's Invitation to Tender documents, sourced and receipted electronically using the Council's e-procurement system and advertisement by public notice

# Agenda Item 4

## Annex 1

4,477,174 plus ** <b>** PCR2015 Threshold for Works</b>	Works	PCR2015 & CSO apply – full competitive process using the Council’s Invitation to Tender documents, sourced and receipted electronically using the Council’s e-procurement system following FTS advertisement
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**Service/Works Concession Contracts:** The following spend thresholds are specific to Service and Works Concession Contracts - Officers should seek both Procurement and Legal guidance on Concession Contract arrangements.

Total Value £	Type of Contract	Procedure to be used
1,000 to 24,999.99	Services and works concessions	Local CSO rules apply - At least one quote in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
25,000 to 49,999.99	Services and works concessions	Local CSO rules apply - At least three quotes in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
50,000 to 139,999.99	Services and works concessions	Local CSO rules apply – At least three written quotes in advance, sourced and receipted electronically using the Council’s e-procurement system – Consideration to be given to suitably qualified Thanet Supplier/s, if available
140,000 to 4,477,173.99*	Services and works concessions	Local CSO rules apply – At least three written tenders in advance, sourced and receipted electronically using the Council’s e-procurement system and advertisement by public notice
4,477,174 Plus ** Plus <b>** CCR 2016 Threshold for Concessions</b>	Services and works concessions	Concession Contracts Regulations 2016 (CCR2016) apply – full competitive process using the Council’s e-procurement system following FTS advertisement - <b>seek guidance from Legal Services /Procurement</b>

\* For the purposes of the Public Procurement Rules services are divided into two types “A” & “Light Touch” and the Public Procurement Rules apply to a different degree. Responsible Officers should act cautiously and seek advice when considering the procedure to be used and application of the Public Procurement Rules to services contracts.

\*\* or relevant threshold in force at the time under the Public Procurement Rules.

# Agenda Item 4

## Annex 1

Please note that the thresholds are fixed every two years and converted from Euro's to £ Sterling subject to the exchange rates applicable at that time and published in the relevant regulations.

6.7 Where contracts are of a type and value that mean the Public Procurement Rules apply to them then there are five main types of Public Procurement procedures available. These are the open, restricted, competitive procedure with negotiation, competitive dialogue and innovation partnership procedures. Care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of Public Procurement procedure should be sought from Legal Services and process progressed via the Procurement Section.

### **7 Financial Thresholds and Processes Applying to Approval and Execution of Contracts**

7.1 For contracts over the relevant Public Procurement threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing by the relevant Head of Service in consultation with the Head of Legal and Democratic Services (Deputy Monitoring Officer) & the Strategic Procurement Manager in advance.

7.2 Before the procurement process starts, the Head of Service must also consider:

7.2.1 how any service to be procured may improve the social environmental and economic wellbeing of the District of Thanet, how the improvement can be secured and whether consultation is needed. Examples of added social value are contained with the Purchasing Guide, which can be found on the intranet @ <https://docs.google.com/document/d/154SLYUkdLLcXFoJcUtOjahvwi6jDaQg3ze0yG79dntA/preview>;

7.2.2 ensure the Council has due regard to equality obligations under the Equality Act 2010; and

7.2.3 ensure the Council has due regard to data protection and obligations under the General Data Protection Regulation (GDPR).

7.3 For all contracts of £50,000 and above, the responsible officer must ensure the Council's Procurement Initiation Form, which can be found on the intranet @ <https://tom.thanet.gov.uk/directorates/corporate-resources/financial-procurement-services/procurement/quotation-and-tender-templates-toolkit>; is fully completed and authorised and submitted to the Procurement Section sufficiently in advance, for the procurement process to be scheduled within the procurement programme.

7.4 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his/her general obligations under these Contract Standing Orders ensure, in particular, that:

7.4.1 the appropriate approvals have been obtained to authorise that decision; and

# Agenda Item 4

## Annex 1

- 7.4.2 where appropriate, a standstill period complying with the Public Procurement Rules is incorporated into the final award process.
- 7.5 Any contracts valued at £140,000 or above including any order made under a framework arrangement shall be executed as a deed under the Council's common seal. Officers with appropriate delegated authority may sign all other contracts.
- 7.6 Any contract with a value of £50,000 or more, entered into on behalf of the Council in discharging an Executive function shall be made in writing. Such contracts shall either be signed by one authorised officer of the Council or be made under the common seal of the Council attested by an authorised signatory of Legal Services.
- 7.7 Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 (or any amended regulations in force at the time) provided the sufficiency of security arrangements has been approved by the Senior ICT Manager.

### 8 Calculating the Contract Value

- 8.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period **(including proposed extensions and options)**.
- 8.2 There shall be no artificial splitting of a contract to avoid the application of the provisions of the Public Procurement Rules and/or these Contract Standing Orders.
- 8.3 The Public Procurement Rules can cover contracts, which are below the stated Public Procurement threshold, where they constitute repeat purchases and/or purchases of a similar type (goods/services or works) in a specified period. Responsible Officers should therefore seek advice from the Strategic Procurement Manager on the application of the Public Procurement Rules where they envisage that they may require repeat purchases and/or purchases of a similar type.

### 9 Principles Underlying Tendering Processes and Tender Evaluation

- 9.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:
- 9.1.1 Sufficient time is given to plan and run the process
  - 9.1.2 Equal opportunity and equal treatment
  - 9.1.3 Openness and transparency
  - 9.1.4 Probity

- 9.1.5 Outcomes that deliver sustainability, efficiency and cost savings (where appropriate).

## **10 Submission and Opening of Tenders**

- 10.1 An Invitation to Tender shall be issued electronically by the Council for all contracts of £140,000 or more, via the Council's eProcurement system and tenders shall be submitted in accordance with the requirements of Invitation to Tender Document.
- 10.2 Any tenders received shall be kept secure electronically unopened within a sealed mailbox on the e-tendering system until the time and date specified for the opening.
- 10.3 No tenders received after the time and date specified for its opening shall be accepted or considered by the Council unless agreed in writing by the Monitoring Officer and only in exceptional circumstances.
- 10.4 Tenders shall be opened electronically by an officer of the Procurement Section on the Council's eProcurement system providing a full audit trail of all activity undertaken. Where Tenders are expected to have a value of £140,000 or more, invitations to the opening of these tenders will be sent to the appropriate Portfolio Holder or another Cabinet Member and the appropriate Shadow Portfolio Holder or another Shadow Cabinet Member, a Procurement Officer, one Responsible Officer and a Democratic Services Officer to undertake the completion of the Record of Receipt of Tender Document of all tenders received including names and addresses and the date and time of opening. In circumstances where both Portfolio/Cabinet member and/or, both Shadow Portfolio/Cabinet members are unable to attend, opening of tenders can and should be undertaken in presence of officers and at least one substitute Member to ensure procurement programme is maintained.

## **11 Evaluation of Quotations and Tenders**

- 11.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenders by no fewer than 2 officers
- 11.2 Tenders subject to the Public Procurement Rules shall be evaluated in accordance with the Public Procurement Rules in the presence and under the guidance of procurement officer/s.

## **12 Waivers**

- 12.1 The requirement for the Council to conduct a competitive purchasing process for contracts of £25,000 or more may be waived in the following circumstances:
- 12.1.1 For contracts which are not subject to the Public Procurement Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or
- 12.1.2 the circumstances set out in the Public Contract Regulations 2015 Regulation 32 apply (whether or not the contract is of a type which is subject to the application of Part 2 of the Regs.); or

# Agenda Item 4

## Annex 1

- 12.1.3 where the supply is for parts for existing machinery, or where the terms of supply of equipment require that maintenance be undertaken by a specified provider; or
  - 12.1.4 where the work is of a specialist nature, the skill of the contractor is of primary importance, and the supply market has been tested and found to be limited; or
  - 12.1.5 where the supply is for maintenance to existing IT equipment or software, including enhancements to current software, which can only be performed by the licensed developer or owner of the system; or
  - 12.1.6 at the discretion of the relevant Director who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.
- 12.2 A Responsible Officer who seeks a waiver of Contract Standing Orders shall do so **only in advance and only in exceptional circumstances**. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Purchasing Guide.
- 12.3 All waivers from these Contract Standing Orders must be:
- 12.3.1 Fully documented
  - 12.3.2 Subject to a written report in an approved format, available on the intranet, to be submitted **in advance** to the relevant Director for endorsement which shall include reasons for the waiver which demonstrate that the waiver is genuinely required
  - 12.3.3 Subject to comment and/or endorsement as to existence of exceptional circumstances by the Strategic Procurement Manager
  - 12.3.4 Subject to **approval in advance** by the Section 151 Officer or his/her authorised representative, who shall record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional.
- 12.4 All decisions on waivers must take into account:
- 12.4.1 Probity
  - 12.4.2 Best value/value for money principles.
- 12.5 For contracts subject to the Public Procurement Rules, any waiver from the requirement for competition must meet without exception the conditions set out in the Public Procurement Rules, in addition to the general requirements above.
- 12.6 Once a waiver is approved in respect of a specific contract value, the waiver shall cover contract spend up to the next spend threshold negating the need for a further waiver application on occasion when there may be a slight increase in contract spend.

### 13 Extensions and other Variations to Existing Contracts

- 13.1 An extension to the duration of an existing contract can only be granted if specifically provided for by that contract and for the period (or periods) specified.

# Agenda Item 4

## Annex 1

- 13.2 Extensions and other variations to existing contracts such as the inclusion of additional works or services must be:
  - 13.2.1 Made in accordance with any statutory restrictions and any specific terms of the contract;
  - 13.2.2 Made in accordance with the principles set out in the Council's Purchasing Guide;
  - 13.2.3 Discussed and notified to the Procurement Section
  - 13.2.4 In a written format approved by Legal Services.
- 13.3 Any extension or other variation must take into account:
  - 13.3.1 Probity
  - 13.3.2 Best value and value for money principles.
- 13.4 For contracts subject to Part 2 Public Contract Regulations 2015, , any extension or other variation must meet the conditions set out in these Regulations in addition to the more general requirements set out above. Responsible Officers should proceed cautiously and seek advice where any extension or other variations are proposed to contracts subject to Part 2 rules.
- 13.5 For all contracts which are not subject to Part 2 Public Contract Regulations 2015, no variation (nor the cumulative effect of more than one variation) of a contract may artificially modify the subject matter of a contract beyond its original specification nor increase its value by more than 20% of the initial contract value.
- 13.6 Subject to the nature of changes which may be required to the contracts and framework agreements, certain variations may be lawfully sought. Responsible Officers should contact Legal Services or Procurement to obtain advice on the lawfulness of the changes required.

### **14 Purchasing Schemes**

- 14.1 A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Purchasing Guide.
- 14.2 Responsible Officers must check and validate in advance that
  - 14.2.1 The Council is legally entitled to use the Purchasing Scheme
  - 14.2.2 The purchases to be made do properly fall within the coverage of the Purchasing Scheme and are made according to any terms of said Scheme
  - 14.2.3 The establishment and operation of each Purchasing Scheme is in compliance with the Public Procurement Rules (where they apply) and meets the Council's own requirements.
- 14.3 A "Purchasing Scheme" may include:
  - 14.3.1 Contractor prequalification lists/select lists
  - 14.3.2 Framework arrangements (including those set up by the Crown Commercial Services and other Purchasing agencies i.e. ESPO, TPPL)

- 14.3.3 Purchasing arrangements set up by central purchasing bodies and commercial organisations
- 14.3.4 Consortium purchasing
- 14.3.5 Collaborative working arrangements
- 14.3.6 E-procurement/purchasing schemes and methods
- 14.3.7 Other similar arrangements such as the Government eMarketplace
- 14.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Purchasing Guide.

## **15 Review and Changes to these Contract Standing Orders**

These Contract Standing Orders shall be reviewed and updated on a regular basis. Save in the case of revisions to the Public Procurement Thresholds in Contract Standing Order 6.6, amended Contract Standing Orders shall be recommended by the Constitutional Review Working Party to Council. The Strategic Procurement Manager will make revisions to the Public Procurement Thresholds as applicable and is permitted to undertake such non-material amendments as a result of business restructuring as required from time to time.

## **16 Standard Clauses**

- 16.1 Each contract (with exception of purchases transacted on Government Procurement Cards) shall include standard clauses, including those indicated "where applicable" dependant on the nature of the contract as follows:
  - 16.1.1 Anti-Corruption and Bribery
  - 16.1.2 Prevention of Assignment
  - 16.1.3 Compliance with Statutes: Health and Safety, Equal Opportunities and National Minimum/Living Wage
  - 16.1.4 Freedom of Information
  - 16.1.5 Prompt Payment of Invoices
  - 16.1.6 Conflict of Interest
  - 16.1.7 Child Protection and Safeguarding Generally
  - 16.1.8 Performance Data Sharing
  - 16.1.9 Data Protection
  - 16.1.10 TUPE and Employment Matters (where applicable)
  - 16.1.11 Termination (Reg 73 PCR 2015) (above EU threshold procurements only)
  - 16.1.12 Electronic Invoicing



# Agenda Item 4

## Annex 1

16.1.13 Insurances

16.1.14 Liquidated Damages (where applicable)

These Standard Clauses are available on the intranet @ <https://sites.google.com/thanet.gov.uk/tom/financial-services/procurement-flexibility/quotation-and-tender-templates-toolkit>. Standard Clauses are maintained by Legal Services and are subject to amendment from time to time.

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## Councillor/Officer Protocol

<b>Constitutional Review Working Party:</b>	27 February 2024
<b>Report Author</b>	Ingrid Brown, Head of Legal Services
<b>Portfolio Holder</b>	Councillor Rob Yates
<b>Status</b>	For Recommendation
<b>Classification:</b>	Unrestricted

### Executive Summary:

This report asks the Constitutional Review Working Party to consider the revised Councillor/Officer protocol at Appendix 1. The revised protocol accords with the recommendations made in the report of the Independent Monitoring Officer in 2021

### Recommendation(s):

It is recommended that Councillors carefully consider the detail of the revised Councillor/Officer protocol and make any recommendations they consider appropriate to the Standards Committee for further consideration.

### Corporate Implications

#### Financial and Value for Money

There are no financial implications arising from this report.

#### Legal

The Local Government Act 2000 requires the Council to periodically review and update its written Constitution.

#### Risk Management

There are no risks associated with this report.

#### Corporate

It is important for the Council to regularly review elements of its constitution to ensure that it remains up to date.

#### Equality Act 2010 & Public Sector Equality Duty

There are no equalities implication arising from this report.

## Corporate Priorities

This report relates to the following corporate priorities: -

- To work efficiently for you

### 1.0 Introduction and Background

- 1.1 Effective Local Government relies on mutual trust and respect between Councillors and Officers and a clear understanding of each other's role and responsibilities.
- 1.2 The Council has an existing Member/Officer protocol and a copy of the same is at appended to this report at Annex 2. Whilst this covers many of the areas essential to an effective Member/Officer protocol, the updated protocol is more extensive and provides some additional information in respect of the sharing of information and the relationship between Councillors and Officers in a number of different contexts.

### 2.0 The Current Situation

- 2.1 The Current Member/Officer protocol sets out clearly many of the expectations of Councillors and Officers and also defines their respective roles. As indicated above, the revised protocol seeks to go further and as well as defining roles and responsibilities of Officers and Councillors, the protocol addresses information sharing between Officers and Councillors in different contexts.
- 2.2 The revised protocol covers the following:
  - i, The role of Councillors and Officers
  - ii, The guiding principles of the working relationship between Councillors and Officers
  - iii, The responsibility for decision taken under delegated powers
  - iv, The specific role of statutory Officers
  - v, A Councillor's role when supporting a resident with legal proceedings against the Council.
  - vi, Expectations for conduct between Councillors
  - vii, Responsibility for Officer's reports
  - viii, Officer advice to political groups and other meetings
  - ix, Local ward issues
  - x, Correspondence on behalf of the Council
  - xi, Dealing with the press and Media
  - xii, Councillors access to information
  - xiii, What to do when the protocol is not followed

### 3.0 Options

- 3.1 The Constitutional Review Working Party is being asked to consider the detail of the revised Councillor/Officer protocol. It may suggest amendments to the protocol to be considered by the Standards Committee. Alternatively it may

approve the revised protocol in its current form as appended to this report at Annex 1.

## 4.0 Next Steps

- 4.1 Once a proposal has been agreed by the Constitutional Review Working Party, it would be recommended to Standards for consideration and onward submission to Full Council

Contact Officer: Ingrid Brown- Head of Legal and Democracy  
Reporting to: Chris Blundell

### Annex List

Annex 1: Councillor/Officer Protocol- Proposed

Annex 2: Councillor/Officer Protocol- Current

### Background Papers

There are no background papers

### Corporate Consultation

**Finance:** Matthew Sanham (Head of Finance and Procurement)

**Legal:** Ingrid Brown –Head of Legal and Democracy and Monitoring Officer

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# Proposed

## Protocol on Councillor/Officer Relations

### 1. INTRODUCTION

- 1.1 A positive, trusting and respectful working relationship between Councillors and Officers is essential to the efficient and effective working of the Council. Mutual respect and an understanding of respective roles are essential. Together Councillors and Officers bring the critical skills, knowledge and experience to run an effective public sector organisation able to deliver the Council's corporate and strategic objectives and meet its statutory obligations.
- 1.2 Councillors and Officers have distinct roles and responsibilities. Councillors provide a democratic mandate to the Council and Officers contribute the professional expertise needed to deliver the policy framework agreed by Councillors.
- 1.3 This protocol seeks to define what should be considered a proper working relationship between Councillors and Officers in Thanet and provide a framework within which confidence in the machinery of local government can be maintained. It reflects the principles underlying the Code of Conduct which applies to Councillors and the employment terms and conditions of Officers. The shared objective is to enhance the integrity, real and perceived, of Local Government.
- 1.4 This protocol is part of the Council's ethical framework and should be read in conjunction with the Council's Constitution, the Code of Conduct for Councillors, disciplinary codes which regulate the conduct of Officers and other relevant codes and guidance.
- 1.5 This protocol is intended to guide Councillors and Officers and explain what they can expect of each other. It cannot cover every matter which will arise but it sets standards and an approach which should be used as a guide to dealing with issues as they arise. It also explains what to do when things go wrong.
- 1.6 A Councillor in need of advice about the application of this Protocol should contact the Monitoring Officer, whereas an Officer in need of advice about the application of this Protocol should contact their line manager in the first instance. Councillors and Officers must follow this Protocol at all times.
- 1.7 This Protocol applies to Councillors and Co-opted Councillors. The Code applies at all times when Councillors act in their capacity as Councillors (or claim to act or give the impression of acting in their capacity as a Councillor).
- 1.8 Officers and staff mean all persons employed by the Council: whether full or part time, fixed term contract, agency or consultant.

### 2. THE ROLES OF COUNCILLORS AND OFFICERS

- 2.1 Councillors and Officers are indispensable to one another and a mutual understanding of their respective roles is essential for good local government.

### **COUNCILLORS**

- 2.2 Councillors are democratically accountable to residents of their Wards and serve only so long as their term of office lasts. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.
- 2.3 Councillors have responsibility to determine the policy of the Council, monitor its performance, represent the Council externally and act as advocates on behalf of their constituents.
- 2.4 Councillors give political leadership and direction and seek to further their agreed policies and objectives.
- 2.5 Councillors have five main areas of responsibility:
- To determine council policy and provide community leadership;
  - To monitor and review council performance in implementing policies and delivering services
  - To represent the council externally; and
  - To act as advocates for their constituents
  - To contribute to planning and regulation- Councillors may be appointed to sit on committees including planning and licensing. In these roles Councillors are required to act independently and should not be subject to the group or party whip.

### **OFFICERS**

- 2.6 Officers are employed by and are accountable to the Council as a whole. Officers work to the instructions of their senior Officers, not individual Councillors or Political Groups.
- 2.7 Officers are responsible for the day to day managerial and operational decisions within their Council and provide services to the local community.
- 2.7 Officers advise, inform and support all Councillors and implement the agreed policies of the Council.
- 2.8 Officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes effective management of employees and operational issues.
- 2.9 Officers have a duty to keep Councillors of all political groups informed about developments of significance in relation to council activities.
- 2.10 Officers are responsible for day to day managerial and operational decisions within the Council, including directing and overseeing the work of more junior Officers.

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



# Agenda Item 5

## Annex 1

- 3.1 Councillors and Officers are indispensable to the working of the council however their roles and responsibilities are distinct. Councillor/Officer relationships should be conducted in a positive and constructive way.
- 3.2 In giving advice to Councillors, and in preparing and presenting reports, it is the responsibility of the Officer to express his/her own professional views and recommendations. An Officer may report the views of individual Councillors on an issue, but the recommendations should be the Officer's own. If a Councillor wishes to express a contrary view, they should not pressurise the Officer to make a recommendation contrary to the Officer's professional view, nor victimise an Officer for discharging his or her responsibilities.
- 3.4 Councillors and Officers should always be open about any personal relationship. Personal familiarity between Councillors and Officers can create the suspicion of improper conduct, however unfounded and can undermine public confidence in the Council. Whilst it is clearly important that there should be a close working relationship between some Officers and Councillors including Cabinet Councillors and chairs of Committees, such relationships should never be allowed to be so close, or appear so close, as to bring into question, the Officer's ability to deal impartially with other Councillors. In circumstances where the relationship between a Councillor and an Officer could reasonably be seen to unduly influence the work of either, then they should inform the Monitoring Officer.
- 3.5 Councillors and Officers should respect each other's non-working time.
- 3.6 Councillors and Officers must not bully any person.
- 3.7 Councillors should remember that Officers within their Departments are accountable to their Head of Service or Director. Councillors are free to approach any Council Department to provide them with information, explanation or advice. In making such an approach, the request should in most circumstances be made to the Director or Head of Service concerned. There will be occasions when it is appropriate to contact a more junior Officer. This will be appropriate for example when the junior Officer is the only Officer with the relevant expertise to address the issue. In such cases and in relation to any written requests for information, it may be appropriate to copy in the relevant Head of Service or Director.

### **Actions taken under delegated authority:**

- 3.8 Councillors who are Cabinet Members and some Officers may have authority delegated to them to make decisions or to act on the Council's behalf. In such cases the individual concerned must consider whether they have full and sufficient information before taking a decision, and may need to consult others: a Councillor should ensure that they have the advice of the relevant Chief Officer/s, and Officers may need to consult the relevant Cabinet Councillor on the proposed decision. When a decision is taken under delegated powers the person to whom that authority has been delegated is personally responsible and accountable for their actions.
- 3.9 In some cases authority delegated to an Officer is on the basis that it is to be exercised in consultation with the relevant Cabinet Member. Whilst, the Officer must have due regard to the comments of the Cabinet Member

concerned, he/she cannot be instructed on the decision by the Councillor and will remain accountable for the action taken. However, if there is a significant disagreement between the Officer and the Cabinet Member that cannot be resolved through discussion, the matter will normally be referred to the appropriate Councillor-level body for decision.

3.10 Chief Officers have delegated responsibility for the general management of their department and the day-to-day delivery of services. They also have powers and duties specifically delegated to them as well as a general delegated authority for executive functions which are not identified in the Council's constitution as being reserved for Councillor-level decisions. Within this framework decisions are frequently delegated below Chief Officer level. While Officers will be sensitive to political guidance on how they exercise their delegated authority and will always consider requests and comments by Councillors, all delegated action must be in accordance with overall Council policies and procedures or Cabinet/Committee decisions but not individual Councillor instructions. Where Cabinet Councillors have authority to take decisions individually under delegated powers, they must be taken formally, based on Officer reports and recorded and published in accordance with Access to Information Procedures.

3.11 A Councillor who gives an undertaking or commitment to a third party in excess of their powers or authority, may be personally liable in law for any costs or damages incurred by the third party if they act on that undertaking or commitment and it is not subsequently confirmed by the Council. An Officer who similarly wrongly advises or misleads a third party may be subject to the Council's disciplinary procedures.

### **Statutory Officers:**

3.12 The Head of Paid Service, the Monitoring Officer and the Chief Finance (Section 151) Officer and other Statutory Officers have specific responsibilities placed on them by law. These responsibilities go beyond their obligations as employees of the Council. Where an Officer is discharging their responsibilities under Statutory Officer duties a Councillor or Councillors shall not:

- improperly interfere with or obstruct the Officer in exercising those responsibilities
- victimise any Officer who is discharging or has discharged their responsibilities of the Statutory Officer

### **General Principles of Good Conduct:**

3.13 Councillors and Officers should adhere to the following:

#### **Councillors should:**

- respect the impartiality of Officers
- act within policies, practices, processes and conventions established by the Council.
- work constructively with Officers acknowledging their separate and distinct roles and responsibilities
- treat Officers fairly with respect, dignity and courtesy

# Agenda Item 5

## Annex 1

- comply at all times with the Councillors' Code of Conduct, the law, the Constitution, and such other policies, procedures, protocols and conventions agreed by the Council
- act with integrity to give support and respect appropriate confidentiality
- have regard to the seniority of Officers in determining what are reasonable requests, consider the relationship between Councillor and Officer and the potential vulnerability of Officers, particularly at junior levels.
- recognise that Officers work to the instructions of their Senior Officers and not to individual Councillors or political groups
- not subject Officers to intimidation, harassment, or put them under any undue pressure.
- not undermine the role of Officers in carrying out their duties
- not ask Officers to exceed their authority where that authority is given to them in law, by the Council or their managers
- not use their position or relationship with Officers to advance their personal interest or those of others or to influence decisions improperly
- not authorise, initiate or certify any financial transactions or to enter into any contract, agreement or undertaking on behalf of the Council or in their role as a Councillor without proper and lawful authority
- not request an Officer to exercise discretion which involves acting outside the Council's policies and procedures.

### **Officers should:**

- implement decisions of the Council and its subordinate bodies which are lawful, which have been properly approved in accordance with the requirements of law and the Council's Constitution and are duly recorded.
- work in partnership with Councillors in an impartial and professional manner
- treat Councillors fairly and with respect and dignity
- respond to requests from Councillors for advice or assistance in a timely fashion and at least in accordance with the agreed standards that apply at the time
- assist and advise all parts of the Council. Officers must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions
- respond to enquiries and complaints in accordance with the Council's Standard's protocol
- be alert to issues which are, or which are likely to be, contentious or politically sensitive and be aware of the implications for Councillors, the Media or other sections of the public
- act with honesty, respect, dignity and courtesy at all times
- provide support, learning and development opportunities for Councillors to help them in performing their various roles
- comply at all times with the Officer Code of Conduct and such other policies of procedures approved by the Council
- not seek to use their relationship with Councillors to advance their personal interests or to influence decisions improperly

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

# Agenda Item 5

## Annex 1

- 4.1 There is a range of circumstances where the Council as a corporate body may be involved in legal proceedings. This could be against residents or other individuals, organisations and companies, and across the whole range of service areas including housing, planning, highways, etc. Councillors have a clear role in representing residents and general public interests. In this representative capacity, Councillors will inevitably become involved in issues where the Council is considering, or is in the process of taking legal action, or where the Council is the defendant to legal actions brought by third parties.
- 4.2 Conflicts of interest will almost certainly occur when a Councillor is enquiring on behalf of an individual or body involved in legal action by or against the Council. In such cases, Councillors will be required to balance their representative role with their wider responsibilities in representing the corporate interests of the authority. For this reason, Councillors must be circumspect in any dealing with persons taking action against the Council, or against whom any legal action is being taken. Particularly, Councillors must be extremely cautious about having any dealings with professional representatives, advisers or witnesses in the case. Not only could such intervention prejudice the Council's position but the Councillors could find himself/ herself accused of an offence of Misconduct of Public Office or, Perverting the Course of Justice or an attempt or conspiracy to do so.
- 4.3 It is therefore particularly important that Councillors should be sure not only to avoid any actual impropriety, but at all times avoid any occasion for suspicion or any appearance of improper conduct.
- 4.4 In that regard, Councillors must not:
- attempt in any way to exercise improper influence over the legal process in which the Council is involved;
  - attempt to exert improper influence on Council Officers involved in the legal process or witnesses in the case;
  - attempt to engage the community to exert improper influence on Council Officers involved in the legal process or witnesses in the case.
- 4.5 Whilst Councillors have every right to information on how any such matter is being dealt with and a duty to represent their constituents, Councillors must also realise that the response on behalf of the Council must be limited to comments on process, so as not to prejudice the proceedings.
- 4.6 In respect of any ongoing or contemplated proceedings, all enquiries must be addressed to either the relevant Director or Head of Service. Councillors must not make contact with any Officers involved in the proceedings to discuss or make any enquiries regarding the proceedings.
- 4.7 If a Councillor believes that the Council's actions or intentions are wrong, they should inform the relevant Director or Head of Service. It will then be for the Director to determine what action to take. If the Councillor remains unhappy with the action taken, then they should refer the matter to the Council's Monitoring Officer or to the Chief Executive.

## **5. COUNCILLOR TO COUNCILLOR EXPECTATIONS**

# Agenda Item 5

## Annex 1

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

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

## **6. REPORTS**

6.1 Officers' reports should contain clear, evidence-based advice as to why a course of action is being recommended. From time to time corporate advice is given to Officers on report writing and they should take care to follow it. The report should lay out all relevant factors for the decision maker, and examine all alternatives in an even handed way. Officers should take care to include even unpopular options if they feel they are relevant. All reports must contain the relevant reference to equalities considerations so that the decision maker can ensure that these are given the necessary regard when considering the decision.

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

6.3 Councillors have the right to criticise reports or the actions taken by Officers, but they should always seek to avoid personal attacks on Officers; and ensure that criticism is constructive and well-founded.

6.4 Councillors have the ability to agree or reject proposals placed before them by Officers, irrespective of the advice or recommendations made by Officers so long as they generally act in good faith and exercise reasonableness in decision-making. This requires them to take into account relevant and dismiss irrelevant matters; and not to come to a conclusion that no reasonable authority would come to. Officers must be able to report to Councillors as they see fit and without any political pressure.

## **7. OFFICER ADVICE TO POLITICAL GROUPS AND OTHER MEETINGS**

7.1. Officers serve the Council as a whole and not exclusively any Political Group, combination of Groups or individual Councillor. Officers must treat Political Groups and individual Councillors in a fair and even-handed manner.

7.2 Political Group meetings perform an important part in the preliminaries to Council decision-making. However, they are not formal decision-making bodies of the Council and are not empowered to make decisions on behalf of

# Agenda Item 5

## Annex 1

the Council. Conclusions reached at such meetings do not rank as Council decisions.

- 7.3 The presence of an Officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.
- 7.4 The principles of this section apply to informal meetings of Cabinet and Officer advice to Other Meetings.
- 7.5 There is statutory recognition of Political Groups. It is common practice for such Groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant formal Council body. Officers may on occasion be called upon to support and contribute to such deliberations by Political Groups but must at all times maintain a stance which is politically impartial. The support provided by Officers may range from a briefing meeting with a Chair or Cabinet Portfolio Holder before a meeting, to a presentation to a Political Group meeting.
- 7.6 Any advice given to a Political Group or Councillor will be treated with the strictest of confidence by the Officers concerned and not be accessible to any other Political Group(s). Factual information upon which any advice is based will be available to all Political Groups.
- 7.7 When Officer attendance is requested for Political Group meetings the request must be made through the Chief Executive or appropriate Senior Officer (Head of Service or above) and can only be made in relation to Council business not Party policies or business. At the meeting Officers will:-
- provide relevant information and advice on Council business only and not on matters which are purely of a party political nature and must at all times do so in a way which is politically impartial;
  - normally leave during the deliberations of the Political Group on the issue in order to avoid any appearance of impropriety or misunderstanding;
  - respect the confidentiality of any Political Group discussion at which they are present; Councillors must not do anything which compromises or is likely to compromise Officers' impartiality. This must not prevent an Officer providing feedback to other Senior Officers as appropriate.
- 7.8 The duration of an Officer's attendance at a Political Group meeting will be at the discretion of the Group, but an Officer may leave at any time if they feel it is no longer appropriate to be there.
- 7.9 An Officer accepting an invitation to the meeting of one Political Group must not decline an invitation to advise another Group about the same matter. They must give substantially the same advice to each.
- 7.10 An Officer must be given the opportunity of verifying comments and advice attributed to them in any written record of a Political Group meeting.
- 7.11 Councillors must not refer in public or at meetings of the Council to advice or information given by Officers to a Political Group meeting unless this has been previously agreed by the relevant Officer or Head of Service.

- 7.12 Officers are available to attend meetings called under the arrangements set out in the Constitution and as specified in this Protocol. Other meetings such as area/community forums, public meetings, local meetings, consultations arranged by Councillors are not official business meetings of the Council. Officers will not attend such other meetings unless authorised/agreed by the relevant Senior Officer.

### **8. LOCAL WARD ISSUES**

- 8.1 To enable them to carry out their Ward role effectively, Councillors need to be informed about significant matters affecting their Ward. Senior Officers should ensure that Ward Councillors are kept informed of such matters thus allowing Councillors to contribute to the decision-making process and develop their representative role.
- 8.2 This requirement is particularly important in the following circumstances :
- during the early stages of policy development, where practicable;
  - in relation to major or sensitive operational matters;
  - whenever any form of public consultation exercise is undertaken; during an Overview and Scrutiny process.
- 8.3 When a public meeting is organised by Officers to consider a local issue, all Councillors representing the affected Wards should be invited to attend the meeting. Similarly, when Officers undertake any form of consultation on a local issue, the Ward Councillors should be notified at the start of the exercise.
- 8.4 If Ward Councillors intend to arrange a public meeting on a matter concerning some aspect of the Council's work, they can invite a relevant Officer to attend if they so wish. Provided that the meeting has not been arranged on a party political basis an Officer may attend but is not obliged to do so and the meeting may be held in Council-owned premises.
- 8.5 Officers will not be able to attend such meetings in the run up to Council elections, the pre-election period.
- 8.6 Officers should not attend Ward or Constituency Political Party meetings.
- 8.7 In seeking to deal with residents' queries or concerns, Councillors must not seek to place Officers under undue pressure to deal with their query in a way which circumvents the usual Council procedures. Officers may not be able to carry out the work required by Councillors in the requested timescale and may need to seek instructions from their managers. Corporate Customer response times apply.
- 8.8 If any of the Members of Parliament (MPs) are involved in a local issue, Officers may invite the MP, in addition to the Ward Councillors. If Officers consider this is not appropriate for any reason they may meet the MP separately.

### **8. CORRESPONDENCE INCLUDING EMAILS**

- 9.1 Official correspondence written on behalf of the Council must normally be in the name of the relevant Officer rather than in the name of a Councillor. It may be appropriate in some circumstances, for example representations to a Government Minister for letters to appear in the name of the appropriate Councillor, for example, the Leader. Letters that, for example, set up meetings, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Councillor.
- 9.2 The Chair may correspond in their own name.
- 9.3 Correspondence which creates legally enforceable obligations or gives instructions on behalf of the Council must never be sent in the name of a Councillor.
- 9.4 Correspondence to individual Councillors from Officers should not be sent or copied to complainants or other third parties if they are marked "confidential". In doing so, the relevant Officer should seek to make clear what is to be treated as being shared with the Councillor in confidence only and why that is so.
- 9.5 Correspondence between an individual Councillor and an Officer should not normally be copied (by the Officer) to any other Councillor. Where exceptionally it is necessary to copy the correspondence to another Councillor, this should be made clear to the original Councillor. In other words, a system of "silent copies" should not be employed. Acknowledging that the "BCC" system of e-mailing is used, it should be made clear at the foot of any e-mails if another councillor has received an email by adding "CC councillor X."

## 10. PRESS AND MEDIA

- 10.1 The council must comply with the provisions of the Local Government Act 1986 regarding publicity. All media relations work will comply with the national Code of Recommended Practice for Local Government Publicity. The Code is statutory guidance and the council must have regard to it and follow its provisions when making any decision on publicity. The Code provides that all Local Authority Publicity should be based around the following seven principles to ensure that all communications activity:
  - Is lawful
  - is cost effective
  - is objective
  - is even-handed
  - is appropriate
  - has regard to equality and diversity
  - is issued with care during periods of heightened sensitivity.
- 10.2 Staff and Councillors must comply with revised rules in respect of publicity during any pre-election period. The LGA's guidance on publicity during this period useful and can be found here:



# Agenda Item 5

## Annex 1

<https://www.local.gov.uk/publications/short-guide-publicity-during-pre-election-period>

- 10.3 The Council's communications staff will provide support and guidance to Councillors in their dealings with the press and other media. However, press and communications staff cannot be called upon to assist in party political communications.
- 10.4 Councillors have freedom to contact and discuss issues with the media but must have regard to their conduct relating to breaches of confidentiality and the need to represent the Council's best interests. It is also important that Councillors stress to reporters, when giving a personal view on an issue, that their views may not reflect Council policy. Councillors who issue press releases or make statements to the press or the general public or part of it, without firstly seeking Officer guidance may be personally liable if there are subsequently claims made for defamation, or if another party acts on incorrect information

### **11. COUNCILLORS ACCESS TO INFORMATION**

- 11.1 Councillors have a statutory right to see documents relating to business to be transacted at a public meeting of the Council, Cabinet, committee or sub-committee. This includes background papers, and applies whether or not the Councillor is a Councillor of that body. But this does not apply to drafts of reports, or to documents which disclose information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, advice from counsel, criminal investigations and other exempt and confidential information.
- 11.2 Councillors have a common law right to see Council-held documents where they can demonstrate a need to know. This means it must be reasonably necessary for the Councillor concerned to see the document in order to carry out his or her duties as a Councillor. Mere curiosity or desire is not sufficient - the Councillor has to demonstrate a need to know. The 'need to know' must be decided by a Chief Officer (or Senior Officer with authority to act on their behalf) following advice from the Monitoring Officer and Councillors who wish to request confidential information should normally do so through the appropriate Chief Officer or Senior Manager.

### **12. Breaches of the Protocol**

- 12.1 Councillors or Officers with questions about the implementation or interpretation of this Protocol should seek guidance from the Monitoring Officer.
- 12.2 If Councillors believe that an Officer has breached this Protocol or have concerns about the conduct, behaviour, or performance/capability of an Officer they should raise the matter directly with that Officer's manager or Director; where the Officer concerned is a Director the matter should be raised with the Chief Executive; and when the Officer is the Chief Executive, with the Monitoring Officer.

- 12.3 In all cases, the Officers with whom the concerns have been raised will report back to the Councillor concerned, giving as much information as they can as to the conclusions they have reached.
- 12.4 This procedure is only appropriate where their issues arise in the Councillor's capacity as a Member of the Council, rather than as a service user or individual affected by the Council's decision. In such cases their concerns should be dealt with in accordance with the Council's complaints procedure.
- 12.5 If Officers are concerned about the conduct of a Councillor, they should raise the matter with their Manager or Director as appropriate. The Manager will discuss the matter with their Director, who will seek to resolve it to the Officer's satisfaction, in consultation with the Monitoring Officer, where appropriate. The aim of these discussions is to resolve the matter by conciliation, rather than by more formal means. Nevertheless, it must be recognised that Officers, like any members of the public, may make an allegation of a breach of the Code of Conduct for Councillors and can also use the procedures set out in the Council's Bullying and Harassment policy.
- 12.6 Where the concerns are about potential unlawful conduct of an Officer or Councillor, the Whistleblowing Policy or other Council policies may be relevant. For further advice, please contact the Monitoring Officer.

# Protocol on Member/Officer Relations

## Introduction

Mutual trust and respect between Members and Staff is at the heart of the Council's good governance. Both are essential if the partnership necessary for the effective and efficient running of the Council is to succeed.

### 1.0 Definitions

1.1 Unless the context indicates otherwise, references in this Protocol to the following terms shall have the following meanings:

- Member includes a non-elected i.e. co-opted member as well as elected members of the Council.
- Member body includes the Council, the Cabinet, Scrutiny and Regulatory Committees, and all other committees, sub-committees and panels described in the Constitution.
- Cabinet Member refers to the leader and other members of the Cabinet under the Council's constitutional arrangements.
- Officer means all persons employed by the Council.
- Chief Officer means the Chief Executive and the corporate directors.
- Designated Finance Officer means the Deputy Chief Executive exercising the duties prescribed by law for the financial administration of the Council.
- Member Liaison Officer means an officer who may be appointed by the Chief Executive to deal with members and their enquiries on specific matters.
- Monitoring Officer means the Corporate Director Governance and is the officer with statutory responsibility for ensuring that the Council acts within the law and in accordance with its Constitution.
- Political Group means any formally recognised group of elected members on the Council who are either members of the same political party or independent members.

### 2.0 Scope

2.1 This Protocol is designed to:

- Promote trust, openness, fairness and honesty by establishing clear ground rules;
- Define roles so as to clarify responsibilities;

# Agenda Item 5

## Annex 2

- Avoid conflict;
- Prevent duplication or omission;
- Secure compliance with the law, codes of conduct and the Council's own practising procedures; and
- To lay down procedures for dealing with concerns by Members or Officers.

2.2 The Protocol represents the central element of the Council's corporate governance and provides the framework for dealing with a wide range of circumstances applying to relations between Members of the Council and its Officers.

2.3 This Protocol covers the main issues which may arise in Member/Officer relations but this is not intended to be comprehensive. Members and Officers should seek advice from the Chief Executive or the Monitoring Officer on any matter not covered by this Protocol or on issues of uncertainty.

### 3.0 Purpose

3.1 Together Members and Officers combine the essential skills, experience and knowledge to manage an effective public sector organisation. Members provide a democratic mandate to the Council whereas Officers contribute the professional expertise and experience to deliver the policy framework agreed by Members.

3.2 Whilst collaborative working is the accepted norm for Member and Officer relations at the Council it is important to recognise and take account of their different roles. This is important for day to day interaction between Members and Officers and for the public perception of the Council by ensuring transparency between the political role of Members and the professional impartial role of Officers.

3.3 This Protocol is intended as a written guide on the basic elements of the relationships between Members and Officers to fulfil the purposes set out above and as a means of demonstrating to the public at large that local government is serious about protecting and enhancing its integrity and reputation. This Protocol has been adopted by the Council in order to achieve these objectives and seeks to maintain and enhance the reputation and integrity of local government in general and this Council in particular.

### 4.0 Status

4.1 This Protocol establishes a set of principles to assist members and officers to work together.

4.2 Members and Officers must at all times observe this Protocol.

4.3 This Protocol is part of the Council's Constitutional documents and its importance is recognised by its adoption by Full Council at its meeting on the 25<sup>th</sup> day of February 2016 with the support of all political groups represented on the Council.

### 5.0 Principles

# Agenda Item 5

## Annex 2

- 5.1 As in all effective partnerships Member/Officer relations are based on the following principles:
- Mutual trust and respect of the different roles of Members and Officers;
  - A common purpose; providing the best possible service to the residents and other stakeholders of Thanet District Council; and
  - A commitment to non-adversarial resolution of disputes.
- 5.2 At the Council mutual respect between Members and Officers is an essential part of the way we work. Conflict and challenge are inevitable and necessary parts of the democratic process in a local authority. Demonstrating mutual respect in instances where Members disagree with specific Council policies or actions demands the highest standards of personal conduct.
- 5.3 Mutual respect is based upon an understanding of the distinct contributions Members and Officers make in respect with the boundaries between those roles. A key principle for Officers is their political impartiality; they serve the whole Council and not particular groups or Members. This is particularly important for Chief Officers and other senior officers who are prevented by law from political activities beyond party membership.
- 5.4 Further some Chief Officers hold posts with mandatory statutory responsibilities notably the Chief Executive, the designated Finance Officer and the Monitoring Officer. Further information about this is provided in Article 12 of Part 2 of the Constitution. Members must respect these duties and recognise that these Officers may be required to give advice or make decisions which Members may not agree with or support.
- 5.5 Members and Officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take an early advantage by virtue of their position.
- 5.6 Whilst Members and Officers are indispensable to one another, their responsibilities are distinct. Members are accountable to the electorate. Officers are accountable to the Council as a whole. Their job is to give advice to Members (individually and collectively) and to carry out the Council's work under the direction of the Council.
- 5.7 To carry out their duties effectively, Members must have broad access to Council information. The following principles apply here:
- Members' enquiries will be dealt with promptly and effectively and within corporate timescales;
  - Members access to information will be compliant with their statutory and common law rights (see the access to information procedure in Part 4 of the Constitution);
  - Officers will not without good reason, withhold information from a Member who is entitled to receive it;

# Agenda Item 5

## Annex 2

- Where confidential, personal or otherwise sensitive personal information is provided to a Member that Member will not disclose it to any other person, without authorisation.

5.8 The Council has adopted a code of conduct for Members which is set out in Part 5 of the Constitution and an employee code of conduct which is also set out in Part 5. The Members' code follows the general principles governing Members' conduct enshrined in law. These are:

- Selflessness – serving only the public interest;
- Integrity – not allowing these to be questioned;
- Objectivity – taking decisions on merit;
- Accountability – to the public, being open to scrutiny;
- Openness – giving reasons for decisions;
- Honesty – acting in a proper manner
- Leadership – acting in a way which has public confidence.

5.9 The same principles underpin this Protocol and also underpin the code of conduct for officers.

5.10 Until such time as a new national code appears Officers are bound by the Council's own employee code of conduct and in some cases by the codes of their professional association.

### 6.0 Roles

A quick guide to Member and Officer roles:-

<b>Members</b>	<b>Officers</b>
Democratically elected and accountable to the electorate	Employees accountable to the Council
Community leader for their ward and the district as a whole	Serve the whole Council
Add a political dimension And may take a role as Cabinet member	Impartial
Set policy and strategy	Ensure operation delivery and provide advice
Bound by a statutory code of conduct	Bound by their contract of employment
Involved in Chief Officer appointments only	Day to day management of staff

### 6.1 **The role of Members**

- 6.1.1 Members have a number of different roles and need to be alert to the potential for conflicts of interest which may arise between them. Where such conflicts are likely and Members may wish to seek the advice of senior colleagues, the Chief Executive, and/or the Monitoring Officer.
- 6.1.2 Collectively Members are the ultimate policy-makers, determine the core values of the Council and approve the Council's policy framework, strategic plans and budgets.
- 6.1.3 Members represent the community, act as community leaders and promote the social, economic and environmental wellbeing of the community often in partnership with other agencies.
- 6.1.4 Every elected member represents the interests of their ward and individual constituents. They represent the Council in the ward, respond to the concerns of constituents, meet with partner agencies and often serve on local bodies.
- 6.1.5 Members are responsible for the decisions taken by Member bodies upon which they sit.
- 6.1.6 Some members may be appointed to represent the Council on local, regional or national bodies.
- 6.1.7 As politicians, elected members will make statements that are representative of the political groups to which they belong.
- 6.1.8 The role of opposition members in offering alternative policies and holding the administration group to account will inevitably involve those members in challenging decisions and care should be taken to ensure that such challenge is directed at the Cabinet Member concerned and not at officers who are charged with implementation.

### 6.2 **The role of Officers**

- 6.2.1 Officers are responsible for giving advice to Members to enable them to fulfil their roles, in doing so Officers will take into account all available relevant factors.
- 6.2.2 Under the direction and control of the Council (including, as appropriate, the Cabinet, committees and sub-committees), Officers manage and provide the Council services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
- 6.2.3 Officers have a duty to implement lawful decisions of the Member bodies which have been properly approved in accordance with the requirement of the law and the Council's Constitution and duly minuted.
- 6.2.4 Officers have a contractual and legal duty to be impartial as well as to place their skill and judgement at the disposal of the Council; they must not allow their professional judgment and advice to be influenced by their personal view.

# Agenda Item 5

## Annex 2

- 6.2.5 Officers must assist and advise all parts of the Council. They must always act to the best of their abilities and in the best interests of the Council.
- 6.2.6 Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for Members, the media or other sections of the public and advise accordingly.
- 6.2.7 Officers have the right not to support Members in any role other than that of an elected councillor, and not to engage in actions incompatible with its Protocol. In particular there is a statutory limitation on Officers' involvement in political activities from those Officers employed in politically restricted posts.

### 7.0 **Conduct**

#### 7.1 **Attitude and Behaviour**

- 7.1.1 The conduct of Members and Officers should be such as to instil mutual confidence and trust.
- 7.1.2 The key elements are recognition of, and a respect for, each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other both publicly and privately.
- 7.1.3 Members should be aware that Officers are constrained in the response they may make to public comments from Members. Members should not criticise Officers personally in public or through the press nor seek to undermine their position by abuse, rudeness or ridicule. This in no way reduces the right of Members to criticise, in a constructive manner, the report or actions of a department or section of the Council where they believe such criticism is well-founded.
- 7.1.4 Discussions and correspondence between Members and Officers should at all times be well-mannered and professional.
- 7.1.5 Informal and collaborative two-way contact between Members and Officers is encouraged, but over familiarity can damage the relationship as might a family or business connection.
- 7.1.6 Members and Officers should inform the Chief Executive or Monitoring Officer of any personal relationship between each other which might be seen as unduly influencing their work in their respective roles.
- 7.1.7 It is not enough to avoid actual impropriety. Members and Officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed those concerned should avoid a situation where conflict could be perceived. Specifically a Member should not sit on a body or participate in any decision which directly affects the Officer on a personal basis.
- 7.1.8 Members of staff should not discuss with a Member inappropriate personal matters concerning themselves or another individual employee. This does not prevent them



# Agenda Item 5

## Annex 2

raising on a personal basis and in their own time a Council service related matter with their ward Member.

7.1.9 Members and Officers should respect each other's free (i.e. non-Council) time.

### 7.2 Conduct of scrutiny reviews

7.2.1 The Chair Overview and Scrutiny Panel should maintain regular contact with the Officers providing the principal support to the overview and scrutiny function staff in consultation with the Chair. It should be the responsibility of the latter to ensure that those who need to know of matters being considered or for possible future consideration are so informed.

7.2.2 The Overview and Scrutiny Panel or its Chair acting on its behalf may require Officers to attend scrutiny meetings. Members should not normally expect junior officers to give evidence but Corporate Directors of services will be expected to comply with the (scrutiny procedure rules). All requests should be made to Chief Officers in the first instance.

7.2.3 When making requests for Officer attendance, scrutiny members shall have regard to the workload of Officers.

7.2.4 It is recognised that Officers appearing before the Overview and Scrutiny Panel may often be those who have advised the Cabinet or another part of the Council on the matter under investigation. In these circumstances an Officer may have a conflict of interest although not a personal interest. Both Members and Officers need to consider the severity of the conflict. If deemed appropriate research and advice may be sought elsewhere.

7.2.5 Subject to the provisions of 7.2.4 Officers should be prepared to justify advice given to a Member body even when the advice is not accepted.

7.2.6 Officers must also be prepared to justify decisions they have taken under delegated powers.

7.2.7 In giving evidence Officers must not be asked to give political views.

7.2.8 Officers should respect Members in the way they respond to Member's questions.

7.2.9 Members should not question Officers in a way that could be interpreted as harassment neither should they ask about matters of a disciplinary nature.

7.2.10 Scrutiny proceedings must not be used to question the capability or competence of Officers. Chair and Members need to make a distinction between reviewing the policies and performance of the Council in its services and appraising the personal performance of Officers. The matter is not an overview and scrutiny function.

7.2.11 In exercising the right to call in a decision of the Cabinet scrutiny Members must seek Officer advice if they consider the decision is contrary to the Council's approved budget or policy framework or is unlawful.

# Agenda Item 5

## Annex 2

### 8.0 **Decision making and matters specific to Cabinet business**

#### 8.1 **Roles**

- 8.1.1 Cabinet Members will take decisions in accordance with the Constitution and will not otherwise direct staff. Corporate Directors will be responsible for instructing staff to implement the Cabinet's decisions.
- 8.1.2 Cabinet members are responsible for providing leadership and direction on policy matters. Day-to-day managerial and operational decisions on the delivery of services should remain the responsibility of the Chief Executive and other officers.
- 8.1.3 Cabinet members will routinely be consulted as part of the process of drawing up proposals for consideration on an agenda for a forthcoming meeting, but it must be recognised that in some situations an officer will be under a professional duty to submit a report. Similarly, a Corporate Director or senior officer will always be fully responsible for the contents of any report submitted in their name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. This is to be distinguished from a situation where there is a value judgement to be made. Any issues arising between a Cabinet member and a Corporate Director in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 8.1.4 In addition to individual Members of the Cabinet, the Chief Executive, Corporate Directors (including the Section 151 Officer) and the Monitoring Officer have the right to submit papers to the Cabinet as a whole or to individual Cabinet Members for consideration.
- 8.1.5 Before any formal decisions are taken by the Cabinet, the Section 151 Officer and the Monitoring Officer and the Corporate Director(s) of the service involved must be consulted. This is to ensure that budget holders are aware of the proposed decision, that the decision's legal implications can be considered, that the opportunity to offer advice has been identified, and that officers are subsequently able properly to authorise the various financial and legal transactions and requirements needed to implement decisions.
- 8.1.6 The Chief Executive, Corporate Directors and Cabinet Members shall agree mutually convenient methods of regular contact including regular meetings between Cabinet Members and the Corporate Directors of their respective portfolio areas, and/or any other appropriate method which complies with law and the Constitution. Before taking any formal decisions, the Cabinet will seek appropriate professional advice including, without exception, the Chief Executive, the Monitoring Officer and Section 151 Officer (or their deputies in their absence), and will not direct Officers in the framing of recommendations.
- 8.1.7 When formal advice is given by the Chief Executive, Monitoring Officer and/or the Section 151 Officer in the furtherance of their statutory duties, Members should be expected to follow it. However, it is recognised that circumstances may arise where they may wish to ignore such advice. Members may make decisions contrary to the advice of officers generally, and Statutory Officers in particular, but should note the following:

# Agenda Item 5

## Annex 2

- (a) Decisions so made may be in breach of the Council's legal duties, particularly the Public Sector Equality Duty;
- (b) Decisions may have unforeseen, negative consequences on the local community, which officers may not have had an opportunity to consider in advance of a decision being made contrary to their advice;
- (c) Even where a decision made by Members contrary to officer advice is not contrary to legislation, it could still render the Council subject to successful legal action, further to a judicial review, action for breach of contract or action for negligence, or all three;
- (d) Such successful action could make the Council liable for damages (whose quantum may not, at the point of decision, be apparent) and against which the Council may not be insured;
- (e) Such successful action would result in reputational damage to the Council and a broken relationship of trust with any person adversely affected by the decision.

8.1.8 Where, notwithstanding the above, Members wish to make a decision contrary to advice, all correspondence relating to the decision must be transacted in writing, including the officer advice itself and the reasons given by Members for acting against it.

### **8.2 Decisions by individual members**

8.2.1 An individual Cabinet Member who is minded to write or commission a report or to make a decision about a matter within their portfolio must ensure that those other Members and Officers who need to know of the matter are informed. There is a particular requirement to involve other Cabinet Members on cross-cutting issues.

8.2.2 Executive Members when making decisions must state the reasons for those decisions in the written record.

### **8.3 Decisions made by officers under delegated powers**

8.3.1 Officers taking decisions under their delegated powers must exercise their judgement and consult with the relevant Cabinet Member (s) in advance when the matter to which the decisions relate are likely to be sensitive or contentious, where the Officer considers that the decision may have wider policy implications, or where the Cabinet Member (s) has/have previously informed the Officer that particular decisions or classes of decisions may have such implications.

8.3.2 Officers are responsible for implementing Member decisions and in the case of Cabinet decisions Chief Officers will be responsible for instructing staff to implement decisions.

8.3.3 Apart from the formal decision making process, Officers work to the instruction of their managers and not individual members. Officers will try to comply with all

# Agenda Item 5

## Annex 2

reasonable requests from Members but Members cannot instruct Officers to do any piece of work or take any course of action.

- 8.3.4 Officers must observe the requirements set out in the officer delegations in Part 3 of the Constitution when taking decisions and ensure that decisions falling outside it are referred to the appropriate Member body for decision unless action is to be taken under standing order?
- 8.3.5 When taking decisions under their delegated powers Officers should be aware of decisions which are likely to be sensitive or contentious. In such cases Officers should inform the relevant Cabinet Member(s) and where appropriate ward Members of their intentions in advance.
- 8.3.6 Officers should also keep Cabinet Members informed in advance of any decisions which they take that have wider policy implications.
- 8.3.7 While Officers will support, advise and respond to Members' requests they must not be asked to exceed the bounds of authority they have been given by their manager.

### 8.4 **Decisions affecting Council staff**

8.4.1 The role of Members in employment matters are limited to:

- Determining significant human resources policies and conditions of employment;
- The appointment and discipline of Chief Officers;
- Hearing and determining appeals.

8.4.2 Members shall not act outside these roles.

8.4.3 Officers are responsible for the appointment and discipline of all other Officers.

8.4.4 In participating in the appointment of Chief Officers, Members should:

- Respect the confidentiality of the process and in particular the identity of the candidates.
- Remember that the sole criterion is merit;
- Never canvass support for a particular candidate;
- Not take part where one of the candidates is a close relative or friend;
- Not be influenced by personal preferences; and
- Not favour a candidate by giving them information not available to the other candidates.

8.4.5 Officers will not seek any Members' support in any employment matter.

# Agenda Item 5

## Annex 2

8.4.6 When discussing or making decisions about industrial relations matters, Members must remember that they represent the Council as an employer and are not a representative of the employees. If a Member considers that they cannot undertake this task from this perspective they should withdraw from this role.

### 9.0 **Support for Members**

#### 9.1 **Members' enquiries and access to Officers**

9.1.1 Members enquiries may be made by any means including verbally, email or in writing.

9.1.2 Members should normally direct their requests and concerns in relation to policy, spending and other major issues to the relevant Corporate or Service Director in the first instance. Failure to do so would have the effect of depriving Members of formal, informed and accountable advice they have a right to expect from senior officers and which they have a duty to consider.

9.1.3 Approaches by Members to other Officers are proper when they are seeking clarification of a response from that Officer or where the nature of the enquiry is routine and requires a detailed knowledge of the issues.

9.1.4 Members' enquiries will be dealt with promptly and effectively. A substantive response to a Member enquiry should be sent within ten working days of receipt.

9.1.5 Officers receiving Member enquiries should ensure that if they are absent or unavailable for more than one working day that their email is checked by a colleague. Out of office email replies should always give an alternative contact.

9.1.6 If it is not possible to respond within ten working days, Officers must explain in writing:

- The reason for the delay;
- What action is being taken to pursue the enquiry; and
- A deadline by which a substantive response will be sent.

9.1.7 Members' enquiries which are in fact constituent complaints will be handled under the Council's complaint procedure.

9.1.8 The Chief Executive and corporate directors are responsible for ensuring that Member enquiries are dealt with promptly and accurately by the department.

9.1.9 In seeking to deal with constituent's queries or concerns Members should not seek to jump the queue but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by Members in the requested timescale and may need to seek instructions from their manager. Where an enquiry imposes a disproportionate burden on Officers' workloads, this should be explained and discussed with the Member concerned and Chief Officers to agree an alternative deadline or response.

# Agenda Item 5

## Annex 2

- 9.1.10 This Members' enquiry procedure supplements but does not replace Members' statutory and common-law rights to information.
- 9.1.11 Co-opted and independent Members' rights to access to information will be limited to those areas that fall within the remit of the body to which they are appointed and their statutory rights.
- 9.1.12 An Officer should not copy correspondence which they have had with a Member to any other Member unless:
- That Member agrees; or
  - The other Member is entitled to the information under the Freedom of Information Act 2000 or the Data Protection Act 1998; or
  - The correspondence from the Member includes a circulation list with other Members' names on it when the response can be copied to the persons on the list; or
  - A response has been given to a question raised at a meeting of a Member body when the response can be copied to other Members.
  - The above does not prevent an Officer copying correspondence to other Officers unless there are confidentiality issues.

A member may copy correspondence which they have had with an Officer to other Members and third parties unless it contains confidential personal or otherwise sensitive information. For the avoidance of doubt correspondence containing such information should state that it is confidential.

### 9.2 Briefings for political groups

- 9.2.1 Chief Officers may be asked to contribute to deliberations of matters concerning Council business by political groups.
- 9.2.2 Chief Officers have the right to refuse such requests and will normally not attend a meeting of a political group where some of those attending are not Members of the Council.
- 9.2.3 Officer support will not extend beyond providing the factual information or professional advice in relation to matters of Council business. Chief Officers must not be involved in advising on matters of party business and therefore should not be expected to be present at meetings or parts of meetings where such matters are to be discussed.
- 9.2.4 Political group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of a Chief Officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.

# Agenda Item 5

## Annex 2

- 9.2.5 Where Chief Officers provide factual information and advice for a political group in relation to a matter of Council business this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant part of the Council.
- 9.2.6 It must not be assumed that a Chief Officer is supportive of a particular policy or view considered at a political group meeting simply because they have attended or provided information to the meeting.
- 9.2.7 Chief Officers will respect the confidentiality of any political group discussions at which they are present and unless requested to do so by that political group will not relay the contents of such discussions to another party group or to any other Member. This shall not prevent a Chief Officer providing feedback to other Chief Officers.
- 9.2.8 In their dealings with political groups Chief Officers must treat each group in a fair and even-handed manner.
- 9.2.9 Members must not do anything which compromises or is likely to compromise Chief Officers' impartiality.
- 9.2.10 A Chief Officer accepting an invitation to the meeting at one political group shall not decline an invitation to advise another group about the same matter. They must give consistent advice to each.
- 9.2.11 Only a Chief Officer or their nominee shall be entitled to attend a political group meeting.
- 9.2.12 A Chief Officer should be given the opportunity of verifying comments and advice attributed to them in any written record of a political group meeting.
- 9.2.13 No Member will refer in public or at meetings of the Council to advice or information given by Chief Officers to a political group meeting.
- 9.2.14 At political group meetings where some of those present are not members of the Council care must be taken not to divulge confidential information relating to Council business. Persons who are not Members are not bound by the Members' Code of Conduct. They do not have the same rights to Council information as Members.

### 9.3 **Access to information**

- 9.3.1 To carry out their duties effectively, Members must have broad access to Council information. This is a complex area which is subject to a wide range of legislation as well as the common law and the detailed rules are set out in the access to information procedure rules in Part 4 of the Constitution. The remainder of this section deals with some specific points.
- 9.3.2 Members' access to information will be compliant with their statutory and common law rights.

The common law right of Members is based on the principle that any Member has a prima facie right to inspect Council documents as far as their access to the

# Agenda Item 5

## Annex 2

documents is reasonably necessary to enable them to perform their duties as a Member of a Council. This principle is commonly referred to as the “need to know” principle.

The exercise of this common law right depends therefore upon the Members’ ability to demonstrate that they have the necessary “need to know”. In this respect a Member has no right to a “roving commission” to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This question must initially be determined by the particular Chief Officer whose department holds the document in question (with advice from the Monitoring Officer).

In some circumstances (e.g. a committee member wishing to inspect documents relating to the functions of that committee) a Member’s “need to know” will normally be presumed. In other circumstances (e.g. a Member wishing to inspect documents which contain personal information about third parties) a Member will normally be expected to justify the request in specific terms.

- 9.3.3 Officers will not without good reason withhold information from a Member who is entitled to receive it.
- 9.3.4 Any disputes relating to access to information will be referred to the Monitoring Officer for determination.
- 9.3.5 Where confidential personal or otherwise sensitive information is provided to a Member they will not disclose it to any other person without authorisation.

#### 9.4 **Use of Council resources**

- 9.4.1 The Council provides all Members with services such as photocopying and computer equipment to assist them in discharging their role as Members. These are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.
- 9.4.2 Members should ensure that they understand and comply with the Council’s own rules about the use of such resources particularly:
  - Where facilities are provided in Members’ homes at the Council’ expense and regarding ICT; and
  - Regarding ICT use and security.
- 9.4.3 Members should not put pressure on Officers to provide resources or support which Officers are not permitted to give. Examples are:
  - Business which is solely to do with a political party;
  - Work in connection with a ward or constituency party political meeting;
  - Electioneering;



# Agenda Item 5

## Annex 2

- Work associated with an event attended by a Member in a capacity other than as a Member of the Council;
- Private personal correspondence;
- Work in connection with another body or organisation where a Member's involvement is other than as a Member of the Council; and
- Support the Member in their capacity as a councillor for another local authority.

### 10.0 Public relations

#### 10.1 Relations with the media

10.1.1 The Media and Communication Team is responsible for:

- Making official press/media statements relating to the function and business of the Council, consulting with the relevant Cabinet Member, Committee Chair or Officer as appropriate; and
- Dealing with day-to-day media enquiries.

In making a press or media statement regard must be had to the law on Local Authority publicity and the relevant code of practice.

10.1.2 Cabinet Members and Committee Chair may also make statements to the press/media on Council matters and they represent the Council in media interviews. If a Cabinet Member or Committee Chair wants to speak to the press or media in a personal capacity or as a representative of their political group they should make this clear at the outset.

10.1.3 If other Members wish to speak to the media they will do this in a personal capacity or as a representative of their political group.

10.1.4 Chief Officers (or their nominees) may deal with any request for information or questions asked by the press/media and may represent the Council in media interviews.

10.1.5 Any Member or Officer who speaks to the press or media on an issue should:

- Consult with the Communications Team for the Council in advance of speaking to the press or to the media;
- Be sure of what they want to say or not say;
- Consider the likely consequences for the Council of their statement;
- Never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter;

# Agenda Item 5

## Annex 2

- Consider whether to consult other relevant members; and
- Take particular care in what is said in the run-up to local or national elections to avoid giving the impression of electioneering unless they have been contacted as an election candidate or political party activist.

10.1.6 Press releases or statements made by Officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.

10.1.7 Before responding to enquiries from the media, Officers shall ensure they are authorised to do so.

10.1.8 Likewise Officers will inform the Council's communication and media section of issues likely to be of media interest when they have been contacted by the media since that unit is often the media's first point of contact.

### 10.2 Correspondence

10.2.1 Correspondence between an individual Member and an Officer should not be copied to another Member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied this should always be made explicit and there should be no "blind" copies.

10.2.2 Official letters written on behalf of the Council should normally be in the name of the relevant Officer.

10.2.3 The Leader may initiate correspondence in their own name.

10.2.4 Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a Member.

10.2.5 When writing in an individual capacity as a ward Member, a Member must make clear that fact.

10.2.6 Correspondence between Members and staff should reflect mutual trust and respect which is essential to the relationship.

11.0 What to do when things go wrong

### 11.1 Procedure for Officers

From time to time the relationship between Members and Officers may become strained or break down. Whilst it will always be preferable to resolve matters informally, through conciliation by an appropriate senior manager or Members, Officers will have recourse to the Council's Grievance Procedure or to the Council's Monitoring Officer, as appropriate to the circumstances. In the event of the basis for a grievance or complaint being found, the matter will be referred to the Chief Executive, who, having advised the Leader of the Council and the appropriate group leader, will refer it to the Standards Committee for consideration and determination.

### 11.2 Procedure for Members

In the event that a Member is dissatisfied with the conduct, behaviour or performance of an Officer, the matter should be raised with the appropriate Service Director. Where the Officer concerned is a Service Director or a Corporate Director of Service the matter should be raised with the Chief Executive. Where the employee concerned is the Chief Executive, the matter should be raised with the Deputy Chief Executive. If the matter cannot be resolved informally, it may be necessary to invoke the Council's Disciplinary Procedure and, where appropriate, act in accordance with a report of a "designated independent person" (see Prescribed Standing Order 10).

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