



# Plymouth City Council Constitution and Rule Book

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# PLYMOUTH CITY COUNCIL CONSTITUTION

## **PART A: ARTICLES OF THE CONSTITUTION**

## **Article I – The Constitution and Rule Book**

### **Powers of the Council**

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

### **The Constitution**

1.2. This Constitution, and all its appendices, is the Constitution and rule book of Plymouth City Council.

### **Purpose of the Constitution**

1.3. The purpose of the Constitution is to:

- provide a framework for the democratic process to allow the Council clear leadership for the city;
- enable decisions to be taken efficiently and effectively;
- support the active involvement of citizens in the process of local authority decision-making;
- ensure that high standards of probity and ethics are evident in decision-making and all activities of the Council;
- assist the Council to undertake proper consultation and take professional advice;
- create a powerful and effective means of holding decision-makers to public account;
- ensure no-one reviews or scrutinises their own decisions;
- assist Councillors to represent their constituents effectively;
- provide a means of improving services.

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

1.4. When the constitution and the law allow the Council to do more than just one thing, the Council will do what is closest to the purposes stated above.

1.5. At Council, the Lord Mayor's interpretation of the constitution will be final. When interpreting the constitution, the Lord Mayor will consider the purpose of the constitution and the advice of the Monitoring Officer.

1.6. If the constitution has no procedures for a meeting, or if there is a gap in the procedures for the meeting, the chair will decide what to do. This must be consistent with the purpose of the constitution.

1.7. The constitution will be reviewed in accordance with Article 13.

## **Article 2 – Councillors**

### **Composition and Eligibility**

- 1.1. The Council has 57 councillors, representing 20 wards. Each ward has three councillors except Drake, Plympton Chaddlewood and Plympton Erle, with two councillors each.
- 1.2. Anyone who is over 18 and a Commonwealth citizen, a citizen of the Republic of Ireland or a citizen of another Member State of the European Community and is either -
  - registered as a local government elector; or
  - has occupied land in the city as owner or tenant for the previous 12 months or worked in the city for the previous 12 months or resided in the city for the previous 12 months is eligible to hold the Office of Councillor.

### **Election and Terms of Office of Councillors**

#### **Councillors**

- 1.3. A Council election takes place on the first Thursday in May every year except in years when there are county council elections in the rest of England. A third of the seats are up for election each time, this is known as election by thirds.
- 1.4. Councillors serve for four years. They become Councillors on the fourth day after being elected. Their term of office ends four years later, on the fourth day after the elections.
- 1.5. A Councillor may resign their position at any time by giving written notice to the Returning Officer (Chief Executive) or designee. The resignation will take effect when the notice is received.

### **Roles and functions of all Councillors**

- 1.6. Key Roles all Councillors will undertake:
  - Collectively set the policies which are matters for full Council;
  - Contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
  - Provide political leadership;
  - Take part in decision making;
  - Take part in Councillor development and training;
  - Represent people in their wards – this may involve balancing different interests;
  - Deal with casework for people in their wards;
  - Attend Council and committee meetings;
  - Work to improve Council services;
  - Be available to and to actively represent the Council on other bodies.

### **Rights and duties**

- 1.7. Councillors will have such rights of access to documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.

- 1.8. Councillors will not make public, information which is confidential or exempt without the consent of the Council, relevant committee or authorised Councillor or officer, or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it.
- 1.9. For the purposes of this Constitution, the terms “confidential” and “exempt” information is as defined in the Access to Information Rules in Part F of this Constitution.

### **Conduct**

- 1.10. Councillors, co-opted and independent members will at all times act in accordance with and observe the “The Councillors Code of Conduct” and the “Protocol on Councillor/Officer Relations” as set out in Part G of this Constitution.

### **Allowances**

- 1.11. Councillors and co-opted or independent members will be entitled to receive allowances in accordance with the Councillors’ Allowance Scheme set out in Appendix One to this Constitution.

## Article 3 – The Public and the Council

1.1. Members of the public have the rights to information and to participate which are explained in more detail in the Access to Information Rules in Part F of this Constitution. Members of the Public have the following rights -

1.2. **Voting:** Those registered on the electoral roll have the right to vote at local elections.

1.3. **Participation:** members of the public have the right to:

- attend Council, Cabinet, Overview and Scrutiny and Committee meetings, except when exempt or confidential items are discussed ([see Access to Information Rules Part F](#));
- speak at a Council / Council meeting to ask a question.

1.4. **Information:** members of the public have the right to:

- look at the Forward Plan, which shows what key decisions and private decisions will be taken by the Cabinet in the next 28 days;
- look at agendas, reports, minutes and background papers unless they are exempt from publication in accordance with Part F – agendas, reports and minutes are available on the Council's website;
- look at the register of Councillors' interests – this is available for inspection on-line, on each Councillor's page, at [www.plymouth.gov.uk](http://www.plymouth.gov.uk);
- inspect the Council's accounts at an advertised time and comment to the external auditor.

1.5. **Complaints:** members of the public have the right to:

- complain to the Council, under its complaints procedure which is available to the public;
- complaint to the Local Government Ombudsman, after using the Council's own complaints scheme;
- complain to the Monitoring Officer about a breach by a councillor of the Code of Conduct.

## The Public's Responsibilities

1.6. Members of the public are expected to conduct themselves in an appropriate and respectful manner.

1.7. Members of the public must not be violent, abusive or threatening to Councillors or officers and must not willfully harm articles owned by the Council, Councillors or officers.

1.8. The public rights of participation are dependent upon:

- refraining from causing damage to property;
- respecting the diversity and equality of all sections of the community;
- respecting the integrity of the roles that Councillors and professional officers of the Council are required to undertake; and
- avoiding language, making statements or behaviours that are racist, derogatory or offensive, such conduct can amount to a criminal offence and may also amount to slander or libel.

## Article 4 – The Full Council

### Full Council Meetings

1.1. There are four types of Council meeting:

- The Annual meeting;
- Ordinary meetings;
- Extraordinary meetings;
- Annual Budget Meeting.

1.2. All meetings of Full Council will be conducted in accordance with the Council Procedure Rules in Part B of this Constitution.

### Functions, Powers and Responsibilities of the Full Council

1.3. Full Council has a number of specific functions allocated as set out in the [Local Authorities \(Functions and Responsibilities\) \(England\) Regulations 2000](#). Details of the functions that are dealt with by the Council are set out in Part B.

1.4. Some functions are the responsibility of the Council as a whole. This includes approval of:

1.5. **The Policy Framework:** this is made up of a series of statutory plans and strategies (list found in Appendix One);

1.6. **The Budget:** this includes the allocation of financial resources to the Corporate Priorities, services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

1.7. Other functions may be undertaken by Full Council or by a committee of sub-committee of full Council, such as regulatory work (Planning and Licensing Committees) and legal and governance work, (for example Audit and Governance Committee).

1.8. Details of how the Council has delegated its remaining functions to Committees or allocated them to Officers are set out in Part E – Other Statutory Functions, Committees, Joint Committees and Committee Procedures.



## **Article 5 – Lord Mayor and Chair of the Council**

### **Appointment of the Lord Mayor**

1.1. The Lord Mayor and the Deputy Lord Mayor will be elected by the Council annually.

### **Role and functions of the Lord Mayor**

1.2. The Lord Mayor, and in their absence the Deputy Lord Mayor, represents the Council at civic and ceremonial events.

1.3. The Lord Mayor, and in their absence the Deputy Lord Mayor, chairs Council meetings. In chairing Council, the Lord Mayor will:

- Uphold and promote the purpose of the Constitution;
- Where required at a meeting of Council, interpret the Constitution;
- Conduct business efficiently but pay attention to the rights of all Councillors and the interests of local people and communities.

1.4. The Lord Mayor does not usually vote and as far as possible should remain impartial and apolitical, as well as chair the meeting effectively, efficiently and with respect. In the event of a tied vote the Lord Mayor may exercise a casting vote.

### **Resignation**

1.5. If the Lord Mayor resigns or dies the Deputy Lord Mayor will act as Lord Mayor until the next appropriate Meeting of the Council where a new Lord Mayor will be elected by the Council.

### **Incapacity**

1.6. If the Lord Mayor is incapacitated the Deputy Lord Mayor will act in their place until the Lord Mayor is able to return to the role.

## **Article 6 – The Leader, Deputy Leader and Cabinet**

### **Role and Responsibility**

- 1.1. Some of the Council's functions are the responsibility of the Leader set down in law.
- 1.2. The responsibilities of the Leader must either be dealt with by them or delegated to the Cabinet, a committee of Cabinet, an individual Cabinet member or an officer, subject to any restrictions in law on delegations.
- 1.3. Full details of how the Leader has decided to allocate these responsibilities are set out in the Leader's scheme of delegation. <https://www.plymouth.gov.uk/aboutcouncil/councilconstitution>

### **Leader**

- 1.4. The Leader is a Councillor who is elected by the Full Council, usually at its annual meeting. The Leader will hold office until :
  - They resign from the office; or
  - They are incapacitated or through death;
  - They are no longer a Councillor.
  - They are removed from office by resolution of the Council.
- 1.5. If the Leader stops being the leader as a result of any of the above, the Deputy Leader will act as Leader until the next meeting of the Council, which has been called in line with statutory requirements, where an agenda item to elect a new Leader will be included. The Leader may not be elected at the Annual Budget Meeting or an Extraordinary Meeting called for any other purpose.
- 1.6. The Leader has responsibility for
  - appointing members of the cabinet
  - delegating executive responsibilities to the cabinet
  - delegating executive functions to committees carrying out executive functions
  - delegating executive responsibilities to individual Cabinet members
  - delegating and allocating executive responsibilities to officers
  - Allocating executive responsibilities when no-one has responsibility for them.

### **Deputy Leader**

- 1.7. The Deputy Leader is nominated by the Leader of the Council. The Deputy Leader will hold office until:
  - They resign from the office; or
  - They are incapacitated or through death;
  - They are no longer a Councillor; or
  - They are removed from office by the Leader who must give written notice of any removal to the Monitoring Officer. The removal will take effect two working days after receipt of the notice by the Monitoring Officer.
- 1.8. In addition to any delegations in the Leaders Scheme of Delegation the Deputy Leader shall deputise for the Leader as appropriate.

## **The Cabinet - Form and Composition**

- 1.9. The Cabinet will consist of the Leader, and Deputy Leader (who may also hold a portfolio), together with Cabinet members. Cabinet members will be appointed by the Leader and notified to the Council. In accordance with the Local Government Act 2000 (Part II Sec. 11 Para. 8) the Cabinet may not consist of more than 10 Councillors (including the Leader).
- 1.10. No member of Cabinet will serve on Overview and Scrutiny Committees.
- 1.11. No member of cabinet will serve as the Lord Mayor or Deputy Lord Mayor
- 1.12. In the event that the Leader resigns, is removed by Council or otherwise incapacitated to the extent they can no longer perform the role of Leader, the delegations to the Cabinet and Cabinet Members remain in place until the publication of an amended scheme of delegation.
- 1.13. In the event of the resignation or death of both the Leader and Deputy Leader, the Monitoring Officer will request that the remaining Cabinet members appoint an Acting Leader from the Cabinet who shall serve until the next Ordinary Meeting of the Council where a new Leader is elected.

## **Proceedings of the Cabinet**

- 1.14. Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out in Part C of this Constitution.

## **Deputy Cabinet Members**

- 1.15. A Deputy Cabinet Member may be appointed by the Leader through inclusion in their scheme of delegation. An Assistant Cabinet member may support a Cabinet Member or Cabinet Members by assisting them with any function, except decision-making.

## **Article 7 – Overview and Scrutiny Committees**

### **Appointment of the Overview and Scrutiny Committees**

- 1.1. The Council will appoint a number of Overview and Scrutiny Committees to discharge the functions conferred by Section 21 of the Local Government Act 2000, Health and Social Care Act 2012, National Health Service Act 2006, the Police and Justice Act 2006 and any subsequent regulations.

### **Proceedings of the Overview and Scrutiny Committees**

- 1.2. The Overview and Scrutiny Committees will conduct their proceedings in accordance with the Overview and Scrutiny Procedures in Part D of the Constitution.

## **Article 8 – Other Committees and Quasi-Judicial Committees**

### **Other Committees and Quasi-Judicial Committees**

- I. The Council will appoint a number of standing committees the roles and responsibilities of which are set out in Part E.

## **Article 9 – Joint Arrangements**

### **Powers to promote wellbeing**

- 1.1. In order to take the reasonable action needed in order to promote the economic, social or environmental wellbeing of the area the Council and the Leader, as appropriate, may:
- Enter into arrangements, agreements or partnerships with any person or body;
  - Co-operate with, facilitate or co-ordinate the activities of any person or body; and
  - Exercise on behalf of that person or body any functions of that person or body.

### **Joint Arrangements**

- 1.2. The Council may establish joint arrangements with one or more local authorities to exercise functions of Full Council of any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- 1.3. The Leader may establish joint arrangements with one or more local authorities to exercise the executive functions in any of the participating authorities, or to advise the leader. A non-executive Councillor of the Council may be appointed to such body where that body is providing an advisory function only. The above arrangements may involve the appointment of a joint committee with one or more local authorities.
- 1.4. Appointment of Councillors to the joint arrangement shall be made by the Council or the Leader, as appropriate.
- 1.5. Details of any joint arrangements including any delegations to joint committees are set out in Part E of this Constitution.

### **Delegation to and from other Local Authorities**

- 1.6. Full Council may delegate or accept the delegation of non-executive functions to or from another Local Authority.
- 1.7. The Leader (or such person as they delegate to) may delegate or accept the delegation of Cabinet (executive) functions to or from another Local Authority.

### **Contracting out**

- 1.8. The full Council and the Cabinet may contract out some of their functions to other organisations under the Deregulation and Contracting Out Act 1994 or under an agency agreement provided there is no delegation of the County Council's discretionary decision making powers.

### **Access to information**

- 1.9. The Access to Information Rules in Part F of this Constitution apply to any joint or partnership arrangements.

## Article 10 – Officers

### Structure

- 1.1. The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- 1.2. The Head of Paid Service will determine, publicise and maintain a description of the overall departmental structure of the Council showing the management structure and deployment of officers.

### Statutory Posts and Chief Officers

- 1.3. Statutory posts of the Council are designated as follows:

Post	Legislation	Designation
Head of Paid Service	Local Government and Housing Act 1989 – Section 4	Chief Executive
Monitoring Officer	Local Government and Housing Act 1989 – Section 5	Head of Legal Services
Chief Financial Officer (Responsible Finance Officer)	Local Government and Housing Act 1989 -	Service Director for Finance (Section 151 officer)
Director of Adult Social Services	Local Authority Social Services Act 1970 (amended by the Children Act 2004)	Strategic Director for Health, Adults and Communities
Director of Children’s Services	Children Act 2004 – Section 18	Strategic Director of Children’s Services
Director of Public Health	Health and Social Care Act 2012 – Section	Strategic Director of Public Health
Statutory Scrutiny Officer	Local Government Act 2000 – Section 9FB	Head of Governance, Performance and Risk
Data Protection Officer	General Data Protection Regulations (regulations 37 to 39) and Data Protection Act sections 69 to 71	Senior Information Risk Owner (Service Director for Finance)

### Functions of the Head of Paid Service

- 1.4. The Head of Paid Service (Chief Executive), where appropriate to do so, will report to Council on the manner in which the discharge of the Council’s functions is coordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- 1.5. Proper officer for access to information. The Proper Officer (Chief Executive or designee) will make sure that committee’ decisions, together with the reasons for those decisions and relevant officer reports and background papers, are made publicly available.

- 1.6. Restrictions on functions. The Head of Paid Service may not be the Monitoring Officer or the Responsible Finance Officer.

### **Functions in case of emergency.**

- 1.7. In cases of urgency or emergency the Head of Paid Service will take any action necessary to protect the Council's interests and assets where time is of the essence and it is impracticable to secure authority to act where such authority would otherwise be required.
- 1.8. The Head of Paid Service, in so acting, will consult the Leader or, in their absence, their designee and will report, in writing, as soon as practicable to the body which would otherwise have been required to give the necessary authority to act.

### **Functions of the Monitoring Officer**

- 1.9. To maintain the Constitution. The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available to Councillors, staff and the public. The Monitoring Officer will review the operation of the Constitution.
- 1.10. To ensure lawfulness and fairness of decision-making. After consulting with the Head of Paid Service and Responsible Finance Officer, the Monitoring Officer will report to Council if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- 1.11. To contribute to Corporate Management. The Monitoring Officer will contribute to the Corporate Management of the Council, in particular through the provision of professional legal advice and democratic support.
- 1.12. To support standards. The Monitoring Officer or designee will contribute to the promotion and maintenance of high standards of conduct.
- 1.13. To conduct investigations. The Monitoring Officer or designee will conduct investigations into matters referred to them and make reports or recommendations based on the investigation.
- 1.14. To advise whether committee decisions are within the budget and policy framework. The Monitoring Officer will advise, as required, whether decisions of the Cabinet, committees or officers are in accordance with the budget and policy framework.
- 1.15. To provide advice. The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- 1.16. Restrictions on posts. The Monitoring Officer cannot be the Responsible Finance Officer or the Head of Paid Service.

### **Functions of the Responsible Finance Officer (Service Director for Finance: Section 151 Officer)**

- 1.17. To make sure decisions are lawful and financially prudent. After consulting with the Head of Paid Service and the Monitoring Officer, the Responsible Finance Officer will report to the Full Council and the Council's external auditor if he/she considers that any proposal, decision



or course of action would incur unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency, or if the Council is about to enter an item of account unlawfully.

- 1.18. To administer financial affairs. The Responsible Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- 1.19. To contribute to corporate management. The Responsible Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- 1.20. To providing advice. The Responsible Finance Officer or designee will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.
- 1.21. Providing financial information. The Responsible Finance Officer or designee will provide financial information to the media, members of the public and the community.
- 1.22. Restrictions on Post. The Responsible Finance Officer cannot be the Monitoring Officer. The Head of Paid Service and the Responsible Finance Officer can be the same person but the Responsible Finance Officer must be a qualified accountant.

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

- 1.23. The Council will provide the Monitoring Officer and Responsible Finance Officer with such officers, accommodation and other resources sufficient to allow their duties to be performed.

### **Conduct of Officers Generally**

- 1.24. All officers will comply with the Officers Code of Conduct and the Councillor/Officer Protocol.
- 1.25. All officers must alert the Monitoring Officer and Responsible Finance Officer to issues of concern as soon as they come up. These will include legal, probity, vires and constitutional issues

### **Employment**

- 1.26. The recruitment, selection and dismissal of officers will comply with the Employment Standing Orders in Part H of this Constitution.

## **Article 11 – Decision Making and Delegation of Functions**

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

- 1.1. The Council will issue and keep up to date a record of the responsibility of the Council, the Leader, the Cabinet, Committees, Cabinet members and individual officers for particular types of decisions or decisions relating to particular areas or functions on its website.

### **Principles of decision making**

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

- Proportionality (i.e. the action must be proportionate to the desired outcome);
- Consultation and due consideration of professional advice from officers;
- Respect for human rights;
- A presumption in favour of openness;
- Clarity of aims and desired outcomes; and
- Explaining what options are available and giving reasons for the decisions taken.

### **Types of decision**

- 1.3. The law divides a council's work into three categories:

- Council responsibilities – these are the responsibility of Council and are set out in section B or delegated to a Committees a sub committees or an officer;
- Executive responsibilities – these are the responsibility of the Leader and are set out in the Leader's scheme of delegation at [www.plymouth.gov.uk/scheme of delegation](http://www.plymouth.gov.uk/scheme%20of%20delegation)
- Local choice responsibilities – Council has decided that these will be the responsibility of the Leader.

### **Full Council and Key Decisions**

Full Council decisions:

- 1.4. Decisions relating to the Council Functions listed in Part B section I will be made by the Full Council and not delegated.

Key decisions:

- 1.5. Some decisions taken by the Cabinet, the Leader or Officers (through delegation) may be defined as a "key decision". A decision will be a "key decision" if it is an executive decision –
- 1.6. Which is likely to result in the local authority incurring expenditure which is, or the making of savings which are, significant: -
- in the case of capital projects and contract awards, when the decision involves a new commitment to spend and/or save in excess of £3million in total; or
  - in the case of revenue projects when the decision involves entering into new commitments and/or making new savings in excess of £1million annually.

- OR which is significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the local authority. (“Significant Impact” in this respect is determined by the Monitoring Officer)

1.7. Decisions to receive grant funding will not be treated as key decisions, unless the terms of the grant agreement have a significant impact on more than two wards as determined by the Monitoring Officer.

1.8. A decision maker may only make a key decision in accordance with the requirements of the Council Procedure Rules set out in Part B of this Constitution.

### **Delegation of responsibilities**

1.9. Council delegates some of its responsibilities to a Committee or an officer. The Leader can delegate some of his or her responsibilities to the Cabinet a committee of Cabinet, an individual Cabinet member or an officer in accordance with the Leader’s scheme of delegation. Council and the Leader cannot delegate to each other.

### **How Delegation Works**

1.10. Council and the Leader can at any time take back responsibilities they have delegated or decide to delegate them on certain conditions.

1.11. Council and the Leader can also decide to delegate further: responsibilities that the Leader has not already delegated can be delegated to the Cabinet a committee of the Cabinet, or to an officer; responsibilities that Council has not already delegated can be delegated to or a committee of Council or to an officer.

#### Interpreting the rules on delegation

1.12. When a responsibility is delegated in this constitution, so is the authority to do anything necessary to carry it out (unless it was forbidden when the responsibility was delegated). Executive and council responsibilities are carried out on behalf of the council and in the council’s name.

#### Decision making by the Full Council

1.13. Unless otherwise stipulated, the Council meeting will follow the Council Procedure Rules in Part B when considering any matter.

#### Decision making by the Leader and Cabinet

1.14. Unless otherwise stipulated, the Cabinet will follow the Cabinet Procedure Rules in Part C when considering any matter.

#### Decision making by the Overview and Scrutiny Committees

1.15. The Overview and Scrutiny Committees and sub-committees will follow the Overview and Scrutiny Procedure Rules in Part D when considering any matter.

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

1.16. Other Council committees and sub committees shall follow the Committee Procedure Rules when considering any matter.

## Decision making by Council bodies acting as tribunals

- I.17. The Council, a Councillor or an officer when acting as a tribunal or in a quasi-judicial manner and determining or considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the Human Rights Act 1998.

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

### **Financial Management**

- 1.1. The management of the Council’s financial affairs will be conducted in accordance with the Financial Regulations.

### **Contracts**

- 1.2. Contracts made by or on behalf of the Council will comply with the Contract Standing Orders.

### **Legal Proceedings**

- 1.3. The management of the Council’s legal affairs will be conducted in accordance with the Legal Standing Orders.

## **Article 13 – Review and Revision of the Constitution**

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

- 1.1. The Council and Monitoring Officer will monitor and review the operation of the Constitution during the year in which ordinary elections to the Council are not held, to ensure that the aims and principles of the Constitution are given full effect.

### **Protocol for monitoring and review of Constitution by Monitoring Officer**

- 1.2. A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations on ways the Constitution can be amended to better achieve its purpose.
- 1.3. In undertaking this task the Monitoring Officer or designee may:
  - Observe meetings of different parts of the Councillor and officer structure;
  - Undertake an audit trail of a sample of decisions;
  - Record and analyse issues raised with them by Councillors, officers, the public and other relevant stakeholders; and
  - Compare practices in this authority with those in other comparable authorities, or national examples of best practice.

### **Changes to the Constitution**

- 1.4. The Audit and Governance Committee can change the following parts of the Constitution:
  - Part F – Access to Information Procedure Rules,
  - Part G – Codes and Protocols apart from the Councillor Code of Conduct,
  - Part H – Standing Orders and Regulations.
- 1.5. The Audit and Governance Committee can also make changes to the Council Procedures, the Budget and Policy Procedure Rules, the Call in Procedure Rules, the Cabinet Procedure Rules, the Overview and Scrutiny Procedure Rules and the General Rules applying to Committees.
- 1.6. The Audit and Governance Committee can refer any proposed changes to the Constitution to Council where considered appropriate.
- 1.7. The Monitoring Officer can change the constitution, in consultation with the appropriate Cabinet member and the Chief Executive, if it is to put right clerical mistakes, to make it follow or clarify the law, or to comply with Council or Audit and Governance Committee decisions to amend the constitution.
- 1.8. The Monitoring Officer can also change the Leader's Scheme Part C Responsibility for executive functions to reflect the wishes of the Leader.
- 1.9. Any other changes must be agreed by Council after considering a report from the Audit and Governance Committee or the Monitoring Officer.

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

### **Suspension of the Constitution**

1.1. Limit to suspension. The Articles of this Constitution may not be suspended.

### **Procedure to suspend the rules of procedure.**

1.2. A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution.

### **Interpretation**

1.3. The ruling of the Lord Mayor or Chair of a meeting as to the Rules of Debate or any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purpose of this Constitution.

### **Publication**

1.4. The Monitoring Officer will ensure that up-to-date copies of the Constitution are made available to Councillors, Officers and the public on request.

PLYMOUTH CITY COUNCIL CONSTITUTION

**PART B: RESPONSIBILITY  
FOR COUNCIL  
FUNCTIONS, THE  
COUNCIL AND COUNCIL  
PROCEDURES**



## Responsibility for council functions

- 1.1. The Government has for the most part prescribed which functions the Council is to be responsible for. Where functions are not prescribed as the responsibility of the Council they will be determined by the Leader.
- 1.2. The Council delegates some of its responsibilities to a Committee, a joint committee, or an officer. The Council can take back responsibilities it has delegated to a Committee, a Joint Committee or an Officer, or decide to delegate them on certain conditions.

## Delegation by committees

- 1.3. Committees can authorise a sub-committee or an officer to carry out their delegated responsibilities on their behalf.

## Council functions

### Functions that may only be exercised by the council

#### Procedural Functions

- To adopt and uphold the Constitution of the Council;
- To agree the roles and responsibilities of all non-executive committees and keep them under review and to delegate non-executive functions to officers;
- To elect the Leader of the Council;
- To elect the Lord Mayor and Deputy Lord Mayor of the Council;
- To agree the composition and membership of all non-executive committees unless the function has been delegated by the Council;
- To adopt Standing Orders and Financial Regulations for the Council and to keep them under review;
- To adopt a Code of Conduct for Councillors and any Councillor/Officer Protocols;
- To appoint any individual to any outside bodies not within the remit of the Cabinet and suspend and/or revoke any such appointment;
- To consider any report from the non-executive committees;
- To consider any matters referred to the Council for decision.

#### Functions relating to the Budget, Policy, the Council and the City

- To agree the Council's revenue and capital budgets;
- To set the Council Tax levels;
- To approve Prudential Indicators for Capital;
- To take decisions about proposals which do not comply with the Policy Framework or Budget, unless they are urgent. The procedure for dealing with Urgent decisions that are outside the Policy Framework and Budget is in Part B .
- To agree the Council's Policy Framework and Budget; (Appendix I(2))
- To keep under review ward boundaries and to decide the Council's response to any proposals by the Local Government Boundary Commission affecting the authority's electoral boundaries;
- Any other matter by law required to be considered or determined by the Council;
- To promote or oppose local, personal or other Bills of Parliament;
- To determine the Council's Scheme for Councillors' Allowances in Appendix I (1) after having regard to the Independent Remuneration Panel's report;

- To approve any application to the Secretary of State in respect of any Housing Land Transfer;
- To appoint the Head of Paid Service (Chief Executive);
- To receive any report by the Responsible Finance Officer;
- To receive any report by the Monitoring Officer (Head of Legal Services)
- To receive any report by the Chief Executive
- To make, amend, revoke or re-enact any byelaws to apply within the unitary boundaries.
- To receive any report of the Council's Committees as appropriate.

#### Functions Relating to Elections and the Name and Status of Areas and Individuals

- To change the name of the city under Section 74 of the Local Government Act 1972.
- To confer the title of Freedom of the City, Honorary Alderman, Honorary Recorder;
- To appoint any electoral registration officer under Section 8(2) of the Representation of the People Act 1983 (c.2)(c);
- To assign officers in relation to requisitions of the registration officer under Section 52(4) of the Representation of the People Act 1983;
- To appoint a returning officer for Local Government elections under Section 35 of the Representation of the People Act 1983;
- To provide assistance at European Parliamentary elections under Paragraph 4(3) and (4) of Schedule 1 to the European Parliamentary Elections Act 1978 (c.10)(d);
- To divide constituencies into polling districts under Section 18 of the Representation of the People Act 1983;
- To divide wards and parliamentary constituencies into polling districts at local government elections under Section 31 of the Representation of the People Act 1983;
- To exercise all powers in respect of holding of elections under Section 39(4) of the Representation of the People Act 1983;
- To pay expenses properly incurred by electoral registration officers under Section 54 of the Representation of the People Act 1983;
- To fill vacancies in the event of insufficient nominations under Section 21 of the Representation of the People Act 1985;
- To declare vacancy in office in certain cases under Section 86 of the Local Government Act 1972;
- To give public notice of a casual vacancy;
- To determine fees and conditions for supply of copies of, or extracts from, elections documents under Rules 48(3) of the Local Elections (Principal Areas) Rules 1986 (S I 1986/2214) and rule 48(3) of the Local Elections (Parishes and Communities) Rules 1986 (S I 1986/2215);
- To submit proposals to the Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000 under Section 10 of the Representation of the People Act 2000 (c.2).

## Council procedure rules

### 2. Meetings

2.1. All Meetings of the Full Council will follow standard Rules of Debate for the conduct of its business in order to facilitate debate in an open but orderly manner.

#### Notice of and summons to meetings

2.2. The Monitoring Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear working days<sup>1</sup> before a meeting, the Monitoring Officer will send a summons (an agenda) to every Councillor of the Council. The agenda will give the date, time and place of each meeting, specify the business to be transacted and will be accompanied by such reports as are available. Where appropriate, Councillors will, in addition/instead, be notified of the summons by email.

#### Time and place of council meetings

2.3. Ordinary meetings and the Annual Budget meeting usually start at 2pm. The times of extraordinary meetings are decided by the Monitoring Officer. Meetings are usually held in the Council Chamber in the Council House.

2.4. The annual meeting will usually start at 10:30 am at Plymouth Guildhall and will take place within 21 days of the retirement of the outgoing Councillors.

#### Order of business at annual meeting of council

2.5. The order of business will be to:

- i. elect the Lord Mayor and the Deputy Lord Mayor
- ii. elect the Leader (or note the Leader if the Leader has previously been elected for a four-year term)
- iii. note the membership of the Cabinet
- iv. agree committees and their Councillors and appoint Chairs and Vice Chairs
- v. agree how Council responsibilities will be carried out
- vi. note how Executive responsibilities will be carried out
- vii. nominate or appoint representatives to outside bodies
- viii. adopt the constitution, if required
- ix. deal with any other business on the agenda

#### Order of business at ordinary meeting of **council**

2.6. At ordinary meetings the order of business will be to:

- i. elect the chair (if the Lord Mayor and Deputy are absent)
- ii. receive apologies for absence from Councillors
- iii. approve minutes of the last meeting as a correct record
- iv. receive declarations of interest from Councillors
- v. make appointments to committees and outside bodies (unless the outside body's function relates to an executive function)
- vi. reply to questions by the public (Not to exceed 10 minutes)

<sup>1</sup> A clear working day is defined as a complete period of 24 hours (excluding weekends and Bank Holidays) not including the day of publication of the agenda or the day/s on which the meeting takes place.

- vii. receive announcements from the Lord Mayor, Head of Paid Service, Responsible Finance Officer and Monitoring Officer
- viii. receive announcements from the Leader, Cabinet members, committee chairs (not to exceed 30 minutes in total)
- ix. receive presentations of and responses to Council Petitions ([see Part G](#))
- x. deal with any unfinished business from the last meeting
- xi. respond to recommendations from the Cabinet
- xii. respond to recommendations and reports from Overview and Scrutiny Committees/sub-committees
- xiii. respond to recommendations from other Committees requiring Council approval
- xiv. respond to reports from the Chief Executive, Responsible Finance Officer or Monitoring Officer
- xv. deal with motions on notice
- xvi. deal with any other agenda items
- xvii. deal with questions by Councillors to the Leader, Cabinet members and committee chairs about their areas of responsibility (Not to exceed 45 minutes in total).

#### Annual budget meeting

2.7. The Annual Budget meeting is usually called each year in February, in advance of statutory deadlines in relation to Council Tax, to consider approval of the Annual Budget for the following year. The only items to be included on the agenda are in relation to the budget which ensures that the full council is able to undertake its functions as described in Article Four.

2.8. At the Annual Budget meeting, the order of business will be-

- i. elect the chair (if the Lord Mayor and Deputy are absent)
- ii. receive apologies for absence from Councillors
- iii. approve minutes of the last meeting as a correct record
- iv. receive declarations of interest from Councillors
- v. receive urgent announcements from the Lord Mayor, Head of Paid Service, Responsible Finance Officer and Monitoring Officer
- vi. respond to budget recommendations from the Cabinet
- vii. respond to budget recommendations and reports from Overview and Scrutiny Committees/sub-committees

2.9. The Lord Mayor or the person presiding at the Council meeting may, with the agreement of the Council, vary the order in which business is considered at the meeting.

#### Extraordinary meetings of council

2.10. The following may call an Extraordinary Council Meeting (specifying the issues/terms to be covered at the meeting):

- the Council by resolution
- the Leader in consultation with the Leader of the largest opposition party
- any ten Councillors who have signed a requisition and presented it to the Monitoring Officer
- the Lord Mayor
- two Cabinet members in accordance with the Call in Procedures in Part C section
- the Chief Executive

2.11. Extraordinary meetings will only deal with the business they have been called for.

#### Changing the order of business

2.12. The Monitoring Officer, in consultation with the Lord Mayor, can ask the Council to agree to change the order of business, except for the first item at the annual meeting. Council must give its consent.

#### Chair of meeting

2.13. The person presiding at a meeting of the Council will exercise any power or duty of the Chair. If there is a gap in these procedures, the Lord Mayor, or the person presiding at the meeting, will decide what to do.

#### Quorum

2.14. The quorum is the minimum number of Councillors needed to conduct business at a meeting. For Council meetings this will be a quarter of the total number of Councillors.

2.15. If a quorum is not present at the start of a meeting, the meeting will be put back by 15 minutes. If there is still no quorum, the business will be deferred until a quorate meeting can be arranged. If a meeting becomes inquorate part of the way through, business will stop for five minutes. If there is still no quorum, the business will be deferred until a quorate meeting can be arranged.

#### Duration of meeting

2.16. The Council meeting will end at 7.30pm and the remaining business will be deferred to 6pm on the next day unless the Council decides otherwise.

## Questions by the public

### 3. Asking questions at Council

3.1. Registered electors may ask questions at ordinary meetings of the Council. These can be addressed to the Leader, other Cabinet members or Chairs of committees. Questions must be about something the Council is responsible for or something that directly affects people in the city. Questions cannot be asked at the Annual General Meeting or the Annual Budget Meeting.

#### Giving notice of questions

3.2. The wording of questions must be given to the Monitoring Officer at least five complete working days<sup>2</sup> before the meeting. Each question must include the name and address of the person or organisation asking it and the name or position of the Councillor being asked it.

#### Number of questions

3.3. Members of the public cannot ask more than one question per meeting. Supplementary questions are not allowed.

<sup>2</sup> A clear working day is defined as a complete period of 24 hours (excluding weekends and Bank Holidays) not including the day of publication of the agenda or the day/s on which the meeting takes place.

### Asking the question

- 3.4. If the questioner is unable to be present they may nominate another person to ask their question. Such a nomination should be provided to the Monitoring Officer at least three days in advance of the meeting.
- 3.5. If the person asking the question is not present and has not nominated another person to ask their question then the question will not be heard.
- 3.6. All questions and responses will be included in the order of proceedings (handed out at the Council meeting) and published on the website after the meeting. The Monitoring Officer will have a reply sent to the questioner within 10 working days.

### Length of questions

- 3.7. Questions will be no more than 50 words.

### Total length of questions

- 3.8. Council will spend no longer than 10 minutes taking questions. If it cannot take all the questions, it will take them in the order that notice was given of them (except that those members of the public who have not already asked a question at previous Council meetings will be heard first) until there is no time left.

### Written answers

- 3.9. Written questions and answers will be included in the minutes of the meeting. (If a question is not taken, the Monitoring Officer will have a reply sent, within 10 working days, to the member of the public who would have asked the question.)

### Discussion

- 3.10. Councillors can only discuss the public questions or answers in Councillors' question time.

### Suitability of questions

- 3.11. The Monitoring Officer can reject a question if:
  - it is not about something that the Council is responsible for or which affects the area
  - it is defamatory, frivolous, trivial or offensive
  - it requires the Council to make public exempt or confidential information
- 3.12. The Monitoring Officer will endeavour to assist members of the public to frame questions to comply with these rules; however, the Monitoring Officer's decision is final. If a question is rejected, reasons must be given.

## Questions by Councillors

### 4. Questions without notice

- 4.1. A Councillor can ask a question without notice (under the appropriate agenda item) to the Leader or Cabinet members, or committee chairs on any aspect of their area of responsibility.

## Timing

4.2. Timing of questions will be one minute for a question, two minutes for a response and the same for supplementary questions. The overall time limit for all questions will be 45 minutes.

## Response and supplementary questions

4.3. An answer may take the form of a direct oral answer; a reference to a publication where the desired information is located; or a written answer circulated later to Councillors, within 10 working days where the reply cannot conveniently be given orally. All written answers will be published at the end of each month.

4.4. One supplementary question can be asked without notice. This must be addressed to the same Councillor as the first question and must arise directly from the first question or the reply. No further supplementary questions are allowed.

## Rejecting questions

4.5. The Monitoring Officer can reject a question if:

- it is not about something that the Council is responsible for or which affects the area
- it is defamatory, frivolous, trivial or offensive
- it requires the Council to make public exempt or confidential information ([see Access to Information Rules](#))

4.6. The Monitoring Officer's decision is final.

## Presentation of minutes

4.7. Council Minutes will be published by Democratic Support as per their publishing protocols.

4.8. Items from Cabinet, Overview and Scrutiny Committees/sub-committees and other committees which require approval or confirmation from the Council will be placed on the Council's agenda.

## Motions on notice

5. Giving notice of motions

5.1. Some motions may be moved without notice. For all other motions, the full wording must be received by the Monitoring Officer by 1pm on the seventh working day before the date of the meeting, with electronic confirmation from the Councillor moving the motion and the Councillor seconding the motion.

## Withdrawing a motion or moving it at a later meeting

If, before a Council meeting, a Councillor proposing a motion wants to withdraw a motion or move it at a later meeting, they must write to (or email) the Monitoring Officer before the meeting begins.

## Absence of the Proposer

- 5.2. In the event that a proposer is not available to move the motion the seconder of the motion may move the motion and seek a seconder from the floor.
- 5.3. In the event that both the proposer and seconder are not available the Lord Mayor will invite the relevant political group to nominate another councillor to move the motion.

#### Listing motions on the agenda

- 5.4. Motions will appear on the agenda in the order they were given to the Monitoring Officer. The Lord Mayor or the person presiding at the Council meeting may, with the agreement of the Council, vary the order in which motions are considered at the meeting.

#### Topic of motions

- 5.5. Motions must be about things that the Council is responsible for or which affect the City (and are not found on the meeting agenda).

#### Rejecting motions

- 5.6. The Monitoring Officer, can reject a motion if:

- it is not about something for which the Council is responsible or which affects the City;
- it is potentially defamatory, frivolous, trivial or offensive
- it requires the Council to make public exempt or confidential information ([see Part F Access to Information Rules](#))

- 5.7. The Monitoring Officer's decision is final.

#### Time Limit to Motions on Notice

- 5.8. There is a time limit to the motions on notice agenda item of two hours. When the time expires, following an opportunity to sum up by the mover of the motion, the Council will move to the vote. Should a motion not be discussed, the motion may re-submitted for a future meeting through the established process, motions will be heard in the order they are received.

#### Motions without notice

- 5.9. There is no need to give notice of motions to:

- appoint a Chair of the meeting;
- agree or correct the minutes;
- change the order of business;
- refer something somewhere else;
- agree or amend recommendations of the Cabinet and Council Committees or officers;
- to appoint members to a Committee or office created at the meeting;
- amend or change a motion;
- go to next business;
- move to a vote;
- continue the meeting beyond 7:30pm;
- suspend a Council procedure;
- hold a discussion in private (when allowed under the Access to Information Procedures;
- Give Council's agreement when it is required by the Constitution.



## **Voting**

### 6. Majority vote

- 6.1. Unless the constitution says otherwise, votes will be decided by a simple majority of Councillors in their seats and voting.

Lord Mayor's second or casting vote

- 6.2. If there is the same number of votes for and against, the Lord Mayor will have a second or casting vote.

Method of voting

- 6.3. Votes will be recorded through use of an electronic voting system, if the electronic voting system fails the Lord Mayor will ask for a show of hands.

Voting on appointments

- 6.4. If there are three or more candidates for a position and none has more than half of the votes, the candidate with the fewest votes will be eliminated and a new vote taken. This will continue until one candidate has more than half the votes.

Reports to note

- 6.5. Reports which contain only recommendations "to note" may not require a vote, unless a vote is called for by Councillors.

## **Minutes**

### 7. Signing the minutes

- 7.1. At the first ordinary meeting when the minutes are available, the Lord Mayor will move that the minutes are correct and sign them. Council will not discuss anything arising from the minutes.

No minutes at Annual or Extraordinary meetings

- 7.2. Minutes are not signed at annual meetings or special meetings. They are signed at the next ordinary meeting instead.

Record of attendance

- 7.3. A record of attendance at Council meetings is noted on the minutes of the meeting. A record of attendance for all meetings is kept and accessible on the Council's website.

- 7.4. Councillors will be expected to remain in the meeting for its duration (exceptions being short personal breaks or leaving pursuant to a declaration of interest).

Exclusion of public

7.5. Members of the public and press may only be excluded either in accordance with the Access to Information Rules of this Constitution ([see Part F](#)) or if they are disrupting the meeting.

## **Councillors' conduct**

### **8. Standing to speak**

8.1. When they speak at Council, Councillors must (unless they cannot) stand and address the Lord Mayor. If more than one Councillor stands, the Lord Mayor will ask one of them to speak and the others must sit down. While a Councillor is speaking, other Councillors must sit unless they are making a point of order or personal explanation or point of clarification.

#### Forms of Address

8.2. Councillors will refer to each other during the transaction of business by their respective titles of 'Lord Mayor', 'chair' or 'Councillor' as the case may be.

#### Chair standing

8.3. If the Lord Mayor stands during a debate, any Councillor who is speaking must stop speaking and sit down. The meeting must be silent.

#### Councillor not to be heard further

8.4. If a Councillor keeps on disrupting the meeting by behaving improperly, or offensively and deliberately obstructs business, the Lord Mayor may decide that the Councillor is not heard further

#### Councillor to leave the meeting

8.5. If the Councillor continues to disrupt the meeting, the Lord Mayor may decide that the Councillor leaves the meeting or that the meeting is adjourned.

#### General disturbance

8.6. If there is general disturbance making it impossible for Council to do its business, the Lord Mayor may adjourn the meeting for as long as necessary.

#### Removal of member of the public

8.7. If a member of the public is disrupting the meeting, the Lord Mayor may warn them. If they carry on disrupting the meeting, the Lord Mayor may have them removed and can halt the meeting until they leave.

#### Clearance of part of meeting room

8.8. If there is a general disturbance in a part of the meeting room open to the public, the Lord Mayor may call for that part of the room to be cleared.

## **Suspension of council procedure rules**

8.9. All the Council Procedures in this section can be suspended except those referring to:

- Right to have individual vote recorded
- No minutes at annual or special meetings
- Councillors conduct and
- General disturbance

8.10. Council Rules of Procedure may be suspended by motion on notice or without notice if at least one half of the whole number of Councillors of the Council are present. Suspension can only be for the duration of the meeting.

Changes to these procedures

8.11. Any motion to change the procedures in this section must be proposed and seconded. After this, it will not be discussed until the next ordinary meeting of Council.

## **The Framework for Cabinet Decisions**

### 9. Responsibility

9.1. Council sets the policy framework and budget.

9.2. The Leader, Cabinet. Committees and officers must act within it.

## **Process for developing the budget and policy framework**

9.3. A timetable for any proposals affecting the policy framework and budget will be drafted and will say what consultation there will be. At the end of the consultation, the Cabinet member will submit a report on the draft proposals to the Cabinet.

9.4. The relevant Cabinet member will draft the initial proposals with the advice of officers and will canvass the views of interested local stakeholders including Overview and Scrutiny.

9.5. The Cabinet member will submit a report on the draft proposals to Cabinet.

9.6. Any reports to the Cabinet must say what consultation there has been and what the results were. The Cabinet will consider the response to the consultation and draw up firm proposals. The report to Council will reflect any comments made during the consultation and the Cabinet's response.

9.7. The Cabinet's proposals will go to Council as soon as possible.

9.8. The Council may:

- Adopt the report and the proposals contained in it;
- Amend the proposals and adopt them;
- Refer the proposals back to the Cabinet for further consideration; or
- Substitute its own proposals for those of the Cabinet.

9.9. If Council accepts the Cabinet's proposals without any changes, the decision will come into force immediately.

9.10. If Council changes the Cabinet's proposals, it will be an in principle decision only. The Leader will be given a copy of an in principle decision. The in principle decision will come into force unless the Leader objects in writing to the Monitoring Officer within five clear working days,

giving reasons.

- 9.11. If the Leader objects to an in principle decision, Council will meet again within 15 further days of the receipt of the Leader's objection. At the meeting, Council can accept the cabinet's proposals or change them, in the light of the Leader's objection which will be circulated in writing to the Council.
- 9.12. The Council's decision will come into force immediately
- 9.13. The Council must agree and set the level of Council Tax by the statutory deadline.
- 9.14. The decision shall be made public in accordance with the Access to Information Procedure Rules, and shall be implemented immediately.
- 9.15. In approving the Budget and Policy Framework, the Council will also specify the extent of virement within the budget and degree of in-year changes to the policy framework which may be undertaken by the Cabinet, in accordance with virement and in-year adjustments. Any other changes to the Budget and Policy Framework are reserved to the Council

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

#### 10. Decisions outside the budget or policy framework

- 10.1. The Cabinet, committees of Cabinet, individual members of Cabinet, committees and joint committees and any officers carrying out executive responsibilities can only take decisions if they are-
  - in line with the policy framework and budget, or
  - urgent decisions allowed under paragraph 4, or
  - allowed under financial procedure rules, or necessary to obey the law or ministerial directions or government guidance.
- 10.2. Any other decisions which are not in accordance with the policy framework and budget must be recommended to Council.
- 10.3. The Cabinet and any officers carrying out executive responsibilities will seek the Monitoring Officer or Responsible Finance Officer's advice if it is unclear whether proposals are in line with the policy framework or budget

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

- 10.4. The Cabinet, committees of Cabinet, individual members of Cabinet, committees and joint committees or officers carrying out executive responsibilities can take a decision that is outside the policy framework or budget if:
  - it is urgent;
  - it is not practicable to arrange a Council meeting;
  - the Chair of the Scrutiny Management Board and the Monitoring Officer (or designee) agrees that the decision is reasonable and that it is not in the interests of the Council or the public to delay it.
- 10.5. If the Chair of the Scrutiny Management Board is absent, the Lord Mayor can agree that the decision is urgent and, if both are absent, the Deputy Lord Mayor can give their agreement.

## Recording Urgent decisions

10.6. The record of the decision must say:

- why it was not practicable to arrange a meeting of Council;
- that the Chair of the Scrutiny Management Board (or Lord Mayor or Deputy Lord Mayor) and the Monitoring Officer (or designee) agreed that the decision was urgent;
- why the decision was considered to be urgent.

## In-year changes to the budget and policy framework

10.7. The responsibility for agreeing the Budget and Policy Framework lies with the Council, and decisions by the Cabinet, a committee of the Cabinet, an individual member of the Cabinet or officers, committees or joint arrangements discharging executive functions must conform to it.

10.8. No changes to any policy or strategy which make up the policy framework may be made by those bodies or individuals except those changes:

- Which will result in the closure or discontinuance of a service or part of service to meet a budgetary constraint;
- Which are necessary to ensure compliance with the law, ministerial direction or government guidance;
- Which are necessary because the existing policy document is silent on the matter under consideration;
- Which relate to policy affecting schools, where the majority of school governing bodies agree with the proposed change.

10.9. The Call in Procedures deal with Call in of decisions outside the policy framework or budget ([see Part C](#)).

# **PART C: RESPONSIBILITY FOR EXECUTIVE FUNCTIONS, THE LEADER'S SCHEME OF DELEGATION, CABINET PROCEDURES AND CALL IN PROCEDURES**

## Responsibility for Executive Functions

This section of the Constitution sets out the responsibilities of the Leader, Cabinet and Call-in procedures.

### I. Functions

I.1. The Leader is responsible for any functions which are not specifically required to be carried out by the Council under regulations.

I.2. All the functions of the Council are executive functions except for:

- Those listed in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended); and
- Those set out in this Constitution as being the responsibility of the Council or a body established by the Council.

I.3. Executive functions will be exercised by the Leader except where the matter is dealt with under joint arrangements or delegated to the Cabinet, a committee of Cabinet, an individual Cabinet member or an officer.

I.4. The Leader will discharge these functions in accordance with the Cabinet Procedures and the Access to Information Rules.

I.5. The Leader will make sure all necessary steps are taken to prepare the authority's budget, and those plans and strategies which constitute the authority's policy framework as set out in of this Constitution, prior to their final approval and adoption by the Council. He or she will undertake this work in accordance with the [Budget and Policy Framework Procedure Rules \(see Part B\)](#).

I.6. The Leader is responsible for:

- appointing members of the Cabinet;
- delegating executive responsibilities to the Cabinet;
- delegating executive responsibilities to committees carrying out executive functions;
- delegating executive responsibilities to individual Cabinet members;
- allocating executive responsibilities to officers;
- allocating executive responsibilities when no-one has responsibility for them.

I.7. The Leader can at any time take back responsibilities delegated to committees of the Cabinet, an individual Cabinet member or officer, or decide to delegate those responsibilities on certain conditions. (i.e. the Leader can choose to exercise any powers in the Scheme of Delegation).

I.8. The Leader can also decide to delegate further responsibilities to committees of the Cabinet, individual Cabinet members or to an officer.

I.9. Executive responsibilities are carried out on behalf of the council and in the council's name.

## Officer Delegations

I.10. See the Officer Scheme of Delegation of Functions in [Part H](#) of the Constitution.

## **Cabinet Procedure Rules**

2. Executive decisions may be made by one or more of the following:

- The Leader
- The Cabinet as a whole
- A committee of the Cabinet
- An individual member of the Cabinet
- An officer
- Joint arrangements

2.1. There is an agreed scheme of delegation for executive functions.

2.2. The scheme of delegation relating to executive functions may be amended by the Leader at any time during the year. To do so, the Leader must give written notice to the Monitoring Officer and to the person, body or committee concerned. The notice must set out the extent of the amendment to the scheme of delegation, and whether it entails the withdrawal of delegation from any person, body, committee or the Cabinet as a whole.

2.3. Where the Leader withdraws delegation from a committee, notice will be given to the committee's Chair, on behalf of the committee.

### Conflicts of Interest

2.4. Where the Leader has a conflict of interest this will be dealt with as set out in the Council's Code of Conduct for Members.

2.5. If every member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members.

2.6. If the exercise of an executive function has been delegated to a committee of the Cabinet, an individual member or an officer, and a conflict of interest arises, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members.

### Cabinet Meetings

2.7. The Cabinet meets on dates agreed by the Leader. Meetings are at the Council House or another place agreed by the Leader

### Decisions to be taken by the Cabinet

2.8. The Cabinet will take decisions at a meeting convened in accordance with the Access to Information Rules in Part F of the Constitution.

2.9. The rules applying to executive decisions taken by an individual Cabinet member shall be the same as those applying to decisions taken by the Cabinet as a whole.

## **Conduct of Cabinet Meetings**

3. Presiding Officer

3.1. The Leader will act as Chair at any meeting of the Cabinet or its committees at which he or



she is present. In the Leader's absence, the Deputy Leader acts as Chair, and in the absence of both may appoint another Member to do so for that meeting only. If the Leader or the person they have appointed arrives part of the way through a meeting, the acting Chair will finish the item of business being conducted; the Leader or the person they have appointed to act as Chair will then conduct the remaining business.

#### Attendance at Cabinet

3.2. Any member of the Council and members of the public may attend a public meeting of the Cabinet. Non Cabinet members may only address the Cabinet with permission of the Leader or the person presiding.

#### Quorum

3.3. The quorum for a meeting of Cabinet is three. Substitutes are not allowed.

#### Vacancies on Cabinet

3.4. A Councillor can resign from the Cabinet by writing to the Leader and sending a copy to the Monitoring Officer. If a Cabinet member resigns from the Cabinet or stops being a Councillor, a replacement will be appointed by the Leader and reported to the next Council meeting

#### Decision taking

3.5. Decisions are taken by a majority of members present and voting. If there is the same number of votes for and against, the Chair can use a second or casting vote. Voting is by show of hands.

#### Record of voting.

3.6. Any Councillor can ask for the minutes to record whether they voted for; voted against or abstained on a vote. The request must be made immediately after the vote.

#### Cabinet Business

3.7. The order of business will be:

- declarations of interest;
- minutes of the last meeting;
- questions from the public for up to 15 minutes;
- chair's urgent business;
- scrutiny reports (if required);
- agenda items, indicating which are key decisions;
- review of the Forward Plan, (if required).

3.8. The Chair of the Cabinet meeting may change the order of business with the agreement of the Cabinet.

#### Questions from the public

3.9. The Monitoring Officer can reject a question from the public if:

- it is not received at least five complete working days before the meeting
- it is not about something for which the Council is responsible or which affects the City
- it is potentially defamatory, frivolous, trivial or offensive
- it requires the Cabinet to make public exempt or confidential information ([see Part F](#))

3.10. The Monitoring Officer will endeavour to assist members of the public to frame questions to comply with these rules. The Monitoring Officer's decision is final.

#### The Cabinet agenda

- 3.11. The Leader will decide the schedule for the meetings of the Cabinet. They may put on the agenda of any Cabinet meeting any matter which he or she wishes, whether or not authority for that function has been delegated to the Cabinet, an individual member or committee of the Cabinet, or to any Member or officer.
- 3.12. The Monitoring Officer will make sure that an item is put on the agenda of the next available meeting of the Cabinet where a relevant scrutiny committee or the Council have resolved that an item be considered by the Cabinet. However, there may only be up to 6 such items on any one agenda.
- 3.13. The Chief Executive, Monitoring Officer or Responsible Finance Officer can put an item on the agenda. If the item is urgent, they can require a special meeting to consider it.
- 3.14. All reports to the Cabinet from any member of the Cabinet or an officer on proposals relating to the budget and policy framework must contain details of the nature and extent of consultation with stakeholders and relevant scrutiny committees, and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

#### Implementation of decisions

- 3.15. All Cabinet decisions are subject to call in ([see Part C](#)) and will be recorded and published following the decision.
- 3.16. A Cabinet decision will come into force if it is not called in by 4.30pm on the fifth working day after the publication date.

#### Urgent decisions

- 3.17. Urgent decisions can be implemented immediately (and the call in procedure does not apply).
- 3.18. A decision is urgent where the interests of the Council or the public require immediate action. Where the Cabinet regards the decision as urgent then the agreement of the chair of the relevant Overview and Scrutiny Committee is required (or in his or her absence the agreement of the Lord Mayor) that the decision is urgent prior to the implementation of the decision.
- 3.19. Where an urgent decision is taken it shall be immediately implemented and the call in procedure set out below will not apply.
- 3.20. The urgent decision must still be recorded, published and reported to the next

meeting of Council.

#### Exempt Information

- 3.21. In those exceptional circumstances where it is necessary, on grounds of confidentiality, to deal with business in part II (in private) the decision sheet will record all part II items (separately if it must be confidential).
- 3.22. Any separate part II business sheet will be subject to the same rules of recording, publication and call in as set out above, but will in addition contain the following caveat:
- 3.23. "PLEASE NOTE: The following matters relate to business which relates to either exempt or confidential matters. Any breach of confidentiality could prejudice the Council and the person concerned and might amount to a breach of the Councillors' and employees' codes of conduct."
- 3.24. If there is a gap in these procedures the Leader will decide what to do.

#### **Cabinet Member Decision Making Procedures**

- 3.25. Only those persons properly appointed to make decisions under the Leaders Scheme of Delegation shall be entitled to exercise these powers.
- 3.26. A Cabinet Member shall have the discretion not to exercise his or her delegated powers to make a decision, choosing in preference for the matter to be considered by and subject to decision by the full Cabinet or Leader.
- 3.27. The exercise of delegated authority by a Cabinet member shall be carried out in the following way:
- 3.28. The lead officer will provide a report for the Cabinet member listing all background information and setting out the options available and the corporate, financial, legal, personnel and property implications of the decision. The Monitoring Officer will ensure that the report has been approved by the necessary officers and any key decisions have been referred to the Cabinet. The Cabinet member will hold a meeting with the lead officer and any other appropriate officer and minutes of the decision will be taken and published.

#### Recording and Publication of Executive Decisions

- 3.29. All Cabinet members' decisions are subject to Call-in and will be recorded and published within twenty four hours of the decision being taken.
- 3.30. Decisions shall be recorded in writing and shall contain the following information:
  - Details of the decision;
  - The name of the Cabinet member making the decision;
  - The decision a summary of the issues;
  - The reasons for the decision;
  - The alternative options considered and rejected;
  - Who was consulted before the decision was made;
  - The date of the decision.
  - Whether the decision and relevant report should be exempt from publication under the Council's Access to Information Rules and the reasons why exemption has been agreed.

- Whether the decision is urgent, the reasons for the urgency and the signature of the Chair of the relevant Overview and Scrutiny Committee (or in his or her absence the Lord Mayor or the Deputy Lord Mayor).
- Any corporate, financial, personnel, legal and asset management implications; and
- Background papers.
- Implementation of delegated Cabinet member decisions

3.31. A Cabinet member decision will come into force if it is not called in by 4:30pm on the fifth working day after the publication date unless it is an urgent decision.

### **Urgent Decisions**

3.32. Urgent decisions can be implemented immediately (and the call in procedures do not apply).

3.33. A decision is urgent where the interests of the Council or the public require immediate action. Where the decision maker regards the decision as urgent then the agreement of the chair of the relevant Overview and Scrutiny Committee is required (or in his/her absence the Lord Mayor/Deputy Lord Mayor) that the decision is urgent prior to the implementation of the decision.

3.34. Where an urgent decision is taken and agreed by the chair of the relevant Overview and Scrutiny Committee or the Lord Mayor/Deputy Lord Mayor it shall be immediately implemented and the call-in procedures in Part C will not apply.

3.35. The urgent decision must still be recorded, published and reported to the relevant Overview and Scrutiny Committee.

### **Call-In Procedure Rules**

4. Call-in is a process where an Overview and Scrutiny Committee can recommend that an executive decision which has not yet been carried out, is reconsidered by the decision maker

4.1. The following executive decisions can be called-in:

- decisions of the Leader;
- Cabinet decisions;
- Cabinet member decisions;
- executive decisions under joint arrangements
- Officer key decisions

Publishing decisions that can be called-in

4.2. Democratic Support will email information about the decision to all Councillors.

4.3. The information will be marked with the date it was published, will say what the decision was and how it can be called-in.

4.4. The information will say that the decision will come into force if it is not called in by 4.30pm on the fifth working day after the publication date.

Who can call in decisions and when do they have to be called in by?

4.5. Any three Councillors can call in a decision by 4.30pm on the fifth working day after the decision was published.

4.6. Co-opted and independent members cannot call-in decisions.

How are decisions called in?

4.7. Decisions are called-in by sending a call in form to the Monitoring Officer or emailing it to [democraticsupport@plymouth.gov.uk](mailto:democraticsupport@plymouth.gov.uk)

4.8. Reasons for the call-in must be given. If an executive decision is being called-in because it is believed to be outside the policy framework and budget, the call-in must say so.

4.9. There are four other reasons to call-in a decision:

- the process was deficient in some way (e.g. the decision maker did not consult people who should have been consulted)
- the decision maker did not consider alternative courses of action
- the decision taker did not take into account relevant factors
- the decision was wrong in law or fact. The caller in must state why it was wrong in law or fact

4.10. When a decision is called in, the Monitoring Officer will tell the relevant officer, the chair of the body which took the decision and the Cabinet member.

Where are decisions called-in?

4.11. The Scrutiny Management Board will consider decisions which are called-in.

What happens when a decision is called-in?

4.12. The Scrutiny Management Board can decide to:

- confirm that the decision should be implemented, the decision can then be acted on immediately; or
- recommend that the decision maker should reconsider the decision in light of the comments expressed by the Committee; or
- refer the decision to Council to consider the call in; or
- send comments to Council on any decision that recommends changing the policy framework and budget.

4.13. Sending the decision back with its comments to the decision maker

4.14. The decision maker will reconsider the decision, taking the Committee's views into account. The decision maker may then:

- implement the decision (which cannot be called-in again); or
- not implement the decision; or
- alter the decision (which can be called-in).

4.15. The decision maker will report the outcome of the above to the next relevant Overview and Scrutiny Committee meeting.

Referring the decision to Council to consider the call-in

4.16. The decision will be considered at the next ordinary Council meeting or, if two Cabinet members require action earlier, at an extraordinary Council meeting. Council can decide to:

- support the decision, which can then be acted on immediately; or
- send the decision back with its comments to the decision maker who will then take a final decision (see below).

4.17. If the decision is sent back to the decision maker they will reconsider the decision taking the Council's views into account.

Exceptions to the call-in procedure

4.18. Call-in will not apply to the following decisions:

- non-executive decisions;
- executive decisions made by appeals panels;
- decisions already called-in once (a decision modified becomes a new decision and may be subject to call-in);
- non-key decisions made by officers with delegated authority;
- urgent decisions.

Decisions believed to be outside the budget or policy framework

4.19. The Monitoring Officer or Responsible Finance Officer will say whether the decision is outside the policy framework and budget.

4.20. If the decision is not outside the policy framework and budget, the relevant Overview and Scrutiny Committee can decide to:

- support the decision, which can then be acted on immediately, or
- send the decision back with its comments to the Cabinet or Cabinet member, who will then take a final decision.

4.21. If the decision is outside the policy framework and budget, it will go as a recommendation to the next ordinary meeting of Council, along with any comments from the relevant Overview and Scrutiny Committee (if two Cabinet members want earlier action, an extraordinary meeting of the Council can be held).

4.22. Council is able to:

- ask the Cabinet to reconsider, or
- change the policy framework and budget so that the decision is within it – the decision can then be acted on immediately.

Urgent decisions outside the budget and policy framework

4.23. A decision cannot be called-in if the Chair of the Chair of the Scrutiny Management Board agrees that:

- the decision is reasonable and
- the delay would not be in the interests of the Council or the public.

- 4.24. If the Chair of The Scrutiny Management Board is not available, the Lord Mayor (or in his or her absence the Deputy Lord Mayor) must agree that the decision is urgent and reasonable.
- 4.25. Urgent decisions must be identified on the published information.
- 4.26. Urgent decisions must be reported to the next ordinary full Council meeting with the reason why they were urgent.

# **PART D: OVERVIEW AND SCRUTINY FUNCTIONS & PROCEDURES**



## Overview and Scrutiny

### Overview and Scrutiny Functions

1.1. The aims of the Overview and Scrutiny process are to-

- add value to Council business and decision-making;
- hold the Cabinet to account;
- monitor the budget and performance of services;
- assist the Council in the development of policy and review the effectiveness of the implementation of Council policy;
- review relevant central government policy development and legislation to assess the impact on the City and make recommendations to Cabinet.

## 2. Scrutiny Management Board

2.1. The purpose of the Scrutiny Management Board is to manage scrutiny in a way that ensures the functions of overview and scrutiny are appropriately undertaken across all aspects of the Council's work, with a view to improving services, reducing inequalities and improving outcomes for the people of Plymouth.

### 2.2. Role of the Scrutiny Management Board

- To review regular budget monitoring reports and the medium-term financial strategy;
- To plan the process for annual Budget Scrutiny;
- To review performance against the relevant corporate priorities and inform work programmes as appropriate;
- To review the forward plan of key decisions and consider scrutiny of those issues;
- Exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Leader/Cabinet Member or relevant senior officers including Corporate or Service Directors jointly with a Deputy Cabinet Member or by any other officer;
- To ensure that work is allocated fairly across scrutiny panels and reflects all aspects of the Council's work by providing oversight and direction to the committees' work programmes;
- To produce an annual scrutiny report to Council;
- To receive for information, and oversee implementation of, recommendations made by each Scrutiny Committee;
- To review national best practice and guidance in relation to overview and scrutiny and recommend any changes to the way overview and scrutiny is undertaken as a result.

2.3. The Scrutiny Management Board will also undertake annual budget scrutiny and is linked to the Cabinet Members responsible for -

- Revenue Budget
- Capital Programme
- The Corporate Plan
- The Plymouth Plan
- Human Resources
- ICT
- Business Continuity and Civil Protection
- Strategic Procurement
- Corporate Property and Facilities Management

- Performance Management
- Transformation and Change Management
- Media, Public Relations and Communications
- Democracy and Governance
- Legal Service

2.4. In addition to the Scrutiny Management Board the Council will operate a scrutiny structure comprising a number of scrutiny panels.

### **3. Membership**

3.1. Membership of the Scrutiny Management Board will not exceed 11 councillors.

3.2. The Chair and Vice Chair of the Board and it will be appointed at the Annual General Meeting of Council alongside the Board and panel membership.

### **4. Principles**

4.1. The Scrutiny panels are committed to the developing of a respectful relationship between themselves, the Cabinet and external partners. The work of the Scrutiny panels is underpinned by the following six principles:-

- i To contribute to sound decision-making in a timely way by holding councillors and key partners to account as a 'critical friend'.
- ii Contribute to and reflect the vision and priorities of the Council.
- iii Enable the voice and concerns of the public to be heard and reflected in the Council's decision-making process.
- iv Engage in policy development at an appropriate time to be able to influence the development of policy.
- v To be agile and able to respond to changing and emerging priorities at the right time with flexible working methods.
- vi For scrutiny to be a councillor led and owned function which seeks to continuously improve through self-reflection and development.

### **Scrutiny Panel Functions**

#### **5. General Terms of Reference**

5.1. Within their agreed remit Scrutiny panels will:

- (i) Review and / or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (ii) Make reports and/or recommendations to the Cabinet / Council in connection with the discharge of any functions; make reports and/or recommendations to partners;
- (iii) Work to ensure that communities are engaged in the scrutiny process; and consider and implement mechanisms to encourage and enhance community participation in the development of policy options.
- (iv) Promote equality and diversity across all its work and the work of the Council.
- (v) Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or service areas;
- (vi) Question the Leader / Cabinet Members / senior officers about their decisions and performance, whether in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;

- (vii) Scrutinising the work of partnerships and partnership bodies in the local area;
- (viii) Make recommendations to the Cabinet/Leader/Cabinet Member, Council or Partners, arising out of the Scrutiny process;
- (ix) Question and gather evidence from any person (with their consent where appropriate).
- (x) Reviewing current policies and strategies and making recommendations to the Leader/Cabinet and Council;
- (xi) Undertaking in depth analysis of policy issues and options to assist the Council and the Leader/Cabinet in the development of its budget and policy framework;
- (xii) Considering matters referred to them by the Leader/Cabinet and reporting to the Leader/Cabinet with proposals and/or options;
- (xiii) Questioning members of the Cabinet and/or Committees and senior officers from the Council about their views on issues and proposals affecting the area; and
- (xiv) Liaising with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

## **Scrutiny Panel Responsibilities**

### **Housing and Community Services Scrutiny Panel**

Linked to the Cabinet Member and Department with Responsibility for

- Cost of Living
- Child Poverty
- Parks including playgrounds and greenspaces
- Waste management, recycling and street cleaning
- Anti-social behavior
- Community safety
- Community cohesion, equalities and neighbourhood development
- Homelessness
- Private sector housing, grants and improvements
- Housing enabling with respect to registered social landlords
- Customer Services
- Car parks
- Licensing – Hackney Carriage and Miscellaneous
- Statutory Role with regard to scrutiny of the community safety partnership

MEMBERSHIP – Proportionality applies, the Chair of the panel shall serve on the Scrutiny Management Board. All members of the panel will adhere to the general rules of Overview and Scrutiny.

There are 11 members of the panel including the Chair and Vice Chair.

### **Children, Young People and Families Scrutiny Panel**

Linked to the Cabinet Member and Department with responsibility for

- Schools and Colleges
- Apprenticeships
- Early years Development
- Education Grants
- Youth Services

- Children’s social care (primary responsibility for Children’s Service Matters)
- Adoption and Fostering
- Early intervention and prevention
- Children with special educational needs and disabilities (SEND)
- Corporate Parenting
- The leadership and delivery of all services for children and young people

MEMBERSHIP – Proportionality applies, the Chair of the panel shall serve on the Scrutiny Management Board. All members of the panel will adhere to the general rules of Overview and Scrutiny.

There are 11 members of the panel including the Chair and Vice Chair.

### **Natural Infrastructure and Growth Scrutiny Panel**

Linked to the Cabinet Member and Department with Responsibility for

- Net Zero Action Plan
- Natural Infrastructure and Investment
- Inclusive Growth
- Regional and local economic strategy
- Development planning
- Strategic Housing Delivery
- Transport policies and strategies
- Social enterprise support
- Sustainable public transport and cycling
- Events, Culture, Heritage and Museums (including Mount Edgumbe)
- Highways

MEMBERSHIP – Proportionality applies, the Chair of the panel shall serve on the Scrutiny Management Board. All members of the panel will adhere to the general rules of Overview and Scrutiny.

There are 11 members of the panel including the Chair and Vice Chair.

### **Health and Wellbeing Scrutiny Panel**

Linked to the Cabinet Member and Department with responsibility for

- Public Health
- Public protection service
- Adult and Children’s Health
- Mental Health Services
- Physical Disability Services
- Drug and Alcohol Services
- Learning Disability Services
- Ageing Well / Older Peoples Services
- Joint Health and Social Care Commissioning
- Leisure Services
- Health and Wellbeing

Statutory Role with regard to undertaking all the statutory functions in accordance with Section 244, of the National Health Act 2006, (as amended by Health and Social Care Act 2012) regulations and guidance under that section.

**MEMBERSHIP** – Proportionality applies, the Chair of the panel shall serve on the Scrutiny Management Board. All members of the panel will adhere to the general rules of Overview and Scrutiny.

There are 11 members of the panel including the Chair and Vice Chair.

## **Overview and Scrutiny General Provisions**

### **6. Conflicts of Interest**

- 6.1. Unless they have a dispensation, members of the Overview and Scrutiny Committees cannot scrutinise decisions they were involved in taking and must leave the room when these decisions are scrutinised. Before they leave they can make representations and answer questions or give evidence if other members of the public would also have this right.

#### **Procedure when a councillor resigns from a committee**

- 6.2. A Councillor can resign from a Committee by writing to the Monitoring Officer. A replacement member will be confirmed at the next Council meeting.

#### **Procedure when a committee member stops being a councillor**

- 6.3. If a Committee member stops being a Councillor, a replacement member will be confirmed at the next full Council meeting.

#### **Co-opted members of overview and scrutiny committees**

- 6.4. Non-voting co-opted members can serve on an Overview and Scrutiny Committees or for a specific policy review.
- 6.5. Co-opted members cannot vote unless they have the legal right to do so.
- 6.6. The Overview and Scrutiny Committee that deals with education matters will appoint four (statutory) co-opted members (two parent governor representatives and two church representatives). One of the church representatives will be nominated by the Diocesan Board of Education for the Church of England diocese and the other will be nominated by the Bishop of the Roman Catholic diocese within the area.

#### **Overview and scrutiny committee meetings**

- 6.7. The annual calendar for Overview and Scrutiny Committee meetings is set by Council. If Overview and Scrutiny Committees need to have extra meetings, they set the dates themselves.
- 6.8. The Chair is responsible for the start times of committees in consultation with the Monitoring Officer.
- 6.9. The Monitoring Officer or the Overview and Scrutiny Committee Chair can decide to call a special meeting.

6.10. If a Committee has no business at one of its fixed meetings, the Monitoring Officer can cancel it after consulting the chair.

### **Substitutes, quorum and training**

6.11. Members of the Committees can send other Councillors (who must belong to the same political group) as substitutes. Substitutes have the powers of an ordinary member of the committee.

6.12. Substitutions must be for a whole meeting. A member cannot take over from their substitute or hand over to them part way through a meeting.

6.13. If a member wants to send a substitute, they must inform the Monitoring Officer before the meeting. Substitutes cannot appoint substitutes of their own.

6.14. If a Councillor is a member of a Select Committee Review, once the group has started its work, no substitution is allowed.

6.15. The quorum for a meeting is one third of its membership.

### **Resignation of chair or vice-chair**

6.16. If a Councillor wants to resign as chair or vice-chair, they must write to the Monitoring Officer. A new chair or vice-chair will be confirmed at the next ordinary meeting of Council.

### **Programme of work**

6.17. The Overview and Scrutiny Committees set their own programmes of work. The Committees must also review anything they are asked to review by Council.

### **Call in**

6.18. Items called in will be heard at a meeting of the Scrutiny Management Board within 10 working days of the end of the call-in period relating to that item.

### **Agenda**

6.19. Any Councillor may place any local government matter (other than excluded matters – see below) which is relevant to the functions of the Committee or board on the agenda of a meeting. The Councillor will be invited to attend the meeting at which the item is to be considered and to explain the reasons for the request.

### **Considering matters**

6.20. When considering a local government matter referred by a Councillor, the Committee will decide whether to:

- review or scrutinise a decision taken by the cabinet or cabinet member;
- make a report or recommendation to the Council or cabinet on how cabinet carries out its functions;
- review or scrutinise a decision taken by a Council body other than the cabinet or a cabinet member;
- make a report or recommendation to the Council or the cabinet on how a Council body

- other than the cabinet carries out its functions;
- make a report or recommendation to the Council or the cabinet on matters which affect the city or the inhabitants of the city;
- take no action.

6.21. The Committee will then report back to the Councillor who raised the local government matter about the decision and the reasons for the decision.

### **Excluded matters**

6.22. The following matters cannot be considered by an Overview and Scrutiny Committee:

- any matter relating to a planning decision;
- any matter relating to a licensing decision;
- any matter relating to an individual or body if s/he/they have, by law, a right to a review or right of appeal;
- any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a Committee or board meeting.

6.23. The Monitoring Officer in consultation with the Scrutiny Officer and Chair (or Vice-Chair in the chair's absence) of the relevant Committee will determine whether a matter is an excluded matter.

### **Speaking on agenda items**

6.24. Any member of the public and any Councillor who is not a member of the Committee can speak on an agenda item if the Chair agrees. The Chair will decide how long they can speak for (unless the meeting is for call-in).

### **Policy review and development**

6.25. The overview and scrutiny Committees' role in developing the policy framework and budget is set out in paragraph 1.

6.26. In areas that are not covered by the policy framework and budget, the Overview and Scrutiny Committees can suggest policies for the cabinet or a cabinet member to develop.

6.27. The Overview and Scrutiny Committees can hold inquiries and consider future policy. This may involve appointing advisors, inviting witnesses, making site visits, holding public meetings, commissioning research or doing anything else which is necessary.

### **Select committee reviews**

6.28. Overview and Scrutiny Committees may appoint time limited Select Committee Reviews to undertake pieces of scrutiny work as required and will be time specific.

### **Requests for reviews from full council**

6.29. The Overview and Scrutiny Committees must review anything full Council asks them to review as soon as they can make space in their programme of work.

### **Requests for reviews from the cabinet**

6.30. The Overview and Scrutiny Committees can (but do not have to) review items the Cabinet or a Cabinet Member asks them to review.

### **Select committees**

6.31. The Overview and Scrutiny Committees may appoint Select Committees to undertake pieces of scrutiny work as required and will be time specific. The Chair of and members of Select Committee can be any member not excluded from scrutiny. Select Committees will be subject to rules of proportionality.

### **Committee/Select Committee Review report**

6.32. At the end of each policy review, the Overview and Scrutiny Committee / Select Committee Review will send the report to the Cabinet or a Cabinet Member (if it is about executive responsibilities) or to Council (if it is about Council responsibilities) or to another organisation, as appropriate.

### **Minority report**

6.33. For each policy review, there can be a minority report giving any dissenting views. The Cabinet, Cabinet Member or Full Council will consider the minority report at the same time as the Committee/ review report.

6.34. Each Overview and Scrutiny Committee / Select Committee Review member can vote for one report but no more than one. The report with the most votes will be the Overview and Scrutiny Committee / Select Committee Review report.

### **Timing**

- 6.35. If an Overview and Scrutiny Committee decides to send a report to the Cabinet, a cabinet member or Council:
- the Cabinet must, where practicable, consider it at its next ordinary meeting if it is about executive responsibilities;
  - Council must, where practicable, consider it at its next ordinary meeting if it is about Council responsibilities.

### **Arrangements for cabinet to comment on reports to full council**

6.36. When the Overview and Scrutiny Committee sends a report to full Council, the Monitoring Officer will send a copy to the Cabinet/Cabinet Member. Council must consider the Cabinet or cabinet member's comments on anything that affects the policy framework and budget.

### **Overview and scrutiny members' rights to see documents**

6.37. Overview and Scrutiny members' rights to see documents are set out in the Access to Information Rules ([see Part F](#)).

### **Duty of cabinet members and officers to attend overview and scrutiny meetings**

- 6.38. Overview and scrutiny meetings can require members of the Cabinet and senior officers to attend and answer questions about:
- their performance



- decisions they were involved in
- the extent to which they have followed the policy framework and budget

6.39. The Lead Scrutiny Officer will inform the Councillor or officer that they are required to attend, what it is about and whether they need to produce a report or provide papers.

### **Whipping**

6.40. Political groups should not pressure their members over how they speak or vote at Overview and Scrutiny meetings.

### **Order of business at overview and scrutiny committees**

6.41. The overview and scrutiny committee will consider:

- declarations of interest
- minutes
- anything that has been called in
- any Cabinet/Cabinet member's responses to the committee's reports
- anything else on the agenda

6.42. This procedure can be suspended if at least half of all the voting members are present and there is a simple majority in favour. It can only be suspended until the end of a meeting.

### **Witnesses at overview and scrutiny meetings**

6.43. Witnesses should be treated with politeness and respect. Witnesses will only be required to attend Scrutiny meetings where the law requires their attendance.

### **Items affecting more than one overview and scrutiny committee**

6.44. If an item affects more than one Overview and Scrutiny Committee, the Chairs and Vice Chairs of the Committees will consider the creation of a Joint Select Committee to review it.

### **Minutes**

6.45. At the first meeting when the minutes are available, the chair will move that the minutes are correct and sign them. The committees will not discuss anything arising from the minutes.

### **Gaps in these procedures**

6.46. If there is a gap in these procedures, the Chair will decide what to do.

# **PART E: COMMITTEES, JOINT COMMITTEES, COMMITTEE PROCEDURE RULES AND OTHER STATUTORY FUNCTIONS**

## **Audit and Governance Committee Terms of Reference**

### **1. Statement of purpose**

- 1.1. Our Audit and Governance Committee is a key component of Plymouth City Council's corporate governance. It provides an independent and high-level focus on the audit, assurance and reporting arrangements that underpin good governance and financial standards.
- 1.2. The purpose of our Audit and Governance Committee is to provide independent assurance to the Council of the adequacy of the risk management framework and the internal control environment. It provides independent review of Plymouth City Council's governance, risk management and control frameworks and oversees the financial reporting and annual governance processes.
- 1.3. It oversees internal audit and external audit, helping to ensure efficient and effective assurance arrangements are in place.

### **2. Membership, Chair and Quorum**

- 2.1. The Audit Committee will have a minimum of seven members which will include two independent members.
- 2.2. Substitute Members are permitted, subject they have met the training requirements.
- 2.3. The committee is politically balanced and appointment to the Committee, Chair and Vice are made by Council.
- 2.4. The quorum for the committee is four members.

### **3. Committee Responsibilities**

#### **3.1. Governance, risk, and control**

- To review the council's corporate governance arrangements against the good governance framework, including the ethical framework and consider the local code of governance.
- To review the Annual Governance Statement prior to approval and consider whether it properly reflects the risk environment and supporting assurances, considering internal audit's opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control.
- To consider the council's arrangements to secure value for money and review assurances and assessments on the effectiveness of these arrangements.
- To consider the council's framework of assurance and ensure that it adequately addresses the risks and priorities of the council.
- To monitor the effective development and operation of risk management in the council.
- To monitor progress in addressing risk-related issues reported to the committee.
- To consider reports on the effectiveness of internal controls and monitor the implementation of agreed actions.
- To review the assessment of fraud risks and potential harm to the council from fraud and corruption.
- To monitor the counter-fraud strategy, actions, and resources.
- To review the governance and assurance arrangements for significant partnerships or collaborations.

- To approve and oversee the Council's strategic objectives across the Plymouth City Council family of companies and to support the development of companies in line with the Council's regulations and values.

### 3.2. Internal Audit

- To approve the internal audit charter.
- To review proposals made in relation to the appointment of external providers of internal audit services and to make recommendations.
- To approve the risk-based internal audit plan, including internal audit's resource requirements, the approach to using other sources of assurance and any work required to place reliance upon those other sources.
- To approve significant interim changes to the risk-based internal audit plan and resource requirements.
- To make appropriate enquiries of both management and the head of internal audit to determine if there are any inappropriate scope or resource limitations.
- To consider any impairments to independence or objectivity arising from additional roles or responsibilities outside of internal auditing of the head of internal audit. To approve and periodically review safeguards to limit such impairments.
- To consider reports from the head of internal audit on internal audit's performance during the year, including the performance of external providers of internal audit services. These will include:
  - updates on the work of internal audit including key findings, issues of concern and action in hand as a result of internal audit work
  - regular reports on the results of the Quality Assurance and Improvement Program
  - reports on instances where the internal audit function does not conform to the Public sector internal audit standards (PSIAS) and local government application note (LGAN), considering whether the non-conformance is significant enough that it must be included in the Annual Governance Statement.
- To consider the head of internal audit's annual report:
  - The statement of the level of conformance with the PSIAS and LGAN and the results of the QAIP that support the statement – these will indicate the reliability of the conclusions of internal audit.
  - The opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management and control together with the summary of the work supporting the opinion.
- To consider summaries of specific internal audit reports as requested.
- To receive reports outlining the action taken where the head of internal audit has concluded that management has accepted a level of risk that may be unacceptable to the authority or there are concerns about progress with the implementation of agreed actions.
- To contribute to the QAIP and to the external quality assessment of internal audit that takes place at least once every five years.
- To consider a report on the effectiveness of internal audit to support the AGS, where required to do so by the Accounts and Audit Regulations
- To provide free and unfettered access to the audit committee chair for the head of internal audit, including the opportunity for a private meeting with the committee.

### 3.3. External audit

- To support the independence of external audit through consideration of the external auditor's annual assessment of its independence and review of any issues raised by Public Sector Audit Appointments or the authority's auditor panel as appropriate.

- To consider the external auditor's annual letter, relevant reports and the report to those charged with governance.
- To consider specific reports as agreed with the external auditor.
- To comment on the scope and depth of external audit work and to ensure it gives value for money.
- To commission work from internal and external audit.
- To advise and recommend on the effectiveness of relationships between external and internal audit and other inspection agencies or relevant bodies.

### **3.4. Financial reporting**

- To review the annual statement of accounts. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the council.
- To consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts.

### **3.5. Accountability arrangements**

- To report to those charged with governance on the committee's findings, conclusions and recommendations concerning the adequacy and effectiveness of their governance, risk management and internal control frameworks, financial reporting arrangements, and internal and external audit functions.
- To report to full council on a regular basis on the committee's performance in relation to the terms of reference and the effectiveness of the committee in meeting its purpose.
- To publish an annual report on the work of the committee.

### **3.6. Ethical Framework**

- To promote and maintain high standards of conduct by Councillors and co-opted Members.
- To assist the Councillors and co-opted Members to observe the Members' Code of Conduct.
- To advise the Council on the adoption or revision of the Members' Code of Conduct.
- To receive reports on the operation of the Members' Code of Conduct from the relevant sub-committee.
- To advise on training arrangements for Councillors and co-opted Members on matters relating to the Members' Code of Conduct.
- To grant dispensations, subject to other delegations, to Councillors and co-opted Members on requirements relating to interests set out in the Members' Code of Conduct.
- To ensure arrangements are in place under which allegations of misconduct in respect of the Members' Code of Conduct can be investigated and to review such arrangements where appropriate.
- To receive an annual report from the Monitoring Officer on local and national issues relating to ethical standards and to bring to the attention of Members any complaints.

## **Taxi Licensing and The Taxi Licensing Committee**

### **1 Functions**

- 1.1 To carry out all the taxi and private hire and other vehicle licensing responsibilities in Paragraph B of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and in the Plymouth City Council Act 1975.
- 1.2 Policy - Council sets policies on taxi and private hire and other vehicle licensing on the recommendation of the Cabinet.

### **2 Matters delegated to the taxi licensing committee**

The Taxi Licensing Committee will:

- 2.1 Determine and review licence fees and terms and conditions of licences for taxis, private hire vehicles and other vehicles and operators.
- 2.2 Determine applications for taxi and private hire and other vehicle, driver, and operator licences, when it has received any objections to the licence, permit or registration.
- 2.3 To determine applications for taxi and private hire and other vehicle, driver and operator licences when the applicant has a conviction, and the Strategic Director of Public Health has concerns about the nature of the offence; or the applicant or vehicle may be unsuitable for some other reason.
- 2.4 Determine whether to withdraw or suspend licences for taxis and private hire and other vehicles and their drivers and operators.
- 2.5 To review and where necessary amend the conditions and guidance to the taxi licensing policy set out in the Hackney Carriage Vehicle Specifications and Conditions, Private Hire Vehicle (and Special Event Vehicles) Specifications and Conditions, Private Hire Drivers and Operators conditions, CCTV guidance, the Code of Good Conduct, the Guidance on relevance of Convictions and Conduct, Penalty Points Scheme, Spoken English Assessment Test procedure, and Wheelchair and Assistance Dogs Exemption Guidelines.

### **3 Matters delegated to officers**

- 3.1 The Director of Public Health is authorised to carry out all other non-executive functions in respect of taxi licensing in accordance with the officer scheme of delegation of functions.

### **4 General**

- 4.1 The Council's Taxi Licensing Committee is comprised of a maximum of seven Councillors who have received the appropriate training.

## **Licensing and The Licensing Committee**

### **1. Functions**

1.1. The Council's licensing functions are:

- (a) All the responsibilities set out in Part B of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 relating to licensing, registration, and gambling apart from those relating to taxis, private hire vehicles, other vehicles and operators; common land and village greens; highways, new roads, and street works.
- (b) The responsibilities set out in Part I of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 relating to making a closure order with respect to take away food shop (see Section 4 of the Local Government (Miscellaneous Provisions) Act 1982).
- (c) The responsibilities set out in Part I of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 relating to making an order identifying a place as a designated public place in connection with police powers about alcohol consumption (see Section 13(2) of the Criminal Justice and Police Act 2001).
- (d) The responsibilities set out in Part I of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 relating to making or revoking an order designating a locality as an alcohol disorder zone (see Section 16 of the Violent Crime Reduction Act 2006).

1.2. Council sets policies in respect of Licensing and Gambling on the recommendation of Cabinet.

### **2. Matters specifically delegated to the licensing committee**

2.1. The Licensing Committee will:

- (a) Make orders identifying a place as a designated public place in connection with police powers about alcohol consumption.
- (b) Make or revoke orders designating a locality as an alcohol disorder zone.
- (c) Set the terms and conditions of licences, permits or registrations payable under the Licensing Act 2003.
- (d) Set the terms and conditions of licences, permits or registrations in connection with sex shops and sex cinemas.
- (e) Set fees for licences and permits issued under the Gambling Act 2005.
- (f) Set fees payable in connection with Street Trading.
- (g) Deal with any matter that is referred to it by an officer.

### **3. The licensing sub-committee**

4. The Licensing Committee appoints a sub-committee (the Licensing Sub-committee). Licensing Sub Committee will:

- (a) decide applications made under the Licensing Act 2003 and Gambling Act 2005 where relevant representations are received within the timescale set out in the Act. When doing this the sub-committee follows the regulations and procedures under the Licensing Act 2003 or the Gambling Act 2005.

- (b) decide whether to grant any other type of registration licence or permit when there are objections.
- (c) determine all matters set out in section 10 of the Licensing Act 2003.
- (d) determine all matters set out in section 154(4)(a) of the Gambling Act 2005.
- (e) determine applications for club gaming or club machine permits and cancellation of such permits when there are objections.
- (f) determine applications for prize gaming permits when there are police objections or officers would want to refuse them.
- (g) determine applications for ice cream consents.
- (h) set the terms and conditions of licences, permits or registrations and any fees or charges in connection with any of its responsibilities if they are referred to the sub-committee by an officer.
- (i) Determine anything else which needs a hearing, or which cannot legally be delegated to officers.

## **5. Matters delegated to officers**

- 5.1. The Strategic Director for Place is authorised to carry out all other licensing functions in relation to Safety Certificates for sports grounds and regulated stands in accordance with the officer scheme of delegation of functions.
- 5.2. The Strategic Director for Place is authorised to carry out all other licensing functions in relation to Street Trading and market licensing in accordance with the officer scheme of delegation of functions.
- 5.3. The Strategic Director for Resources is authorised to carry out all other licensing responsibilities in relation to premises for the solemnisation of marriage in accordance with the officer scheme of delegation of functions.
- 5.4. The Strategic Director for People deals with all other licensing responsibilities in relation to the employment of children. The Strategic Director for People is authorised to carry out all other licensing responsibilities in relation to the employment of children in accordance with the officer scheme of delegation of functions.
- 5.5. The Strategic Director for People is authorised to carry out all other licensing responsibilities in relation to houses in multiple occupation in accordance with the officer scheme of delegation of functions.
- 5.6. The Strategic Director of Public Health is authorised to carry out all other licensing responsibilities in accordance with the officer scheme of delegation of functions.

## **6. General**

- 6.1. The Council's Licensing Committee is comprised of a maximum of 15 members.
- 6.2. The Licensing Committee must comprise members who have received the relevant training.

## **7. Procedures**

- 7.1. When an application under the Licensing Act 2003 and the Gambling Act 2005 is being dealt with the procedure followed shall be as set out in the Regulations issued under the Acts.
- 7.2. When any other licensing application is being dealt with the Council Rules of Procedure apply to meetings of this committee.



## **8. Quorum**

8.1. The quorum of the Licensing Committee shall be no less than one third of the members of the full Committee and the Sub-Committee quorum shall be three members.

## **9. Appointment of Substitute Members**

9.1. No substitute members are allowed to sit on the Licensing Committee and Members appointed must have completed the Council's prescribed licensing training course. The Sub-Committee(s) will be made up of three members drawn from the members of the Licensing Committee.

## **Planning and the Planning Committee**

### **I. FUNCTIONS**

**The relevant functions of the Council are:**

#### **I.1 Planning and Conservation**

- A** All the Council's functions in relation to Town and Country Planning and Development Control as specified in Schedule I to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended.

##### **Commons registration**

- B** All the Council's functions in relation to common land or town and village greens or unclaimed common land, or unlawful works on common land and to register the variation of rights of common as set out in Schedule I to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended.

##### **Highways Use and Regulation**

- C** All the Council's functions in relation to the regulation of the use of highways set out in Schedule I to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended.

High Hedges

- D** All the Council's functions in relation to applications and complaints about high hedges under Part 8 of the Anti-Social Behaviour Act 2003.

Trees

- E** The powers to preserve trees under Sections 197 to 214D of the Town and Country Planning Act 1990, and the Trees Regulations 1999 and to protect important hedgerows under the Hedgerows Regulations 1997.

#### **I.2 Policy**

The Council decides whether to adopt the Development Plan, on the recommendation of Cabinet.

### **2 Matters specifically delegated to the planning committee**

#### **2.1 In relation to policies and strategies the Committee will:**

Advise the Cabinet on the implementation of the Development Plan and other planning policies and strategies.

#### **2.2 Within the policies laid down by the Council, the Committee will:**

- 2.2.1. Determine applications relating to town and country planning, commons registration, the making or confirmation of Tree Preservation Orders where there are objections that cannot be resolved and the use or regulation of highways that would have a significant impact on two or more wards of the Council.

2.2.2 Determine town and village green applications where the matter is referred to the Committee by the Service Director for Strategic Planning and Infrastructure or a Member of the Council whose ward the town or village green is located in. Any referral by a Member of the Council must be made within 21 days from the date of notification of the recommendation.

2.2.3 Determine individual applications for planning permission and any other application made under planning legislation where:

- a) it is an application for 10 or more dwellings or non-residential floor space of 1000 sq m or more and more than 15 written representations have been received within the statutory public consultation period raising valid planning considerations that are contrary to officer recommendation, either objecting when the officer recommendation is for approval, or supporting when the officer recommendation is for refusal.
- b) the application is substantively contrary to a Development Plan site allocation policy or a policy that safeguards a site from inappropriate development and the officer recommendation is to approve.
- c) the application is submitted by an employee or Member of the Council, or a close relative of an employee or Member of the Council living in the same property (see paragraph 4.3 for definition of a close relative).
- d) a Member of the Council has a legal interest in the land for which the application relates
- e) a Member of Council whose ward boundary falls within the 'red line' of a planning application site or other application (or at the discretion of the Chair, an adjacent ward immediately affected by the development) has directed the application be dealt with by the Committee by completing the prescribed member referral form in full and submitting it to the Service Director for Strategic Planning and Infrastructure within the published public consultation period. All such forms must include what recommendation the member would find acceptable to enable the application to be dealt with as a delegated decision. Please note referrals cannot be made by a member who has a disclosable pecuniary interest.
- f) the matter is referred to the Committee by the Service Director for Strategic Planning and Infrastructure under one of the following criteria:
  - there is finely balanced policy or precedent issues;
  - there are probity issues or public interest reasons for the matter to be determined by the Committee.
  - the matter is an unusual response to a particular set of issues that warrants debate by the Committee.

2.2.4 Approve any substantive changes to the terms of planning agreements that have been specifically agreed by the Planning Committee on a previous occasion.

In relation to Highways Matters the Committee will:

2.3.1. Determine applications for Orders to create divert or stop up footpaths or bridleways and applications to modify the definitive map that are either referred by the Service Director of Strategic Planning or Street Services or a Member of the Council whose

ward boundary falls within the area covered by the Order. Any referral by a Member of the Council must be made within 21 days from the date of notification of the recommendation.

2.3.2. Determine applications that are referred by either the Service Director for Strategic Planning and Infrastructure or Service Director for Street Services.

### **3. Matters delegated to officers**

3.1 All other non executive functions in respect of planning highways and transport have been specifically delegated to the Director for Place

### **4. General**

#### **4.1. Substitute Members**

Any Member of the Council may act as substitute provided, they have undergone the Council's prescribed Member planning training course (as specified in the Planning Committee Code of Good Practice).

4.2 Planning Committee Procedures are found in the Planning Committee's Code of Good Practice.

4.3 For the purposes of the Planning Committee functions a close relative is defined as: a husband or wife (or civil partner), a son or daughter, a father or mother; or a brother or sister.

## **Chief Officer Appointments, Appeals and Disciplinary Committees**

### **1. Functions**

1.1 Undertaking the selection process for the appointment, and formulating recommendations to the Council in relation to:

- (a) the appointment and dismissal of the Head of the Paid Service.
- (b) the designation of an officer to act as Monitoring Officer and Responsible Finance Officer (Section 151 Officer).
- (c) the appointment/dismissal of Monitoring Officer and Responsible Finance Officer.

in accordance with legislation, Council policies, conditions of service and the appropriate procedures set out in the employment standing orders.

1.2 Undertaking the selection, appointment and dismissal processes for any staff where so required by law.

(It should be noted that the Chief Executive as head of paid service, or a person nominated by them, has powers to appoint all other staff).

1.3 Hearing and determining any appeals by staff under the Council's approved Human Resources policies and procedures including through any appointed Sub-Committee.

1.4 Determining terms and conditions for staff employed on the JNC terms and conditions for Chief Officers.

### **2. Procedures**

2.1 The Committees shall be politically balanced and include the relevant Cabinet member when required. The majority of members on the Committee cannot be members of the Cabinet.

When acting as a Disciplinary Committee in respect of a proposal to dismiss the Chief Executive or Section 151 Officer or Monitoring Officer for reasons other than ill health retirement or redundancy the Committee will also include two Designated Independent Persons appointed for this purpose.

2.2 A Committee which hears an appeal will not include members of the Committee which made the original decision.

#### **Appointment of substitute members**

2.3 Any member of the Council may act as substitute on a committee provided that they have completed the Council's relevant human resources training/ briefing.

### **3 General**

The Committees are convened from time to time as required.

## **Independent Remuneration Panel**

### **1. Functions**

The Panel carries out the Council's responsibilities under the Local Authorities (Members Allowances) Regulation 2003 as amended to convene an Independent Panel to make recommendations to the Council about the level of Members Allowances.

#### **Specific Responsibilities**

- 2.1 Overall, to recommend the level of allowances to be paid to Members, including special responsibility allowances, pension rights for elected Members and allowances payable to co-opted members.
- 2.2 The Panel will recommend:
  - (a) The amount of basic allowance that should be payable to elected Members.
  - (b) The categories of Members who should receive special responsibility allowances and the amount of such an allowance.
  - (c) The travel and subsistence scheme, the amount of the allowance and how it should be paid.
  - (d) The payment of an allowance for co-opted members and the amount of that allowance.
  - (e) The payment of an allowance in respect of arranging for the care of Members' children and other dependents, the amount of this allowance and the means by which it should be determined.
  - (f) Whether the allowances should be backdated to the beginning of the municipal year.
  - (g) Whether annual adjustments of allowance levels may be made by reference to an index, and, if so, for how long such a measure should run.

## **Tamar Bridge and Torpoint Ferry and Joint Committee**

### **I Functions**

- I.1. Plymouth City Council and Cornwall Council undertake the functions in relation to the Bridge and Ferry that are required by law to be carried out by the two authorities. Any revenue and capital expenditure incurred is to be defrayed and income shared by the two constituent Councils in equal portions.
- I.1 A joint committee of the Authorities has been appointed under the provisions of the Local Government Act of 1972 relating to joint committees:
- I.2 The Councils of the constituent authorities, acting together, are responsible for all the responsibilities for the Tamar Bridge and Torpoint Ferry as set out in the Tamar Bridge Acts 1957, 1979, 1998 which cannot by law be delegated to the Joint Committee. These principally are.
  - (a) all matters relating to the discharge of the functions of the Authorities under the Tamar Bridge Act 1957 to 1998 shall stand referred to such joint committee for consideration; those relating to the acquisition, appropriation, leasing or disposal of land.
  - (b) there shall be delegated to such joint committee all the powers of the Tamar Bridge Act conferred upon the Authorities except those relating to the ceasing to demand and take and recover tolls and those relating to resuming the demanding, taking and recovering of tolls.
  - (c) those contained in Part VI (Finance) of the Tamar Bridge Act
- I.3 The Councils of the constituent authorities acting together may make byelaws to:
  - (a) prevent injury and damage to the bridge.
  - (b) regulate the conduct of all persons using the bridge.
  - (c) regulate the traffic along over and under the bridge and also for regulating the use of the bridge and for prohibiting the use thereof in certain cases and by certain engines carriages vehicles and animals or other classes of traffic and for providing that the bridge may be temporarily closed to road traffic for repairs or other emergencies and for ensuring that road traffic shall not be unreasonably delayed.
  - (d) prohibit the conveyance upon the bridge of any goods which may in the opinion of the Authorities be injurious to or prejudicially affect the use of the same or the traffic to be carried thereon or endanger the safety of the bridge or the passenger and other traffic carried thereon.
  - (e) regulate to the issue and inspection of tickets and collection of tolls.
  - (f) regulate and control the use of the bridge.

### **2 Matters specifically delegated to each council**

- 2.1 Each Council will:

- agree the annual budget for the Tamar Bridge and Torpoint Ferry.
- agree any extra spending outside the budget; and
- take decisions to stop demanding tolls or to reinstate the demand for tolls should they have been previously ceased.

### **3 Matters specifically delegated to each cabinet:**

#### **3.1 Each Cabinet will:**

- recommend the annual business plan and budget to Council as part of the budget process.
- recommend extra spending outside the agreed budget to Council.
- appoint a Cabinet member with responsibility, amongst other things, for the Tamar Bridge and Torpoint Ferry;
- take any decisions about the acquisition/disposal of land for the undertaking; and
- approve major items of capital expenditure (as defined by the authorities from time to time) as part of the capital programme in Plymouth and in Cornwall.

### **4 Matters specifically delegated to the joint committee**

#### **4.1 The Tamar Bridge and Torpoint Ferry Joint Committee will:**

- propose a business plan to Cabinet as part of the annual budget setting process.
- monitor performance of the undertaking against the business plan and recommend variations to the business plan to the Cabinet Members.
- monitor performance of the undertaking to ensure value for money is achieved.
- ensure the management of the Bridge and Ferry accords with proper financial and legal practice appropriate to local authorities.
- make sure proper audit and risk management procedures are in place.
- make sure an appropriate inspection of the Bridge and Ferry takes place on an annual basis; and
- undertake appropriate consultation with key stakeholders.

### **5 Matters specifically delegated to officers**

- 5.1 The Strategic Director for Place in Plymouth is authorised to carry out all other functions in respect of the Tamar Bridge and Torpoint Ferry in accordance with the officer scheme of delegation of functions and in conjunction with the Director for Environment, Planning and Economy in Cornwall.

### **6. Procedures**

- 6.1 The Tamar Bridge and Torpoint Ferry Joint Committee procedures will apply.



## **Devon Assurance Partnership and Joint Committee**

### **1. Functions**

1.1 The Devon Audit Partnership comprises Plymouth City Council Devon County Council and Torbay Council.

1.2 The Audit Partnership provides an internal audit function for the three Councils.

### **2 responsibilities of the devon audit partnership joint committee**

The Joint Committee will:

- Receive and consider reports from the management board, the head of the internal audit partnership, external audit and the host Council.
- Approve the annual accounts of the partnership.
- Approve the budget in respect of the audit partnership functions.
- Approve the annual work programme in respect of the audit partnership functions.
- Approve the appointment and dismissal or removal of the head of the internal audit partnership.
- Approve changes to the partnership client base, trading agreements, charging policies and other necessary matters pertaining to the future operations of the partnership.
- Resolve any disputes that are still unresolved after reference to the Partnership's management board.

### **3 Matters specifically delegated to officers**

The Service Director of Finance is authorised to carry out all other functions in respect of the Devon Audit Partnership in accordance with the officer scheme of delegation of functions.

### **4 Procedures**

The Devon County Council procedures apply to meetings of the Committee.

## **South West Devon Waste Partnership Joint Committee**

### **1 Functions**

- 1.1 The South West Devon Waste Partnership comprises Plymouth City Council, Devon County Council and Torbay Council.
- 1.2 The purpose of the three authorities in establishing the Joint Committee is to facilitate the joint procurement of, and the subsequent operation and management of, facilities for the treatment and disposal of residual waste in pursuance of the waste disposal functions of the three authorities arising under Section 51 of the Environmental Protection Act 1990.
- 1.3 The functions of the Committee are set out in full in the Committee's Joint working Agreement. (The Joint working Agreement is available on request).

### **2. Delegation to the joint committee**

- 2.1 The responsibilities of the Committee are set out in full in the Committee's Joint Working Agreement which is available on request.
- 2.2 The key responsibilities of the Joint Committee are:  
All executive functions and powers of each authority as may be necessary, calculated to facilitate, incidental or conducive to the discharge of the joint procurement of, and the subsequent operation and management of, facilities for the treatment and disposal of residual waste in pursuance of the waste disposal functions of the three authorities arising under Section 51 of the Environmental Protection Act 1990.
- 2.3 The South West Devon Waste Partnership has delegated authority from each of the partners to:
  - take any decision where the Lead Officer of any of the appointing authorities has notified the Chair to the Waste Project Executive in writing of that authority's formal objection to the proposed decision of the Chair of the Waste Private Finance Initiative (PFI) project executive in accordance with clause 8.2.7 of Schedule C of the Joint Working Agreement.
  - agree all evaluation criteria relating to the project.
  - select the preferred bidder.

### **3. Matters specifically delegated to officers**

The Strategic Director for Place of Plymouth City Council in his/her capacity as chair of the Waste PFI project executive is authorised to deal with all other executive functions relating to the partnership in accordance with the officer scheme of delegation of functions.

### **4. Procedures**

- 4.1 Schedule C of the Committee's Joint Working Agreement apply. (The Joint Working Agreement is available upon request)
- 4.2 Standing Orders for Contracts, Financial Regulations and Officer Employment Procedure Rules
- 4.3 The Joint Committee shall operate under the Standing Orders for Contracts, Financial Regulations and Officer Employment Procedure Rules of Plymouth City Council.

#### 4.4 **Quorum**

The quorum of the South West Devon Waste Partnership Joint Committee will be no less than three Members.

## Health and Well Being Board

### 1. Functions

- 1.1 The council's function relating to its Health and Wellbeing Board under Part 5 of the Health and Social Care Act 2012 as amended (2.2 below).

### 2. Responsibilities of health and wellbeing board

- 2.1 The purpose of the Board is to promote the health and wellbeing of all citizens in the City of Plymouth. The Board has three principles of working cooperatively which are to:

- Work together with all city partners and with those we serve to take joint ownership of the sustainability agenda.
- Ensure systems and processes will be developed and used to make the best use of limited resources, every time.
- Ensure partners move resources – both fiscal and human to the prevention and health and wellbeing agenda

- 2.2 The Board will identify and develop a shared understanding of the needs and priorities of local communities in Plymouth through the development of the Plymouth Joint Strategic Needs Assessment (JSNA). Specifically, the Board will ensure that:

- A Joint Health and Wellbeing Strategy for Plymouth is prepared and published to ensure that the needs identified in the JSNA are delivered in a planned, coordinated and measurable way.
- The Plymouth JSNA is based on the best evidence and data available so that it is fit for purpose and reflects the needs of local people, users and stakeholders.
- The JSNA drives the development of the Joint Plymouth Health and Wellbeing Strategy and influences other key plans and strategies across the city.
- Plymouth City Council, NEW Devon Clinical Commissioning Groups and NHS Commissioning Board Area Teams demonstrate how the JSNA has driven commissioning decisions.

- 2.3 The Board will:

- Develop an agreed set of strategic priorities to focus both collective effort and resources across the city.
- Seek assurance that commissioners plans are in place to deliver the Board's strategic priorities and outcomes.
- Review the commissioning plans for healthcare, social care and public health to ensure that they have due regard to the Joint Plymouth Health and Wellbeing Strategy and take appropriate action if they do not.
- Ensure that appropriate structures and arrangements are in place to ensure the effective engagement and influence of local people and stakeholders.
- Represent Plymouth in relation to health and wellbeing issues across the sub regional and at national level.
- Work closely with Plymouth Healthwatch ensuring that appropriate engagement and involvement with existing patient and service user involvement groups takes place.
- Retain a strategic overview of the work of commissioners in the city.
- Support joint commissioning of NHS, social care and public health services and identify those service areas in Plymouth where additional improvements in joint commissioning could achieve the Board's priority outcomes.

- Recommend the development of aligned or pooled budgets and encourage partners to share or integrate services where this would lead to efficiencies and improved service delivery.

### **3. Matters delegated to officers**

- 3.1 The Strategic Director for People is authorised to carry out all other functions in respect of health and wellbeing in accordance with the officer scheme of delegation of functions.

## **4. General**

### **Membership**

- 4.1 The Council's Health and Wellbeing Board is comprised of:

A core membership being -

- The Cabinet Member responsible for Health and Adult Social Care
- The Cabinet Member responsible for Children and Young People
- The lead opposition member
- The Strategic Director of Public Health
- The Strategic Director for People
- The Service Director for Community Connections
- One representative from the Clinical Commissioning Groups
- One representative of the local Healthwatch

Reflecting the approach to engage with customers and other stakeholders over the city's key priorities, the Board will co-opt additional partners which it considers are most likely to be able to work together to deliver the vision. The Board will make recommendations to the city council for appointments to the Board.

- 4.2 The Health and Wellbeing Board is a committee of the council under the Local Government Act 1972. The Local Authority (Public Health, Health and Wellbeing and Health Scrutiny) Regulations 2013 have dis-applied aspects of the Act which have been incorporated into these terms of reference.

- 4.3 The Board will act in accordance with the council constitution unless these conflicts with law.

### **4.4 Meetings**

The Health and Wellbeing Board will meet four times per year which will be reviewed after 12 months. The date, time and venue of meetings will be fixed in advance by the Board and an annual schedule of meetings will be agreed by council. Additional meetings may be convened at the request of the Chair. Meetings will be webcast and utilise social media tools to allow real time interaction with the meeting.

### **4.5 Voting**

In principle, decisions and recommendations will be reached by consensus. In exceptional circumstances and where decisions cannot be reached by a consensus of opinion and/or there is a need to provide absolute clarity on the will of the Board to executive bodies, voting will take place and decisions will be agreed by a simple

majority of all members (councillors and co-opted members) present.

Where there are equal votes the Chair of the meeting will have the casting vote.

#### **4.6 Declaration of Interests**

Members of the Health and Wellbeing Board will promote and support high standards of conduct and as such will be subject to the council's code of conduct. Members of the Board must, before the end of 28 days beginning with the day on which they become a member of the Board, notify the authority's monitoring officer of any disclosable pecuniary interests. Notification of changes to declared interests must be made to the authority's monitoring officer within 28 days of the change taking effect.

#### **4.7 Quorum**

A quorum of one third of all members will apply for meetings of the Health and Wellbeing Board including at least one elected councillor from Plymouth City Council.

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

Health and Wellbeing Board meetings will be regarded as a council committee for Access to Information Act purposes and meetings will be open to the press/public. Freedom of Information Act provisions shall apply to all business.

#### **4.9 Papers**

The agenda and supporting papers will be in a standard format and circulated at least five clear working days in advance of meetings. The minutes of decisions taken at meetings will be kept and circulated to partner organisations as soon as possible and will be published on the city council web site.

#### **4.10 General Rules**

The Health and Wellbeing Board will adhere to the Rules of Debate and General Rules Applying to Committees. Where there are gaps in procedure the Chair will decide what to do.

## **Standards Committee**

### **1. General**

#### **1.1. Definitions:**

- “Complainant” - the party who has made an allegation that a Member has failed to comply with the Members’ Code of Conduct.
- “Independent Person” - a person who is not a Member, co-opted Member or officer of the Council and who has been appointed to the role of Independent Person and whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage of the investigation, or by a Member or co-opted Member against whom an allegation has been made.
- “Investigator” - the person appointed by the Monitoring Officer to undertake the investigation. The investigation officer may be the Monitoring Officer, another officer of the Council, an officer of another authority or an external investigator.
- “Subject Member” - the Member against whom the allegation has been made of a failure to comply with the Code of Conduct.

### **2. Purpose**

- 2.1. To hear cases in accordance with the Council’s procedure for dealing with complaints about Member’s and co-opted members’ conduct.
- 2.2. To decide whether to uphold complaints made against Members having first considered the views of the Independent Person.
- 2.3. To determine what action to take based upon the outcome of the hearing.

### **3. Membership**

- 3.1. All members of the Committee will adhere to the general rules of the Committee.
- 3.2. There are five members of the Committee including the Chair and Vice Chair.

### **4. Proportionality**

- 4.1. The Standards Committee is a proportional committee of council, allocation of seats will be determined through the proportionality calculations.

### **5. Chair**

- 5.1. The Chair will be from the group in administration.

### **6. Vice chair**

- 6.1. The Vice Chair will be from a group in opposition.

### **7. Matters to be considered at the committee**

- 7.1. The Monitoring Officer may refer a matter to the Standards Committee where they consider that the matter is one or more of the following:

- very serious;
- a conflict of interest has arisen;
- the matter is particularly complex;
- the matter is potentially going to attract a high level of public interest;
- the matter is politically sensitive.

## 8. Referral of the matter to committee

8.1. Where the Monitoring Officer considers a standards matter should be referred to the Standards Committee (“Committee”) for determination they will convene a meeting of the Committee as soon as reasonably practicable.

8.2. The Monitoring Officer shall prepare a summary report for the Committee detailing:

- The complaint and information supporting it.
- The provisions of the code engaged by the allegations.
- Any comments of the Subject Member.
- A summary of the findings of the investigation report.
- A summary of the views of the Independent Person.
- Details of any efforts made to resolve the matter informally.

8.3. The Independent Person is invited to attend all meetings of the Committee.

8.4. The Committee will consider directions to enable the matter to proceed to a final hearing.

## 9. Procedure

9.1. The Investigator will attend the Standards Committee to present his/her investigation report and may invite the Complainant to appear as a witness or call other witnesses.

9.2. The following people<sup>3</sup> will also be invited to attend the Standards Committee:

- The Complainant;
- The Subject Member;
- The Independent Person;
- Any witnesses; or
- Any other person as determined by the Chair of the Committee and/or the Monitoring Officer.
- The Subject Member may bring witnesses (of a number the Committee considers is reasonable), in which case written statements from the witnesses must be lodged with the Monitoring Officer at least 10 working days before the hearing. “Character witnesses” who cannot provide evidence on the matter complained about will not be permitted. The cost of any attendance/representation must be borne by the party concerned.

9.3. All written evidence must be provided to the Monitoring Officer at least 5 working days before the hearing so it can be circulated to the Committee, the Independent Person, the Investigator, the Subject Member and the Complainant.

<sup>3</sup> No person shall sit on a full hearing if they have previously considered any element of the complaint in order to avoid any potential conflict of interest.



- 9.4. Written statements will not be read out at the hearing as it will be assumed all those present are already familiar with their contents.
- 9.5. The Monitoring Officer can speak at any time to advise the Committee on technical matters or ask questions of any party.
- 9.6. The Chair of the Committee will introduce the members of the Committee, the Independent Person, officers, the Subject Member, the Investigator and the Complainant, if present.
- 9.7. The Chair will explain the reason for the meeting and outline the procedure to be followed. The Chair may choose to vary this procedure in any particular instance where they are of the opinion that such a variation is necessary in the interests of fairness.
- 9.8. The Chair will also explain that the hearing will normally be held in public unless the Committee exercises its discretion for the matter to be considered in private in accordance with the provisions of Rule 10 of the Access to Information Procedure Rules relating to exempt information. If the meeting is to be held in private the press and public will be excluded<sup>4</sup>.
- 9.9. The Chair will then confirm that all those involved understand the procedure to be followed and ask if there are any preliminary procedural issues which anyone wishes to raise before the hearing begins.
- 9.10. If any procedural issues are raised, the Committee will hear representations on them before determining them.
- 9.11. If the Subject Member is not present at the start of the hearing, the Committee will consider any reasons given by them for their non-attendance. If the Committee is satisfied that there is good reason for their non-attendance, it may adjourn to another date, or proceed on the request of the Subject Member.
- 9.12. If the Committee is not satisfied that there is good reason for the Subject Member's non-attendance, or if the Subject Member has failed to give any reason for their non-attendance, the Committee can decide to consider the matter and make a determination in the absence of the Subject Member, or to adjourn the Hearing to another date.
- 9.13. The Investigator will be invited to summarise their report and findings and make any representations about the written pre-hearing submission of the Subject Member. The Investigator may call any witnesses, including the Complainant.
- 9.14. The Committee will identify the areas of disagreement between the Investigator and the Subject Member on the Investigation report's facts or conclusions.
- 9.15. The Subject Member will then be invited to make representations in support of the fact(s) concerned and whether the evidence gives rise to a breach or breaches of the Code of Conduct.
- 9.16. The Committee and/or the Independent Person may also ask questions of anyone present at the meeting in order to reach a conclusion on the complaint.

<sup>4</sup> The Committee may invite people to remain in the meeting if it is considered that they could provide information relevant to the complaint.

- 9.17. The Subject Member and the Investigator/Complainant will be given the opportunity to make closing statements if they wish to do so.
- 9.18. Before reaching a final decision on the complaint, the Committee must seek, and take account of, the view of the Independent Person in relation to the complaint.
- 9.19. The Committee and the Independent Person will retire to consider what they have heard in private accompanied only by the clerk and legal advisor, who will advise them when required.
- 9.20. If the Committee is unable to reach a conclusion on the complaint on the basis of the information before it, it may adjourn the meeting and request that the Monitoring Officer seeks the further information required. However, when doing so the Committee should consider whether the information will be readily available to the Monitoring Officer.

## **10. Decision**

- 10.1. Once the Committee is satisfied with the information before it, it must decide the following issues:
  - Whether the Subject Member has failed to comply with the Members' Code of Conduct;
  - Whether further action is warranted; and
  - What form of action might be appropriate.
- 10.2. The Chair will then announce to all present at the Hearing the Committee's decision whether the Subject Member has failed to comply with the Code of Conduct, whilst setting out the facts upon which the conclusions have been reached.
- 10.3. If the Committee decides that the Subject Member has not failed to follow the Code of Conduct, the Committee will then consider whether it should make any recommendations to the Council.
- 10.4. If the Committee concludes that, on the balance of probabilities, the Subject Member did not fail to comply with the Members' Code of Conduct, this will conclude the complaints process. In such cases no further action will be taken in respect of the complaint, although the Committee may still wish to consider making a recommendation to the authority with a view to promoting and maintaining high standards of conduct in general.
- 10.5. If the Committee concludes that, on the balance of probabilities, the Subject Member has failed to comply with the Members' Code of Conduct, the Committee must go on to consider whether action should be recommended in respect of the Subject Member, and what form of action might be appropriate. Before doing so, the Committee may hear further representations from the Subject Member and the Independent Person. Such recommendations may include proposed changes to internal procedures and practices or training for Members in general.
- 10.6. The recommendations available to the Committee include<sup>5</sup> but are not limited to:
  - Recommend to the Council that it should make a motion of censure in relation to the Subject Member's conduct; or

<sup>5</sup> The committee may not decide to disqualify or suspend the Subject Member as a councillor.

- Recommend to the leader of the Subject Member's political group (where the Subject Member is a member of a political group or otherwise to the Council) that the Subject Member be removed from any or all Committees or Sub-Committees of the Council (subject to statutory and constitutional requirements).
- In the case of a Cabinet Member recommend to the Leader of the Council that the Subject Member be removed from the Cabinet.
- In the case of the Leader recommend to the Council that the Subject Member be replaced as Executive Leader;
- Recommend to full Council or Cabinet that the Subject Member be removed from all outside appointments to which the Subject Member has been appointed or nominated by the Council.

10.7. Furthermore the Committee may –

- Send a formal letter to the Subject Member from the Chair of the Standards Committee;
- Reprimand the Subject Member;
- Request the Subject Member remove any social media content which led to the complaint;
- Request that the Subject Member be required to make an apology at full Council;
- Publish its findings in respect of the Subject Member's conduct;
- Report its findings to full Council for information and noting;
- Instruct the Monitoring Officer to arrange training for the Subject Member, which the Subject Member is obliged to attend;
- Exclude the Subject Member from the Council's offices or other premises (if reasonable in response to the acts complained of and provided it does not prevent the Subject Member from carrying out their duties as a councillor), with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

10.8. The Committee has no power to suspend or disqualify the Subject Member or to withdraw Members' or special responsibility allowances.

10.9. The Committee may make a recommendation in relation to one or more of the above sanctions to full Council or, if appropriate, the Group Whip.

10.10. The Committee may also make general recommendations to the authority with a view to promoting and maintaining high standards of conduct within the authority. As stated above, such recommendations may include proposed changes to internal procedures and practices or training for Members in general. The Monitoring Officer will be responsible for communicating such recommendations to the relevant Committee or officer for consideration.

10.11. Within five working days of the meeting the Chair of the Committee will write to the complainant and the Subject Member explaining the final decision of the Committee and detailing any recommendations made.

10.12. There is no right of appeal against a decision of the Committee.

## **General Rules Applying to Committees**

### **1. The extent of these rules**

These procedures apply to the:

- Appointments panel
- Employment appeals panel
- Audit and governance committee
- Chief officers committees
- Licensing committee
- Licensing sub-committee
- Taxi licensing sub-committee
- Planning committee
- Scrutiny Committees

### **2. Appointment of committees**

Council is responsible for appointing and dissolving committees which undertake council functions and for agreeing their membership and roles unless the law says otherwise.

There must always be at least one scrutiny committee, an independent remuneration panel and a committee which carries out responsibilities under the Licensing Act 2003 and the Gambling Act 2005.

Committees may appoint sub-committees and working groups and stipulate membership requirements.

### **3. Conduct of debate**

The Chair, in line with guidance and protocols, will ensure all members are heard and that the meeting is conducted efficiently.

### **4. Notice of and summons to meetings**

The public will be notified of the time and place of any meeting in accordance with the [Access to Information Rules](#). At least five clear working days before a meeting, Governance Advisors will send a summons electronically to every member of the committee. The summons will give the date, time and place of each meeting and specify the business to be transacted and will be accompanied by such reports as are available.

### **5 Chair of meeting**

The person presiding at a meeting of a Council committee will exercise any power or duty of the Chair.

## 6. Quorum and substitutes

- 6.1 Members of the committees can send other Councillors (who must belong to the same political group) to the meeting as substitutes, unless the law doesn't allow it. Substitutes have the powers of an ordinary member of the committee.
- 6.2 Substitutions must be for a whole meeting. A member cannot take over from their substitute or hand over to them part of the way through.
- 6.3 If a member wants to send a substitute, they must tell the Monitoring Officer before the meeting.
- 6.4 Substitutes cannot send substitutes of their own.

Committee	Quorum	Substitutes	Relevant training required?
Audit and Governance Committee	Four	Any member	ü
Chief Officers Committees	Three	Any member	ü
Licensing committee	Five	None	ü
Licensing sub-committee	Three	Any member of the general licensing committee	ü
Taxi licensing committee	Three	Any member	ü
Planning committee	Three	Any member	ü

### Joint committees

Committee	Quorum	Substitutes	Relevant Training required?
South West Devon Waste Partnership	Three (one from each authority)	Any Cabinet member	
Tamar Bridge and Torpoint Ferry Joint Committee	Four (two from each authority)	Named substitutes allowed	
Devon Audit Partnership	3 members including one from each partner authority	Any member	

## **Vacancies on committees**

Procedure when a Councillor resigns from a committee.

- 7.1 A Councillor can resign from a committee by writing to the Monitoring Officer or their deputy. The political groups can nominate a replacement who will take up their position immediately. Their replacement will be confirmed at the next Council meeting.

## **Procedure when someone stops being a Councillor.**

- 7.2 If someone stops being a Councillor, the political groups can nominate a replacement who will take up their position immediately. The replacement committee member(s) will be confirmed at the next Council meeting.

## **8. Chair and vice-chair**

### **8.1 Election of chair and vice-chair**

The Council will elect a chair and a vice-chair for each committee at the annual meeting.

### **8.2 Absence of the Chair and Vice Chair**

If the chair and vice-chair are absent, a committee can elect another Councillor to chair the meeting. If the chair or vice-chair arrives part of the way through the meeting, the acting chair will finish the item of business being conducted; the Chair or Vice Chair will then conduct the remaining business.

### **8.3 Resignation of the Chair and Vice Chair**

If a Councillor wants to resign as chair or vice-chair, they must write to the Monitoring Officer. A new chair or vice-chair will be elected at the next ordinary Council meeting.

## **9. Committee meetings**

### **9.1 Cancelling a meeting.**

If a committee has no business at one of its fixed meetings, the Monitoring Officer or their deputy can cancel it after consulting the chair.

### **9.2 Extraordinary Meetings**

The Monitoring Officer or their deputy can arrange a special meeting after consulting the chair. Special meetings will only deal with the business they have been called to deal with.

### **9.3 Speaking on an agenda item.**

Where the press and the public are not excluded, any member of the public and any city Councillor can speak on any agenda item for up to five minutes if the chair agrees (unless the law, this constitution, the planning code of practice or the licensing procedure do not allow it).

### **9.4 Minutes**

At the first meeting when the minutes are available, the chair will move that the minutes are correct and sign them. The committee will not discuss anything arising from the minutes.

#### **9.5 Planning Committee**

The planning committee has adopted a code of practice which provides details on public speaking and the operation of the committee.

#### **9.6 Licensing committee and licensing sub-committee**

These Committees follow the procedures in the Licensing Act 2003 and the Gambling Act 2005, as amended.

#### **9.7 Co-opted members – voting rights.**

Co- opted members will not normally have voting rights apart from the statutory co- opted members of the Overview and Scrutiny Committees.

#### **9.8 Gaps in these procedures**

If there is a gap in these procedures the Chair will decide what to do.

# **PART F: ACCESS TO INFORMATION RULES**



## **Access to Information Rules**

### **1. Scope**

- 1.1. These rules apply to all meetings of the Council, the Cabinet and its committees including the Overview and Scrutiny Committees and Audit Committee and regulatory committees (together called meetings).

### **2. Additional rights to information**

- 2.1. These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.
- 2.2. The public can attend meetings, except when confidential or exempt information is being discussed, unless the law says otherwise.

### **3. Exceptions to the public's right to attend meetings**

- 3.1. The Council and committees must meet in private when confidential information is likely to be discussed, confidential information is information which is prevented from being made public by a court order or a government department that has provided the information.
- 3.2. The Council and committees can meet in private when exempt information is likely to be discussed. Information is exempt if it would not be in the public interest to publish it and it falls into one or more of the categories set out below identified in the Local Government Act 1972 (as amended).

Category	Condition
<p>1. Information relating to an individual</p>	<p>Information is not exempt information unless it relates to an individual of that description i.e. it must relate to and be recognisable as referring to a particular living individual in the roles indicated.</p> <p>Information is only exempt:</p> <ul style="list-style-type: none"> <li>(a) where disclosure is prohibited by statute; or</li> <li>(b) where disclosure might involve providing personal information about individuals”, or</li> <li>(c) where disclosure might breach a duty of confidentiality; and</li> <li>(d) in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</li> </ul>
<p>2. Information which is likely to reveal the identity of an individual</p>	<p>Condition as above.</p>
<p>3. Information relating to the financial or business affairs of any particular person (including the authority holding the information) “Financial or business affairs” includes contemplated, as well as past or current, activities.</p> <p>This category will include commercial and contractual interests.</p>	<p>Information is not exempt information if it is required to be registered by law e.g. Companies Act 1985, the Charities Act 1993 etc.</p> <p>Information is only exempt if and for so long as:</p> <ul style="list-style-type: none"> <li>(a) disclosure of the amount involved would be likely to give advantage to a person entering into or seeking to enter into a contract with the Council in respect of property, goods or services whether the advantage would arise as against the Council or as against other persons, or</li> <li>(b) disclosure would prejudice the efficiency and effectiveness of the use of Council resources; or</li> <li>(c) disclosure of trade secrets and other information would, or would likely, prejudice the commercial interests of any person, including the Council; and</li> <li>(d) in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information</li> </ul>

<p>4. Information relating to any consultation or negotiations or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority</p>	<p>Information is only exempt if and for so long as its disclosure to the public:</p> <p>(a) would prejudice the Council in those or any other consultations or negotiations in connection with a labour relations matter; and</p> <p>(b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</p>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings</p>	<p>Information is only exempt:</p> <p>(a) where a claim of legal professional privilege could be maintained in legal proceedings e.g. correspondence such as legal advice and assistance between the Council's Legal Services and its client; and</p> <p>(b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</p>
<p>6. Information which reveals that the authority proposes:</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person, or</p> <p>(b) to make an order or direction under any enactment</p>	<p>Information is exempt only if and as long as:</p> <p>(a) disclosure to the public might afford an opportunity to a person affected by the notice, order or direction to defeat the purpose or one of the purposes for which the notice order or direction is to be given or made; and</p> <p>(b) in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</p>
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>	<p>Information is only exempt if its disclosure would, or would be likely to, prejudice:</p> <p>(a) criminal investigation and proceedings; or</p> <p>(b) the apprehension or prosecution of offenders; or</p> <p>(c) the administration of justice; or</p> <p>(d) the assessment or collection of any tax or duty or of any imposition of a similar nature; or</p> <p>(e) regulatory enforcement; or</p> <p>(f) any civil proceedings; or</p> <p>(g) health and safety; or</p> <p>(h) information obtained from confidential sources; and</p> <p>(i) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</p>

3.3. At general licensing and licensing sub-committee meetings, there are extra categories of information which can be heard in private.

3.4. If the Monitoring Officer expects that a report will be considered in private because it contains exempt or confidential information it will not be made available to the public. It will be marked “not for publication” and will say what category of information is involved.

#### **4. Notices of meeting**

- 4.1. The Council will give at least twenty-eight days’ notice of any meeting of the Cabinet or a committee of Cabinet which is likely to consider confidential or exempt information by posting details of the meeting at its designated office and on the Council’s website. This notice will give details of why the Council intends to hold the meeting in private.
- 4.2. The Council will give a further notice of its intention to hold part of a meeting in private at least five days before the meeting, including details of any representations that have been received about why the meeting should be open to the public; and a statement of the Council’s response to such representations.
- 4.3. If the date by which a meeting must be held means it is not practicable to give the notices set out in 5.1 and 5.2 the meeting can only take place in private if the Chair of the relevant Overview and Scrutiny Committee (or in his /her absence the Lord Mayor or in the absence of both the Deputy Lord Mayor) agrees that the meeting is urgent and it is not reasonable to defer it.
- 4.4. The Council will give at least five clear working days’ notice of any other Council or Committee meeting by posting details of the meeting at the Council House (the designated offices) and on the Council’s website.

#### **5. Access to agenda and reports before the meeting**

- 5.1. The agenda and reports will be available at the designated office or on the Council’s website at least five clear working days before a meeting. If an item is added later, any report relating to that item will be made available as soon as it is added.
- 5.2. Copies of the agenda, reports and background papers will be made available for public inspection. The agenda and reports will also be available on the Council’s website.
- 5.3. Councillors will receive the papers in advance for any committee of which they are members.

#### **6. Supply of copies**

6.1. The Council will supply copies of:

- any agenda and reports which are open to public inspection;
- any further statements or particulars necessary to indicate the nature of the items in the agenda; and if the Monitoring Officer designates, copies of any other documents supplied to Councillors in connection with an item to any person on payment of a charge for postage and any other administration costs.

#### **7. Access to minutes and records after the meeting**

- 7.1. For the six years following a meeting the Council will make available at its designated office and on its website copies of:
  - the date and minutes of the meeting [or date and records of delegated decisions taken], together with reasons, except for items that were considered in private because they contain exempt or confidential information;
  - a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
  - the agenda for the meeting; and

- reports relating to items when the meeting was open to the public.
- Extra information in relation to Cabinet decisions and decisions about executive functions.
- The record of an executive decision will include the following details:
- details of any alternative options considered and rejected by the decision making body or person;
- a record of any conflict of interest that was declared by a Cabinet member who made the decision and a note of dispensation from the head of paid service in respect of it
- a record of a conflict of interest declared by a Cabinet member who was consulted by the decision maker which relates to the decision and a note of dispensation from the head of the paid service in respect of it.

7.2. The Council will supply copies of these records and minutes to any person on payment of a charge for postage and any other administrative costs.

## **8. Background papers**

8.1. Each report will include a list of background papers. Background papers are papers which have been relied on when writing the report. They do not include published works or documents which contain exempt or confidential information

8.2. The Council will make available for public inspection at its designated office and on its website for four years after the date of the meeting one copy of each of the documents on the list of background papers.

## **9. Summary of public's rights**

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

## **10. Additional rights of access for councillors**

10.1. All Councillors will be entitled to inspect any document which is in the possession or under the control of any committee of the Council including the Cabinet and contains material relating to any business previously transacted at a meeting unless it contains confidential or exempt information.

10.2. Any councillor is entitled to inspect any documents in the possession of or under the control of Cabinet (apart from draft documents) that are relevant to:

- decisions to be taken by the Cabinet in public or
- decisions taken by the Cabinet in private or
- decisions to be taken by individual Cabinet members
- key decisions taken by officers.
- But this does not apply to:
- information about individuals
- information about the possible terms of a contract the council is negotiating
- labour relations information
- information that could be considered legally privileged
- information about action to deal with a crime
- advice given by a political assistant.
- Any document in draft form (except for consultation drafts).

10.3. Councillors must not pass on exempt information that has not been made public or confidential information. If they do this, they may be breaking the law and the members' code of conduct.

## **11. Overview and scrutiny committees/panels access to documents**

11.1. Overview and Scrutiny Committees/sub-committees) will be entitled to copies of any document which is in the possession or control of the Cabinet and any Cabinet committees and which contains material relating to any business transacted at a public or private meeting of that committee; or any decision taken under delegated powers.

11.2. The Overview and Scrutiny Committees/sub-committees will not be entitled to:

- any part of a document which contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
- the advice of a political advisor.

11.3. Requests for the documents by the Overview and Scrutiny Committees/sub-committees should be sent in writing to the Monitoring Officer at the Council's designated office and the requested documents will be supplied no later than 10 clear days after the request has been received.

## **12. Procedure before taking key decisions**

12.1. When a key decision is taken, it must first have been published in the Forward Plan unless it is urgent.

12.2. If a key decision is taken by the Leader or the Cabinet, the report must say that it is a key decision.

## **13. The forward plan**

13.1. To comply with the law, a notice informing the public that a key decision is due to be taken, must be published at least 28 days before the decision is made. Upon publication, the notices will be circulated, electronically to all councillors.

13.2. The Forward Plan will contain matters which the Cabinet has reason to believe will be subject to a key decision to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, officers or under joint arrangements in the course of the discharge of an executive function. It will describe the following particulars in so far as the information is available or might reasonably be obtained. The Forward Plan will list any key decisions that are expected to be taken. For each decision it will say:

- what the decision is about
- where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership who will take the decision;
- the date on which, or the period within which, the decision will be taken when the decision will be taken;
- the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter and the date by which those steps must be taken

- a list of the documents submitted to the decision taker for consideration in relation to the matter which documents the decision takers have been given to consider.
- the address where the documents are available
- a statement that other documents may be submitted to the decision maker
- the procedure for obtaining access to additional documents
- The Forward Plan must be made available for inspection by the public at the designated Council offices and on the website at least 28 days before the date that the first key decision shown on it is due to be made.

13.3. The Forward Plan will include information (28 days before an exempt/confidential item is taken at the Cabinet) about why the item will be discussed in private. It will also give details about how to make representations about why that part of the meeting should be open to the public. At least 5 days before the meeting, the Council should review the reasons for discussing the item in private and respond to any representations.

#### **14. Urgent key decisions**

14.1. If a key decision has not been included in the Forward Plan, it can still be taken if it is not practicable to put it in the next plan.

14.2. Before taking a key decision that has not been included in the Forward Plan, the Monitoring Officer must give written notice to the Chair of the relevant Overview and Scrutiny Committee or, in his/her absence every member of the Board. A copy of the notice must be made available to the public at the Council's offices.

14.3. The decision cannot normally be taken until five clear working days after the notice is given.

14.4. But the decision can be taken earlier if the Chair of the relevant Overview and Scrutiny Committee (or in his /her absence the Lord Mayor or in the absence of both the Deputy Lord Mayor) agrees that the decision is urgent and it is not reasonable to defer it.

#### **15. Reports to council**

15.1. If the relevant Overview and Scrutiny Committee or five of its members, or its Chair think that a key decision has been taken that was not treated as a key decision; it can require the Cabinet to provide a report to Council.

15.2. The Cabinet will prepare a report for submission to the next available Council meeting. However, if the next meeting of the Council is within 7 days of the request for Cabinet to report to Council, then the report may be submitted to the meeting after that. The report to Council will say what the decision was, who took it, and if the Cabinet is of the opinion that it was not a key decision the reasons for that opinion.

15.3. The Leader will make an annual report to Council on any urgent key decisions that have been taken during that period. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

PLYMOUTH CITY COUNCIL CONSTITUTION

**PART G: CODES AND  
PROTOCOLS**



## **Councillors Code of Conduct**

1. Plymouth City Council has adopted this code which sets out the conduct expected of elected and co-opted members of the council.

### **2. Definitions**

- 2.1. For the purposes of this Code of Conduct, a “councillor” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who –
  - I. is a member of any committee or sub-committee of the authority or;
  - II. is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority; and
  - III. who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

### **3. Purpose of the Code of Conduct**

- 3.1. The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct.
- 3.2. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

### **4. General principles of councillor conduct**

- 4.1. Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.
- 4.2. Building on these principles, the following general principles have been developed specifically for the role of councillor.
- 4.3. In accordance with the public trust placed in me, on all occasions:
  - I act with integrity and honesty
  - I act lawfully
  - I treat all persons fairly and with respect; and
  - I lead by example and act in a way that secures public confidence in the role of councillor.
- 4.4. In undertaking my role:
  - I impartially exercise my responsibilities in the interests of the local community
  - I do not improperly seek to confer an advantage, or disadvantage, on any person
  - I avoid conflicts of interest
  - I exercise reasonable care and diligence; and
  - I ensure that public resources are used prudently in accordance with my local authority’s requirements and in the public interest.

### **5. Application of the Code of Conduct**

- 5.1. This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

5.2. This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- I. you misuse your position as a councillor
- II. your actions would give the impression to a reasonable member of the public with knowledge of all the facts, that you are acting as a councillor
- III. there is a clear link to a local authority function

5.3. The Code applies to all forms of communication and interaction, including:

- I. at face-to-face meetings
- II. at online or telephone meetings
- III. in written communication
- IV. in verbal communication
- V. in non-verbal communication
- VI. in electronic and social media communication, posts, statements and comments.

5.4. On social media there must be a link within the individual posting or thread to your role as a councillor or to local authority business. Even if you do not describe yourself as a councillor you may fall within the scope of the code if you are discussing local authority business.

5.5. You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor. Expressions of political opinion not related to Council business will not necessarily invoke the Code.

5.6. The Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from the Monitoring Officer on any matters that may relate to the Code of Conduct.

## 6. Standards of councillor conduct

6.1. This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

6.2. Guidance is included to help explain the reasons for the obligations and how they should be followed.

## General Conduct

### 7. Respect

#### As a councillor:

- I. I treat other councillors and members of the public with respect.**
- II. I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

7.1. Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

7.2. In your contact with the public, you should treat them politely and courteously.

7.3. As a Councillor, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media

provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

## **8. Bullying, harassment and discrimination**

### **As a councillor:**

- I. I do not bully any person.**
- II. I do not harass any person.**
- III. I do not do anything to break equality laws.**
- IV. I do not discriminate unlawfully against any person.**

- 8.1. The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.
- 8.2. The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.
- 8.3. Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 8.4. The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

## **9. Impartiality of officers of the council**

### **As a councillor:**

- I. I do not seek to compromise the impartiality of anyone who works for, or on behalf of, the local authority.**

- 9.1. Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

## 10. Confidentiality and access to information

As a councillor:

- I. I do not disclose information:
  - a. given to me in confidence by anyone;
  - b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature;
- II. unless
  - a. I have received the consent of a person authorised to give it;
  - b. I am required by law to do so;
  - c. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person;
  - d. Or, the disclosure is:
    - i. reasonable and in the public interest; and
    - ii. made in good faith and in compliance with the reasonable requirements of the local authority; and
  - e. I have consulted the Monitoring Officer prior to its release.
- III. I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.
- IV. I do not prevent anyone from getting information that they are entitled to by law.

10.1. Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

10.2. Before making any disclosure you must comply with the Council's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

10.3. Details of the Council's whistleblowing are available at the following link  
<https://tinyurl.com/3bmez4hm>.

10.4. All UK public sector organisations are now using the same document classification scheme to identify the sensitivity of information contained in a particular document. Using this standardised scheme helps to improve the Council's data security and reduces risk of breaches. There are two classifications to use:

- OFFICIAL
- OFFICIAL: SENSITIVE

10.5. Details of the document classification in use at the council is available at the following link  
<https://tinyurl.com/3uj7fdsw>.

## 11. Disrepute

As a councillor:

- I. I do not bring my role or local authority into disrepute.

11.1. As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local

authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute. Conduct which directly and significantly undermines the authority's reputation as a good employer or responsible service provider could be a situation that might give rise to you bringing the role of councillor or the authority into disrepute.

11.2. You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

## **12. Use of position**

### **As a councillor:**

- I. I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

12.1. Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

## **13. Use of local authority resources and facilities**

### **As a councillor:**

- I. I do not misuse council resources.**
- II. I will, when using the resources of the local or authorising their use by others:**
  - a. act in accordance with the local authority's requirements; and**
  - b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

13.1. You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor. Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

13.2. These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

## **14. Complying with the Code of Conduct**

### **As a councillor:**

- I. I undertake Code of Conduct training provided by my local authority.**
- II. I cooperate with any Code of Conduct investigation.**
- III. I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**

14.1. It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its

governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

## Protecting your reputation and the reputation of the local authority

### 15. Interests

#### As a councillor:

##### I. I register and declare my interests.

15.1. Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

15.2. You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable.

15.3. You are personally responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

15.4. You should note that failure to register or declare a disclosable pecuniary interest as set out in Table I is a criminal offence under the Localism Act 2011.

15.5. Appendix B sets out the detailed provisions on registering and declaring interests. If in doubt, you should always seek advice from your Monitoring Officer.

### 16. Gifts and hospitality

#### As a councillor:

- I. **I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**
- II. **I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
- III. **I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

16.1. In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality.

16.2. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

## **Appendix A – The Seven Principles of Public Life**

The principles are:

### **1. Selflessness**

Holders of public office should act solely in terms of the public interest.

### **2. Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### **3. Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **4. Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **5. Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **6. Honesty**

Holders of public office should be truthful.

### **7. Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## **Appendix B**

### **Registering interests**

#### **1. Disclosable Pecuniary Interests**

- 1.1. Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) which are described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”. You should also register details of your other personal interests which fall within the categories set out in Table 2 (Other Registerable Interests).
- 1.2. “Disclosable Pecuniary Interest” means an interest of yourself, or of your partner if you are aware of your partner’s interest, within the descriptions set out in Table 1 below.
- 1.3. “Partner” means a spouse or civil partner, or a person with whom you are living as husband and wife, or a person with whom you are living as if you are civil partners.
- 1.4. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
- 1.5. A ‘sensitive interest’ is an interest which, if disclosed, could lead to the councillor or a person connected with the councillor, being subject to violence or intimidation.
- 1.6. Where you have a ‘sensitive interest’ you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

#### **Non participation in case of disclosable pecuniary interest**

- 1.7. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in Table 1, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to declare the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
- 1.8. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

#### **2. Disclosure of Other Registerable Interests**

- 2.1. Where a matter arises at a meeting which directly relates to the financial interest or well-being of one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting, you may remain in the room in an area designated for the public but otherwise must not take part in any discussion or vote on the matter unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest.

#### **3. Disclosure of Non-Registerable Interests**

- 3.1. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you may remain in the



room in an area designated for the public but must not take part in any discussion or vote on the matter unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

3.2. Where a matter arises at a meeting which affects –

- your own financial interest or well-being;
- a financial interest or well-being of a relative or close associate; or
- a financial interest or well-being of body included under Other Registerable Interests as set out in Table 2

3.3. you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

3.4. Where the matter (referred to in paragraph 8 above) affects the financial interest or well-being:

- to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

3.5. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you may remain in the room in an area designated for the public but you must not take part in any discussion or vote on the matter unless you have been granted a dispensation.

3.6. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

3.7. Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

**Table 1: Disclosable Pecuniary Interests**

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

<b>Subject</b>	<b>Description</b>
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain.
<b>Sponsorship</b>	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
<b>Contracts</b>	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council — (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
<b>Land and Property</b>	Any beneficial interest in land which is within the area of the council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.
<b>Licences</b>	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer
<b>Corporate tenancies</b>	Any tenancy where (to the councillor's knowledge) — (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.

<b>Securities</b>	<p>Any beneficial interest in securities* of a body where —</p> <p>(a) that body (to the councillor’s knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either —</p> <p>(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>
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- \* ‘director’ includes a member of the committee of management of an industrial and provident society.
- \* ‘securities’ means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

**Table 2: Other Registerable Interests**

<p>a) any unpaid directorships</p> <p>b) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority</p> <p>c) any body</p> <ul style="list-style-type: none"><li>(i) exercising functions of a public nature</li><li>(ii) directed to charitable purposes or</li><li>(iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)</li></ul> <p>of which you are a member or in a position of general control or management.</p> <p>d) any secret society or similar organisation of which you are a member or are involved in its management</p>
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## Arrangements for handling allegations under the Code of Conduct against Members of Plymouth City Council (“the Council”)

### 1. Introduction

- 1.1. This procedure applies to complaints about alleged breaches of the Code of Conduct by Members of Plymouth City Council, pursuant to Section 28 of the Localism Act 2011.
- 1.2. For the purposes of this procedure the person who makes the complaint is described as “the Complainant” and the person about whom the complaint is made is “the Member”. In this procedure “Member” includes “Co-opted Member”.
- 1.3. The adopted code of conduct for Members is attached at appendix A to these arrangements and is also available in the constitution on the council’s website.

### 2. Summary of how the procedure works

#### 2.1. *Stage 1 – Making a complaint*

- 2.2. In order to make a complaint you must send your complaint in writing to the Monitoring Officer (see paragraph 1.1 below for details of how to do this and where to send your complaint).

#### 2.3. *Stage 2 – Assessment of your complaint*

- 2.4. If informal resolution is not possible the Monitoring Officer will assess the complaint and decide whether to investigate the allegations contained in it. If the Monitoring Officer decides that the complaint should be investigated, he/she will undertake a process (details of which are set out below) to determine whether or not the complaint is upheld. If the complaint is not to be investigated the Monitoring Officer will write to you to explain why. In some cases, the Monitoring Officer may consider informal resolution of your complaint if appropriate.

#### 2.5. *Stage 3 – Investigation of the complaint*

- 2.6. If the Monitoring Officer does investigate your complaint, the final summary investigation report and finding will be published on the Authority’s website. In cases where the Monitoring Officer upholds your complaint, he/she will consult with the Council’s Standards Advisory Group on what if any sanctions should be imposed in respect of the breach.
- 2.7. There are no appeal mechanisms within this procedure. Should you be dissatisfied with the Monitoring Officer’s decisions and/or actions at any point, a member of the public may complain to the Local Government Ombudsman or to the courts.

### 3. *Stage 1 – Making a complaint*

- 3.1. How to complain about Member conduct and what you and the Member are told after you have made a complaint

How to complain

- 3.2. If you want to complain that a Member of the Authority has breached the Authority’s Code of Conduct you must make your complaint in writing;

- 3.3. You can do this by completing a complaint form, which you can obtain by telephoning 01752 305403 or contacting the Monitoring Officer by email at [democratic.support@plymouth.gov.uk](mailto:democratic.support@plymouth.gov.uk) The complaint form explains what information you should include in the form.
- 3.4. You are not, however, required to use the complaint form, and can make your complaint in writing to: The Monitoring Officer, Plymouth City Council, Civic Centre, Plymouth, PL1 2AA or [democratic.support@plymouth.gov.uk](mailto:democratic.support@plymouth.gov.uk)
- 3.5. If you do not use the complaint form and write to the Monitoring Officer instead you should clearly set out the following information in your letter:
- the name of the Member you believe has breached the Code of Conduct;
  - what the Member has done that you believe breaches the Code of Conduct, and which paragraphs of the Code you believe they have breached. (If you are complaining about more than one Member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct).
  - you should be specific, wherever possible, about exactly what you are alleging the Member said or did;
  - you should provide the dates of the alleged incidents wherever possible. if you cannot provide exact dates it is important to give a general timeframe;
  - you should confirm whether there were any witnesses to the alleged conduct and provide their names and contact details if possible;
  - you should provide any relevant background information;
  - you should say what action you think would be appropriate to resolve your complaint;
  - you should say whether you would like your identity and the details of your complaint to be kept from the Member(s) you are complaining about and, if so, explain why. Any such request will be taken into account but your anonymity cannot be guaranteed.

What happens once you submit a complaint?

- 3.6. All complaints about Member conduct will be dealt with by the Authority's Monitoring Officer.
- 3.7. If the Monitoring Officer is unsure whether you are actually making a complaint, or any details of your complaint, he/she will contact you to clarify.
- 3.8. If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the police or other regulatory agencies. In particular, a breach of the process around Disclosable Pecuniary Interests is in most instances a criminal offence which should be investigated by the Police.

What you and the Member are told next

- 3.9. If the Monitoring Officer is clear that you are making a complaint that a Member of the Authority has breached the Authority's Code of Conduct, where the Monitoring Officer considers it appropriate, he/she will try to resolve your complaint informally (see Stage 2 below).
- 3.10. If informal resolution is not appropriate or is unsuccessful, the Monitoring Officer will:
- write to you to acknowledge that he/she has received your formal complaint and to inform you that the Member you are complaining about will usually be provided with your

- identity, unless you write back within 5 working days asking for this not to happen; and
- unless there are good reasons not to, write to the Member you are complaining about;
- stating that a formal complaint has been made against them;
- providing them with your name (unless you have asked that this information is not provided and/or the Monitoring Officer considers there are good reasons not to provide it);
- stating the relevant paragraphs of the Code you believe the Member has breached; and stating that the complaint will be considered by the Monitoring Officer.

#### 4. Stage 2 – Assessment

##### 4.1. Assessing your complaint and making a decision

4.2. The Monitoring Officer will assess all complaints on a case by case basis and, in doing this, will also take into account relevant guidance, professional advice and the criteria set out below and may seek the views of the Independent Person.

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4.3. The Monitoring Officer will also take into account any relevant criteria and factors.

4.4. Given the limited sanctions available to the Monitoring Officer to apply in the event of a breach of the Code, the Authority expects this complaints procedure to be proportionate to the issues raised and the expected outcomes.

4.5. The following criteria will be considered in deciding what action, if any, to take:

Has the complainant submitted enough information to satisfy the Monitoring Officer that the complaint should be referred for investigation or other action?

**If not:**

The information provided is insufficient to make a decision. So unless, or until, further information is received, no further action will be taken on the complaint.

Is the complaint about someone who is no longer a member of the Council, but is a member of another authority? If so, should the complaint be referred to the monitoring officer of that other authority?

**If yes:**

The complaint will be referred to the monitoring officer of that other authority to consider.

Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?

**If yes:**

There may be nothing more to be gained by further action being taken.

Is the complaint about something which happened so long ago that there would be little benefit in taking action now?

**If yes:**

Further action may not be warranted.

Does the complaint appear too trivial to justify the cost or inconvenience of further action?

**If yes:**

Further action will not be warranted.

Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?

**If yes:**

Further action will not normally be warranted.

Is the complaint anonymous?

**If yes:**

No action will normally be taken unless there are compelling reasons to suggest otherwise, e.g. if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

With respect to complaints made by a Councillor, has the complaint been referred to the respective groups for informal resolution?

**If no:**

The complaint will be referred to the Group Whips and Leaders for resolution without the requirement for a formal complaint process.

4.6. After reviewing your complaint, the Monitoring Officer will do one of the following:

- decide that no action should be taken on your complaint (and inform you of this decision and the related reasons); or
- decide that informal resolution is appropriate; or
- decide to investigate your complaint (and inform you of this decision and the related reasons); or
- pass the matter to the Police or other regulatory agency.

4.7. How are you told about the Monitoring Officer's decision?

4.8. Within 5 working days of making a decision, the Monitoring Officer will provide you and the Member you are complaining about with a written document, containing his/her decision. This is called a "Decision Notice".

4.9. What information will the Decision Notice contain?

4.10. This will be prepared having regard to any professional advice and the information it contains will depend upon what information the Monitoring Officer decides should be provided. Normally, however, the Decision Notice will:

- contain your name and a written summary of your complaint;
- contain the Monitoring Officer's decision;
- record the main points the Monitoring Officer considered, the conclusion and the reasons.

4.11. the Monitoring Officer will first consider whether providing these or any details is in the public interest or would undermine a person's ability to investigate your complaint (as this may be necessary at a later stage).

4.12. If there has been no finding against the Member, the Decision Notice will not contain the name of the Member.

5. Decision Notices are made public

5.1. After the Decision Notice has been sent to you and the Member you are complaining about, the Authority will publish the Decision Notice on its website.

5.2. The Monitoring Officer's decision is final. Where the Monitoring Officer has decided that no



action should be taken on your complaint, there is no right to ask for a review of the decision. In these circumstances, a member of the public may complain to the Local Government Ombudsman at [www.lgo.org.uk](http://www.lgo.org.uk) or in writing The Local Government Ombudsman, PO Box 4771, Coventry CV4 0EH.

## 6. What is informal resolution?

- 6.1. Where the Monitoring officer decides that it would be appropriate to seek informal resolution, he/she will contact you to find out if your complaint can be resolved immediately, without recourse to formal investigation.
- 6.2. Unless there are good reasons not to, the Monitoring officer will normally advise the Member at this stage that a complaint has been received and provide the Member with such details as the Monitoring Officer considers appropriate.
- 6.3. There will be a whole range of actions that may be appropriate to try and resolve your complaint informally. Some examples are: the Monitoring Officer having a discussion with the Member you have complained about; arranging for the Member to do something which you have asked them to do; arranging a discussion between you and the Member; obtaining an apology from the Member.
- 6.4. It is important, therefore, that you tell us in your complaint what action you think would be appropriate to resolve your complaint.

## 7. Stage 3 Investigation following assessment

Monitoring Officer decides to investigate your complaint

- 7.1. Where the Monitoring Officer decides that a complaint should be investigated further, he/she may ask you, the Member, any witnesses and any other relevant people to provide them with detailed information or explanations, possibly by way of an interview.
- 7.2. The Monitoring Officer may arrange for the investigation to be carried out on his or her behalf by another person. In determining the complaint, the Monitoring Officer will seek and take into account the views of at least one Independent Member appointed by the Authority for such purposes. The Monitoring Officer may take into account the views of an Independent Person on any other matter concerning the investigation.
- 7.3. Information obtained in conducting the investigation will only be released to third parties where this will allow your complaint to be dealt with properly.
- 7.4. In addition to taking into account the views of the Independent Person, the Monitoring Officer will, when seeking to reach a finding on the complaint, take into account relevant guidance and professional advice. The Monitoring Officer may also consult with the Council's Standards Advisory Group which is comprised of six councillors.

## 8. The role of the Independent Person

8.1. The role of the Independent Person, under Section 28(7) Localism Act 2011, is:

- to give views, which must be taken into account by the Monitoring Officer before he/she makes a decision on an investigation he/she has decided to investigate;
- give views, if requested by the Monitoring Officer, on any other allegation;
- to give views to a Member if that person's behaviour is the subject of an allegation.

## 9. What happens when your complaint is investigated and the investigation is completed?

### 9.1. Once the investigation is completed, the Monitoring Officer will, after consulting with the Standards Advisory Group:

- find that the Member has failed to comply with the Authority's Code of Conduct ("a finding of failure"); OR find that the Member has not failed to comply with the Authority's Code of Conduct ("a finding of no failure");
- prepare a written summary report of the investigation which contains a statement of the finding;
- send a copy of the report to you and the Member as soon as is reasonably practicable after making the decision; and
- publish a summary report and finding on the Authority's website. The name of the Member will only be published where there is a finding of failure on the part of the Member.
- In cases where the Monitoring Officer upholds your complaint, he/she will consult with the Council's Standards Advisory Group on what if any sanctions should be imposed in respect of the breach.

### 9.2. The possible sanctions for breach of the code are:

- A reprimand of the Member by letter;
- Report to Council proposing a formal censure to Council;
- Refer findings to full council for information;
- Publication of the reprimand or censure by press release or other appropriate publicity;
- Recommendation to the Group Leader (or in the case of un-grouped members, recommend to council or committee) that he/she be removed from any or all committees of the Council;
- Recommendation to the Leader of the council that the Member be removed from the Cabinet, or removed from particular portfolio responsibilities;
- Recommendation of training for the Member

### 9.3. There is no power to suspend or disqualify the Member or to withdraw member's allowances or special responsibility allowances.

### 9.4. The decision of the Monitoring Officer is final. There is no entitlement to appeal against the Monitoring Officer's decision on a complaint. In these circumstances, you may be able to complain to the Local Government Ombudsman.

## 10. Disclosable Pecuniary Interests

### 10.1. If the complaint relates to a disclosable pecuniary interest, the Monitoring Officer will either pass the complaint directly to the Police or recommend that the Complainant contacts the Police.

### 10.2. In respect of disclosable pecuniary interests it is a criminal offence if, without reasonable excuse, a Member fails to tell the Monitoring Officer about his/her disclosable pecuniary interests, either for inclusion on the register if they are newly elected, co-opted or appointed member, or to update the register if they are re-elected, or re-appointed, or when they become aware of a disclosable pecuniary interest which is not recorded in the register but which relates to any matter that will be or is being considered at a meeting where they are

present, or on which they are acting alone.

- 10.3. It is also a criminal offence for a Member to knowingly or recklessly provide false or misleading information, or to participate in the business of the authority where that business involves a disclosable pecuniary interest. It is also a criminal offence to continue working on a matter which can be discharged by a single member and in which they have a disclosable pecuniary interest.
- 10.4. If the Member is found guilty of such a criminal offence, they can be fined up to £5,000 and disqualified from holding office as a councillor for up to five years.

## Officers' Code of Conduct

### 1. PURPOSE

- 1.1. The purpose of this code is to supplement the seven Principles of Public Life, to lay down guidelines to assist employees in maintaining and improving standards and protect employees from any misunderstanding or criticism.

### 2. CODES OF CONDUCT

- 2.1. Whilst this Code concentrates upon the rights and responsibilities of employees in the conduct of business, the Council equally recognises the rights of employees to be full and active participants in the life of the community and workplace. In fact, the Council encourages all citizens to participate fully in the wider community.
- 2.2. The Council recognises the rights afforded to employees through the Human Rights Act, its Equal Opportunities Policy and the principles of Social Inclusion. This Code will therefore be applied in the context of recognising the rights available under the Human Rights Act, and in particular the following provisions of the European Convention on Human Rights;
  - The right to respect for a person's private and family life, their home and correspondence.
  - The right for every person to freedom of thought, conscience and religion.
  - The right to freedom of expression, including the right to hold opinions and receive and impart information and ideas.
  - Everyone has the right to freedom of peaceful assembly and association with others, including the right to form and join Trade Unions for the protection of their interests.
  - The right to enjoy these and all of the rights set out in the Convention without discrimination on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status<sup>6</sup>.
- 2.3. The Council will similarly apply this Code so as to avoid the social exclusion of any of its employees, which can occur when individuals do not have access to social networks.
- 2.4. The Council will, therefore, ensure that all rights under the European Convention, but particularly those listed above, are fully taken into account in interpreting this Code and will not unnecessarily restrict or disadvantage employees from playing a full role in their community and workplace.

### 3. In particular, the Council will;

- Continue to encourage active community participation amongst employees including the right to participate in community associations, governing bodies of schools, clubs and societies, campaigns etc.
- Continue to encourage employees to be active in a trade union of their choice.
- Not discourage Members and employees from being friends and good colleagues and participating in social activities.
- Not discourage employees from taking part in party political activities (subject to the restrictions that might apply under the Local Government and Housing Act 1989).

<sup>6</sup> NB This right carries duties and responsibilities and as such may be subject to restrictions including the right to restrict the expression of views, which may be racially or otherwise offensive, or incite racial hatred.

3.1. Central Government takes the view that the Conduct of everyone in Local Government - Councillors and Council employees - needs to be of the highest standards. On this depends the bond of trust between Councils and their local people which is essential if Councils are to play their part in leading communities and improving people's quality of life.

3.2. Plymouth City Council agrees with this statement.

3.3. In July 1997, Lord Nolan's Committee on Standards in Public Life issued its third report dealing with Standards of Conduct in Local Government. The report made wide ranging proposals concerning the conduct of Local Government. At the moment, Central Government is finalising its plans for legislating on the proposals. The City Council does not intend to wait for this legislation; It is proposed to include Codes and guidance which address the points made by Lord Nolan without delay and to modify them as and when Statutory Provisions are introduced.

3.4. This Code provides standards of conduct for employees. It is a document which has been drawn up after consultation with Staff Representatives and thus represents a joint proposal for conduct.

#### 4. The Seven Principles of Public Life

4.1. The Nolan Report sets out the Seven Principles of Public Life. These are repeated below.

4.2. The City Council endorses these principles; they form the underlying basis for its Ethical Standards.

##### Selflessness

4.3. Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

##### Integrity

4.4. Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

##### Objectivity

4.5. In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

##### Accountability

4.6. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

##### Openness

4.7. Holders of public office should be as open as possible about all the decisions and actions that

they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### Honesty

4.8. Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### Leadership

4.9. Holders of public office should promote and support these principles by leadership and example.

## 5. The Aim of the Code

5.1. The aim of this Code is to supplement the Seven Principles of Public Life, to lay down guidelines, to assist employees in maintaining and improving standards and protect employees from any misunderstanding or criticism.

## 6. Who the Code is aimed at

6.1. Inevitably, some of the issues covered by the Code will affect senior, managerial and professional employees more than others. Nonetheless, this Code is intended to cover all employees under a contract of employment with the City Council, including office holders such as Registrars, and also part-time and agency workers. Employees acting as members of companies or voluntary organisations under appointment from the City Council should also subject themselves to the minimum standards within this Code.

## 7. STANDARDS

7.1. Local Government employees are expected to give the highest possible standards of service to the public, and this means that they must bear in mind at all times the general requirements of the Seven Principles of Public Life.

7.2. Whenever called upon to do so, and where it is in-keeping with their duties, employees will be expected to give advice to colleagues and Council Members.

7.3. The Council will introduce procedures which will allow employees to bring to the attention of appropriate persons any deficiency in the level of service, or any suspicion of impropriety or breach of procedure. These opportunities will be available free of any possibility of recrimination.

7.4. By these means staff will be provided with the opportunity to take leadership in matters concerning the upholding of the Seven Principles of Public Life.

## 8. DISCLOSURE OF INFORMATION

8.1. The law already provides for the activities of Local Authorities to be open to public scrutiny. Certain types of information must be available to Members, auditors, services users and the public. The Council may itself take a view that certain information over and above the legal requirements should be made openly available.

8.2. This Code will be backed with guidance as to the nature of the information that is required

to be disclosed by law. Employees should co-operate in ensuring that this process of open government is not interfered with in any way and should cooperate with any reasonable request for information, which should be disclosed by law to be released or made available.

8.3. In certain circumstances information which is of a commercially sensitive nature will be known to or available to employees. This will apply in cases where, for example, services, goods or works are being submitted to a tendering process (including under Best Value). In such cases the general principle of openness will give way to commercial needs and employees should not release information without the authority of their line manager.

8.4. By these means employees should be able to meet the requirements of accountability and openness as set out in the Seven Principles of Public Life.

## 9. POLITICAL NEUTRALITY

9.1. Employees serve the authority as a whole. It follows they must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected.

9.2. The City Council takes the view that it is appropriate for employees to be asked to give briefings to political groups. However, the City Council recognises that in giving advice to political groups employees should not be expected to compromise their political neutrality. The City Council will include in a separate protocol relating to Member and employee relationships, guidance as to how both Members and employees should conduct themselves when employees are required to give advice in a political forum.

9.3. Employees, whether or not politically restricted, must follow every lawful policy of the authority and must not allow their own personal or political opinions to interfere with their work.

9.4. Political Assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989 are exempt from the standards set out in the preceding three paragraphs.

9.5. Employees acting in their role as Trade Union activists are similarly exempt from the provisions set out in the paragraphs above.

9.6. By these means employees should be able to meet the principles of selflessness and objectivity set out in the seven principles of public life.

## 10. RELATIONSHIPS

10.1. The City Council believes that the most productive form of relationship between Member and employees arises when communication can freely take place between the two at all levels of the organisation. However, the City Council also recognises that relationships between Members and employees must be based upon mutual respect and that close personal familiarity between employees and individual Councillors may damage that relationship and prove embarrassing to other employees and Councillors and should therefore be avoided. The Council will, therefore, introduce a range of guidance as to how the relationship might be managed to avoid these potential problems.

10.2. Employees should also remember that their responsibilities are to the Council and community they serve and they should be courteous, efficient and impartial and available to all groups and individuals within the community as defined by the policies of the authority.

- 10.3. If an employee has relationships of a business, personal or private nature with external contractors, or potential contractors, then he or she should make them known to the appropriate Head of Service or Director and should take no further part in the matter concerned. The City Council will introduce guidance and processes to ensure that declarations of this sort are recorded and these will not be public records.
- 10.4. Orders and contracts must be awarded on merit, by fair competition against other tenders, or otherwise in accordance with the Council's Standing Orders and no special favour should be shown to business run by, for example, friends, partners, or relatives. No part of the local community should be discriminated against.
- 10.5. Employees who in the course of their duties engage or supervise contractors, or have any other official relationship with contractors, and who have previously had or currently have a relationship in a private or domestic capacity with contractors should again make that relationship known to the appropriate Head of Service or Strategic Director.
- 10.6. By these means employees should be able to meet the principles of selflessness, integrity, objectivity, accountability, openness and honesty set out in the Seven Principles of Public Life.

## 11. APPOINTMENTS AND OTHER EMPLOYMENT MATTERS

- 11.1. The City Council has a Recruitment and Selection Code of Practice. Employees involved in making appointments should ensure that the Recruitment Code of Practice is applied in all relevant circumstances.
- 11.2. Similarly, the Council has appropriate Codes relating to Disciplinary Procedures and employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative or partner.
- 11.3. By these means employees should be able to meet the principles of selflessness, integrity and objectivity set out in the Seven Principles of Public Life.

## 12. PERSONAL INTERESTS

- 12.1. Employees must declare to an appropriate Head of Service or Strategic Director any financial, or non-financial interests which relate to their work, as well as membership of any organisation not open to the public without formal membership and commitments of allegiance and which has secrecy about rules or membership or conduct. The Council will provide appropriate procedures for the registration of such interests in documents which will not be publicly disclosable.
- 12.2. By these means an employee will be able to meet the requirements of the principles of selflessness, integrity, objectivity, accountability, openness and honesty set out in the Seven Principles of Public Life.

## 13. OUTSIDE COMMITMENTS

- 13.1. Some employees have Conditions of Service which require them to obtain written consent to take any outside employment. This Code is supported by guidance as to the nature of those Terms and Conditions of Employment. All employees should ensure that they are clear about their contractual obligations and should not take outside employment which conflicts with the authority's interests.



- 13.2. It is line management's responsibility to ensure all staff are made aware of the Codes of Conduct and that they receive copies for which employees have signed to confirm they have read and understood the documents. Where the Council considers it appropriate it may from time to time seek to bind employees to a duty of confidentiality after they have left the employ of the Council. This will be to protect commercially sensitive information. Employees subject to such terms should make sure that they are clear as to the implications for them and their future employment.
- 13.3. Employees should also be aware of the law and the Council's rules relating to ownership of intellectual property or copyright created during their employment. Again, this Code is supported by guidance on this point.
- 13.4. The Council accepts that in certain circumstances some employees are required or appointed to provide advice to, or sit upon outside bodies by the Council. In this event the Council will provide guidance as to how employees should conduct themselves and what indemnity can be given whilst acting with or for the outside body so as not to conflict with the authority's interests. The Council will also do whatever it is legally possible to do in order to indemnify employees against any such commitments.
- 13.5. By these means employees should be able to meet the principles of selflessness, integrity and objectivity set out in the Seven Principles of Public Life.

#### 14. EQUALITY ISSUES

- 14.1. The City Council has a very clear Policy on Equality issues. All employees should ensure that the Policies relating to Equality are complied with in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.
- 14.2. In applying the Council's Equal Opportunities and other policies relating to social inclusion, employees will be fulfilling the principle of objectivity set out in the seven Principles of Public Life.

#### 15. BEST VALUE

- 15.1. The City Council is committed to the pursuit of Best Value. Employees should conduct themselves in a way which does not conflict with the pursuit of Best Value. Equally, employees should ensure that insofar as it is legally possible the Council's work with partners or contractors under Best Value requires those partners or contractors to comply with the Seven Principles of Public Life.
- 15.2. By these means employees should be able to apply the Seven Principles of Public Life into Best Value.

#### 16. CORRUPTION

- 16.1. Employees should be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything, or showing favour or disfavour to any person in their official capacity.
- 16.2. The City Council will provide guidance relating to fraud and how to deal with it and employees should make themselves aware of its contents. Similarly, the main statutory provisions relating to fraud and corruption are repeated in guidance to this Code.

16.3. By these means employees should be able to meet the principles of selflessness and integrity set out in the Seven Principles of Public Life.

## 17. USE OF FINANCIAL AND OTHER RESOURCES

17.1. Employees must ensure that they use public funds or resources entrusted to them in a reasonable, responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the authority. In this context the City Council has Standing Orders and Financial Regulations dealing with the financial affairs of the City and employees should make themselves aware of those.

17.2. By these means employees should be able to satisfy the requirements of the principles of selflessness and honesty set out in the Seven Principles of Public Life.

## 18. HOSPITALITY / GIFTS

18.1. Employees should be sensitive to the possibility that they may find themselves compromised by accepting gifts or hospitality from persons who provide goods, services or works for the Council.

18.2. The principle of openness suggests that hospitality, money or gifts, if offered (and whether or not accepted) should be declared. Employees should only accept offers of hospitality if there is a genuine need to impart information, or represent the local authority in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community, or where the authority should be seen to be represented.

18.3. They should be properly authorised and recorded and for this purpose the City Council will set out guidance for Heads of Service and Strategic Directors to hold registers of such hospitality or activities. These records are not to be subject to public disclosure.

18.4. When hospitality has to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the authority.

18.5. Attendance at paid for events should be authorised and recorded in the same way as for other hospitality, with a clear rationale explaining why attendance is beneficial.

18.6. In such circumstances it is generally expected that there would be no more than one councillor and one officer attending

18.7. The Council may occasionally sponsor a table at an event or ceremony hosted by another organisation. On such occasions, the relevant Cabinet member must be consulted on both the decision to provide sponsorship and the guest list.

18.8. Employees should not accept significant personal gifts from contractors and outside suppliers, although the appropriate Head of Service or Strategic Director may allow employees to keep insignificant items of token value such as pens, diaries, etc. In all instances, however, the appropriate Head of Service or Strategic Director should be advised of the gift and a record of it should be taken in the register already referred to.

18.9. When accepting hospitality employees should be particularly sensitive as to its timing in relation to decisions which the authority may be taking affecting those providing the hospitality.

18.10. Where visits to inspect equipment, etc, are required, employees should ensure that the

Council meets the cost of such visits to avoid jeopardising the integrity of any subsequent purchasing decision.

18.11. By these means employees should be able to satisfy the principles of integrity, objectivity, accountability, openness and honesty set out in the Seven Principles of Public Life.

## 19. SPONSORSHIP - GIVING AND RECEIVING

19.1. Where an outside organisation wishes to sponsor, or is seeking to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality (whether obtained directly or indirectly) will apply. Particular care must be taken when dealing with contractors or potential contractors.

19.2. Where the authority wishes to sponsor an event or service neither an employee, nor any partner, spouse or relative, must benefit from such sponsorship in a direct way, without there being full disclosure to an appropriate manager of any such interest. Similarly, where the authority through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

19.3. By these means employees should be able to satisfy the principles of selflessness, integrity, objectivity, accountability, openness and honesty within the Seven Principles of Public Life.

## 20. RELATIONSHIP WITH OTHER CODES AND PROTOCOLS

20.1. The matters dealt with in this Code are also referred to in other Codes and Protocols adopted by the City Council –

- Code of Conduct for Members
- Protocol for Member/Employee relationships
- Financial Regulations
- Standing Orders for Contracts

FURTHER ADVICE ON THIS CODE MAY BE OBTAINED FROM THE MONITORING OFFICER

## Protocol on Member/Officer Relations

### 1. Introduction

- 1.1. Councillors are democratically accountable and have political affiliations. Officers must serve the whole Council objectively. Together they must balance a complex range of obligations and competing interests. For this to be effective Members and officers must have mutual trust and respect for each other's requirements and duties.
- 1.2. Seven general principles of conduct for Members and officers, co-opted and independent members of local authorities have been prescribed by legislation. The Council has also adopted both a Member and an Officer Code of Conduct, which sets out the minimum standards Members and officers must observe. This Protocol operates within that framework and provides the Council's local ground rules.
- 1.3. Councillors, co-opted and independent members and officers agree to observe the general principals, the Code of Conduct and this Protocol and be guided by them in the interest of fair treatment and good government.

### 2. The Protocol is the Council's way of applying the following best principles

Members have a right to information and support on a "need to know" basis

- 2.1. The need is so that they can perform their role as a Councillor. It can be limited by conflict of interest, confidentiality and practicality.

Officers must serve the whole Council objectively

- 2.2. Officers must provide "unified advice" at all times. This advice is to be objective, consistent and point out all relevant factors. Different points of view between officers should be resolved or presented in a balanced way which helps Members choose between them.

Political processes and different roles of Members are a legitimate part of local democracy

- 2.3. Officers' advice and support can be tailored accordingly, a party group is entitled to the confidentiality of officer advice on developing policies. The overall arrangements for officer advice must be transparent.

### 3. The Relationship: General Points

- 3.1. Both Members and officers are public servants and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Members and the Council, and to carry out the Council's work under the direction and control of the Council, Cabinet, and the committees and sub-committees.
- 3.2. At the heart of the Code of Conduct and this Protocol, is the importance of mutual respect. Member/officer relationships should be conducted in a positive and constructive way. It is important that any dealings between Members and officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.
- 3.3. Inappropriate relationships can be inferred from language/style. So, Members and officers should always seek to address each other with courtesy.

- 3.4. A Member should not raise matters relating to the conduct or capability of an officer in a manner that is incompatible with the objectives of this Protocol. This is a long-standing tradition in public service. An officer has no means of responding to such criticism in public. If a Member feels he/she has not been treated with proper respect, courtesy or has any concern about the conduct or capability of an officer, and fails to resolve it through direct discussion with the officer, the Member should raise the matter with the respective Head of Service. The Head of Service will then look into the facts and report back to the Member. If the Member continues to feel concern, then he/she should report the facts to the Strategic Director who is responsible for the Directorate concerned, or if, after doing so, is still dissatisfied, should raise the issue with the Chief Executive who will look into the matter afresh. Any action taken against an officer in response to a complaint will be in accordance with the provisions of the Council's Procedures.
- 3.5. An officer should not raise in public with a Member matters relating to the conduct or capability of another officer or the internal management of a Section/ Division/Department/Directorate in a manner that is incompatible with the overall objectives of this Protocol. If such issues are raised by Members, then the matter will be dealt with in accordance with the Officers' Code of Conduct and the Council's disciplinary Rules and Procedures. Unwarranted criticism of officers by Members should be avoided, particularly when they cannot respond on equal terms such as at public Council Meetings.
- 3.6. Where an officer feels that she/he has not been properly treated with respect and courtesy by a Member, she/he should raise the matter with his/her head of Service or Director, especially if they do not feel able to discuss it directly with the Member concerned. In these circumstances, the Head of Service or Director will take appropriate action either by approaching the individual Member and/or Group Leader. The Director will inform the Chief Executive if the party Group Leader does become involved, or as the Director feels appropriate. If the matter cannot be resolved to the satisfaction of the employee concerned and their Director the matter will be treated as a grievance and dealt with under the Council's formal grievance and harassment procedures.
4. The Relationship-Officer Support to Members: General Points
- 4.1. Members are democratically accountable and have political affiliations. They have a clear role in providing leadership within the community and as ward Councillors, to represent their constituents. Officers are responsible for day-to-day managerial and operational decisions within Plymouth City Council and provide services to the local community.
- 4.2. Certain statutory officers – Chief Executive, Monitoring Officer and the Responsible Finance Officer (Service Director for Finance) have specific roles. These are set out in the Constitution. Their roles need to be understood and respected by all Members.
5. The following key principles reflect the way in which officers generally relate to Members. All officers are employed by, and accountable to Plymouth City Council as a whole:
- 5.1. Support from officers is needed for all Plymouth City Council's functions including, Full Council, Cabinet, Overview and Scrutiny, Council Committees and individual Members representing their communities.
- 5.2. 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.

- 5.3. On occasion, a decision may be reached which authorises named officers to take action between meetings following consultation with a Member or Members, It must be recognised that it is the officer, rather than the Member or Members, who takes the action and it is the officer who is accountable for it.
- 5.4. Officers within a Unit/Division/Department or a Directorate are accountable to their Head of Service and Director and whilst officers should always seek to assist a Member, they must not, in doing so, go beyond the bounds of whatever authority they have been given by their Head of Service or Director.

## 6. The Relationship - Officer Support: Members and Party Groups

- 6.1. It must be recognised by all officers and Members that in discharging their duties and responsibilities, officers serve the Council as a whole and not any political group, combination of groups, or any individual member of the Council. However, political assistants are not required to maintain political neutrality, since their role is to support the political group on whose behalf they have been engaged. Consequently, such officers may be exempted from the constraints on officer neutrality set out below
- 6.2. There is now statutory recognition for party groups and it is commonplace for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision-making body. Officers may properly be called upon to support and contribute to such deliberations by party groups but must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.
- 6.3. The support provided by officers can take many forms. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 6.4. Certain points must however, be clearly understood by all those participating in this type of process, Members and officers alike. In particular:
- 6.4.1. the observance of neutrality will be assisted if officers only attend party group meetings for specified business and officers withdraw from the meeting after briefing and any questions and before political discussion;
  - 6.4.2. party group meetings, whilst they form part of the preliminaries to Council decision-making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and
  - 6.4.3. similarly, where officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered.
- 6.5. Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting, which includes persons who are not Members of the Council. Such persons are not bound by the Code of Conduct for Members (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers must be cautious about attending and/or giving advice to such meetings.
- 6.6. Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another

party group.

6.7. Any Member may ask a relevant Head of Service, Director or the Chief Executive for written, factual information about a Directorate or service, but such requests must be reasonable and not seek information relating to, for instance, casework of a confidential nature (eg Social Services, employment,). Requests will be met subject to any overriding legal considerations (to be determined by the Head of Legal or designee), or if the recipient of any request considers the cost of providing the information requested or the nature of the request to be unreasonable. If a Member requesting such information is dissatisfied by such a response, she/he should raise the matter in the first place with the relevant Director, and if still dissatisfied, should raise the issue with the Chief Executive who will discuss the issue with the relevant Group Leader(s).

6.8. In relation to budget proposals:

6.8.1. the Administration (i.e. the political party in control) shall be entitled to confidential discussions with officers regarding options and proposals. These will remain confidential until determined by the Administration or until published in advance of committee/Council Meetings, whichever is earlier.

6.8.2. the opposition groups shall also be entitled to confidential discussions with officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of committee/Council meetings, whichever is earlier.

6.9. It must not be assumed by any party group or Member that any officer is supportive of any policy or strategy developed because of that officer's assistance in the formulation of that policy or strategy.

6.10. If any Member or officer experiences any particular case of difficulty or uncertainty in this area of officer advice to party groups they should raise the matter with the Chief Executive who will discuss those concerns with the relevant Group Leaders.

7. The Relationship - Officer Support: The Cabinet

7.1. It is clearly important that there should be a close working relationship between Cabinet members and the officers who support and/or interact with them.

7.2. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officer's ability to deal impartially with other Members and other party groups.

7.3. 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 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 Director in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.

7.4. Cabinet members both individually and sitting together in Cabinet have wide ranging leadership roles. They will:

- 7.4.1. Lead the community planning process and the search for best Value, with input and advice from Scrutiny Committees, other Council committees and any other person(s) as appropriate;
  - 7.4.2. Lead the preparation of the Council's Budget and Policy Framework;
  - 7.4.3. Take in-year decisions on resources and priorities together with other stakeholders and partners in the local community, to deliver and implement the Budget & Policy Framework adopted by the Full Council; and
  - 7.4.4. Be the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.
- 7.5. Where functions which are the responsibility of the Cabinet are delegated to officers or other structures the Cabinet will remain accountable to the Council through Overview and Scrutiny for the discharge of those functions. A Cabinet member will be held to account for both their decision to delegate a function and the way that the function is being carried out
- 7.6. Under Executive Arrangements, Individual Cabinet members are allowed to formally take decisions and they must satisfy themselves that they are clear what exactly they can and cannot do.
- 7.7. The Council has put in place mechanisms/protocols, which ensure that (as with the Council, Cabinet, committees and sub-committees) an individual Cabinet member seeks advice from the relevant officers before taking a decision within their delegated authority. This includes taking legal, financial or professional officer advice (particularly about contractual matters) as well as consulting the Monitoring Officer where there is doubt about the legality of a decision.
- 7.8. Decisions taken by individual Cabinet members give rise to legal and financial obligations in the same way as decisions taken collectively. Cabinet members should always be aware of legal and financial liabilities (consulting the Monitoring Officer and Responsible Finance Officer as appropriate) that arise from their decisions. To ensure effective leadership for the Council and its community there are arrangements to ensure co-ordination of and responsibility for Cabinet decisions including those by individuals.
- 7.9. Officers will continue to work for and serve the Council as a whole. Significant functions are not the responsibility of Cabinet members through their delegated authority and it is likely that in practice many officers will be working for Cabinet members for most of their time. Cabinet members must respect the political neutrality of officers. Officers must ensure that even when they are predominantly supporting Cabinet members or the Cabinet that their critical neutrality is not compromised.
- 7.10. In organising support for Cabinet & its members, there is a potential for tension between Chief Officers and Cabinet members. All Members and officers need to be constantly aware of the possibility of such tensions and conflicts existing or being perceived.
8. The Relationship - Officer Support: Overview and Scrutiny Committees/sub-committees
- 8.1. The Overview and Scrutiny function is vital for good governance of the Council and is conducted through the Overview and Scrutiny Committees/sub-committees within the Council. Many Members sit on a committee and are entitled to receive appropriate officer support for the work they do.
  - 8.2. The Overview and Scrutiny Committees determine their work programmes for scrutinising the implementation of decisions and for recommending policy changes to the Cabinet, It is



expected that reports commissioned and evidence requested will:

- 8.2.1. Avoid cutting across work in support of developing Cabinet policies
- 8.2.2. Involve reasonable cost and use of officer time

9. An Overview and Scrutiny Protocol has been agreed and incorporated into the Council's Constitution. This contains clear guidelines for Members and officers in the conduct of the business of Overview and Scrutiny Committees/sub-committees.

#### 10. Support Services to Members and Party Groups

10.1. The only basis on which the Council can lawfully provide support services (eg stationery, typing, printing, photocopying, transport etc) to Members is to assist them in discharging their role as members of the Council. Such support services must only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

#### 11. Members' Access to Information and Council Documents

11.1. Members have the ability to ask for information in accordance with their legal right. This right extends to such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Head of Service or another senior officer of the Unit/Division/Department concerned. In cases of doubt, Members should approach the Monitoring Officer.

11.2. As regards the legal rights of Members to inspect Council Documents, these are covered partly by statute and partly by common law.

11.3. Members have a statutory right to inspect any Council document *which contains material relating to any business which is to be transacted by the Council*. This right applies irrespective of whether the Member is a member of the committee, or sub-committee concerned and extends not only to reports which are submitted to the meeting but also any relevant background papers. This right does not, however, apply to documents relating to certain items which may appear as confidential (Part II) items on the agenda for a meeting. The items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children & the vulnerable, contract and industrial relations negotiations, advice from counsel and criminal investigations.

11.4. In relation to the business for the Cabinet or individual Cabinet members, by virtue of Regulation 17 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000:

11.4.1. where there is a Cabinet meeting and there is a document relating to the business to be conducted at that meeting, that document shall be made available for inspection;

11.4.2. Where the decision is made at a private meeting by a Cabinet member or is a decision delegated to an officer and there is a document relating to that business, the document shall be available for inspection;

11.5. the above is subject to the general rules for exempt and confidential material.

- 11.6. The Council's Constitution exceeds this minimum legal requirement in its provision for the publication of all proposed decisions which will set out clearly background papers which are available for inspections.
- 11.7. The common law rights of Members remains intact, are much broader and are based on the principle that any Member has a right to inspect Council Documents *so far as his/her access to the document is reasonably necessary to enable the Member's properly to perform his/her duties as a member of the Council*. This principle is commonly referred to as the "need to know" principle.
- 11.8. The exercise of this common law right depends upon an individual Member being able to demonstrate that she/he has 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 Head of Service whose Unit/Division/Department holds the document in question (with advice from the Monitoring Officer). In the event of dispute, the question falls to be determined by the Monitoring Officer in association with the relevant Director.
- 11.9. In some circumstances (e.g. committee member wishing to inspect documents relating to the business of the 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) the Member will normally be expected to justify the request in specific terms. There will be a range of documents, which because of their nature are either not accessible to Members or are accessible only by the political group forming the administration and not by other political groups; an example of the latter category would be draft documents compiled in the context of emerging Council policies and draft committee reports, the disclosure of which prematurely might be against the Council's and the public interest.
- 11.10. Whilst the term "Council Document" is very broad and includes for example, any document produced with Council resources, it is accepted by convention that a Member of one party group will not have a "need to know" and therefore, a right to inspect, a document which forms a part of the integral workings of another party.
- 11.11. Any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, ie in connection with the proper performance of the Member's duties as a member of the Council. Therefore, for example, early drafts of committee reports/ briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they are supplied. This point is emphasised in paragraph 4 of the Code of Local Government Conduct:

## 12. Correspondence

- 12.1. Correspondence between an individual Member and an officer should not normally be copied (by the officer) to any other Member without the consent of that Member. Correspondence includes both hard copy memoranda or letters and email.
- 12.2. Most official letters on behalf of the Council will normally be sent in the name of the appropriate officer rather than in the name of a Member, particularly when dealing with operational or service delivery matters. However, it will be appropriate in certain circumstances (e.g. representations to Government) for correspondence to be sent in the name of a Cabinet member or the Leader of the Council. Letters which create legal obligations or give instructions on behalf of the Council and which are sent out in the name

of a Member should always be agreed in consultation with the Chief Executive or the relevant Director and, on legal matters, on advice from the Monitoring Officer

### 13. Publicity and Press Releases

- 13.1. Local Authorities are accountable to their electorate. Accountability requires local understanding. This will be promoted by the authority, explaining its objectives and policies to the electors and ratepayers. In recent years, all Local Authorities have increasingly used publicity to keep the public informed and to encourage public participation; every Council needs to tell the public about the services it provides. Increasingly, Local Authorities see this task as an essential part of providing services. Good, effective publicity aimed to improve public awareness of the Council's activities is to be welcomed.
- 13.2. Publicity is, however, a sensitive matter in any political environment because of the impact it can have. Expenditure on publicity can be significant. It is essential to ensure that the Council's decisions on publicity are properly made in accordance with clear principles of good practice. The Government has issued a code of Recommended Practice on Local Authority Publicity. The purpose of the Code is to set out such principles. The Code affects the conventions which should apply to all publicity at public expense and which traditionally have applied in both central and local government. The Code requires that all Local Authorities shall have regard to its provisions in coming to any decision on publicity.
- 13.3. Officers and members of the Council will, in making decisions on publicity, take account of the provisions of this Code. If in doubt, officers and/or Members should initially seek advice from the Corporate Communications Manager who will refer the matter to the Monitoring Officer if required. Particular care should be paid to any publicity used by the Council around the time of an election. Particular advice will be given on this by the Monitoring Officer, as appropriate.
- 13.4. For the sake of clarity, the Code does not apply to press releases and publicity that Members may arrange and distribute in their individual political capacity rather than through the Council.

### 14. Involvement of Ward Councillors

- 14.1. It is a fundamental principle that ward Councillors should be consulted and provided with information on matters to enable them properly to fulfil their role in representing their constituents.

### 15. Conclusion

- 15.1. Mutual understanding, openness on these sort of sensitive issues and basic respect are the greatest safeguard of the integrity of the Council, its Members and officers.

## **Protocol in Relation to Political Group Assistants**

### **1. Background**

- 1.1. Political Assistants are Local Government Officers employed by the Council, and are appointed under the 1989 Local Government and Housing Act and are politically restricted. (Part 1 & Part 3 of the Local Government Officers (Political Restrictions) Regulations 1990 apply).
- 1.2. The Democratic and Member Support Manager line manages the Political Group Assistants.
- 1.3. The work of the Political Group Assistants comes directly from their political group with the Group Leader having day-to-day responsibility for their workload.

### **2. Main Duties and Responsibilities**

- 2.1. To provide necessary research and support to their respective political groups, providing evaluation, information and advice services to their members.
- 2.2. Identify and advise on opportunities for policy development and research and providing information to assist their Leader, Scrutiny Members, and all Group Members in the formulation of these policies.
- 2.3. To present information in the form of briefs, reports and presentations to their Members and to liaise with local and national bodies, professional organisations and other service providers to exchange ideas and assist in developing initiatives.
- 2.4. Develop an information retrieval system for their political group to ensure efficient and effective research service and monitor publications and other media to identify areas of potential political or budgetary interest to the Group and brief the Group Leader accordingly.
- 2.5. Attend selected committee meetings of the authority, internally and externally organised conferences, seminars and other meetings and report back to the Group Leader, spokespersons, or Group Members and to liaise with the Council's Corporate Policy Advisor and other officers regarding policy development, consultations and scrutiny.
- 2.6. Prepare agendas and reports for group meetings, take notes at other meetings as directed.
- 2.7. The post holder will also undertake other duties, appropriate to the grading of the post as required.

### **3. Access to exempt information and private section of meetings**

- 3.1. Political Group Assistants will not receive material or attend meetings on staffing matters concerning individuals.
- 3.2. With the agreement of Group Leaders, Political Group Assistants may attend meetings for the private section of an agenda when non-staffing items are considered.
- 3.3. In terms of the distribution of material, Political Assistants will have the same entitlement to information as their respective Members.

### **4. Access to Information**

- 4.1. As an officer of the Council, Political Group Assistants have access to all public parts of the agenda and meetings. However, discretion will be applied in relation to confidential and exempt information. Attendance by Political Group Assistants at a particular meeting will generally be determined by the relevant Group Leader.
  - 4.2. Officers will respond promptly to requests for information from Political Assistants and Political Assistants will bear in mind the capacity of officers in terms of speed and ability to respond to requests for information. All requests for Information shall:
    - 4.2.1. Strictly observe the distinctions between confidential or exempt and open information;
    - 4.2.2. Seek clear information from officers as to the status of the information provided;
    - 4.2.3. Specify whether the enquiry is made in confidence.
  - 4.3. In their response to requests from the Political Assistants, officers shall indicate if the information provided is confidential, exempt or open and whether or not a document is in draft or is final (public).
  - 4.4. All officers including Political Group Assistants will operate to the highest professional standard, building positive personal relationships, which benefit the authority through improved member/officer relations, and removing “silo” behaviours.
5. Access to Officers
- 5.1. Political Assistants will have access to all officers of the Council, subject to availability and work programme commitments. In the case of senior officers, it will normally be required to make an appointment in advance.
  - 5.2. In the event of any tension or dispute either the Political Group Assistant or the officer shall in the first instance refer it to the Democratic and Member Support Manager who will investigate that matter and discuss it with the relevant Group Leader
6. Other Provisions
- 6.1. In accordance with the Access to Information rules set out in the Council’s Constitution, all officers may not disclose (to persons other than Members and officers) confidential or exempt information.
  - 6.2. Political Group Assistants must observe any Code of Conduct for Council Officers which may be in force from time to time.
  - 6.3. Pending the outcome of political restrictions on Council officers, Political Assistants will adhere to the restrictions placed on them in terms of activities in accordance with the Local Government and Housing Act of 1989.
  - 6.4. The Political Group Assistants will operate within this protocol and the Council’s Constitution and Rules of Procedure.

## Whistleblowing Policy

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## WHISTLEBLOWING POLICY

### I. POLICY STATEMENT

- 1.1 Plymouth City Council is committed to the highest possible standards of honesty, openness and accountability in public life.
- 1.2 All organisations face the risk of things going wrong or of unknowingly harbouring malpractice. This Policy has been developed in accordance with the provisions of the Employment Rights Act 1996, as amended by the [Public Interest Disclosure Act 1998](#). It is [also supplemental to and supports the](#) Council's [Anti-Fraud, Bribery and Corruption Policy](#). It also is part of the Council's role in identifying and taking measures to remedy all malpractice, particularly regarding issues of fraud and corruption.
- 1.3 We want you to feel that it is safe and acceptable to tell us about your concerns so that we can investigate and take action as soon as possible. We welcome all genuine concerns and will treat your issues seriously - this policy explains how to raise a concern, the types of activity you should report, the protection we can provide, confidentiality, our response and how you can take matters further, if necessary.  
III.
- 1.4 By promoting a culture of openness within the Council, we want to encourage individuals to feel confident and come forward to raise both disclosures and serious allegations of wrongdoing; this may involve the actions of the Council's employees, its Councillors, contractors or any aspect of the Council's activities. Disclosures can be made through established internal channels, without fear of victimisation, detriment or risk to job security

### 2. SCOPE AND AIMS OF THE POLICY

#### Aims:

- 2.1 The policy sets out the procedure via which the Council will deal with a whistleblowing complaint and, where the complainant is an employee, the measures in place to ensure the protection due to them under the Employment Rights Act 1996.
- 2.2 A whistleblowing complaint is the disclosure of information which relates to suspected wrongdoing or dangers at work within the Council. This may include:
  - criminal activity;
  - failure to comply with any legal or professional obligation [or regulatory requirements];
  - miscarriages of justice;
  - danger to health and safety;
  - damage to the environment;
  - bribery and/or corruption;
  - financial fraud or mismanagement;
  - conduct likely to damage our reputation or financial wellbeing;
  - unauthorised disclosure of confidential information;
  - negligence;

- the deliberate concealment of any of the above matters.

### 2.3 The Policy aims to:

- A. Provide the framework for employees to feel that there are protections in place for them and the reassurance that there will be protection from reprisals or victimisation for employees who raise a whistleblowing complaint in good faith in accordance with this procedure.
- B. Ensure employees, and all other persons to feel confident in raising that when they wish to raise concerns there is a process in place under which they will be dealt with;
- C. Provide avenues for employees to raise these concerns and receive feedback on any action taken;
- D. Set out a procedure by which the matter can be taken further where there is dissatisfaction with the Council's response.

### Scope

2.4 This whistleblowing policy applies to all [employees](#) wishing to raise a whistleblowing complaint.

2.5 UK law protects employees from dismissal, harassment or victimisation if such treatment occurs as a result of having made a whistle-blowing disclosure considered to be in the public interest. In addition to the employer's liability, the individual who subjects the employee to such treatment may also be held personally liable.

2.6 Whilst the process for dealing with complaints in this policy apply to any person raising a whistleblowing complaint, where allegations are raised by other individuals who are not direct employees (including, councillors, agency workers, consultants, contractors, sub-contractors) the protection measures within this will not apply.

2.7 Although the Council will endeavor to provide appropriate advice and support wherever possible in this eventuality, it is recommended that advice is sought from a trade union representative or from Protect (formerly Public Concern at Work) an independent charity set up to provide advice and guidance about whistleblowing issues. Contact details for [Protect](#) are given in Section 10 below.

2.8 This policy does not replace:

#### **Our existing [Grievance Resolution Policy and Procedure](#).**

You should use these policies if you have a personal grievance or are unhappy with the way you are being treated. This includes harassment, discrimination or unfair treatment as a result of a protected characteristic under the **Equality Act 2010**. The Whistleblowing arrangements are not intended to give you a further opportunity to pursue a grievance or complaint once you have exhausted the relevant employment procedures.

### Corporate Complaints Procedure



Individuals wishing to bring a complaint about the delivery of a Council service to them where it is not a serious issue (as falling within 2.1 above) should use the Corporate Complaints Procedure.

### **Our Councillor Standards Complaints Arrangements**

Individuals (other than employees, due to the statutory protection of staff whistleblowing) wishing to bring a complaint against a Councillor should use the Standards Arrangements and submit a complaint to the Monitoring Officer, in the first instance. This will not prevent the complaint being taken forward under the Whistleblowing arrangements, where appropriate.

### **Safeguarding Procedures (Adults and Children)**

Where there is a concern for the safety of a child or vulnerable adult the referral should be via the appropriate safeguarding process.

## **3. SAFEGUARDS**

### **3.1 Harassment or Victimisation (employees)**

The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for, or suspected of, the malpractice. The Council will not tolerate harassment or victimisation of any employee as a result of them raising a whistleblowing complaint. The Council will take action to protect staff when they do so in good faith. However this does not mean that if a member of staff is already the subject of disciplinary or redundancy procedures, those procedures will be halted because of their Whistleblowing'.

### **3.2 Confidentiality**

The Council will do its utmost, subject to any over-riding legal obligations, to protect an individual's identity when they raise a concern and do not want their name to be disclosed. It must be realised and appreciated, however, that the investigation process itself may well reveal the source of the information, and, depending on the outcome, a formal statement by the individual may be required as part of the evidence.

### **3.3 Anonymous Allegations**

**3.4** Remember, this policy is designed to encourage employees to put their names to allegations. If you do not tell us who you are, it will be much more difficult for us to look into the matter, to protect your position or to give you feedback. Concerns which are reported anonymously are much less powerful, but if they contain sufficient detail they will be considered at the discretion of the Council. The factors to be considered would include:

- (a) The seriousness of the issue raised;
- (b) The credibility of the concern; and
- (c) The likelihood of confirming the allegation from attributable sources.

### **3.5 Untrue Allegations**

If an employee makes an allegation in good faith, reasonably believing it to be true, but it is not confirmed by the investigation, no action will be taken against them. If, however, individuals make malicious or vexatious allegations, disciplinary action may be considered and implemented.

## **4. RASING A CONCERN**

**4.1** Initially, employees are encouraged to raise concerns with:

- (a) Their immediate line manager or their line manager's manager;
- (b) For Voluntary Controlled, Community schools / Nursery staff, with the Headteacher or Chair of Governors, where the Governing Body had adopted this policy

**4.2** If this is not appropriate due to the nature of the concerns, or where the person is **not** an employee, the individual can raise their concerns with:

- (a) A Head of Service
- (b) A Service Director
- (c) A Strategic Director
- (d) The Chief Executive

**4.3** Individuals who are unsure about reporting or do not feel at ease raising the concern through any of the above routes are encouraged to seek advice from one of the following:

- (a) The Head of Devon Audit Partnership
- (b) The Head of Legal Services (Monitoring Officer)
- (c) Service Director for Human Resources & Organisational Development

**4.4** Employees may ask their Trade Union or professional association to raise the concern on their behalf.

**4.5** Concerns should be raised in writing, where possible. The background and history of the concern should be set out, giving names, dates and places where possible, and the reason why the individual is concerned about the situation. Those who do not feel able to put their concerns in writing may raise the matter verbally with the appropriate officer.

**4.6** Although employees are not expected to prove the truth of their concern, they will need to demonstrate to the person contacted that there are sufficient grounds for concern.

## **5. HOW THE COUNCIL WILL RESPOND**

- 5.1** Within ten working days of a concern being received, the relevant Service Director from the Council will contact the individual raising the complaint:
- (a) Acknowledging that the concern has been received;
  - (b) Indicating how it proposes to deal with the matter;
  - (c) Telling the employee whether any initial enquiries have been made;
  - (d) Telling the employee whether further investigations will take place, and if not, why not.
- 5.2** The action taken by the Council will depend on the nature of the concern.
- 5.3** The matters raised may:
- (a) Be investigated internally;
  - (b) Be referred to the Police;
  - (c) Be referred to the External Auditors;
  - (d) Form the subject of an independent inquiry by the Ombudsman
- 5.4** To protect individuals and the Council, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations which fall within the scope of other, existing, procedures (e.g. child protection or discrimination issues) will normally be referred for consideration under those procedures.
- 5.5** Some concerns may be resolved without the need for investigation. Where a formal investigation is required, it is likely to take the form of an investigation by a manager or by Devon Audit Partnership. In certain cases, the matters raised may be referred to the Police or the Council's external auditors for investigation or an independent inquiry could be set up.
- 5.6** The amount of contact between the managers considering the issues raised and the complainant will depend on the nature of the matters raised, the potential difficulties involved, and the clarity of the information provided.
- 5.7** When any meeting is arranged, employees have the right, if they so wish, to be accompanied by a Trade Union or professional association representative or a work colleague who is not involved in the area of work to which the concern relates.
- 5.8** The Council will take steps to minimise any difficulties which employees may experience as a result of raising a concern. For instance, if employees are required to give evidence in criminal or disciplinary proceedings, the Council will advise them about the procedure.
- 5.9** The Council accepts that employees need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, and the requirement for confidentiality of others involved in the process, employees will receive information about the outcomes of any investigations.
- 5.10** If an employee is not assured that the matter has been properly addressed, they should contact the Head of Devon Audit Partnership, or consider an alternative method of taking forward a complaint (section 6).

## **6. ALTERNATIVE METHODS OF TAKING FORWARD A COMPLAINT**

6.1 This policy is intended to provide employees with an avenue to raise concerns within the Council. If an individual is not satisfied, and feels it is right to take the matter outside this process, possible contact points are listed below including Protect (formerly Public Concern at Work), an independent charity set up to provide advice and guidance about whistleblowing issues.

- (a) The local Council member (if you live in the area of the Council);
- (b) The External Auditor;
- (c) Relevant professional bodies or regulatory organisations;
- (d) Individuals' solicitors;
- (e) A relevant charity or voluntary organisation such as Protect;
- (f) The Police.

6.2 If an employee does take the matter outside the Council, they need to ensure that they do not disclose confidential information or that disclosure would be privileged. This should be checked with one of the designated contact points, Devon Audit Partnership, Legal Services, Human Resources or if preferred, an outside organisation such as the Ombudsman or Protect.

## **7. THE RESPONSIBLE OFFICER**

7.1 The Head of Devon Audit Partnership has overall responsibility for the maintenance and operation of this policy.

7.2 The Head of Devon Audit Partnership will maintain a record of concerns raised and the outcomes (in an anonymous format) and will report as necessary to the Audit and Governance Committee.

## **8. REVIEW AND MONITORING**

8.1 This policy is to be reviewed and monitored every year; the next review date is March 2024.

8.2 The Head of Devon Audit Partnership will monitor this policy. In this regard managers, councillors and trade union representatives must inform Devon Audit Partnership immediately should concerns falling under the scope of this policy be raised with them.

## **9. RELATED POLICIES AND DOCUMENTS AND SUPPORT**

- [Anti-Fraud, Bribery and Corruption Policy](#)
- [Anti-Fraud, Bribery and Corruption Strategy and Response Plan](#)
- [Grievance Resolution Policy and Procedure](#)
- [Employee Assistance Programme \(Bullying & Harassment\)](#)
- [Employee Handbook](#)

## 10. KEY CONTACT INFORMATION

Internal Audit:

Chief Internal Auditor  
Devon Assurance Partnership  
The Watermark  
Erme Court  
Leonards Road  
Ivybridge  
[DAP@devon.gov.uk](mailto:DAP@devon.gov.uk)

**Legal Services:**

Tel: 01752 304330

**Human Resources (HR):  
Protect (formerly Public  
Concern at Work)**

HR Helpdesk Tel: 01752 304444 - Option 5  
Tel: 020 3117 2520  
Website: <https://protect-advice.org.uk/advice-line/>

**Local Government and Social  
Care Ombudsman**

Tel: 0300 061 0614  
Website: <https://www.lgo.org.uk>

## Code on Councillors' Use of ICT Equipment

### 1. When does this code apply?

1.1. This policy applies when Councillors, co-opted and independent members use the Council's ICT equipment.

### 2. Security of ICT equipment and data

2.1. Councillors, co-opted and independent members must follow the Council's ICT security and data security policy. For example, they must:

- 2.1.1. allow the anti-virus software and anti-malware to update itself
- 2.1.2. allow any other automatic software updates
- 2.1.3. keep the firewall installed and switched on
- 2.1.4. not send confidential data in an insecure way
- 2.1.5. not open email attachments that look suspicious
- 2.1.6. use passwords that are difficult to guess
- 2.1.7. log out or lock the screen when they leave their workstation
- 2.1.8. inform the Council's IT provider of any security problems immediately

### 3. Use of ICT equipment

3.1. ICT equipment is provided for Councillors, co-opted and independent members to do their work as Councillors or as representatives on Council committees. They must not use Council ICT equipment to:

- 3.1.1. break the law
- 3.1.2. break the Council's email and internet policy
- 3.1.3. download or distribute pornography
- 3.1.4. pass on anything they should keep confidential
- 3.1.5. download or distribute pirated software
- 3.1.6. damage or spy on other computers or networks
- 3.1.7. interfere with other users' data

#### Username

3.2. Councillors, co-opted and independent members should not use any Council username except their own nor should they let other people use their own Council username.

#### Email

3.3. When Councillors, co-opted and independent members send emails from plymouth.gov.uk addresses, they should:

- 3.3.1. be aware of the risk of libel
- 3.3.2. be aware of the effect they might have on the Council's reputation
- 3.3.3. not harass other people, for example by forwarding chain letters or flooding their mailboxes

3.3.4. use the mail address in a secure way in accordance with this code

#### Computer setting and software

3.4. When using the Council's computers, Councillors, co-opted and independent members must not change the internet security settings. Neither must they load their own software (including games) or connect ICT equipment of their own to the Council's networks.

#### Technical support

3.5. The Council only provides technical support for its own equipment.

#### Monitoring

3.6. The Council records internet use, emails and any files that are sent to outside users and retains the right to view all messages whether incoming or outgoing and whether business, personal or otherwise. The Council will investigate any incident of possible misuse. If substantiated this may result in withdrawal of access and possible further action. Access to some websites is automatically blocked. Councillors who need to visit these websites to do their Council work should seek the advice of the Council's ICT manager.

#### Returning equipment

3.7. Where a Councillor or co-opted or independent member is not re-elected or has to or chooses to stand down, ICT equipment loaned to that person must be returned within 10 days of the event and the city Council ICT manager's signature (or the signature of another Council officer nominated by her or him) must be obtained to confirm return. If equipment is not returned within 10 days a charge amounting to the full cost to the Council of replacement equipment may be made.

#### Complaints about this code being broken

3.8. Complaints about this code being broken should be directed to the Monitoring Officer.

#### Reviewing this code

3.9. The Service Director for Finance has overall responsibility for this code and how it is used.

## Guide to Councillors' Call for Action

### 1. Introduction

1.1. The Local Government and Public Involvement in Health Act 2007 introduced the Councillor Call for Action (CCfA) from 1 April 2009. This guide sets out how Plymouth City Councillors can use this power.

### 2. What is a Councillor Call for Action?

2.1. In their day-to-day role, Councillors identify concerns in their communities and try to resolve them by talking to the Council and other service providers. If they can't resolve a particular issue they can make a 'Councillor Call for Action' which asks for the matter to be referred to the Overview and Scrutiny for further investigation.

2.1.1. Any Councillor can refer an issue to the Scrutiny. Issues must relate to the city

2.1.2. Council's functions, affect all or part of the Councillor's ward or any person who lives or works in the ward and can include matters that the Council and its partners are delivering.

2.2. The Police and Justice Act 2006 makes provision for a CCfA for crime and disorder and community safety issues. In practice, referrals made relating to these issues should be dealt with in the same way as other CCfAs.

### 3. How does it work?

3.1. The Councillor attempts to resolve the issue at a local level in the usual way eg raising it as casework with the appropriate officer and/or Cabinet member, through the formal complaints procedure of the Council, with the relevant partner organisation, questions to Council/committee, a motion on notice to the city Council and so on.

4. If these approaches don't resolve the matter or if it is a persistent matter, the Councillor can refer the issue to the Democratic and Member Support Manager (Plymouth City Council, Ballard House, West Hoe Road, Plymouth PL1 3BJ [democratic.support@plymouth.gov.uk](mailto:democratic.support@plymouth.gov.uk)) who will discuss it with the chair of the relevant Overview and Scrutiny Committee.

4.1. It should be noted that the CCfA is intended to be a measure of last resort and may not be considered until all other avenues have been tried.

### 5. Criteria for considering requests for a CCfA

#### Background information

5.1. Has enough information been provided to enable a view to be taken as to:

5.1.1. which service/functions of the city Council or partner organisation are most



- relevant to the CCfA?
- 5.1.2. whether the request relates to the Councillor's ward or to a person who lives or works in the ward?
  - 5.1.3. what steps have already been taken to try and resolve the issue?

#### Outcome

- 5.2. Has the Councillor clearly stated the desired outcome?

#### Use of existing procedures

- 5.3. Have the city Council's procedures (or partners' procedures) for resolution of issues been used without success? Councillors will need to demonstrate that they have taken reasonable steps to resolve the matter.

#### History

- 5.4. Has the same issue been the subject of a previous CCfA?
- 5.5. Is the length of time that has elapsed between the date of the last action by the Councillor to try to solve the problem and the request for the CCfA such that the CCfA can no longer be regarded as a timely and suitable method of resolution – a time bar of 6 months is suggested.

#### Vexatious

- 5.6. Is the matter vexatious/not reasonable? (Likely to cause distress/disruption or irritation without any proper or justified cause)

#### Discrimination

- 5.7. Is the subject matter discriminatory? (Discriminates against another in relation to their race/religion/faith/belief/sexual orientation/gender/disability)

### 6. Referral to scrutiny

- 6.1. The chair of the relevant Overview and Scrutiny Committee will consider the request and inform the Councillor whether they accept the request. In the event of disagreement between the Councillor and the chair, the matter will be referred to the Monitoring Officer.
- 6.2. Reasons the chair of relevant Overview and Scrutiny Committee may not agree to take the CCfA forward to the Committee could include:
  - 6.2.1. Not enough information has been provided
  - 6.2.2. More could be done to resolve the issue at local level
  - 6.2.3. The matter has recently been examined by scrutiny
  - 6.2.4. The matter is the subject of an ombudsman complaint or other official complaints procedure

6.2.5. The matter is excluded by legislation. For example, planning and licensing applications/appeals

6.2.6. The CCfA is vexatious or discriminatory

6.3. The Oversight and Governance Manager will notify the Councillor, within 14 days of the request being made, of the outcome of the initial consideration of the CCfA request.

6.4. The Councillor may reply to the chair with further information to support the CCfA.

6.5. If the CCfA is accepted, the Overview and Scrutiny Committee will include the CCfA on the agenda at the first available business meeting following the initial consideration of the request.

## 7. Role of the Relevant Overview and Scrutiny Committee

7.1. The Overview and Scrutiny Committee will hear from relevant witnesses, including the Councillor submitting the CCfA, and reach a conclusion as follows:

7.1.1. Write a report setting out their findings and recommendations to Cabinet/a partner organisation as appropriate

7.1.2. Decide that the CCfA matter is complex that needs further investigation and refer the matter to another body for more detailed scrutiny (refer it to the appropriate scrutiny committee or set up a review)

7.1.3. Decide not to take any action

7.2. The outcome of the meeting will be published and details sent to the Councillor who submitted the CCfA, relevant Cabinet members and partners (subject to the rules on confidential and exempt information).

7.3. The Councillor who submitted the CCfA will advise the individual(s) who made the initial representations of the outcome of the CCfA.

7.4. Where Cabinet members and partners are asked to take action to resolve a particular issue they will be asked to make a formal response to a future meeting of the Committee within 28 days, complying with the new requirement, the Duty to Respond.

## CITY COUNCIL

### PETITION SCHEME

#### 1. SUBMITTING A PETITION TO THE COUNCIL

- 1.1. We welcome petitions and recognise that petitions are one way in which people can let us know their concerns.
- 1.2. Paper petitions are those prepared in the traditional way: a petition organiser creates a paper document that includes a proposed action. Residents physically write their name, address and signature on this document to show their support of the proposed action.
- 1.3. To help you organise your paper petition, we have prepared a template which is available on our website.
- 1.4. Paper petitions can be sent to the Democratic Services Team.
- 1.5. e-Petitions are created, signed, and submitted entirely online. **E-petitions created or submitted through third party websites will not be accepted.** If you wish to start an e-petition, please use the Council e-petition system<sup>7</sup>.
- 1.6. Petitions which relate to constitutional changes are governed by legislation<sup>8</sup>. Such petitions must be conducted using a paper petition only with a “wet” signature. Further details can be sought from our Democratic Support Team.

#### 2. GUIDELINES FOR SUBMITTING A PETITION

- 2.1. Petitions submitted to the Council must include:
  - A clear and concise statement covering the subject of the petition. This should state what action the petitioners wish the Council to take.
  - The names and signatures of each person supporting the petition, together with the full addresses (including postcode) at which they live, work or study in Plymouth, regardless of age.
  - Contact details, including an address, for the petition organiser. This is the person we will contact to explain how we will respond to the petition. The contact details of the petition organiser will not be published.
  - If the petition does not identify a petition organiser, we will contact the first listed signatory to the petition to agree who should act as the petition organiser.

#### 3. Scope of Petition

- 3.1. The Monitoring Officer may reject a petition if it:
  - is not about a matter for which the local authority has a responsibility or which affects the City;

<sup>7</sup> <https://www.plymouth.gov.uk/get-involved>

<sup>8</sup> [The Local Authorities \(Referendums\)\(Petitions\)\(England\) Regulations 2011](#)

- is defamatory, discriminatory, frivolous; offensive; vexatious, abusive or otherwise inappropriate;
- is substantially the same as a petition which has been put at a meeting of the Council in the previous 6 months;
- requires the disclosure of confidential or exempt information; or
- seeks to pursue or further a complaint against the Council, where other channels already exist for the determination of complaints.

3.2. In addition, there are some circumstances where petitions will not be dealt with under this Scheme. These include any matters relating to planning or licensing applications; where a separate consultation process is active; or other circumstances which, in the opinion of the Monitoring Officer would mean the petitions would better be dealt with using a different Council procedure.

3.3. The Council may seek to verify the authenticity of each entry on a petition by reference to existing information such as (where appropriate) the current electoral register or other relevant records. Entries which cannot be verified may not be counted for the purposes of determining whether a petition has exceeded a threshold set out in this scheme.

3.4. In the period immediately before an election or referendum, when certain legal restrictions apply, we may need to deal with your petition differently – if this is the case we will explain the reasons and discuss the revised timescale which will apply.

3.5. If a petition does not follow the guidelines set out above, we may decide not to do anything further with it. In that case, we will write to you to explain the reasons.

#### **4. ACTION BY THE COUNCIL ON RECEIPT OF A PETITION**

4.1. An acknowledgement will be sent to the petition organiser within 10 working days of us receiving the petition. This will let them know what we plan to do with the petition and when they can expect to receive a formal response to it. If the petition needs more investigation, we will tell the petition organiser the steps we plan to take.

4.2. If we can do what the petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed.

4.3. All qualifying petitions will receive a formal response within 28 days of receipt. This will usually be the quickest way of addressing the issue raised by the petition.

4.4. If however, the petition meets the requirements to be debated at a meeting of Councillors under the provisions of this scheme, the petition will receive a formal response within 28 days from the meeting. If want the petition debated at a meeting, you may still receive a formal response. You may choose not to proceed with presentation at a meeting if you feel their response resolves the matter.

4.5. To ensure that people know what we are doing in response to the petitions we receive, the details of all petitions submitted to the Council will be published on our website, except in cases where this would be inappropriate.

#### **5. DEBATE BY ELECTED COUNCILLORS**

- 5.1. Subject to your petition containing sufficient signatures as set out above the petition will be presented to a meeting of Councillors at your request. There are several ways in which this can be done.

### **Debate at a Council Meeting**

- 5.2. If your petition includes the names, addresses and signatures of 5000 persons who live, work or study in Plymouth a debate will be held about the petition at a full Council meeting.

### **Response at Overview and Scrutiny Committee**

- 5.3. If your petition includes the names, addresses and signatures of at least 2500 persons who live, work or study in Plymouth, you may request that a formal response is provided at one of the Council's Overview and Scrutiny Committees.

### **General guidance on requesting your petition be debated**

- 5.4. When determining whether a petition has met or exceeded a threshold set out in this scheme, we will only count signatories for which a local connection (i.e. that the signatory either lives, works or studies in Plymouth) can be evidenced from the information supplied. There is a risk that petitions created and/or submitted via third party e-petition websites may not satisfy this criterion therefore e-petitions must be created via the Council's own e-petition facility.
- 5.5. Similar petitions: In the event that 2 or more petitions which are substantially the same are received from different petition organisers, the Monitoring Officer may aggregate the number of valid signatures in each petition for the purpose of determining whether the threshold to trigger a Council debate of the matters raised has been reached if that is the wish of the petition organisers.

## **6. Petitions on Non-council Functions**

- 6.1. If your petition is about something over which the Council has no direct control (for example the local railway or hospital) it is unlikely you will be able to present it to a Council meeting, but we will consider making representations on behalf of the community to the relevant body. The council works with a large number of local partners and where possible may liaise with these partners to respond to your petition. If we are not able to do this for any reason (for example if what the petition calls for conflicts with Council policy), then we will set out the reasons for this to you.
- 6.2. If your petition is about something that a different authority is responsible for, we will give consideration to what the best method is for responding to it. This might consist of simply forwarding the petition to the other authority, but could involve other steps. In any event we will notify you of the action we have taken.

# **“Probity in Planning”**

## **Planning Committee Code of Practice**

**Authors: Service Director for Strategic Planning and Infrastructure, Head of Development Management and Senior Lawyer**

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## **I.0 INTRODUCTION**

- 1.1 The conduct of both Officers and Councillors in Local Government needs to be of the highest standing: on this depends the bond of trust between Councils and their local people, which is essential if Councils are to play their part in leading communities and improving people's quality of life. The local administration of the planning system has come under close scrutiny. The Nolan Committee's Third Report investigated standards in public life, and was followed by the Local Government Act 2000 which introduced a structure by which local authorities were to promote high standards of conduct, through a National Code of Conduct for Members. In 2013 the Local Government Association provided updated guidance on "Probity in Planning" and the Localism Act 2011 has created a new Standard regime with a more local focus, supplemented by advice in the National Planning Policy Guidance on how the conduct of Councillors is regulated.
- 1.2 This Code offers clear guidance and advice as to procedures and practices to elected Councillors, Officers and Councillors of the public in connection with the determination of planning applications and other applications. This Code will ensure that not only are the applications determined in a fair and impartial way, but also in a way which is seen to be fair and impartial. The introduction of the Local Government Act 2000 and associated legislation provides the necessary statutory framework, by which these standards may be achieved, maintained and regulated by each local authority.
- 1.3 Clearly, one of the key purposes of the planning system is to control development in the public interest. When performing this role the Local Planning Authority and elected Councillors are making decisions that necessarily affect land and property interests, as well as the financial value and settings of land holdings. Clearly, there is a need to make decisions that are open, impartial and based on sound judgement and reason. The process of determining applications should leave no grounds for a suggestion that a decision has been partial, biased or ill founded in any way. Decisions must always be made on planning grounds and planning grounds alone.
- 1.4 This Code of Good Practice has been adapted from national guidelines on probity to take account of the local situation. Two particular areas of the Localism Act are relevant to this code. Firstly, with regard to pre-determination the Act makes it clear that it is proper for councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result, provided they maintain an open mind. Secondly, and related to pre-determination, the act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments. This gives Councillors and local residents a chance to comment when there is still genuine scope to make changes to proposals at both pre-application and post submission stage.
- 1.5 The Terms of Reference for Planning Committee is set out in the Council's Constitution (<https://www.plymouth.gov.uk/aboutcouncil/councilconstitution>) which specifies the matters that are delegated to be considered by Planning Committee.

## **2.0 STATUS OF THE CODE**

- 2.1 This Code sets out the basis as to how Officers and Councillors should determine planning and other relevant applications submitted to the Council and ensures that conduct accords with the Council's Codes of Conduct for Members and Officers which is contained within the Council's Constitution.
- 2.2 This Code is contained in the Council's Constitution. A breach of this Code, depending on the circumstances, does not usually amount to a breach of criminal law but may adversely affect the standing of the City Council. It could result in a decision being judicially reviewed or allegation of a breach of the Code of Conduct or a complaint of maladministration made to the Local Government Ombudsman.

IV.

## **3.0 GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS**

- 3.1 Elected Councillors are guided by the Council's Code of Conduct, the seven principles of public life and the Localism Act 2011. This Code is further amplified by reference to the Council's constitution in respect of general Council procedures as well as further amplification in specific Codes of Conduct such as the advice contained in this Code.
- 3.2 Councillors and Officers have different but complementary roles with the determination of planning applications and it is important that an open, respectful and transparent relationship is developed based upon mutual trust and understanding of each other's positions. It is important for the overall standing of the Council and the achievement of national performance targets that they work as an effective team. The role of a Councillor when determining a planning application is to have an overriding duty to the whole community and, accordingly, in deciding the outcome of an application to make a reasoned decision taking into account the provisions of the Development Plan and all relevant material considerations. All decisions should be taken in the interests of Plymouth as a whole.
- 3.3 The basis of the planning system is that consideration is given to all development proposals and these are determined against the wider public interest. Much is often at stake in such decisions and in the process for local people and development interests, as well as for the City of Plymouth itself. Given the nature of these decisions opposing views are often held by those involved. Whilst these views must be taken into account in the determination of planning applications, as stated above, the Planning Committee must not favour any person, group or locality. Councillors must therefore take steps to ensure that in their discharge of their Planning Committee duties the distinction between this role and their role as an individual Ward Councillor is constantly made clear. If Councillors wish to act in the latter capacity they must make that clear at the outset. Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on the Planning



Committee, especially if they feel that they will often be placed in the position of wishing to represent constituents and wishing to speak as a Ward Councillor rather than a Member of the Planning Committee (See paragraph 5.4).

- 3.4 In reaching a decision Councillors should ensure they read, consider and take account of the relevant material considerations connected with the application and should not favour any person, group or locality or put themselves in a position where they may appear to do so.
- 3.5 All decisions should be made in an open and transparent manner by the Councillors of the Planning Committee and this should not at any time be compromised in any way. Therefore, such actions as messages being passed to Councillors of the Planning Committee during a debate should be avoided as this could give an impression of undue influence from a third party. In the first instance in an emergency any notes should be passed to the Democratic Support Officer.
- 3.6 Councillors should always address the Planning Committee through the Chair and avoid speaking directly to one another since it is important that all matters being discussed are clearly heard and acknowledged by everyone at the meeting.
- 3.7 In order to ensure that decisions are taken on planning grounds and are sound it is incumbent on all Planning Committee Members to give full consideration to reports prepared by Officers and familiarise themselves with all relevant national planning guidance (including the National Planning Policy Framework), Development Plan policies and other material considerations well in advance of the consideration of a development proposal at the Planning Committee itself. It is important also that Councillors are seen to be meeting this provision of the code.
- 3.8 The role of Officers is to advise Councillors and the Council as a whole (through the Cabinet and relevant Portfolio Holders) and to carry out work as set out in the Corporate Plan and agreed Business Plans. Officers are employed by the Council, not by individual councillors, and it follows that instructions to them may only be given through a decision of the Council, the Cabinet, the relevant Portfolio Holders, or the Planning Committee.
- 3.9 The conduct of Officers who advise on the determination of planning applications is contained generally in the Council's protocol for Councillor/employee relations and is supplemented by guidance from their professional bodies, such as Royal Town Planning Institute, the Law Society, and the Institute of Legal Executives. Officers may not be instructed by any Councillor to conduct themselves in a manner which would place them in conflict with their professional codes of conduct.
- 3.10 Councillors should abide by the following advice:

- Councillors should always pass a copy of any lobbying correspondence to the Service Director for Strategic Planning and Infrastructure or representative at the earliest opportunity;
- Councillors should never pressurise or lobby Officers for a particular recommendation;
- Councillors should promptly refer to the Service Director for Strategic Planning and Infrastructure any offers made to them of planning gain or constraint of development;
- Councillors should inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying or approaches including inappropriate offers of gifts or hospitality (see also paragraph 3.12);
- Councillors should never use political group meetings to dictate how they should vote on a planning issue and should not lobby fellow Councillors regarding concerns or views, nor attempt to persuade other Councillors to vote in a particular way.

3.11 Officers are required to act impartially at all times in determining applications and providing advice at the Planning Committee. Officers will be expected to conduct themselves in all they say and do in a manner which totally preserves this position of impartiality.

3.12 During the determination of an application, it is possible that Officers and Councillors may be offered hospitality by an interested party. Even though this rarely occurs in Plymouth, it is important to recognise that, if at all possible, these offers should be politely declined. However, any Councillors receiving any gift or hospitality, in their capacity as Councillors, over the value of £25, should provide within 28 days of receipt written notification of the details to the Monitoring Officer of the Council for entry into the register of gifts and hospitality which is open to public inspection and located in the Democratic Support Office. Similarly, for Officers, in the event that the receipt of hospitality is unavoidable, they must ensure that the hospitality is of a minimal level and declare its receipt as soon as possible by completing a “Hospitality Declaration Form” and submit this to the Service Director for Strategic Planning and Infrastructure for signature.

## **4.0 DECLARATION AND REGISTRATION OF COUNCILLOR AND OFFICER INTERESTS AND BIAS**

4.1 Councillors and Officers are required to give a general notice of interest that they hold usually upon their election or appointment to office and are under a duty to maintain that declaration and amend, as necessary, within 28 days of becoming aware of any such changes, throughout their term of office.

- 4.2 A register of Councillors' interests will be maintained by the Council's Monitoring Officer and is available for public inspection. A register of Planning Officers' interests will be maintained by the Service Director for Strategic Planning and Infrastructure.
- 4.3 Furthermore, Councillors and Officers are under a duty to declare interests as and when matters arise at Planning Committee. Guidance on these issues may be sought by the Council's Monitoring Officer. The decision as to whether an interest ought to be declared rests with the individual Councillor or Officer involved.

There are two types of interest, 'a disclosable pecuniary interest and private.

- 4.5 With regard to Planning Officer interests the Service Director for Strategic Planning and Infrastructure Services will check the Officer declarations list and advise the Officer accordingly if they feel that alternative arrangements are necessary in presenting the report.

4.6 What is a Disclosable Pecuniary Interest (DPI)

Disclosable pecuniary interests are defined in regulations. The regulations in general will mean that a member will have to register any interest they or their husband or wife or civil partner or cohabitee has in:

- any employment, office, trade, profession or vocation that they carry on for profit or gain or that their spouse civil partner or cohabitee carries on for profit or gain;
- any sponsorship that the councillor receives including contributions to the councillor's expenses as a councillor; or the councillor's election expenses from a Trade Union.
- any land licence or tenancy they have in Plymouth or that their spouse civil partner or cohabitee has
- any current contracts leases or tenancies between the council and them, or between the council and their spouse civil partner or cohabitee;
- any current contracts leases or tenancies between the council and any organisation with land in Plymouth in which they are a partner, a paid director, or have a relevant interest in its shares and securities;
- any current contracts leases or tenancies between the councillor's spouse civil partner or cohabitee and any organisation with land in Plymouth in which he or she is a partner, a paid director, or has a relevant interest in its shares and securities;
- any organisation which has land or a place of business in Plymouth and in which they have a relevant interest in its shares or its securities.
- any organisation which has land or a place of business in Plymouth and in which the councillors spouse, civil partner or cohabitee has a relevant interest in its shares or its securities;

4.7 What to do if you have a DPI

If a Councillor has a disclosable pecuniary interest (whether a Planning Committee Member or a Councillor speaking on an item as a Ward Councillor) they must declare that they have an interest at the start of the meeting and leave the meeting

when the application is due to be considered as they cannot participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting.

#### 4.8 What is a Private Interest

The public is likely to consider that a Councillor has a private interest if it affects the wellbeing or financial position of:

- his/her family and close associates, or
- any organisation where he or she is a member, or where he or she is involved in its management;
- any organisation to which he or she has been appointed by the council.

#### 4.9 What to do if you have a Private Interest – Financial

If a Councillor has a private they must declare the interest if the decision could confer a financial advantage or disadvantage on:

- his or her family , or
- his or her close associates, or

an organisation where he or she is a member, or is involved in its management (whether or not appointed to that body by the council). This would include membership of a secret society and other similar organisations.

#### 4.10 What to do if you have a Private Interest - Other issues

When the committee is determining an application in which the Councillor has a private interest a councillor should declare the interest if the decision relates to an approval, consent, licence, permission, or registration for:

- his or her family, or
- his or her close associates, or
- an organisation where he or she is a member or is involved in its management (whether or not appointed to that body by the council). This would include membership of a secret society and any other similar organisations.

#### 4.11 A Councillor should declare an interest at the start of the meeting, or when they realise they have the interest if that is later. They can stay in the meeting and speak and vote unless their private interest is also a disclosable pecuniary interest.

#### 4.12 If a decision being taken at the committee is likely to confer an advantage or disadvantage on:

- a councillor's family;
- his or her close associates; or
- an organization where he or she has a private interest

more than it will affect other people living or working in the area the councillor should discuss the matter with the Monitoring Officer, or his/her designee in advance of the meeting as legal issues of bias may arise.

- 4.13 Councillors should also not give grounds for a suspicion that any such interests may arise and have not been declared.
- 4.14 When an application is to be determined, there is an expectation that it will be dealt with transparently, openly and in a fair way. Councillors will be expected to take account of all relevant evidence and give it appropriate weight in the decision making process and arrive at a reasoned sound decision.
- 4.15 An alternative approach may be for the Planning Committee Member to refrain from making any public statement on an application and to invite another Ward Councillor to attend the Planning Committee to speak on the local ward issues and for the Member of the Planning Committee, if she/he has not made a public statement in support of or against the application, to confine his/her comments to the relevant planning issues, taking into account the interests of the City as a whole.

## **5.0 PREDETERMINATION OR PREDISPOSITION**

- 5.1 Members of the Planning Committee need to ensure that they do not fetter their ability to participate in the decision making process on an application by making up their mind or clearly indicating that they have made up their mind on how they will vote prior to the consideration of the application by the committee.
- 5.2 The Planning Committee should, when considering an application, take into account all views that are expressed in such a way that they are openly heard and fairly considered in a balanced way before the committee reach a decision.
- 5.3 Members of the Planning Committee can have a predisposition to an initial view, where the Councillor is clear they are still willing to listen to all the material considerations presented at the Planning Committee before deciding on how to exercise their vote on behalf of the community.
- 5.4 The fettering of a Councillors discretion as set out in 5.1 and then taking part in the decision making process will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a risk of bias or predetermination or a failure to not take into account all of the factors enabling the application to be considered on its merits.
- 5.5 The Localism Act 2011 now sets out that a Councillor, who has expressed a preference for a particular outcome of an application as it proceeds to determination, will **not** be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate their view in respect of the matter. However, it is important that a fair minded observer would think that the Councillor was open to changing their mind in the light of different or additional information, advice or evidence presented.

- 5.6 It will be evident that the appropriate action is not clear cut and will depend on the circumstances of a particular case and application. Planning Committee members need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, Councillors taking the decision on an application must take account of all the evidence presented before arriving at a decision, and should avoid committing themselves one way or another before hearing all the arguments.
- 5.7 A situation can arise when a Member of the Planning Committee represents a Ward within which a contentious application is lodged. If, prior to the matter being considered by the Planning Committee, that Councillor decides to make a public statement, and either supports or opposes the application, it will be difficult for that Councillor to be seen to subsequently determine the application transparently, openly and fairly. Accordingly, the Councillor should make an open declaration, in relation to his or her position and not vote on the determination of the application at Planning Committee. The open declaration should be noted in the Planning Committee minutes. The Councillor will also be required to vacate their seat within the Planning Committee and to sit within the public gallery for the duration of the consideration of the item, and where they have exercised their right to speak as a Ward Councillor, they can address the Planning Committee at the appropriate time in accordance with the Ward Councillor speaking arrangements (see section 11).
- 5.8 Ultimately it is the responsibility of the individual Councillor to ensure that their role on the Planning Committee is not compromised and it is also for them to strike the balance that may need to be made between ward and other interests and the requirements of the Planning Committee.

## **6.0 DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS, OFFICERS AND THE COUNCIL**

- 6.1 In accordance with the Council's Officer Code of Conduct (June 2000), employees must declare any financial or non-financial interests which relate to their work to the appropriate Director, Service Director, or Head of Service, including membership of any organisation not open to the public without formal membership and commitments of allegiance. Such declarations will be maintained in documents which will not be publicly disclosable.
- 6.2 Such declarations can be made on a regular basis without any known future applications coming forward. In such situations, planning and other associated applications will not be allocated to that employee to deal with.
- 6.3 However, it will sometimes occur that an employee only identifies a conflict of interest in the course of determining an application. At this point it is the

responsibility of the employee to immediately raise the declaration with the Director, Service Director, or Head of Service and for the employee to take no further action in the determination of the case. Again, a record of the declaration will be maintained in documents which will not be publicly disclosable.

- 6.4 In all instances where there is a conflict of interest the appropriate procedure would be for officers to notify the Director, Service Director, or Head of Service of that conflict and to have no further part in the determination of the application.
- 6.5 Any proposals submitted by Councillors and Officers shall be dealt with so as to give no grounds for accusations of favouritism. For this reason reference is made in the Terms of Reference for Planning Committee for decision making involving Council employees or Councillors.
- 6.6 Officers and serving Councillors must not act as agents for people pursuing Planning matters within Plymouth City Council's jurisdiction.
- 6.7 Any application submitted by Plymouth City Council shall be processed in the same transparent and impartial manner as for any other applicant with the Service Director for Strategic Planning and Infrastructure using his powers of referral if he considers it meets the provisions outlined in the Planning Committee Terms of Reference.

## **7.0 LOBBYING**

- 7.1 It is recognised that lobbying is a normal and perfectly legitimate element of the process of considering planning applications. If a Councillor, who is not on the Planning Committee to determine an application, wishes to support a particular viewpoint then that Councillor has a right to appear at Planning Committee and seek permission to address the meeting.
- 7.2 It is, however, important that Councillors protect their impartiality and integrity in planning matters. Planning Committee Members will not breach the Code by listening to or receiving viewpoints from residents or other interested parties provided that they make it clear that they are keeping an open mind. However expressing an intention to vote one way or another before a Planning Committee meeting would prejudice impartiality.

## **8.0 WARD COUNCILLOR INVOLVEMENT IN PLANNING APPLICATIONS PROCESS**

- 8.1 Ward Councillors have a central role in helping to represent the views of local people and other stakeholders at both pre-application and planning application stage. Ward Councillors bring strong community leadership, extensive local knowledge and an up to date understanding of current issues. Planning officers have to act impartially at all times, but will provide support and advice to ward Councillors on planning matters in order for them to play this community leadership role. This will include the involvement of ward Councillors in negotiations on planning obligations.
- 8.2 To assist with councillor engagement in the Planning process named Planning Officers have been identified for each ward. Councillors are encouraged to contact this officer to help them become engaged in Planning decisions and ensure they can properly represent the issues raised by their residents.

### **Information available to Ward Councillors**

- 8.3 The City Council web-site sets out development plan policies and supporting information and evidence base documents in order to help inform ward councillors consideration of a development proposal at both pre-application and submission stages.
- 8.4 To further assist ward councillors in considering to what extent they wish to make comments on development proposals, every week ward councillors will be sent a link to the weekly planning list which includes all planning consent applications all pre applications submitted unless there is a specific exclusion from the public record by virtue of the Freedom of Information Act or Data Protection Act. In these cases the case officer will encourage the applicant to engage with Ward Councillors on a confidential basis.



## **Councillor Involvement at Development Enquiry Service (DES) Pre-Application Stage**

- 8.5 Councillors should review the weekly planning list. Councillors should contact the named case officer at their earliest opportunity if they wish to draw attention to any particular planning or Section 106 related issues or concerns, specifying which site this relates to. This will enable officers, ward councillors and the developer to more positively engage together in progressing the pre-application discussions and take account of key local issues at an early stage. It is at this stage a councillor should also indicate whether they wish to receive an informal presentation from or attend a meeting with the developer/agent. Pre-application engagement with councillors will enable the developer to positively engage with ward councillors at an early stage in the development process, without compromising the decision making process
- 8.6 Where requested, for major developments, the planning case officer will facilitate the opportunity for an informal presentation of the development proposal by the developer/agent to interested councillors, at pre-application stage. A request for an informal presentation can be made by councillors, the developer/agent or by planning officers. Informal DES presentations will generally be undertaken within 4 weeks of the Development Enquiry Service application being registered, and will be carried out fully in accordance with the Council's Code of Good Practice for Members and Officers, and the general advice contained in the National Model Code of Conduct (Local Authorities (Model Code of Conduct) Order 2007 - SI 2007/1159). Wherever possible meetings will be arranged for all interested councillors to reflect councillor availability, but in order not to unduly delay pre-application discussions councillors will be expected to prioritise attendance at any DES meetings requested.
- 8.7 The purpose of these DES presentations is to inform councillors of emerging proposals for major developments and enable key local issues of relevance to the development, including any Section 106 matters, to be identified. Such early engagement will enable the developer to understand and address any significant local concerns as early in the development process as possible including any priorities to mitigate the impact of the proposed development. The collection and expenditure of Community Infrastructure Levy (CIL) payments will not be a matter for discussion at these meetings since CIL is non-negotiable and the expenditure will be determined through the governance of the Council's Regulation 123 List.
- 8.8 The developer's presentation will be limited to the facts of the development proposal.
- 8.9 Councillors will be given the opportunity to ask questions concerning any aspect of the proposal, including Section 106 matters. Unless a matter is commercially confidential and sensitive, developers will be expected to provide comprehensive answers to questions from ward councillors.
- 8.10 The planning case officer will highlight the key planning issues, summarising policy issues, third party views and other issues for consideration. Key issues raised at the DES meeting will be written up as part of the case officer's report to Planning Committee.

- 8.11 Councillors will be at liberty to express opinions in support or opposition for the proposals at meetings with the applicant if they wish, unless they are also a member of the Planning Committee.
- 8.12 Where a councillor is also a member of Planning Committee this will be declared at the start of the meeting. The planning case officer will then make it clear that the Planning Committee Member is at the meeting to understand the issues and to ask questions of clarification, but will remain open minded so as to avoid any suggestions of pre-determination.
- 8.13 Local ward councillor involvement at pre-application stage will not affect the speaking rights of the member at Planning Committee provided the local ward Councillor has followed the Council's Code of Good Practice for Members and officers.
- 8.14 The presentation will not form part of the formal negotiation process that will take place strictly between the Strategic Planning and Infrastructure Department and the applicant.
- 8.15 **Under no circumstances should Planning Committee Members meet with developers / landowners / applicant (or their advisors) without the presence of a Planning Officer.** To do so will be a breach of this code and may prejudice the integrity of any subsequent decisions made on any application. Councillors who are not members of Planning Committee are advised to seek advice from Planning Officers prior to agreeing to meet with applicants.

#### **Councillor Involvement at Planning Application Stage**

- 8.16 In accordance with the principles set out in the Statement of Community Involvement, councillors should review the weekly list of planning applications. It is the councillor's responsibility to initiate contact with the case officer named in the weekly list if they wish to draw attention to any particular planning or Section 106 related issues or concerns.
- 8.17 Where a councillor asks to be involved in the planning application discussions the case officer will arrange a meeting with the applicant (or their representatives) at a mutually convenient date and time and will always invite the other ward councillors to attend.
- 8.18 In order not to unduly delay the determination of planning applications councillors will be expected to prioritise attendance at any planning meetings requested. This date will normally be within 3 weeks of receipt of the request for the meeting. Members can still make comments on a planning application within the statutory consultation period of 21 days.
- 8.19 The advice and discussions at any meeting will not bind the formal determination by the Local Planning Authority of the planning application.
- 8.20 Under no circumstances should Planning Committee Members meet with a developer without the presence of a Planning Officer and other Members are advised to seek advice from Planning Officers prior to meeting a developer.

## **Presentation to Councillors prior to Planning Committee**

- 8.21 Planning Committee can request that a presentation is given to the Planning Committee Members prior to the formal Planning Committee. This will only be agreed in exceptional circumstances when there are complex issues that Planning Committee need to understand before they can make a reasoned Planning decision. For example it could be due to a legal ruling, the need to understand the activities being proposed by the applicant, or a complex policy issue. The need for a presentation will be at the complete discretion of the Chair of Planning Committee in consultation with the Service Director for Strategic Planning and Infrastructure.
- 8.22 The presentation will be held for the benefit of Planning Committee members only and any public or applicant involvement would be at the discretion of the Chair of Planning Committee in consultation with the Service Director for Strategic Planning and Infrastructure
- 8.23 The presentation will be chaired by the Chair of Planning Committee and be attended by appropriate Council Officers who will give factual information as requested by the Chair. Under no circumstances will there be a debate on the merits of the relevant planning application. The Chair will remind Members at the beginning of the meeting of their responsibilities not be pre-determined prior to the Planning Committee and the Chair would reserve the right to end the meeting if Members do not strictly adhere to the provisions set out in section 5 of the Code of Good Practice relating to pre-determination.
- 8.24 The meeting will not form part of the formal Planning Committee meeting, but will be referred to in the minutes that will accompany the formal planning decision.

## **9.0 ROLES OF MEMBERS AND OFFICERS AT PLANNING COMMITTEE**

- 9.1 Officers and Members have specific roles at Planning Committee. In particular the following Members and Officers will be identified at the Planning Committee:
- Chair of Planning Committee
  - Vice Chair of Planning Committee
  - Other Members of Planning Committee
  - Lead Planning Officer
  - Legal Officer
  - Democratic Support Officer
  - Case Officer
  - Other professional inputs (as determined by the Service Director for Strategic Planning and Infrastructure)

## **10.0 ORDER OF PLANNING COMMITTEE CONSIDERATIONS**

- 10.1 All decisions that are to be made by the Planning Committee will be based upon written reports by Officers supplemented, where necessary, by a brief oral presentation which may include a site plan, an aerial photograph of the site, photographs of the site, key application plans and drawings, video and other relevant material that the Officer considers will assist the Planning Committee in the consideration of the proposal.
- 10.2 In specific regard to the written reports prepared by Officers if there is found to be an error in the report after the reports have been published then the application will be deferred to the next Committee. Officers will bring this to the Planning Committee's attention at the start of the oral presentation. The Committee can, however, determine that the application should not be deferred if it is considered appropriate.
- 10.3 In most cases the Service Director for Strategic Planning and Infrastructure will make a recommendation to the Planning Committee to either refuse planning permission, with reasons, or to approve planning permission, with conditions. In exceptional circumstances the Service Director for Strategic Planning and Infrastructure may not be in a position to make a recommendation to the Planning Committee through the main report. Where this is necessary reasons will be given as part of the Officer report and presentation to the Planning Committee. The Service Director for Strategic Planning and Infrastructure may also need to report updates on specific aspects of a proposed development or undertake presentations of development proposals with the applicant at the early stages of a proposal. Where this is the case these will be separately identified on the Planning Committee agenda. In order to ensure efficient and effective decision making the Service Director for Strategic Planning and Infrastructure will generally seek from the Planning Committee delegated authority to determine a planning application after the expiry of an advertisement period, or upon receipt of additional details, or will seek delegated authority to refuse permission where a Section 106 agreement linked to a resolution to grant consent is not, in his/her opinion, being expedited with sufficient speed by the applicant or will seek to defer to the Service Director for further negotiations in consultation with Chair, Vice Chair, and Lead Opposition Group Member for Planning.
- 10.4 Where further detail and clarification on a published report is required, this will be provided in the form of a written addendum report, to be made public no later than 5.00 p.m. the day prior to the Planning Committee meeting. Officers will always seek to ensure that the use of addendum reports is kept to the absolute minimum.
- 10.5 In exceptional circumstances, a further oral report may need to be provided at the Planning Committee meeting itself.

10.6 The order for consideration of all planning applications will be as follows:

1. Planning Officer Oral Presentation;
2. Any Planning Committee Member(s) with a prejudicial interest who wish to speak for or against a proposal (who will then leave the room);
3. Any eligible Ward Councillor(s) who wish to speak for or against the proposal;
4. Any Public Speaker who wishes to speak against the proposal;
5. Any Public Speaker who wishes to speak in favour of the proposal;
6. Questions to the Planning Officer by Planning Committee Members and debate on the proposal;
8. Planning Committee Members move and debate any alternative motions to the recommendation. The Lead Officer clarifies the wording of the alternative motion and the Chair puts these to the vote as appropriate (refer also to section 14);
9. Chair of Planning Committee puts the original recommendation to the vote, if necessary;
10. Formal Decision of Planning Committee on the proposal.

10.7 If Members request a point of clarification arising from what they have heard from any of the Speakers, to assist them with their consideration of the proposal, the Chair may, at his or her complete discretion, ask for a short adjournment so that the Lead Planning Officer can consult directly with the Speaker or another officer not present at the meeting who may be able to assist.

## **11.0 SPEAKING AT PLANNING COMMITTEE**

11.1 Once the Planning Committee agenda and accompanying papers are made available to the public five days prior to the Planning Committee meeting, anyone who wishes to speak must notify the Council's Democratic Support Section (details of which will be on the agenda papers) that they wish to speak, give details of the item upon which they wish to speak under Part I and whether they wish to speak as a supporter, objector, or Ward Councillor. The exception to this would be a Councillor who has referred an item to Planning Committee. In such cases the Councillor will have been deemed to have registered to speak at Planning Committee through the referral process. Notification must be made in person by either telephone, letter or e-mail and must be received by no later than 4.30 p.m. two working days before the Planning Committee meeting. An individual who wishes to speak at Planning Committee must register personally.

11.2 The Members who will be permitted to speak as Ward Members are normally only those Members whose ward boundary falls within the 'red line' of the planning application site. However, exceptionally other Members will be allowed to speak at

the discretion of the Chair provided that they represent an adjacent ward to where the red line is located and in the Committee's opinion the development directly affects residents in that adjacent ward and any of those residents have submitted letters of representation within the statutory notice period. When such an exception is made the reason will be provided as part of the Planning Committee minutes. Other Members can speak at Planning Committee, but as an objector or supporter and provided they meet the other requirements in section 11.

- 11.3 The other participants allowed to publicly speak at the Planning Committee will be the applicant or agent and/or third party objectors and supporters or another representative nominated by them. In the case of third parties only those who have made written representations on the planning application during the statutory consultation period will be eligible to speak. In the case of Public Rights of Way applications there will also be a further participant, the landowner, who will be allowed to speak after the Officer presentation, and any Members, objectors and supporters have spoken.
- 11.4 In all circumstances the maximum number of public speakers will be one objector and one in support of the development proposal (plus a landowner for Public Rights of Way applications). If there are several persons wishing to speak (whether objectors or supporters) preference will be given to the first person who properly registers to speak. However the Democratic Support Officer will advise other people who wish to speak of the nominated speaker and, if that speaker is agreeable, then an alternative speaker can be put forward provided all the other criteria in section 11 is satisfied.
- 11.5 Speakers who have notified that they wish to speak need to attend the Planning Committee at least quarter of an hour before the start of the meeting and should register their details with the Democratic Support Officer. They will need to provide their name, the application they are to speak on, and whether they are an objector or supporter of the proposal.
- 11.6 Speakers will be allowed to speak for up to a maximum of five minutes and there will be no further involvement of the speaker in the deliberations of the Planning Committee, except as outlined in paragraph 10.6. Speakers will NOT be given an opportunity to ask questions of the Members of the Planning Committee.
- 11.7 Speakers are not expected to provide any presentational material for the Planning Committee. However, if a speaker wishes to submit any presentational material to supplement their speech they must do so no later than the deadline for speaking as outlined in paragraph 11.1. The material must only deal with issues raised through the formal representations procedure on that particular application. Any other presentational material that is produced by speakers will not be accepted and will be disregarded.

- 11.8 In the event an application is deferred, anyone wishing to speak at the subsequent Planning Committee meeting must register in the normal way. Any previous speaker will not be given preference over other eligible speakers.
- 11.9 Speakers should not interrupt other speakers or interrupt the Planning Committee debate.
- 11.10 Speakers should not to make slanderous statements or any other racially motivated, discriminatory or inflammatory remarks.
- 11.11 The Chair can suspend the right to public speaking in relation to an individual item or the whole Planning Committee if he/she considers it necessary to maintain order at the meeting.
- 11.12 The Chair can also require a speaker to cease speaking and leave the meeting if in the opinion of the Chair the speaker's statement falls within 11.9 or 11.10 above.
- 11.13 The Chair of Planning Committee at any time may adjourn the Planning Committee and ask for the public gallery to be cleared to maintain order at the meeting if there is any activity or behaviour which, in his/her opinion, is disrupting the proper consideration of a planning application and/or the conduct of the business of the Planning Committee.
- 11.14 The Chair of Planning Committee at any time may require a Member of the Planning Committee to leave the meeting and take no further part in the proceedings if, in his or her opinion the Member has made statements that fall within 11.9 or 11.10.

## **12.0 SITE VISITS**

- 12.1 Planning Committee Members will be expected to be familiar with the site and the issues surrounding the Officer recommendation when they arrive at a Planning Committee meeting.
- 12.2 If, prior to a Planning Committee meeting, a Member considers that additional illustrative material would assist the Planning Committee to visualise the impact of the proposed development (over and above the planning application drawings and plans and the material forming part of the Officer's presentation to the Planning

Committee) they should advise the Service Director for Strategic Planning and Infrastructure either at least three working days before the Planning Committee meeting or during the Planning Committee site visit clearly specifying what additional material is needed and why.

- 12.3 Officers will normally organise a site visit ahead of any formal recommendation if they feel this would benefit Members' understanding of the proposal and subject to the agreement of the Chair. These site visits will be held prior to the Planning Committee meeting and will be agreed in advance in consultation with the Chair and Vice Chair. Councillors will be expected to give priority to attending this at the arranged time. If Councillors wish the Planning Committee to visit other sites on the Planning Committee agenda not already included in the scheduled site visit they should advise the Service Director for Strategic Planning and Infrastructure at the earliest opportunity. If Councillors cannot attend the scheduled site visit they will still be expected to have familiarised themselves with the site. Councillors should, however, inform the planning officer if they intend to enter the owner's property unaccompanied and seek clarification from the planning officer whether it is appropriate for them to be accompanied by an officer.
- 12.4 If a Member of Planning Committee moves a resolution for a site visit at a Planning Committee meeting not having attended the scheduled visit under paragraph 12.3 Planning Committee will exercise a strong presumption against agreeing to defer the planning application for a further site visit.
- 12.5 If during the course of the consideration of any application a Councillor moves a resolution for a site visit on a site which was not included in the Scheduled site visit the Councillor will need to give an explicit reason that must explain why the need for a site visit was not apparent prior to the Planning Committee meeting. In such cases the deferment for a site visit will need to be agreed by Planning Committee members through a majority vote.
- 12.6 If a site visit is to be made by the Planning Committee it will consist of an inspection of the site (and adjoining sites and buildings as necessary) with the assistance of Officers. The purpose of the site visit is to assess the site and surroundings in the context of the development proposals under consideration, relevant development plan policies and proposals, and identified material considerations. It does not form part of the formal Planning Committee meeting.
- 12.7 Site visits conducted by the Planning Committee will normally be unaccompanied (by third parties). As such there is no obligation on the Council to notify the applicant or objectors of the arrangements for a site visit. However it may be necessary to contact the applicant and/or landowner of the site and/or adjacent sites to gain permission to access private property. Before Councillors enter the site(s) or building(s) Officers will explain to any applicants, objectors, or supporters in attendance the procedure for the conduct of the visit. Officers will then explain to Councillors the issues relating to the Planning Committee item pointing out any site



related matters as necessary. Councillors will be encouraged to ask Officers questions of fact.

12.8 Under no circumstances are Councillors of the Committee or Officers to enter into any discussions with Ward Councillors, applicants, supporters or objectors on the site visit regarding the merits or demerits of the proposal. During the site visit Councillors and Officers should avoid comments that could be interpreted as deliberations on the proposal itself, restricting themselves to questions of clarification or observations of fact. If, in the opinion of the Chair of the Planning Committee (or a named substitute), the conduct of Councillors, Officers or third parties is of such a nature as to be potentially in conflict with any of these requirements, or the safety of the Councillors or Officers is in question, he/she will immediately suspend the site visit. If the Chair of the Planning Committee (or a named substitute) does suspend a site visit the application will be determined by a subsequent Planning Committee without further recourse to a site visit (even if a further request is made by a Councillor).

12.9 Ward Councillors will be notified and may be present at a site visit but this is only to accompany the Planning Committee members, it is not an opportunity for the Ward Councillors to put forward any case for or against the proposal. The Ward Councillor is only present to assist with any clarification that may be required in connection with local area issues and to hear the explanation given by the Officer.

12.10 The purpose of Planning Committee site visits is:

- For Members of the Planning Committee to familiarise themselves with the site and its surroundings and the location of relevant parts of the proposal.
- For Officer(s) to provide factual information to Councillors regarding the site and the proposed development.
- For the applicant or their agent to be present on the site, either to enable access or to ensure health and safety procedures are followed.
- At the Chair's discretion, to visit third party premises.
- To seek clarification on details of the planning application from officers.

12.11 At the discretion of the Chair of the Planning Committee (or a named substitute) a statement will be read out to all in attendance regarding site visit procedures. The statement is as follows:

“May I remind Members of the Planning Committee that the purpose of this site visit is solely to view the site and seek clarification on the planning application from officers. Planning Committee Members cannot engage in a debate or answer questions about the development. Members cannot discuss the merits or otherwise of the proposal with developers, ward councillors or local residents.”

12.12 The Chair of the Planning Committee (or a named substitute) is able to suspend a site visit at any time if they are not conducted in an appropriate manner or where there are health and safety issues.

12.13 A record that a Planning Committee site visit has taken place should be made through a Planning Committee minute.

### **13.0 DECISIONS CONTRARY TO THE DEVELOPMENT PLAN**

13.1 The general principle in planning is that where the Development Plan is up to date and relevant, planning applications should be determined in accordance with it unless material considerations indicate otherwise.

13.2 All applications must be assessed in accordance with Section 38(6) of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990 as amended by Section 143 of the Localism Act 2011.

### **14.0 DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

14.1 The Planning Practice Guidance (PPG) advises that the most common cause for costs being awarded against a Local Planning Authority is where there are unsubstantiated reasons for refusal. However, the PPG recognises that planning can often involve judgements concerning the character and appearance of a local area and the precise interpretation and application of development plan policy requirements.

14.2 Planning applications can also give rise to local controversy and sustained opposition, leading to Councillors being actively lobbied (see Section 7). However, as the Planning Policy Guidance makes clear, local opposition or support for a proposal is not, in itself, a ground for refusing or granting planning permission, unless it is founded upon valid material planning reasons. Planning authorities will be at risk of costs for unsubstantiated reasons for refusal that rely almost exclusively on local opposition for their justification.

14.3 Once the Planning Committee agenda has been published any Councillor may seek advice from Planning Officers, irrespective of the recommendation made on any particular planning application, and discuss what options there are with the Service Director for Strategic Planning and Infrastructure or the Head of Development Management.

- 14.4 If a decision is to be made contrary to the Service Director for Strategic Planning and Infrastructure recommendation, then the Councillors proposing, seconding or supporting a contrary decision must agree the planning reasons leading to this decision and must also give Officers an opportunity to explain the implications of such decision prior to the vote. The reasons for the decision must be given prior to the vote and shall be minuted.
- 14.5 In the event that the Planning Committee is minded to grant an application contrary to Officers recommendation then they MUST provide:
- (i) Full conditions and relevant informatives or agree to delegate to the Service Director for Strategic Planning and Infrastructure;
  - (ii) Full statement of reasons for approval (as defined in Town and Country Planning (Development Management Procedure) (England) Order 2015);
  - (iii) Relevant Development Plan policies and proposals.
- 14.6 If Planning Committee wishes to add pre-commencement conditions to a decision to grant, the Service Director of Strategic Planning and Infrastructure will be granted delegated powers to refuse the application if the applicant does not agree to the condition, in order to satisfy the requirements of the Neighbourhood Planning Act 2017.
- 14.7 Where a Member of the Planning Committee moves a motion to refuse an application contrary to the Officers' recommendation then the Councillor moving the motion MUST provide:
- (i) Full reasons for refusal, which must include a statement as to demonstrable harm caused and a list of the relevant plan and policies which the application is in conflict with;
- 14.8 In the event of a Councillor motion to refuse, which is seconded, the Chair will if necessary adjourn the meeting for a few minutes to allow Officers to advise of any other relevant planning issues to assist them with their reasons. Vague, generalised or inaccurate assertions about a proposals' impact, which are unsupported by an objective analysis, are more likely to result in a costs award.
- 14.9 If the Councillor moving the motion does not meet the requirements of 14.6 above the motion shall be not be deemed to have been properly made.
- 14.10 If, in the opinion of the Lead Planning Officer (that is the senior planning officer supporting the Chair at the meeting) the possible decision of the Planning Committee to refuse planning permission would carry a high risk of an award of costs against the Local Planning Authority, she or he shall formally ask the Planning Committee to defer a decision and this advice will be formally minuted. The purpose of the deferral shall

be to provide time for a full consideration by Officers of the Planning Committee's concerns about the application, such that Officers may advise of grounds of refusal, should the Planning Committee remain minded to refuse the application. In making an assessment about the level of risk of a cost award, the Lead Officer shall have regard to:

- The application's level of compliance with the Development Plan and other adopted policies;
- The robustness of the evidence that can be cited to support a refusal of planning permission;
- All other material considerations.

14.11 Any decision made during the Planning Committee forms the full and final decision of the Council (subject to agreed matters for deferral and final ratification) and it is therefore essential that both Councillors and Officers carefully follow the above procedure in order to provide a legally binding decision.

## **15.0 APPEALS AND INQUIRIES**

15.1 In the event that planning permission is refused either under delegated powers conferred on the Service Director for Strategic Planning and Infrastructure or by the Planning Committee, an applicant may exercise his/her right of appeal. Officers are responsible for preparing the Council's evidence for these appeals, and the vast majority of these are dealt with by written representations involving an exchange of statements. On occasions specialist Counsel and consultant support is needed to supplement the evidence of Officers.

15.2 In the case of an applicant exercising his/her right to an informal hearing or a Public Inquiry Officers will be responsible for presenting the Council's evidence and attending to present that evidence. Councillors are at liberty to attend in their capacity as Ward Councillors and may be called to give evidence as a Ward Councillor. Members of the Planning Committee will not normally be required to attend to present the Council's case.

15.3 In the case where the Planning Committee has refused planning permission contrary to Officer's recommendations Officers will normally prepare and present the evidence in their role as employee of the Local Planning Authority. It will be for the Service Director for Strategic Planning and Infrastructure to identify the officers to prepare and present the evidence.

15.4 Members of the Planning Committee who voted to overturn a decision will be provided with a draft of the appeal statement and invited to comment before the officer sends it to the Planning Inspectorate. In addition, there may be some situations where in an informal hearing or Public Inquiry Councillor involvement as a relevant

witness is necessary in order to provide a full and accurate case. In circumstances where the Service Director for Strategic Planning and Infrastructure considers this to be the case the Councillor will be expected to attend any Informal Hearing or Public Inquiry in support of the Council's case.

- 15.5 In exceptional circumstances the Service Director for Strategic Planning and Infrastructure may not be able to prepare the Council's evidence to the hearing or inquiry because the Officer's earlier recommendation on the grounds of refusal is so prejudiced by the earlier advice given. In these circumstances a nominated Member of the Planning Committee together with an externally appointed consultant will need to present the Council's evidence.

## **16.0 QUALITY OF SERVICE**

- 16.1 The responsibility to provide a quality service is shared by both Officers and Councillors. Unnecessary delay at any point in the process of determining an application can result in customer commitments not being met. It can also mean costly delays and can damage the reputation of Plymouth City Council, the Planning Committee itself and its individual Councillors and Officers. This could have wider implications for the regeneration of Plymouth in terms of how investors, and indeed local people, perceive the city.
- 16.2 Therefore, when making decisions Councillors and Officers need to ensure primarily that a fair and reasonable planning decision is made, but that in so doing account must also be taken of customer commitments.

## **17.0 MONITORING AND REVIEW OF DECISIONS**

- 17.1 Councillors should also play an active part in regularly reviewing the outcome of planning decisions so that lessons can be learned and the future consideration and determination of planning application proposals can be improved as part of a broader commitment to continuous improvement.
- 17.2 Every year the Planning Committee will undertake an Annual Site Visit to review completed projects and look at key regeneration sites that form part of the Local Development Framework. There may also be the need for review site visits during the determination stage of planning applications.

- 17.3 Councillors should assist in the preparation of the Local Development Framework/Local Plans by engaging in key consultation stages and discussing with Officers the application of key policies. The Chair of Planning Committee will also meet regularly with the relevant Portfolio Holder to discuss the interrelationships between policy development and policy application.
- 17.4 Councillors should therefore ensure that they are available for review visits as and when necessary throughout the year and for a whole day of visits for the Annual Site Visit.

## **18.0 TRAINING**

- 18.1 No Councillor may sit at a Planning Committee meeting without first having received appropriate mandatory Introduction to Planning Committee training. This training will expire if the Councillor has not sat on the Planning Committee within 12 months of receiving the training, or has had a gap of at least 6 months from the Planning Committee. Where the training has expired the Councillor may not sit on the Planning Committee until they have renewed their Introduction to Planning Committee training.
- 18.2 Given the complex legislative framework for determining planning applications and the constant reforms and changes to procedure within the planning system, the Service Director for Strategic Planning and Infrastructure will provide a Planning Committee Training Programme. The following additional training is mandatory for all permanent Planning Committee members:

An annual Planning Committee training session that will provide an overview of the key role of planning in the city and the role of Councillors in the planning process. This training will normally be held once the annual list of Planning Committee members are known and should be attended by both new and existing Councillors and will normally include a site visit to look at proposals relevant to the Planning Committee. Training will be undertaken by appropriate Legal and Planning Officers.

- 18.3 In addition there will be additional training Workshops on new Council and Central Government policy and legislation or other Planning issues that either Members request or Officers recommend.
- 18.4 The above training will usually be open to all Councillors of the Council to enable them to have a better understanding of planning issues in their role as Ward Councillors.

18.5 Councillors will be expected to make themselves available to attend these training sessions in order to keep up to date on the latest planning and development issues. It will be the responsibility of each individual Councillor to ensure that they have had at least the annual training in order to be able to sit at a Planning Committee meeting. The Service Director for Strategic Planning and Infrastructure will maintain a register of Councillor training. Training will be provided using a range of training methods.

## **19.0 COMPLAINTS**

19.1 A complaint that a Councillor or Officer has breached this code should be made in writing to the Head of Legal Services and would be referred to the Monitoring Officer for investigation and determination.

19.2 A complaint made in writing regarding the determination of a planning application or a related planning matter would be investigated by the Service Director for Strategic Planning and Infrastructure and/or an appropriate officer of the Strategic Planning & Infrastructure Department in accordance with the Council's complaints procedure.

19.3 A complaint may be made to the Local Government Ombudsman in the event that a complainant was not satisfied with the result of an investigation under the Council's complaints procedure. This must be made on the appropriate prescribed form and submitted direct to the Local Government Ombudsman.

## Protocol for Webcasting of Council and other Meetings

The Council has agreed that certain meetings should be webcast and archived and subsequently made available on the Council's web site.

### I. Main Provisions

- I.1. The Chair of the meeting has the discretion to suspend the webcast if, in the opinion of the Chair, continuing to webcast would prejudice the proceedings of the meeting.
- I.2. This would include:
  - I.2.1. Public disturbance or other suspension of the meeting
  - I.2.2. Exclusion of public and press being moved and agreed
- I.3. Archived webcasts or parts of webcasts will be removed from the Council's website if the Monitoring Officer (after consulting the Leader and Leader of the opposition group) considers that it is necessary because all or part of the content of the webcast is or is likely to be in breach of any statutory provision or common law doctrine. Such situations would include, for example, the disclosure of confidential or exempt information, potential actions for defamation or breaches of equalities, data protection, human rights or other legislation.
- I.4. The grounds for not publishing would always have to outweigh the public interest in publication. In considering the public interest, the Monitoring Officer will have to exercise judgement, for example where abusive language is used by Members as part of the 'cut and thrust' of political debate. In these circumstances, the Monitoring Officer will take into account any representations made by Members and whether a Member had an opportunity to respond to or refute the comments or allegations at the meeting.
- I.5. Where comments are made by Members about the conduct and capability of officers, the Council's Protocol on Member Officer Relations says:
- I.6. *'A Member should not raise matters relating to the conduct or capability of an officer in a manner that is incompatible with the objectives of this Protocol. This is a long-standing tradition in public service. An officer has no means of responding to such criticism in public. If a Member feels he/she has not been treated with proper respect, courtesy or has any concern about the conduct or capability of an officer, and fails to resolve it through direct discussion with the officer, the Member should raise the matter with the respective Head of Service.'*
- I.7. It would generally, therefore, be inappropriate to publish those parts of an archived webcast of a meeting where this provision of the Protocol on Member Officer Relations may have been breached.



- 1.8. Any elected Member or officer who is concerned about any webcast should raise their concern with the Monitoring Officer.
- 1.9. Archives webcasts will be available on the Council's website (hosted by the webcast provider) for a period of 12 months. Five years' worth of archived webcasts will be available from the Council's YouTube channel.

# Use of Filming, Photography, Recording and the Use of Social Media at Council Meetings

## 1. Introduction

- 1.1. Plymouth City Council believes in openness and transparency. Anyone who wishes to report on any public meeting will be welcomed and will be provided with reasonable facilities to report, film, tweet or blog about any aspect of the meeting.

## 2. Filming, photographing and recording meetings

- 2.1. The Council asks that filming and/or photography requests are made in advance of the meeting (contact Democratic Support) and takes place from positions in the room as agreed by the Chair as such activities must not be disruptive or distracting to the good conduct of the meeting.
- 2.2. The Chair's decision, on whether or not the meeting is being disrupted or disturbed and to require filming, photography, recording or the use of social media to stop, is final.
- 2.3. At the start of each meeting, the Chair will make an announcement that the meeting may be filmed, recorded or photographed. Meeting agendas will carry this message and notices will be placed in meeting rooms.
- 2.4. There are situations where national rules require or allow the Council's committees to be closed to the public and press for example when they have to deal with confidential information. This protocol does not apply in such cases.

## 3. Filming and photographing members of the public

- 3.1. Some Council meetings are webcast. Where a meeting is webcast and members of the public may speak (to ask a 'public question' for example) the Democratic Support Officer will ask each individual to give their permission to be photographed and/or filmed and they will not be photographed/filmed if they object.

## 4. Use of mobile devices

- 4.1. To minimise disruption to others attending the meeting, all attendees must ensure that their phone or other mobile devices are switched off or set to silent during the meeting.
- 4.2. No councillor, whether a decision maker or an observer, is permitted to use social media or mobile devices in a private meeting (when the press and public are excluded) or to disclose in any way the content of items under discussion.
- 4.3. The Councillors Code of Conduct will apply when using social media. Inappropriate comments made during a meeting could open councillors to potential complaints or investigation under the Code of Conduct.

## **Protocol on the use of electronic voting**

1. Members benches have an individual unit containing a microphone and buttons to allow Members to vote Yes (in favour), No (against) or Abstain. The electronic voting system has been configured so that only Members control panels have the ability to vote.
2. To ensure there is a consistent approach for the operation of electronic voting, Council have adopted the following procedure:
3. Members will be assigned a numbered unit, relating to their seat in the Chamber, which they must use during a council meeting. This will ensure their vote is recorded correctly and will assist with features of the new system that will be implemented in the future.
4. The Lord Mayor / Chair or Monitoring Officer or Democratic Support will confirm the motion to be voted upon and announce that the vote is open.
5. The vote will be open for 20 seconds during a Planning Committee Meeting and 20 seconds during a Full Council Meeting and Members must cast their vote in this time. Members can change their vote while the vote is open, however, their vote cannot be altered once the vote has been closed.
6. The Monitoring Officer or Democratic Support will announce that the vote is closing when ten seconds remain.
7. The Monitoring Officer and Democratic Support will check the number of votes cast does not exceed the number of Members in attendance.
8. The Lord Mayor / Chair will announce the outcome of the vote. The vote will only take effect once the outcome is confirmed by the Lord Mayor / Chair.
9. Should the electronic voting system be unavailable or breakdown during a meeting, voting will revert to being undertaken by a show of hands.
10. The Lord Mayor/Chair continues to have a casting vote in the event that the vote is tied.
11. The Lord Mayor/Chair's casting vote shall be made verbally.
12. At a Full Council meeting Members will see in real time the vote of individual members on the screens in the Council Chamber.
13. The outcome of the vote will be displayed on the screens in the Chamber.

# PLYMOUTH CITY COUNCIL CONSTITUTION

## **PART H: STANDING ORDERS AND REGULATIONS**

## **Employment Standing Orders**

### **1. Appointing the Chief Executive**

- 1.1 The Chief Executive is appointed by Council on the recommendation of the Appointments Panel. At least one member of the Cabinet must be a member of the Appointments Panel but the majority of members must not be Cabinet members.
- 1.2 Before the Chief Executive is appointed, the Service Director for Human Resources and Organisational Development must tell Cabinet who the Appointments Panel wants to appoint and anything else which is relevant to the appointment.
- 1.3 The appointment can go ahead if the Cabinet agrees or if it makes no objection by a deadline set by the Service Director for Human Resources and Organisational Development or if Council does not consider any objection made by the Cabinet relevant and justified.

### **2. Appointing the Strategic Directors, Service Directors and Heads of Service**

- 2.1 Strategic Directors and Service Directors are appointed by the Appointments Panel. At least one member of the Cabinet must be a member of the Appointments Panel, but the majority of members must not be Cabinet members.
- 2.2 Before a Strategic Director or a Service Director is appointed, the Service Director for Human Resources and Organisational Development must tell the Cabinet whom the Appointments Panel wants to appoint and anything else which is relevant to the appointment.
- 2.3 The appointment can go ahead if the Cabinet agrees or if it makes no objection by a deadline set by the Service Director for Human Resources and Organisational Development or if the Appointments Panel does not consider any objection made by the Cabinet relevant and justified.

### **3. Dismissing the Chief Executive, Strategic Directors and Heads of Service**

- 3.1 The Chief Executive, Section 151 Officer and Monitoring Officer are dismissed by Council following a report and recommendation from the Chief Officers' Disciplinary Committee, unless the reason for dismissal is ill health retirement or redundancy in which case decision to dismiss is determined by the Chief Officers Disciplinary Committee. The Committee must be politically proportionate and include the relevant Cabinet member but the majority of members cannot be Cabinet members.
- 3.2 When dealing with cases of misconduct by the Chief Executive, Section 151 Officer or Monitoring Officer the Committee is required to appoint an independent investigator to investigate any allegations of misconduct if matters are not capable of being resolved by mutual agreement, or an informal warning. Following receipt of the investigation report the Committee must consider any representations from the

officer and decide what recommendation to make to Council. If the recommendation is to dismiss the officer the Committee must convene an Independent Advisory Panel to review the situation and prepare a report for Council taking into account the procedures recommended by the Joint Negotiating Council for Chief Executives. Before the taking of a vote at the relevant Council meeting on whether or not to approve such a dismissal, the authority must take into account:

- a) any advice, views or recommendations from the Panel;
- b) the conclusion of any investigation into the proposed dismissal; and
- c) any representations from the relevant officer.

3.3 The Assistant Chief Executive, Directors and Service Directors are dismissed by the Chief Officers' Disciplinary Committee, which must be politically proportionate and include at least one Member of the Cabinet but the majority of members should not be Cabinet members.

3.4 Before a dismissal, the Service Director for Human Resources and Organisational Development must tell the Cabinet whom the Committee wants to dismiss and anything else which is relevant to the dismissal.

3.5 The dismissal can go ahead if the Cabinet agrees or if it makes no objection by a deadline set by the Service Director for Human Resources and Organisational Development or if the Chief Officers' Disciplinary Committee does not consider any objection relevant or justified.

#### **4. Appointing Political Assistants**

Appointments of Political Assistants will follow the wishes of their political groups.

#### **5. Councillors not to be involved in appointing or dismissing other officers**

Councillors will not be involved in appointing or dismissing anyone except the Chief Executive, Strategic Directors and Service Directors other than those who report to the Strategic Director for Public Health and Political Assistants. Other officers are appointed and dismissed by their Service Directors or their nominees. All Officers except Political Assistants must be appointed on merit.

#### **6. Recruitment and selection procedure**

All appointments must follow the Council's recruitment and selection procedure.

#### **7. Advertising the positions of Chief Executive, Strategic Directors and Service Directors**

When the Council wants to appoint a Chief Executive, Strategic Director or Service Director (and it is not proposed that the appointment be made exclusively from the existing officers), it will produce a statement specifying the duties of the post and any qualifications or qualities to be sought in the person to be appointed and send them to anyone who asks. The post will be advertised in a way which will bring it to the attention of suitable applicants.

## **8. Relationships with Councillors and officers**

Candidates must disclose on their application form whether they are related to any Councillor, officer, Councillor or officer's partner as their partner, parent, child, stepchild, adopted child, grandparent, grandchild, brother, sister, uncle, aunt, niece or nephew.

If a candidate declares a relationship with a Councillor, officer or their partner, their appointment must be approved by the appropriate Head of Service (if they have declared a relationship with the Head of Service or their partner, it must be approved by the appropriate Director).

## **9. Lobbying**

**Councillors and officers must not lobby for or against candidates.**

The Council will disqualify candidates who lobby Councillors or officers or get other people to lobby them. Candidates will be warned about this in the recruitment literature.

## Legal Standing Orders

### 1. Legal action

The Monitoring Officer can take any legal action necessary to carry out the Council's decisions or protect its interests e.g. starting defending, withdrawing, or settling any claims or legal proceedings.

The Chief Executive and all First and Second Tier Officers may start, defend or withdraw any claims or legal proceedings or authorise officers to appear on behalf of the Council in court and take action to rectify any failure to comply with legislation or any statutory notice if:

- the action taken is about a function which they or an officer who reports to them has budgetary or management responsibility for and
- the constitution or the law does not require the action to be taken by someone else and
- they have had regard to any advice from the Head of Legal Services

### 2. Signing of documents

The Monitoring Officer can sign any document necessary to carry out the Council's decisions or protect its interests including certificates given under the Local Government (Contracts) Act 1997.

The Chief Executive and first and second tier officers may sign documents on behalf of the Council or authorise officers whom they manage to sign documents on behalf of the Council if:

- the document is about a function which they or an officer who reports to them has budgetary or management responsibility for and
- the constitution or the law does not require the document to be signed out by someone else and
- they have had regard to any advice from the Responsible Finance Officer and Monitoring Officer

### 3. Common seal of the Council

The common seal of the Council will be kept in a safe place in the custody of the Head of Legal Services. It will be attested by the Monitoring Officer, Head of Legal Services or an officer nominated by them. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Head of Legal Services should be sealed.



The Council will keep a book recording when the common seal is used. The book will be signed by the officer who attests the seal.

## **Financial Regulations**

### **1. Scope**

- 1.1** The Council acknowledges the responsibility it has for the administration of public funds, and wishes to emphasise to both the public and its employees the importance it places upon probity, financial control and honest administration.
- 1.2** These Financial Regulations provide the framework for managing the Council's financial affairs. They apply to every member, committee, school governing body, department, officer, partner, employee of the Council, and anyone acting on behalf of the Council, unless otherwise minuted by the Council. Breaches will be reported to the audit committee, if the Responsible Finance Officer and the chair of the audit committee deem that it is appropriate.
- 1.3** Failure to comply with the requirements of these Financial Regulations and any associated guidance could be considered a potential act of gross misconduct.
- 1.4** Further advice and guidance is given in the documents listed at Regulation 33. These documents describe "processes and procedures" that show users "how to" deliver the requirements of the Financial Regulations at a working level.
- 1.5** All of these documents require specific approval of Audit Committee, and once adopted carry the same status as the Financial Regulations themselves.

### **2. Responsibilities under the Financial Regulations**

#### **2.1 Responsibilities of the Responsible Finance Officer**

2.1.1 The Responsible Finance Officer carries out the statutory duties in relation to the financial administration and stewardship of the Council. The statutory duties arise from:

- Section 151 of the Local Government Act 1972;
- Local Government Finance Act 1988;
- The Local Government and Housing Act 1989;
- The Accounts and Audit Regulations 2003; and
- The Local Government Act 2000;

and are supplemented and explained by case law.

2.1.2 The Responsible Finance Officer has a legal duty to make sure the Council keeps to the highest financial standards. Other officers with responsibilities under the Financial Regulations are using powers delegated by the Responsible Finance Officer.

The Responsible Finance Officer will review and update the Financial Regulations each year to make sure they comply with relevant law and

guidance. The Responsible Finance Officer may also issue guidance on how to ensure high financial standards.

## **2.2 Responsibilities of Strategic Directors**

Strategic Directors must oversee and monitor the financial management of their service areas.

## **2.3 Responsibilities of Service Directors**

Service Directors must:

- deliver services in compliance with these Financial Regulations and their service budget allocations;
- make sure staff within their departments comply with these Financial Regulations and have adequate written guidance on financial procedures and system working practices;
- monitor the overall financial state of their service area;
- make sure that they identify and agree with the Responsible Finance Officer the financial implications of all proposals for new spending and partnering arrangements, and that the cabinet is advised of those implications, before such spending is incurred or committed;
- consult with the Responsible Finance Officer on any report with financial implications;
- consult with, and seek agreement of, the Responsible Finance Officer where it is apparent that new written processes and procedures are required.

## **2.4 Departmental Section 151 Responsibilities**

Departmental finance managers are required to bring the Responsible Finance Officer's attention to any section 151 issue they are unable to resolve.

## **2.5 Governing Bodies**

School governing bodies shall conduct their affairs in accordance with these Financial Regulations, unless this would be contrary to the law, the Council's fair funding for schools scheme or a later Council minute. They are responsible for:

- risk and governance arrangements for the school;
- the management of their delegated budgets in accordance with the provisions contained in the fair funding scheme;
- making sure that staff are aware of these Financial Regulations and that they have adequate written guidance on financial procedures and system working practices, and
- ensuring that staff comply with this written guidance.

## **2.6 Responsibilities of all Officers**

- 2.6.1 Officers must take reasonable action to provide for the security of the assets under their control, and to make sure that the use of these resources is legal, properly authorised and provides value for money.
- 2.6.2 Officers must be familiar with these Financial Regulations and must understand the ones which affect their work. If an officer is unclear about these rules, they must get advice before acting, by talking to their line manager or finance manager.
- 2.6.3 Officers must make sure they are using the latest version of these rules. This will always be in the constitution.
- 2.6.4 Officers must show the highest standards of financial probity. As well as following these rules, they must use their common sense and judgement.

### **3. Audit**

#### **3.1 Internal audit**

- 3.1.1 Auditors will review the Council's financial and management systems and must act if fraud or corruption is found. They will also comment on how to achieve better value.
- 3.1.2 Auditors have the right to see the records and to ask for information and explanations. Officers must co-operate with them fully.

#### **3.2 External audit**

- 3.2.1 The external auditors undertake a yearly audit of the Council's statement of accounts and performance indicators. They have the right to see records and to ask for information and explanations. Officers must co-operate fully.
- 3.2.2 The Responsible Finance Officer has overall responsibility for co-operating fully with the external auditors.

### **4. If the Financial Regulations have been Broken**

- 4.1 If officers suspect that these rules are being broken or they suspect fraud, corruption or poor value for money, they must tell their line manager (unless their line manager is involved).
- 4.2 The Council's Whistleblowing policy ([see Part G](#)) has guidance on what to do if a line manager is involved.
- 4.3 If the Financial Regulations have been broken, the Responsible Finance Officer must be told in writing. The Responsible Finance Officer will decide what needs to be done and whether Councillors need to be told.

### **5. Combating Fraud and Corruption**

- 5.1 The Council is committed to making sure that the opportunity for fraud and corruption is reduced to the lowest possible risk. Where there is a possibility of fraud, corruption or other related problems the Council will deal with it in a firm and controlled manner regardless of whether the perpetrators are from inside (members and employees) or outside the Council.
- 5.2 The Anti-Fraud and Corruption Policy gives advice and guidance to Councillors and officers about the Council's approach to the serious issues of fraud and corruption and sets out how to deal with an allegation or suspicion of fraud or corruption.

## **6. Information and records**

- 6.1 The Responsible Finance Officer is responsible for determining the accounting procedures to be followed and accounting records to be maintained within the authority in order to comply with the Accounts and Audit Regulations 2003.
- 6.2 Service Directors will arrange suitable training for their staff in keeping accounting records. The content of the training must be approved by the Responsible Finance Officer.

## **7. Financial Systems and Procedures**

- 7.1 The Responsible Finance Officer must ensure that the Council's financial systems are sound and operate efficiently.
- 7.2 Service Directors must seek the prior approval of the Responsible Finance Officer to any proposed changes to the existing financial or related systems or to the establishment of any new financial or related systems which are/ will be directly under their control.
- 7.3 Service Directors must also seek the prior approval of the Responsible Finance Officer who, if appropriate, will seek the approval initially of the Corporate Management Team and subsequently of the Cabinet or Audit Committee as appropriate, to any proposed changes to the Council's instructions or procedural notes on financial matters which are required to meet their own specific service needs.

## **8. VAT and Tax**

- 8.1 The Responsible Finance Officer is responsible for keeping tax records, advising on tax, making tax payments, receiving tax credits and submitting tax returns.
- 8.2 Tax issues are often very complex and the penalties for incorrectly accounting for tax are severe; all officers must therefore take particular care when dealing with issues which have tax implications.

## 9. Outside Bodies

- 9.1 The Responsible Finance Officer is responsible for promoting and maintaining high standards of conduct with regard to financial administration in partnerships and joint ventures and will make sure that partnerships involving the Council follow the latest accounting policies, law and guidance.
- 9.2 The Responsible Finance Officer must approve any financial arrangements where the Council acts as the accountable body, lead authority or major funder for another organisation. Such organisations must have satisfactory rules dealing with the matters covered in these Financial Regulations and the Contract Standing Orders.
- 9.3 The Responsible Finance Officer will make sure that funding to or from outside bodies is properly recorded in the Council's accounts.

## 10. Medium-Term Financial Planning

The Responsible Finance Officer will report to the cabinet on the medium-term budget prospects. Reports should consider the amount of support the Council can expect from the government. The City Council Investment Board is responsible for the governance of the medium-term capital programme; this includes reviewing and monitoring the progress of the capital programme. Strategic Directors and capital delivery project officers are required to present a capital programme summary report at each City Council Investment Board meeting.

## 11. Responsibility for Budget Decisions

Responsibilities for budget decisions are shown in the table below, subject to the permitted changes shown in Financial Regulation 13:

<b>Cabinet responsibilities Cabinet will determine whether to</b>	<b>Full Council responsibilities Council will determine whether to</b>
Recommend the budget to Council	Agree the budget
Recommend any changes to the net revenue budget to Council	Approve any changes to the net revenue budget
Recommend the Treasury Management Strategy	Agree or change the Treasury Management Strategy
Set the Council Tax base	
	Setting the Council Tax
Recommend the Prudential and Treasury indicators to Council	Agree or change the Prudential and Treasury Indicators
Recommend the medium term financial strategy to Council	Agree or change the medium-term financial strategy
	Agree or change the capital budget

Recommend the Corporate Asset Management Plan to Council	Agree the Corporate Asset Management Plan
Recommend the Capital Programme to Council	Agree the capital programme

### **Audit and Governance Committee**

The Audit and Governance Committee will scrutinise the Treasury Management Strategy before it goes to Council.

## **12. Emergency Spending**

If there is an emergency or a disaster, the Chief Executive can agree extra spending after consulting the Leader and Responsible Finance Officer.

## **13. Moving Money between Cost Centres**

**13.1** The rules for moving money between revenue cost centres (virement) are:

<b>Amount to be moved</b>	<b>Who can approve it?</b>
Up to £20,000	Service Head (Team Plymouth)
Up to £50,000	Service Director
Up to £100,000	Strategic Director (with notification to Responsible Finance Officer)
Up to £500,000	Cabinet Member
Over £500,000	Cabinet if it is within the budget, if not Council makes the decision on the recommendation of the cabinet.

**13.2** The rules for moving money between capital cost centres or changes to the capital programme are:

**New and amended Capital Schemes** – In year, new capital schemes should be approved in accordance with the following rules:

<b>New Schemes</b>	<b>Who can approve it?</b>
Up to £200,000	Responsible Finance Officer in consultation with the Strategic Director and relevant cabinet member(s)

Between £200,000 and £500,000	Cabinet or the Leader
Above £500,000	Council or the Leader

**Capital Programme Transfers (Virement)/Amendments** – These should be approved in accordance with the following rules:

Type of Transfer	Who can Approve it?
<b>Within A Directorate</b>	
Up to £200,000	Responsible Finance Officer in consultation with the Strategic Director and relevant Cabinet Member(s)
Up to £500,000	Cabinet or the Leader
<b>Between Directorates</b>	
Up to £200,000	Responsible Finance Officer in consultation with the Strategic Director and relevant Cabinet Member(s)
Up to £500,000	Cabinet or the Leader

**Capital Scheme Variations** – Where there are variations in contract costs on existing schemes compared with the provision in the Capital Programme and the relevant Strategic Director is not able to identify a virement, additional costs will be approved in accordance with the following conditions:

Existing Scheme Additional Costs	Who can Approve it?
£200,000 or 10% of original contract sum (whichever is lowest)	Responsible Finance Officer in consultation with the Strategic Director, and relevant Cabinet Member(s)
£500,000 or 25% of original contract sum (whichever is lowest)	Cabinet or the Leader
More than 25% of original sum or £500,000	Council or the Leader



- 13.3** Where there are proposed increases to existing approved schemes in the Capital Programme which can be funded from increased ring-fenced funding then scheme increases will be approved in accordance with the following conditions:

<b>Existing Scheme Additional Costs</b>	<b>Who can Approve it?</b>
Up to £200,000	Responsible Finance Officer in consultation with the Strategic Director, and relevant Cabinet Member(s)
£200,000 to £500,000	Cabinet or the Leader
Above £500,000	Council or the Leader

Note: Changes to the capital programme will be reported to Members through the Capital update to Council.

- 13.4** Transfers in or out of employee account codes or income account codes must be agreed by the Responsible Finance Officer.
- 13.5** Requests for transfers must be in a format agreed by the Responsible Finance Officer. Requests must say how much is going to be spent, what it is going to be spent on, where the money will come from and what effect the spending will have in current and future financial years.

## **14. Budgetary Control**

### **14.1 Council's reserves**

The Responsible Finance Officer must advise the Council on keeping a safe level of reserves.

### **14.2 Monitoring budgets**

The Responsible Finance Officer will give Strategic Directors and Service Directors the information they need to monitor their budgets.

### **14.3 Responsibilities of the Responsible Finance Officer**

The Responsible Finance Officer will:

- produce regular monitoring reports for the cabinet – these will identify any areas of concern and say how things can be put right
- tell the cabinet when spending or extra spending is needed
- advise on the medium-term effects of spending decisions
- make sure each capital scheme includes a project plan, progress targets and forecasts of linked revenue spending
- manage a scheme of carry forwards within guidelines set by the cabinet.

## **14.4 Responsibilities of Service Directors**

Service Directors will:

- monitor income and control spending
- monitor performance
- manage their budgets
- report any problems promptly to the Responsible Finance Officer
- make sure staff keep all financial records, particularly the supporting papers for grant claims

## **15. Year-End Balances**

The Cabinet will agree the procedures for carrying forward under and over-spending on budget headings at the year end, in consultation with the Responsible Finance Officer.

Strategic Directors are responsible for monitoring the impact of the year-end variations on the level of service outputs which had been planned for both the relevant and subsequent year(s).

## **16. Capital Strategy**

The Responsible Finance Officer will prepare an asset management plan and capital strategy. This will:

- set out the principles the Council will follow in its capital planning and management
- include a five year capital programme
- show how schemes are added into the Capital Programme

## **17. Project Approval**

### **17.1 Which projects need approval?**

All new schemes must be fully financed and approved by the City Council Investment Board. They require an initial project proposal and detailed business case unless they meet the criteria of fast track schemes (see Capital Programme Governance document).

### **17.2 Who approves projects?**

Projects that are not already in the capital programme with an estimated cost of more than £200,000 but less than £500,000 need approval of Cabinet or the Leader on the recommendation of the Responsible Finance Officer in consultation with the City Council Investment Board. Projects that are not already in the capital programme with an estimated cost of more than £500,000 require approval of Council on the recommendation of cabinet or the Leader may make the decision.

### **17.3 Project approval report**

The project approval report to the cabinet must include:

- the aim of the project and any other ways of achieving it
- effects on staffing
- legal, contractual and prudential borrowing code implications
- if the Council is acting through an agent or partnership, legal advice on whether it has the power to act this way
- if it is a key decision, any comments made during consultation and the Council's response
- the estimate amount and timing of any capital and revenue spending, any ongoing effect on revenue, and whether this spending is included in the budget

#### **17.4 Key decisions**

If project approvals are key decisions, the Access to Information Rules ([see Part F](#)) and Cabinet Key Decision Procedures ([see Part C](#)) apply.

### **18. Capital Projects**

Spending is only allowed on capital projects that:

- have project approval
- are in the Capital Programme
- have been through the correct procedure in the Contract Standing Orders (see Standing Orders 17 - 21).

### **19. Treasury management**

#### **19.1 Treasury Management Strategy**

The Responsible Finance Officer will produce the treasury management strategy. This will set out the treasury plans for the next year (including any prudential borrowing plans). The strategy will include a list of organisations the Council will borrow from and lend to and the maximum individual amounts it will borrow or lend. The treasury management strategy must be scrutinised by Audit Committee prior to submission to Full Council for approval. A mid-year and end of year report must also be produced and submitted to Audit Committee for scrutiny prior to submission to Full Council.

#### **19.2 Day-To-Day Treasury Management**

The Responsible Finance Officer is responsible for day-to-day treasury management in liaison with the Treasury Management Board. Treasury management is carried out in accordance with detailed Treasury Management Practices, which are approved by Audit Committee. The Responsible Finance Officer will make sure:

- all borrowing and investment complies with the Council's treasury management strategy and the Chartered Institute of Public Finance and Accountancy's Code of Practice on Treasury Management and the Prudential Code
- all borrowing and lending is done in the name of the Council
- all securities are held by the appropriate Strategic Director or Service Director

### **19.3 Bank accounts**

Only the Responsible Finance Officer can open a bank or building society account on behalf of the Council. The Responsible Finance Officer is responsible for managing all accounts.

## **20. Asset Management**

### **20.1 Responsibilities of Responsible Finance Officer**

The Responsible Finance Officer will:

- recommend the asset management policy and capital strategy to Council
- produce guideline for acquiring, managing and disposing of assets
- make sure the Council's records include any money from sales
- make sure the Council's records do not include the value of any assets that have been disposed of

### **20.2 Register of fixed assets**

The Responsible Finance Officer will keep a register of all fixed assets worth more than a sum which is decided from time to time by the Responsible Finance Officer. Service Directors must report any acquisitions or disposals so that this can be kept up-to-date. Every year the Responsible Finance Officer will check that the assets are still shown at the right value, that they have a suitable asset life and that they have been properly depreciated.

### **20.3 Disposing of assets (except land)**

All staff should follow the Responsible Finance Officer's instructions on the disposal of surplus or obsolete vehicles, plant, furniture, materials, stocks, stores or other equipment. Arrangements for the disposal of surplus goods, materials, vehicles and equipment should be carried out in the manner most beneficial to the Council, making every effort to dispose of surplus or obsolete assets by competitive tender or by public auction. Where the estimated value of the proceeds is at a level determined by the Responsible Finance Officer, officers must keep a record of all disposals on inventories or within stock systems, including details of the quantity, items, proceeds and the purchaser. Sale proceeds must be banked and accounted for promptly, and the Responsible Finance Officer must be notified of the disposal of any capital assets.

The disposal of computers and other recordable Information and Communication Technology media should be arranged via the Information and Communication Technology department, who will ensure that all data is properly erased prior to disposal.

#### **20.4 Arranging leases**

The Council has employed the services of a leasing advisor to obtain the most favourable terms for its leasing agreements and the advisor should be consulted on all lease proposals. Before entering into any finance or operating lease, or lease rental agreement, or PFI arrangements, Chief Officers must get agreement from the Responsible Finance Officer to ensure that the arrangement is financially advantageous to the Council and should take appropriate legal advice from the Head of Legal Services. Staff must keep an inventory of all leased assets and make sure assets are returned at the end of the lease period in accordance with the terms of the arrangement. This inventory must be made available to the Responsible Finance Officer for the preparation of the statutory accounts.

#### **20.5 Computer systems**

The Service Director for Finance has overall responsibility for the Council's computer systems. The Service Director for Finance is also responsible for making staff aware of their responsibilities relating to the computer systems.

#### **20.6 Stocks and Inventories**

The Council holds stocks of various materials for use in service delivery. Every effort should be taken to ensure excessive stocks are not held.

Obsolete stock may be written off subject to the write off limits for debt (see Financial Regulation 27).

#### **20.7 Security of Assets**

Officers must ensure that all assets are safeguarded against loss, damage, misuse or any other unnecessary diminution in value so that they continue to be available to provide continuity of efficient service delivery. Similarly, information must also be safeguarded so that service delivery can continue.

### **21. Intellectual Property**

Intellectual property is a generic term which includes inventions and written works. Certain creations, particularly computer software, may have a commercial value and be marketable outside the Council.

As a general rule, items of intellectual property which are created by an employee during the normal course of their employment will be the property of the Council, not the employee.

Various Acts of Parliament detail the treatment of different types of intellectual property and provide for the patenting of the development work to safeguard it against exploitation.

## **22. Risk Management**

### **22.1 Responsibilities of the Cabinet**

The Cabinet will identify key risks and promote risk management in the Council. The Chief Executive will report to the Cabinet on how risk is being managed.

### **22.2 Responsibilities of the Responsible Finance Officer**

The Responsible Finance Officer will prepare and update the Council's risk register and related policies (including anti-fraud and anti-corruption policies). The risk register must be agreed by the Cabinet.

### **22.3 Responsibilities of Service Directors**

Service Directors must:

- identify and manage risks in their service areas;
- have contingency plans for major risks;
- tell the Responsible Finance Officer of any risks that could result in losses or claims against the Council.

## **23. Wages, Salaries and Pensions**

**23.1** The Responsible Finance Officer is responsible for paying all wages and expenses, including Councillors' allowances.

**23.2** Staff costs are the largest item of expenditure for most of the Council's services. It is therefore important that payments to current and former employees are made, accurately, on the due date and in accordance with the individual's conditions of service.

**23.3** Payments to Councillors must be in accordance with the scheme approved by the Council and recorded accurately and promptly; and comply with statutory and other corporate requirements.

**23.4** Service Directors must tell the Head of Human Resources, Organisational Development and ICT of any changes to staff pay and any deductions that need to be made.

## **24. Ordering and Paying for Goods and Services**

### **24.1 Role of Responsible Finance Officer**

The Responsible Finance Officer will make sure there are proper procedures and controls for ordering and paying for goods and services.

New systems for orders or payments must be agreed by the Responsible Finance Officer.

## 24.2 Responsibilities of Service Directors

Service Directors are responsible for their service areas' orders and payments. They must make sure those officers who order and pay for goods have been properly trained and that responsibility for ordering and paying for goods are kept separate.

## 24.3 Orders

Orders must normally be in writing. Orders can be given orally in emergencies only and must be confirmed in writing as soon as possible.

Official orders for the purchase of goods or services must be in a standard form approved by the Responsible Finance Officer and must be issued for all purchases with the exception of utilities (gas, electricity, water etc.), taxis, refunds, grants, periodic payments (such as rent or rates), petty cash purchases, purchasing cards or other exceptions specified by the Responsible Finance Officer.

In addition, commitments from credit card, purchasing card or internet purchases must only occur through the Council's approved scheme and in accordance with the instructions on that scheme from the Strategic Director for Corporate Support.

Official orders must not be raised for any personal or private purchases.

The authorisation profiles agreed by the Responsible Finance Officer and fixed within the Purchasing system are as follows:

<u>Purchase Order Authorisation Limits</u>	
Strategic Directors	Above £5,000,000
Service Directors	Up to £1,000,000
Heads of Service (Team Plymouth)	Up to £500,000
4 <sup>th</sup> Tier Officers and below:*	
Grades H to I	Up to £50,000
Grades F to G	Up to £2,500

Officers below F Grades will not be able to authorise orders.

\*Any exceptions to these parameters will be subject to approval by the Strategic Director of Customer and Corporate (or his/her nominated deputy).

The use of e-business, e-commerce, credit / debit or purchasing cards, or other electronic means of purchasing goods or services, must be authorised by the Responsible Finance Officer and will be subject to the following limits:

<b><u>Purchase Card Limits</u></b>	<b>Maximum transaction limit</b>	<b>Maximum Authorised Card limit</b>
	£	£
Chief Officer	10,000	50,000
Buyer/Procurement Officer	5,000	50,000
Emergency Planning Officer	20,000	100,000
Standard PCC Employee	500	2,000

Approval in excess of these limits may be given by the Responsible Finance Officer in exceptional cases, for example Lodge Cards.

#### **24.4 Unusual terms and conditions**

Officers should check with the Head of Legal Services before accepting any unusual terms or conditions.

#### **25. Petty Cash**

The Service Directors will oversee the system of petty cash floats. Floats will only be topped up when a proper claim is made with receipts for all items. The Responsible Finance Officer will give detailed guidance on petty cash.

#### **26. Income**

##### **26.1 Responsibilities of Responsible Finance Officer**

The Responsible Finance Officer will ensure that systems exist for all income to be identified, collected, receipted and promptly banked.

##### **26.2 Responsibilities of Service Directors**

Service Directors must have a proper scheme of delegation for dealing with income and spending in their service area and must make sure it is working. There must be extra controls in service areas that collect cash or cheques. Service Directors must ensure that:

- officers are suitably trained



- official receipts are always given
- proper records are kept
- money is banked as soon as possible
- VAT is properly accounted for

Service Directors must have effective systems for monitoring income due to their service area. The Responsible Finance Officer must be told if income is much less than expected and it cannot be explained.

Service Directors must not run their own debtor systems without the agreement of the Responsible Finance Officer.

### 26.3 Invoices

The format of invoices must be approved by the Responsible Finance Officer. Invoices must make it clear that payment should be made to Plymouth City Council.

## 27. Debt

### 27.1 Collecting debt

The Cabinet will set procedures for managing debt. Officers must:

- make sure invoices are accurate
- send invoices promptly
- act quickly to collect debts
- sort out disputes as quickly as possible

### 27.2 Writing off debt

The rules for writing off debts are as shown in the table below:

<b>Value of Debt</b>	<b>Who can approve it?</b>
Up to £40	Nominated recovery officers
Up to £200	Nominated recovery officers (Grade E and above)
Up to £1,000	Nominated Officers (Grade H and above)
Up to £10,000	Heads of Service and other nominated officers of the Strategic Director of Corporate Services
Up to £10,000	School principal and/or governors (schools debt)
Up to £100,000	Responsible Finance Officer
Up to £200,000	Cabinet Member

All debt over £200,000 unless covered by below exception	Cabinet
Unlimited in the case of bankruptcy or liquidation/CVA/death/no assets/no trace	Responsible Finance Officer or other senior finance officer nominated by him.

### **27.3 Cancelling debt**

Debts can be cancelled if they have been raised by mistake. All cancellations over £5,000 must be agreed by the Responsible Finance Officer or his/her nominated Officer.

### **28. Payments for Loss, Damage or Personal Injury**

Officers may make ex gratia payments for loss or damage or personal injury up to a maximum of £1,000 to any one payee in any one year following consultation with the Council's corporate risk manager and the Head of Legal Services.

### **29. Money Laundering**

The Council has procedures for checking and recording the intentions of the people and organisations it does business with and for reporting suspected money laundering. Officers must not:

- conceal, disguise, convert, transfer or remove anything gained through crime
- tip off a criminal or suspect
- assist money laundering
- pay money to terrorists or suspected terrorists or their organisations.

The maximum amount of cash that can be taken in any one transaction is £9,000.

### **30. External Funding**

The Responsible Finance Officer will provide specific guidance to Strategic Directors and Service Directors to enable them to account properly for funding receivable from external sources. This will be contained within the Index.

### **31. Work for Third Parties**

The Responsible Finance Officer will provide guidance and advice to Strategic Directors and Service Directors in respect of the financial aspects of third party contracts, contractual arrangements for the provision of services to third parties or external bodies.

### **32. Loans and Guarantee Arrangements**

Officers must not enter into an arrangement to provide Loan or Guarantee facilities to any third parties without the prior approval of the Responsible Finance Officer and Head of Legal Services.

### **33. Supplementary Governance Document**

These documents are intended to be a detailed working practice but cannot override any requirements contained within the approved Financial Regulations or its Index of linked Policies.

### **33 The Financial Regulations Approved Governance Documents**

- Medium Term Financial Strategy
- Budget Book
- Statement of Accounts
- Annual Governance Statement
- Risk Management Strategy
- Introduction to Local Government Finance
- Asset Management Plan and Capital Strategy
- VAT handbook
- Plymouth Trading Fair Funding Guide
- Fair Funding for Schools Scheme
- Treasury Management Strategy
- Annual audit plan
- Anti-Fraud and Corruption Policy
- Retention and Disposition Schedule
- Ordering and paying for the purchase of work, supplies and services
- Arrangements for the collection and processing of income and other amount due
- Budget Carry Forward Policy
- Capital Programme Governance Document

### **33 Draft Documents yet to be Approval by Audit Committee**

- Money Laundering Policy
- External Funding/Grants Protocol
- Income and Credit Management Policy
- Key Controls and Responsibilities

### **33 Working Practices available on the Financial Management Web Pages**

- Budget Managers' Role Definition
- Procurement and Purchasing Card Arrangements
- Creditors User Guide
- Working Practices for Purchasing and Creditors
- Procedures for Purchasing Goods and Services
- Purchasing Manual
- Bad Debt Write Off Policy

- Debtors Manual
- Financial Management and Budgetary Control Training Guide
- Close Down Guidance and Timetable
- Virement Working Practice
- Journal Transfer Working Practice
- General Ledger Introductory Guide
- Treasury Management Practices



# **PLYMOUTH CITY COUNCIL**

## **Contract Standing Orders**

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# 0. Introduction

## 0.1. Purpose of the document

- 0.1.1. The purpose of these Contract Standing Orders (CSOs) are to set out the governance framework for how the Council procures from third party suppliers for the provision of Supplies, Services and Works.
- 0.1.2. The CSOs set out the minimum requirements to be adhered to when the Council undertakes procurement activity and are to be read in conjunction with the accompanying Procedural Notes - see Appendix A.
- 0.1.3. The Procedural Notes explain how the minimum requirements are to be fulfilled and must be complied with as an extension to the CSOs, hereafter known collectively as 'CSOs.'
- 0.1.4. The CSOs are to be applied to ensure:
  - 0.1.4.1. Compliance with all relevant statutory provisions including the Public Contracts Regulations 2015 the Concession Contracts Regulations 2016 and The Health Care Services (Provider Selection Regime) Regulations 2023 as amended from time to time (the Regulations),
  - 0.1.4.2. Compliance with the Council's Constitution,
  - 0.1.4.3. Consideration is given to central government policy and guidance as part of procurement activity including Procurement Policy Notes,
  - 0.1.4.4. The principles of transparency, equal treatment, proportionality, non-discrimination, and mutual recognition are adhered to,
  - 0.1.4.5. The commercial interests of the Council are duly safeguarded along with the interests of elected members and officers,
  - 0.1.4.6. Probity and the sound reputation of the Council is maintained in respect of procurement and commercial arrangements,
  - 0.1.4.7. Robust commercial governance is in place with related risks duly understood, effectively managed, and mitigated,
  - 0.1.4.8. Fulfilment of Best Value Duty and maximising 'value for money' defined as the optimum balance of price, quality, and social value,
  - 0.1.4.9. The benefits of Council spending for the local economy, society, and environment (Social Value) is maximised,
  - 0.1.4.10. Procurements are undertaken in a sustainable and ethical manner,
  - 0.1.4.11. Minimising and wherever possible avoidance of fraud and / or malpractice in commercial matters,
  - 0.1.4.12. Efficient and proportionate use of Council time and resources.

## 0.2. When the CSOs apply

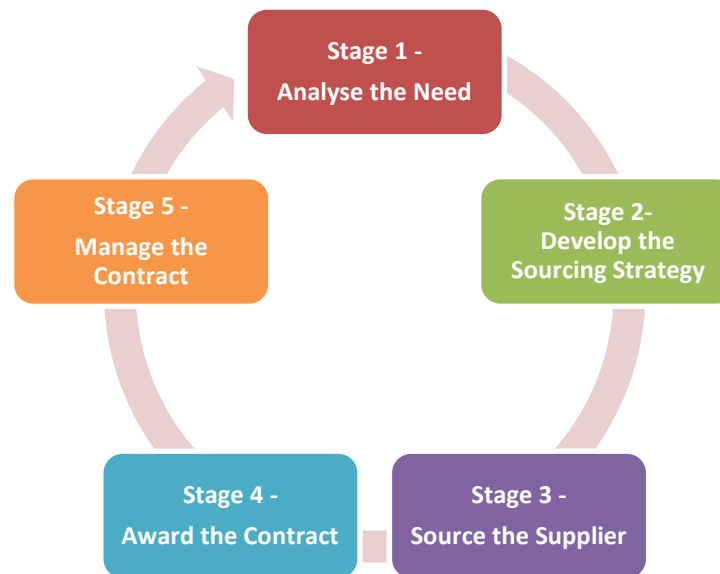
0.2.1. The CSOs apply where the Council expects to:

- 0.2.1.1. Spend money,
- 0.2.1.2. Offer other value, benefit, or opportunity to an external supplier.

0.2.2. CSO applies to:

- 0.2.2.1. Supplies, Services and Works,
- 0.2.2.2. New requirements,
- 0.2.2.3. The re-procurement of existing contracts,
- 0.2.2.4. The variation of existing contracts,
- 0.2.2.5. Capital and revenue expenditure,
- 0.2.2.6. The spending of grant funding,
- 0.2.2.7. The selection of grant funding delivery partners not stipulated by the funding body where a contractual relationship is being established which is not itself a grant agreement.

0.2.3. Where CSOs apply, the following procurement cycle must be followed:



**Figure. 1**

### **0.3. When the CSOs do not apply**

#### **0.3.1. The following arrangements are exempt from CSOs:**

- 0.3.1.1.** Appointment outside the Council's control, e.g. Appointment of external auditors; a supplier that a funding body requires the Council to use in the delivery of a project,
- 0.3.1.2.** Employment contracts,
- 0.3.1.3.** Specific licensing requirements e.g. TV License or Public Entertainment License,
- 0.3.1.4.** Planning and Highway Agreements, e.g. Section 106, 278 and 38,
- 0.3.1.5.** Allocation of Grant payments by the Council to third parties,
- 0.3.1.6.** Acquisitions and disposals of land or buildings,
- 0.3.1.7.** Individual budgets for personal care services,
- 0.3.1.8.** Financial dealings by the Chief Finance Officer in respect of dealing in money markets or obtaining finance for the Council,
- 0.3.1.9.** Contracts offered by the Head of Legal Services for the appointment of Counsel,
- 0.3.1.10.** Contracts where a sole supplier has exclusive rights e.g. alterations to statutory undertakers' apparatus,
- 0.3.1.11.** Disposal of surplus Goods / Supplies,
- 0.3.1.12.** Loan payments or loans from the Council to third parties provided on market terms (otherwise subsidy control considerations may apply),
- 0.3.1.13.** Where it is clear no need to go through a procurement process on the basis of other regulatory or legislative grounds e.g. The Service Subsidy Agreements (Tendering) (England) (Amendment) Regulations 2004 (S.I. 2004 No.609),
- 0.3.1.14.** Subscriptions to National Organisations e.g. Local Government Association,
- 0.3.1.15.** Contributions and/or subscriptions to Partnerships to which the Council is a member,
- 0.3.1.16.** Professional subscriptions where not having membership would detrimentally impact on the Council's ability to fulfil its purpose,
- 0.3.1.17.** Procurement of certain insurances not available on open market e.g. Marine.

#### **0.3.2. Arrangements that are exempt from CSOs must still adhere to other relevant rules and regulations including Council governance procedures and the need to ensure robust contracting.**

#### **0.3.3. Where an arrangement is considered 'Sole Source' the *Procedural Note: Sole Source Arrangement* must be adhered to.**

## 0.4. When CSOs can be Waived

- 0.4.1.** It should be the default position to follow the CSOs in all situations, but it is recognised that on occasions it may not be possible or in the best interest of the Council to do so.
- 0.4.2.** Where the CSOs cannot be followed a Waiver must be applied for in accordance with the *Procedural Note: CSOs Waiver*.
- 0.4.3. Only waivers which relate to Council Procurement rules can be authorised, national laws and regulations must be complied with at all times.**
- 0.4.4.** A waiver will only be considered in the event of the following situations:
- 0.4.4.1.** A **Breach or Conflict of Statutory Duties** would arise if CSOs were applied, and / or,
  - 0.4.4.2.** In the case of **legal hearings, planning appeals and public examinations etc**, where there is a need for a supplier who previously provided advice to the Council to provide evidence and support to the Council at the hearing, appeal, or public examination in relation to that advice, and/or,
  - 0.4.4.3. Unavoidable / Time Critical** considerations that would result in negative **Reputational Implications** or lost opportunity for grant funding to the Council if the action outlined within the waiver request is not followed and / or,
  - 0.4.4.4.** Detriment to **Personal Welfare of Service Users**, where there is a likelihood that vulnerable service user(s) would be placed in unnecessary or inappropriate risks if the proposed actions within the waiver request are not undertaken and/or,
  - 0.4.4.5.** Evidence of **Limited Market** that negates wider public interest.
- 0.4.5.** A waiver must be authorised in accordance with the table below:

**Table 1:**

Consideration	Total Estimated Contract Value				
	Up to £15,000	Over £15,000 up to £50,000	Over £50,000 up to £200,000*	Over £200,000 up to £500,000*	Over £500,000*
<b>Authorisation Level</b>	Head of Service	Head of Service	Service Director/ Strategic Director	Monitoring Officer and Section 151 Officer	Cabinet
<b>Documentation</b>	No formal requirement	CSO Waiver Authorisation Form	CSO Waiver Authorisation Form	CSO Waiver Authorisation Form	<ul style="list-style-type: none"> <li>• CSO Waiver Authorisation Form</li> <li>• Cabinet Paper**</li> </ul>

					• EIA
<b>Publication of Decision</b>	No	No	No	No	Yes
<b>Decision subject to call in</b>	No	No	No	No	Yes

\*Subject to compliance with relevant GPA threshold

\*\* Where information is confidential Part I and Part II papers should be used

## 0.5. Emergencies

**0.5.1.** In the event of an 'Emergency' the Chief Executive and Monitoring Officer can authorise the progressing of work as required.

**0.5.2.** Officers in consultation with the Monitoring Officer can authorise the progressing of work as required in accordance with the table below:

**Table 2:**

Consideration	Total Estimated Contract Value			
	Up to £15,000	Over £15,000 up to £500,000	Over £500,000 up to £3,000,000	Over £3,000,000 or Key Decision
<b>Authorisation Level</b>	Strategic Director/ Service Director	Strategic Director/ Service Director	Strategic Director/ Service Director	Strategic Director/ Service Director
<b>Stage I - Taking of Decision</b>				
<b>Documentation</b>	No formal requirement	CSO Emergency Decision Form	CSO Emergency Decision Form	CSO Emergency Decision Form

<b>Publication of Decision</b>	No	No	No	No
<b>Decision subject to call in</b>	No	No	No	No
<b>Stage 2- Scrutiny of Decision</b>				
<b>Documentation</b>	N/A	N/A	<ul style="list-style-type: none"> <li>• CSO Emergency Decision Form</li> <li>• Executive Decision *</li> <li>• EIA</li> </ul>	<ul style="list-style-type: none"> <li>• CSO Emergency Decision Form</li> <li>• Cabinet Paper*</li> <li>• EIA</li> </ul>
<b>Publication of Decision</b>	N/A	N/A	Yes	Yes
<b>Decision subject to call in</b>	N/A	N/A	Yes	Yes

\* Where information is confidential Part I and Part II papers should be used.

**0.5.3.** The work authorised under these emergency provisions should be limited to those supplies, services, or works strictly necessary to mitigate immediate risks. Any further work required must follow the standard procedures of CSO.

## **0.6. Breaches and Non-Compliance**

**0.6.1.** The consequences of not applying due process in how contracts and commercial arrangements are established can be significant.  
**Compliance with the CSOs is mandatory.**

**0.6.2.** Those with responsibility for fulfilling their duties in line with the CSOs are required to maintain ongoing knowledge and awareness to ensure compliance.

**0.6.3.** It is the responsibility of Responsible Officers (including those with line management responsibilities) to address non-compliance swiftly and in the most appropriate way according to the nature of the non-compliance.

**0.6.4.** In the event of a suspected breach reference should be made to *Procedural Note: Breach of Contract Standing Orders*.

**0.6.5.** Means of reporting concerns can also be raised anonymously in line with the Council's Whistleblowing Policy.  
<http://documentlibrary/documents/Policy%20-%20whistleblowing.pdf>

**0.6.6.** Any potential misuse or non-compliance of the CSOs will be formally logged and must be acknowledged by the appropriate officer in accordance with the table below:

**Table 3:**

<b>Consideration</b>	<b>All Total Estimated Contract Values</b>
<b>Acknowledgement Level</b>	Head of Service
<b>Documentation</b>	CSO Declaration of Non-Compliance
<b>Publication of Acknowledgement</b>	No
<b>Acknowledgement subject to call in</b>	No

**0.6.7.** Instances of non-compliance will be reported to senior management on a regular basis, with a six-monthly report sent to the Corporate Management Team

**0.6.8.** Non-compliance with the CSOs may result in the Council's Disciplinary Policy and Procedure being applied. In respect of wilful, negligent, repeated, or other serious breaches this could result in significant sanctions and even dismissal.  
[http://documentlibrary.plymcc.local/documents/Policy\\_and\\_procedure\\_disciplinary.docx.pdf](http://documentlibrary.plymcc.local/documents/Policy_and_procedure_disciplinary.docx.pdf)

# **I. Stage I - Analyse the Need**

## **I.1. Stage Introduction**

- I.1.1. Before any procurement activity is undertaken an analysis of the business need must be completed. This analysis must be undertaken on a requirement-by-requirement basis and applies to both new requirements as well as existing contracts requiring re-procurement. This analysis must consider the following:

## **I.2. Engagement with Subject Matter Experts**

- I.2.1. Relevant subject matter experts within the Council including but not limited to, Procurement, Health and Safety, Finance, Legal Services, and Democratic Support must be engaged at the earliest opportunity to support the definition of the business need and to provide advice and guidance on any risks and mitigations relevant to their area of expertise where it is appropriate to do-so. The Responsible Officer shall be responsible for carrying out appropriate due diligence on their requirement and to take any subject matter expert recommendations into consideration when making decisions.
- I.2.2. Where appropriate subject matter experts should continue to be consulted at appropriate times throughout the procurement process and during the delivery of the contract.
- I.2.3. Any gaps in the Council's internal expertise must be noted in the business need analysis and plans for the appropriate mitigation of any associated risks put in place.

## **I.3. Early Market Engagement**

- I.3.1. Where appropriate the gathering of market intelligence through early market engagement is permitted and encouraged with the intention to inform the definition of the business need and subsequent sourcing strategy
- I.3.2. All early market engagement must comply with the principles of transparency, equal treatment, proportionality, non-discrimination and mutual recognition and care must be taken to ensure that it is undertaken in accordance with the Regulations where applicable.



## **1.4. Alternative Delivery Options**

- 1.4.1.** Alternative options to the procurement of supplies, services or works should be considered as part of the business needs analysis including challenging the need itself. **If a clear business case cannot be made for a given requirement it should not be procured.**
- 1.4.2.** The costs and benefits of any alternative options considered should be documented including any impact on the local economy, community, and environment.

## **1.5. Calculation of Estimated Total Contract Value**

- 1.5.1.** When estimating the total contract value, the estimate shall be:
  - 1.5.1.1.** For the whole duration of any anticipated contract including any form of option or renewal of the contract explicitly set out in the procurement documents,
  - 1.5.1.2.** For the timeframe duration of 1.5.1.1, cover the whole life cost of the business need, from the initial definition through to the end of useful life including any maintenance, servicing, consumables, licences, decommission and disposal,
  - 1.5.1.3.** Net of Value Added Tax (VAT),
  - 1.5.1.4.** The value of any non-monetary consideration, benefit, or opportunity the Council is giving,
  - 1.5.1.5.** The value of anything the Council is getting for free as part of the contract.
- 1.5.2.** In the case of Concession contracts, the total anticipated turnover a supplier could make on the contract exclusive of VAT.
- 1.5.3.** In the case of Framework Agreements and Dynamic Purchasing Systems, the maximum estimated value, exclusive of VAT, of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.
- 1.5.4.** In the case of Public Works contracts, the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authority provided that they are necessary for executing the works.
- 1.5.5.** In the case of Public Supply or Service contracts which are regular in nature, or which are intended to be renewed within a given period, the total actual value of the contract of the same type during the preceding 12 months or financial year adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract.

- I.5.6.** The estimate shall be calculated at the moment a call for competition is submitted or the procurement procedure commences.
- I.5.7.** If an estimated total contract value cannot be calculated it is deemed to be equal to the relevant threshold amount as set out in the Regulations.
- I.5.8.** The choice of the method used to calculate the estimated value of a contract shall not be made with the intention of circumventing the thresholds as set out in the Regulations and CSOs.
- I.5.9.** A contract shall not be undervalued or subdivided with the intention of circumventing the thresholds as set out in the Regulations and CSOs.

## **I.6. Funding Sources**

- I.6.1.** A source or sources of funding must be identified which will sufficiently cover the estimated total contract value.
- I.6.2.** Where the use of external funding is being considered care must be taken to ensure any funding conditions are satisfied and complied with. This may require consultation with subject matter experts before funding is applied for.
- I.6.3.** Where the use of capital funding is being considered, the Responsible Officer must ensure that the requirement has been formally registered onto the Capital Programme before the procurement commences.
- I.6.4.** The identified funds should be secured and available for commitment prior to any procurement activity being undertaken. The only exception to this is where a procurement activity is required as part of a grant funding bid. For example, to secure a delivery partner or to demonstrate to a funding body that a preferred supplier is ready to be engaged.
- I.6.5.** Where secured and available funding falls short of the estimated total contract value, a funding strategy must be developed and submitted for approval as part of the authority to procure decision.

## **I.7. Conflicts of Interest**

- I.7.1.** Consideration must be given as to whether any conflict of interest exists or could potentially exist, directly or indirectly, between any individual involved in the procurement activity and any supplier(s) who may be interested in the opportunity or any person(s) that might be affected by the outcome of the procurement.
- I.7.2.** Consideration must be given on a requirement-by-requirement basis and should also include whether any perceived conflict could exist.
- I.7.3.** Any actual or perceived conflicts identified should be captured and a management plan developed to a level of detail and in a format appropriate to the extent of the risk, taking into consideration:
  - I.7.3.1.** The nature of the requirement,
  - I.7.3.2.** The nature of the supply market,
  - I.7.3.3.** Estimated contract value,
  - I.7.3.4.** Route to market,
  - I.7.3.5.** The nature of the conflict,

## **I.8. Authority To Procure**

- I.8.1.** Where the outcome of the business need analysis determines that a procurement activity is required, approval to procure must be obtained.
- I.8.2.** The table below sets out the Council's minimum requirements when approving a decision to procure.
- I.8.3.** The requirements are based on total estimated contract value (Ex. VAT) however officers should also consider the specifics of their requirement and consider whether a higher level of approval is more appropriate.
- I.8.4. No procurement can commence without the appropriate 'Authority to Procure' authorisation.**

**Revenue Spend- Table 4:**

Consideration	Total Estimated Contract Value				
	Up to £50,000	Over £50,000 up to £200,000	Over £200,000 up to £500,000	Over £500,000 up to £3,000,000 *	Over £3,000,000 or Key Decision*
<b>Authorisation level</b>	Responsible Officer	Head of Service	Service Director/ Strategic Director	Portfolio Holder*	Cabinet* or The Leader*
<b>Documentation</b>	No formal requirement	Business Case	Business Case	<ul style="list-style-type: none"> <li>• Business Case**</li> <li>• Executive Decision</li> <li>• EIA</li> </ul>	<u>Cabinet:</u> <ul style="list-style-type: none"> <li>• Business Case</li> <li>• Cabinet Paper **</li> <li>• EIA</li> <li>• Climate Impact Assessment***</li> </ul> <hr/> <u>The Leader:</u> <ul style="list-style-type: none"> <li>• Business Case</li> <li>• Executive Decision**</li> <li>• EIA</li> <li>• Climate Impact Assessment***</li> </ul>
<b>Publication of Decision</b>	No	No	No	Yes	Yes
<b>Subject to call in</b>	No	No	No	Yes	Yes
<b>Published on the Forward Plan</b>	No	No	No	Yes, if decision: <ul style="list-style-type: none"> <li>• Is 'Key,'</li> <li>• Will be discussed at a public meeting where information is withheld within a Part II paper,</li> <li>• Will require the delegation of powers to implement,</li> </ul> An entry must appear on the forward plan 28 days before the decision is made.	

- \*Cabinet and Cabinet Members can delegate their authority to award and vary contracts to officers as part of a business case
- \*\* Where information is confidential Part I and Part II papers should be used
- \*\*\* Where Key Decision

**Capital Spend- Table 5:**

- 1.8.5.** No procurement can commence without the appropriate ‘Authority to Procure’ authorisation which, for capital projects forms part of the registration of the requirement on the Capital Programme.
- 1.8.6.** Where a capital project will require multiple individual procurement activities only authorisation of a single overarching business case is necessary in accordance with the Council’ Capital Programme governance requirements as below:

Consideration	Total Estimated Project Value	
	Up to £200,000	Over £200,000
<b>Authorisation level</b>	Section 151 Officer	Cabinet* or The Leader*
<b>Documentation</b>	To be confirmed by Finance	<u>Cabinet:</u> <ul style="list-style-type: none"> <li>• Capital Investment Business Case</li> <li>• Cabinet Paper**</li> <li>• EIA</li> <li>• Climate Impact Assessment</li> </ul> <hr/> <u>The Leader:</u> <ul style="list-style-type: none"> <li>• Capital Investment Business Case</li> <li>• Executive Decision**</li> <li>• EIA</li> </ul>

		• Climate Impact Assessment
<b>Publication of Decision</b>	No	Yes
<b>Subject to call in</b>	No	Yes
<b>Published on the Forward Plan</b>	No	Yes An entry must appear on the forward plan 28 days before the decision is made.

\*Cabinet and Cabinet Members can delegate their authority to award and vary contracts to officers as part of a business case

\*\* Where information is confidential Part I and Part II papers should be used

## 2. Stage 2: Develop the Sourcing Strategy

### 2.1. Stage Introduction

- 2.1.1 The procurement route to market may be determined as part of *Stage 1 - Analyse the Need* where the requirement has been sufficiently defined but is not a condition of Stage 1 approval and can be developed as part of *Stage 2 - Develop the Sourcing Strategy*.
- 2.1.2 At whichever stage, the procurement route to market is determined it must be developed on a requirement-by-requirement basis and consider the following:

### 2.2. Grant / Funding Conditions

- 2.2.1. Consideration must be given to any procurement or contract conditions set as part of any grant or other external funding agreements. Care shall be taken to ensure the funding conditions are satisfied and complied with to avoid risk to the loss of the funding being made in full or in part to the Council.
- 2.2.2. Funders should be consulted where there is uncertainty as to whether a sourcing strategy will satisfy the conditions including a direct award.

### 2.3. Route to Market Hierarchy

- 2.3.1. The following routes to market are listed in order of general Council preference but Officers must always consider which route offers best value for money:
  - 2.3.1.1. **Use of in-house provision-** where the capability and capacity of an internal department satisfies the requirement,
  - 2.3.1.2. **Use of an existing Council contract/ commercial arrangement-** where a contract already covers the requirement or can be reasonably varied to include it in accordance with the Council's contract variation process,  
  
Information on current Council contracts can be found on the Council's published contract register here:  
[www.supplyingthesouthwest.org.uk](http://www.supplyingthesouthwest.org.uk)
  - 2.3.1.3. Officers must take notice of Council contracts which grant suppliers exclusivity and assess the risk of non-compliance where another route to market is preferred,

**2.3.1.4. Use of Council Teckal company arrangements-** The Council has a number of teckal companies which it has established to fulfil its various functions, and these should be used where a company already offers the requirement or could reasonably do-so within the remit of its existing responsibility. This step may also include discussions relating to the appropriateness of establishing of a new company.

**2.3.1.5. Run a new procurement activity-** via an independent procurement process, framework or DPS, whichever represents best value for money.

**2.3.1.5.1.** It is the Council's default position that the running of a competitive multi-supplier process will deliver best value for money and should be pursued wherever possible. Robust justification must be documented where a direct award sourcing strategy is pursued.

**2.3.1.5.2.** When running a new procurement activity, the decision on which route to follow should be based on which offers best value for money. Factors to be considered in this decision-making, include but are not limited to:

- Compliance with Procurement Regulations and CSO,
- The subject matter of the requirement,
- The scope of the requirement,
- The frequency of the requirement,
- The contract period/delivery timescales,
- The estimated total contract value,
- The contract budget,
- The minimum quality level,
- The Council's buy local and SME agendas,
- The Council's Social Value Policy,
- Wider Council strategic objectives,
- Process complexity and flexibility,
- The level of market interest,
- Opportunities for savings,
- Contracting options,
- Resource demands (whole life),
- Other route specific costs and benefits,



## 2.4. Independent Procurement Process

### 2.4.1. Sourcing Requirements

2.4.1.1. The table below sets out the Council's standard minimum sourcing requirements when undertaking an independent procurement process. This table should be read in conjunction with *Procedural Note: Buy Local*.

2.4.1.2. The requirements are based on total estimated contract value (Ex. VAT) however Officers must also consider the specifics of their requirement and consider exceeding these minimums where it is relevant and proportionate to do-so.

**Table 6:**

Consideration	Total Estimated Contract Value			
	Up to £15,000	Over £15,000 up to £50,000	Over £50,000 up to relevant GPA threshold*	Over relevant GPA threshold
<b>Level of Competition</b>	Source <b>one</b> written Quotation	Seek <b>two</b> written quotations	Seek <b>three</b> written quotations/ tenders	Undertake Regulatory procedure
<b>Buy Local Agenda</b>	from PL Postcode where possible	At least one from PL Postcode where possible	Two from PL Postcode where possible	Engage PL Postcode suppliers where possible
<b>SME Agenda</b>	Engagement with SMEs should be maximised where possible			
<b>Social Value</b>	Discretionary but to be included where possible	Discretionary but to be included where possible	Discretionary but to be included where possible	Mandatory where relevant
<b>Advertisement</b>	Optional	Optional	Optional	In accordance with Regulation procedure

\*Where the initial contract value estimate is within 10% of the relevant GPA Threshold, a procedure in accordance with the Regulations should be undertaken.

- 2.5.1.3 Running an independent procurement process can only be undertaken by officers who have been explicitly authorised to do-so. See *Procedural Note- Procurement Self-Service*.
- 2.5.1.4 Confirmation as to whether the Regulations will apply to a procurement activity and if so, the relevant threshold and applicable sections must be given by Procurement on a requirement-by-requirement basis.
- 2.5.1.5 Copies of the Regulations and Current GPA Thresholds can be found here: [Legislation.gov.uk](https://legislation.gov.uk)
- 2.5.1.6 The GPA Thresholds are inclusive of VAT therefore to maintain consistency with internal governance processes and assure compliance with Regulatory procedures, the highest government VAT rate is assumed for all types of requirement for the purposes of decision-making. E.g. 20%. However, where it would be in the best interests of the Council to determine the exact VAT rate for a given requirement and procure on that basis, the Council will.

## **2.5. Frameworks/ DPS**

- 2.5.1.** Due diligence must be undertaken on any framework or DPS on a requirement-by-requirement basis to ensure it is suitable and can be used in a manner which complies with the Regulations and the Council's CSOs. This review must be undertaken by Procurement and sign off, of the framework or DPS given prior to use.
- 2.5.2.** Running a further competition is the preferred route to market when using a framework on the basis it will maximise the opportunity to secure best value. Robust justification must be documented where a direct award under a framework is made.
- 2.5.3.** Procurement activity under a framework or DPS can only be undertaken by officers who have been explicitly authorised to do-so.
- 2.5.4.** Due regard must still be given to the Council's standard minimum sourcing requirements as set out in *table 6* and complied with where possible.
- 2.5.5.** Standard internal governance procedures apply when using any framework or DPS except for legal services frameworks explicitly exempted by the Monitoring Officer.

## **2.6. Pre-Procurement Market Engagement**

- 2.6.1.** In addition to any early market engagement undertaken at *Stage 1 - Analyse the Need*, Officers should consider whether there is a benefit to undertaking pre-procurement market engagement. Such engagement is permitted and encouraged where it is relevant and proportional to do so and can take a number of forms depending on the intended purpose and desired outcomes, such as:
- 2.6.1.1.** Notifying the market about a future opportunity i.e. Prior Information Notice,
  - 2.6.1.2.** Seeking market interest for an upcoming opportunity i.e. Expression of Interest activity or call for competition,
  - 2.6.1.3.** Seeking feedback on an indicative specification or sourcing strategy i.e. soft market test,
  - 2.6.1.4.** Warming up potential suppliers i.e. Bidder's Day or similar engagement session,
- 2.6.2.** Any pre-procurement market engagement must comply with the principles of transparency, equal treatment, proportionality, non-discrimination and mutual recognition and care must be taken to ensure that it is undertaken in accordance with the Regulations where applicable.

## **2.7. Sourcing Documentation**

- 2.7.1.** Council policies and corporate strategies and standards relevant to the subject matter of the requirement should be consulted prior to the drafting of sourcing documentation. Relevant policies and corporate strategies may include, and cover topics such as:
- Health and safety,
  - The Corporate Plan,
  - Buy local agenda,
  - Social Value Policy,
  - Net zero action plan,
  - Equality and diversity,
  - Modern Slavery Policy,
  - Data protection,
- 2.7.2.** Documentation to be issued as part of a procurement activity must clearly and precisely set out the Council's requirement and be of sufficient quality to enable suppliers to submit accurate and unqualified offers.
- 2.7.3.** Documentation should be produced electronically in a format that is appropriate and proportionate for the route to market.

2.7.4. Formal Council templates should be used to ensure completeness and consistency of approach.

2.7.5. Where a framework or DPS provider offers their own templates, these may be used with oversight by Procurement.

## 2.8. Systems

2.8.1. All procurement activity must be undertaken electronically using systems that are appropriate and proportionate for the route to market.

2.8.2. The Council's formal e-procurement system must be used for all procurement activity that is advertised and subject to the Regulations.

2.8.3. Where a framework or DPS provider offers use of their own portal, this may be used with oversight by Procurement.

## 2.9. Advertisement

2.9.1. The advertisement of procurement opportunities shall be in line with the thresholds as set out in *Table 6*.

2.9.2. Where advertisement is 'optional' the decision must be based on best value for money taking into consideration the nature and value of the requirement and all process costs and benefits.

2.9.3. Advertisements must be made in accordance with the following publication scheme:

**Table 7:**

	Total Estimated Contract Value		
	Up to £25,000	Over £25,000 up to relevant GPA threshold	Over relevant GPA threshold
Advertisement platform	Council's e-procurement system	Council's e-procurement system Contracts Finder	Council's e-procurement system Contracts Finder Find a Tender

**2.9.4.** Care must be taken to ensure that advertisement it is undertaken in accordance with the Regulations, where applicable.

**2.9.5.** Where a framework or DPS is used, the advertisement rules of that specific route to market must be complied with.

## **2.10. Timescales**

**2.10.1.** Quotation and Tender timescales for submission shall be reasonable, sufficient, and proportional to enable Suppliers to submit a suitable response and facilitate genuine competition.

**2.10.2.** Any procurement activity above the relevant GPA threshold must comply with the relevant timescales as set out in the Regulations.

## **2.11. Terms and Conditions**

**2.11.1.** Wherever possible and appropriate to do so, contracts shall be based on the Council's standard Terms and Conditions, related to the subject matter of the contract.

**2.11.2.** Specialist Terms and Conditions can be used, subject to agreement with Procurement and in consultation with Legal Services where required.

**2.11.3.** Terms and Conditions shall be stated and disclosed within the Sourcing Documentation.

## **2.12. Sourcing Strategy Decisions**

**2.12.1.** The table below sets out the Council's minimum requirements when approving a sourcing strategy.

**2.12.2.** The requirements are based on total estimated contract value (Ex. VAT) however officers should also consider the specifics of their requirement and consider whether a higher level of approval is appropriate.

**2.12.3. No procurement can commence without the appropriate 'Sourcing strategy decision' authorisation.**

**Table 8:**

<b>Consideration</b>	<b>Total Estimated Contract Value</b>		
	<b>Up to £50,000</b>	<b>Over £50,000 up to £200,000</b>	<b>Over £200,000</b>
<b>Authorisation level</b>	Responsible Officer	Head of Service	Service Director/ Strategic Director
<b>Documentation</b>	No formal requirement	Sourcing Strategy	Sourcing Strategy
<b>Publication of Decision</b>	No	No	No
<b>Decision subject to call in</b>	No	No	No

## 3. Stage 3: Source the Supplier

### 3.1. Stage Introduction

- 3.1.1. Following authorisation of the sourcing strategy the procurement must be issued in accordance with the sourcing strategy and comply with the Regulations where applicable.

### 3.2. Communication

- 3.2.1. Communication with suppliers as part of any procurement activity must be in accordance with the process as published in the sourcing documentation and adhere to the principles of transparency, equal treatment, proportionality, non-discrimination, and mutual recognition.
- 3.2.2. Where procurement activity is undertaken using the Council's e-procurement System all communication must be made via that System. **No direct communication between the Responsible Officer (or their representatives) and Suppliers must take place to preserve the integrity of the process.**

### 3.3. Receipt of Quotations / Tenders

- 3.3.1. Requests to participate, quotations and tenders must be received in accordance with the submission instructions published in the sourcing documentation.
- 3.3.2. Requests to participate, quotations and Tenders received after the submission deadline or not otherwise in accordance with the submission instructions should be assessed in line with *Procedural Note: Late Submissions*.

### 3.4. Evaluation

- 3.4.1. Requests to participate, quotations and tenders should not be opened until the submission deadline has passed.
- 3.4.2. Any individual who is appointed as an evaluator must have the appropriate skills and experience to ensure transparency and robustness of the process.

- 3.4.3.** Requests to participate, quotations and tenders will be evaluated in accordance with the evaluation criteria and methodology as published in the sourcing documentation.
- 3.4.4.** Evaluations must be undertaken using formal Council templates and in line with Procurement guidance to ensure a consistent, fair, and transparent approach.
- 3.4.5.** Where information within a request to participate, quotation or tender is felt to be missing or erroneous reference should be made to *Procedural Note: Missing or Erroneous Information*.



## 4. Stage 4: Award the Contract

### 4.1. Stage Introduction

- 4.1.1. The Council is under no obligation to award a contract(s) at the conclusion of a procurement activity.
- 4.1.2. Where the Council makes the decision not to award a contract, a written record of the reasons for the decision should be made.
- 4.1.3. Contracts must be awarded in accordance with the process as published in the sourcing documentation and comply with the Regulations where applicable.

### 4.2. Contract Award Decisions

- 4.2.1. The table below sets out the Council's minimum requirements when awarding a contract.
- 4.2.2. The requirements are based on total contract value (Ex. VAT) however officers should also consider the specifics of their proposed contract and consider whether a higher level of approval is more appropriate.
- 4.2.3. No contract can be committed without the appropriate 'contract award decision' authorisation.

**Table 9:**

Consideration	Total Estimated Contract Value				
	Up to £50,000	Over £50,000 up to £200,000	Over £200,000 up to £500,000	Over £500,000 up to £3,000,000	Over £3,000,000 or Key Decision
<b>Authorisation level</b>	Responsible Officer	Head of Service	Service Director/ Strategic Director	Portfolio Holder*	Cabinet* or The Leader*

<b>Contract Award</b>	Procurement Checklist	Contract Award Report	<ul style="list-style-type: none"> <li>• Contract Award Report</li> <li>• Climate Impact Assessment***</li> </ul>	<ul style="list-style-type: none"> <li>• Contract Award Report</li> <li>• Executive Decision**</li> <li>• EIA</li> <li>• Climate Impact Assessment***</li> </ul>	<u>Cabinet</u> <ul style="list-style-type: none"> <li>• Contract Award Report</li> <li>• Cabinet Paper**</li> <li>• EIA</li> <li>• Climate Impact Assessment***</li> </ul> <u>The Leader:</u> <ul style="list-style-type: none"> <li>• Contract Award Report</li> <li>• Executive Decision **</li> <li>• EIA</li> <li>• Climate Impact Assessment***</li> </ul>
<b>Publication of Decision</b>	No	No	No	Yes	Yes
<b>Decision subject to call in</b>	No	No	No	Yes	Yes
<b>Published on the Forward Plan</b>	No	No	No	Only where not added at Stage I. See Stage I for details	

\* Where a contract award decision has been delegated at Stage I, a Contract Award Report must be completed, and the named officer must make and publish an Officer Executive Decision to use the delegation. This decision will not be key and will not be subject to call-in.

\*\* Where information is confidential Part I and Part II papers should be used

\*\*\* Where decision is capital and/or Key

### 4.3. Notification of Award

- 4.3.1. The Council’s decision to award a contract (or otherwise) should be communicated to the Suppliers who have taken part in a procurement activity at the earliest opportunity and prior to the publication of the decision into the public domain.
- 4.3.2. Notification must be in writing using formal Council templates and in line with Procurement guidance to ensure a consistent, fair, and transparent approach.
- 4.3.3. Where a mandatory standstill period does not apply, consideration should be given as to whether a voluntary standstill should be implemented.

### 4.4. Contract Arrangements

- 4.4.1. Contracts are to be executed in accordance with the table below:

**Table 10:**

Consideration	Total Contract Value				
	Up to £50,000	Over £50,000 up to £200,000	Over £200,000 up to £500,000	Over £500,000 up to £3,000,000	Over £3,000,000 or Key Decision
<b>Contract Signatory</b>	Strategic Director/ Service Director*	Strategic Director/ Service Director*	Service Director/ Strategic Director*	Strategic Director/ Service Director*	Strategic Director/ Service Director*
<b>Form of Contract</b>	Council Purchase Order or Formal Contract Agreement	Council Purchase Order or Formal Contract Agreement or Sealed Contract**	Formal Contract Agreement or Sealed Contract**	Formal Contract Agreement or Sealed Contract**	Formal Contract Agreement or Sealed Contract**

\* Strategic and Service Directors can delegate their authority to sign contracts to officers.

\*\* See below for when a Sealed Contract is required

**4.4.2.** In the event of any ambiguity as to the appropriate level of authorisation required; the overarching Financial Regulation 24.3 will take precedence.

**4.4.3.** All contracts must be in writing.

**4.4.4.** Contracts shall be executed as a deed (Sealed Contract) if they are:

**4.4.4.1.** For Works contracts (e.g. construction), or

**4.4.4.2.** Where the Council may wish to enforce the contract more than six years after its end; or

**4.4.4.3.** Nil consideration or the price paid or received under the contract is a nominal price and does not reflect the value of the supplies or services; or

**4.4.4.4.** the Total Value exceeds £1,000,000; or

**4.4.4.5.** legally required to be executed as a deed or if the Head of Legal Services advises they must be executed as a deed; or

**4.4.4.6.** probate.

**4.4.5.** Only Legal Services can execute documents as deed (Sealed Contract) by affixing the Council’s seal.

**4.4.6.** Formal Contract Agreements or Sealed Contracts must be signed by all parties. Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided assurance the arrangements are secure. Currently the Council cannot execute its part of Sealed Contracts electronically.

## **4.5. Contract Publication Requirements**

**4.5.1.** The table below sets out the Council’s minimum contract publication requirements in accordance with the Regulations and wider Local Government Transparency requirements. Values EX VAT:

**Table 11:**

<b>Consideration</b>	<b>Total Contract Value</b>			
	<b>Up to £5,000</b>	<b>Over £5,000 up to £25,000</b>	<b>Over £25,000 up to relevant GPA threshold</b>	<b>Over relevant GPA threshold</b>
<b>Council Contract</b>	No	Yes	Yes	Yes

<b>Register</b>				
<b>UK Government Portal</b>	No	No	Contracts Finder	Find a Tender <i>and</i> Contracts Finder

**4.5.2.** The scope and timing of the information to be published must comply with the minimum requirements as set out in the Regulations and wider Local Government Transparency requirements, where applicable, subject to the consideration of any prescribed exemptions.

## 5. Stage 5- Manage the Contract

### 5.1. Stage Introduction

5.1.1. Once the contract has been executed full ownership and responsibility for the delivery of the contract transfers to the Responsible Officer and their wider department.

### 5.2. Contract Management and Monitoring

5.2.1. **Every Council contract must have a designated Contract Manager.** If a Contract Manager leaves the Council's employment, responsibility must be formally allocated to another officer.

5.2.2. Any Officer who is appointed a Contract Manager must have the appropriate skills and experience to ensure delivery of the Council's requirement in accordance with the contract.

5.2.3. Contract management and monitoring arrangements shall be undertaken in a manner that is relevant and proportionate to the benefits and the risks associated with the specific requirement.

5.2.4. Contract Managers should also consider how the contract may be continuously improved over its duration.

### 5.3. Take up of Contract Options

5.3.1. This section applies where a contract option was clearly, precisely, and unequivocally provided for in the initial procurement documentation and formed part of the original contract award decision.

5.3.2. The take up of contract option(s) must be actioned in accordance with the terms of the relevant contract or framework agreement and comply with the Regulations, where applicable.

5.3.3. The take up of all contract options shall be in writing and executed in the same manner as the original contract.

5.3.4. The table below sets out the Council's minimum requirements when taking up a contract option:

**Table 12:**

<b>Consideration</b>	<b>All Option Value</b>
<b>Authorisation Level</b>	Contract Manager
<b>Documentation</b>	Contract Option Take Up Form
<b>Publication of Decision</b>	No
<b>Decision subject to call in</b>	No

## **5.4. Contract Variations**

- 5.4.1.** This section applies where the Council is looking to vary an existing contract or framework agreement, where the proposed variation is outside of the scope of the initial procurement and did not form part of the original contract award decision.
- 5.4.2.** All variation must be actioned in accordance with the terms of the relevant contract or framework agreement and comply with the Regulations, where applicable.
- 5.4.3.** All variations shall be in writing and executed in the same manner as the original contract.
- 5.4.4.** No contract/ framework agreement can be varied without the appropriate ‘variation decision’ authorisation in accordance with the table below:

**Table 13:**

Consideration	Total Variation Value				
	Up to £50,000	Over £50,000 up to £200,000	Over £200,000 up to £500,000	Over £500,000 up to £3,000,000	Over £3,000,000 or Key Decision
<b>Authorisation level</b>	Responsible Officer	Head of Service	Service Director/ Strategic Director	Portfolio Holder*	Cabinet* or The Leader*
<b>Documentation</b>	Contract Variation Authorisation Form	Contract Variation Authorisation Form	Contract Variation Authorisation Form	<ul style="list-style-type: none"> <li>• Contract Variation Authorisation Form</li> <li>• Executive Decision**</li> </ul>	<u>Cabinet</u> <ul style="list-style-type: none"> <li>• Contract Variation Authorisation Form</li> <li>• Cabinet Paper**</li> <li>• EIA</li> </ul> <u>The Leader:</u> <ul style="list-style-type: none"> <li>• Contract Variation Authorisation Form</li> <li>• Executive Decision **</li> <li>• EIA</li> </ul>
<b>Publication of Decision</b>	No	No	No	Yes	Yes
<b>subject to call in</b>	No	No	No	Yes	Yes
<b>Published on the Forward Plan</b>	No	No	No	Only where not added at Stage I. See Stage I for details	

\* Where a contract variation decision has been delegated at Stage I a Contract Variation Authorisation Form must be completed and the named officer must make and publish an Officer Executive Decision to use the delegation. This decision will not be key and will not be subject to call-in.

\*\* Where information is confidential Part I and Part II papers should be used.



## 5.5. Contract Novation/ Assignment

5.5.1. The transfer of the rights and/or obligations of a party to a contract, which the Council has a formal interest in, to another party may be considered in accordance with this section.

5.5.2. Any novation/ assignment must be actioned in accordance with the terms of the relevant contract and comply with the Regulations, where applicable.

5.5.3. All novations/assignments shall be in writing.

### 5.5.4. Change of Supplier

5.5.4.1. Where a supplier requests the novation or assignment of their contract with the Council to another supplier, the Council's Contract Manager, in consultation with relevant subject matter experts must ensure that sufficient due diligence is carried out to give the Council confidence that the new supplier is sufficiently capable and that the contract will be delivered to the same or a comparable standard as originally contracted.

5.5.4.2. The level of due diligence required is to be determined on a contract-by-contract basis relevant and proportionate to the nature and value of the contract.

5.5.4.3. Novation of a Council contract to a new supplier must be executed in accordance with the table below:

**Table 14:**

Consideration	Novated Contract Value
	All values
Authorisation Level	Contract Manager
Documentation	Contract Novation or Assignment Review Form

### 5.5.5. Change of Contracting Authority

5.5.5.1. Where the Council wishes to novate or assign its contract with a supplier to another contracting authority, such as one of its arms-length companies, the Contract Manager in consultation with relevant subject matter experts, will provide sufficient assurances to the supplier and the organisation as to the appropriateness of the transfer and support the transition of the contract.

5.5.5.2. Novation of a contract from the Council to a new contracting authority must be executed in accordance with the table below:

**Table 15:**

Consideration	Novated Contract Value
	All values
Authorisation Level	Contract Manager
Documentation	Contract Novation or Assignment Review Form

### 5.5.6. Acceptance of Novated or Assigned Contracts

5.5.6.1. Where an organisation, such as a Council partner requests the novation or assignment of their contract with a supplier to the Council, a Council Contract Manager must be nominated who, in consultation with relevant subject matter experts, must ensure that sufficient due diligence is carried out to give the Council confidence that becoming a party to the contract is in the best interests of Council and any risks are minimised to an acceptable level.

5.5.6.2. The level of due diligence required is to be determined on a contract-by-contract basis relevant and proportionate to the nature and value of the contract.

5.5.6.3. The acceptance of a novated or assigned contract must be made in accordance with the table below:

**Table 16:**

Consideration	Total Contract Value				
	Up to £50,000	Over £50,000 up to £200,000	Over £200,000 up to £500,000	Over £500,000 up to £3,000,000 *	Over £3,000,000 or Key Decision***
<b>Authorisation level</b>	Responsible Officer	Head of Service	Service Director/ Strategic Director	Portfolio Holder*	Cabinet* or The Leader*
<b>Documentation</b>	Contract Novation or Assignment Authorisation Form	Contract Novation or Assignment Authorisation Form	Contract Novation or Assignment Authorisation Form	<ul style="list-style-type: none"> <li>• Contract Novation or Assignment Authorisation Form</li> <li>• Executive Decision**</li> <li>• EIA</li> </ul>	<ul style="list-style-type: none"> <li>• Contract Novation or Assignment Authorisation Form</li> <li>• Cabinet Paper**</li> <li>• EIA</li> </ul>
<b>Publication of Decision</b>	No	No	No	Yes	Yes
<b>Decision subject to call in</b>	No	No	No	Yes	Yes
<b>Published on the Forward Plan</b>	No	No	No	Only where not added at Stage I. See Stage I for details	

\* Where a contract novation or assignment decision is delegated a Contract Novation or Assignment Authorisation Form must be completed and the named officer must make and publish an Officer Executive Decision to use the delegation. This decision will not be key and will not be subject to call-in.

\*\* Where information is confidential Part I and Part II papers should be used.

## 5.6. End of Contract Review

**5.6.1.** Prior to the expiry of a contract a review should be undertaken by the Contract Manager, assessing the overall success of the contract’s delivery. This review will form the Council’s official contract performance record and should include any key points of

learning for future contracts.

## 5.7. Asset Disposal

- 5.7.1. Assets used during the delivery of a contract should be disposed of in accordance with the policy or process set out in the contract. Where no such policy or process was agreed within the contract, the Contract Manager should consider all the disposal options available and make a decision based on which option represents best value for money.

## 5.8. Re-procurement

- 5.8.1. Where the subject matter of a contract is an ongoing requirement and the existing contract is about to expire, the procurement cycle must be restarted from Stage 1: Analyse the Need.
- 5.8.2. Sufficient time must be given to complete another procurement cycle prior to the existing contract expiring, including consideration for a mobilisation and/or transition period to ensure continuity of service and a smooth transfer from one contract to another.
- 5.8.3. What is considered 'sufficient' time must be agreed between the Responsible Officer and Procurement on a procurement-by-procurement basis, but the Council's default approach is:
  - 5.8.3.1. Contracts with a total estimated value **above** the relevant GPA threshold: 12-18 months
  - 5.8.3.2. Contracts with a total estimated value **below** the relevant GPA threshold: 6- 12 months

## **Appendix A - Procedural Notes**

- Source Sole Arrangement
- Contract Standing Orders Waiver
- Breach of Contract Standing Orders
- Buy Local
- Procurement Self-Service
- Late Submissions
- Missing or Erroneous Information

## Appendix B- Roles and Responsibilities

<b>Cabinet</b>	<p>Ensuring compliance with the Members' Code of Conduct, including in relation to any interests they may have, and any specific responsibilities they have in relation to the CSOs themselves.</p> <p>Authorisation in line with levels as set out in the document</p>
<b>Corporate Management Team</b>	<p>Maintaining a strategic overview of compliance with the CSOs and overall accountability for non-compliance with the CSOs in their respective areas of responsibility.</p> <p>Instructing relevant changes to ensure compliance and controls remain effective.</p>
<b>Head of Procurement</b>	<p>Overall ownership of the CSOs and ensuring that the overall framework for procurement considerations is complied with robustly and effectively.</p> <p>Ensuring compliance with the Council's overarching decision-making responsibilities and providing related guidance.</p>
<b>Legal Services</b>	<p>Leading on the overall ownership of legal matters related to Contract Terms and Conditions.</p> <p>Point of escalation in relation to formal challenges within procurement or contract matters.</p>
<b>Monitoring Officer</b>	<p>To ensure overall lawfulness and fairness of procurement processes and decision-making.</p> <p>To provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and Council Officers.</p> <p>Acting as the ultimate point of escalation in respect of breaches or non-compliance with the CSOs and wider procurement and contract law and enforcing corrective action where required.</p>
<b>Portfolio Holder</b>	<p>Ensuring accountability by Officers is maintained with responsibilities for delivery of the CSOs.</p> <p>Authorisation in line with levels as set out in the document</p>
<b>Procurement</b>	<p>Covering both the Procurement Service and Officers with formal Procurement-related positions in Strategic Cooperative Commissioning. Acting as primary advisory service in relation to public sector procurement, commercial and contract management matters.</p>

<b>Responsible Officer</b>	<p>The Officer formally designated the departmental procurement lead.</p> <p>Has overall responsibility for ensuring compliance with CSOs and wider procurement and contract law during the delivery of the activities described within this document.</p> <p>Has the responsibility to seek the advice of subject matter experts where necessary.</p>
<b>Section 151 Officer</b>	<p>Ensuring overall probity in respect of related financial matters, through relevant controls and monitoring.</p>
<b>Service / Strategic Director</b>	<p>Authorisation in line with levels as set out in the document and Scheme of Delegation as set out in the Constitution.</p> <p>Ensuring awareness and compliance within their respective areas of responsibility.</p> <p>Point of escalation to investigate and / or implement corrective action in instances of breach or non-compliance within the respective area of responsibility and, where necessary, onward escalation to Director / Monitoring Officer.</p>
<b>Subject Matter Expert</b>	<p>Subject Matter Experts shall be relevant subject matter experts related to specialisms or professions, e.g. Procurement, service area teams, Legal Services, Finance, Health, and Safety, etc. to be consulted at appropriate times during the procurement process.</p>

## Appendix C- Defined Terms

**Best Value Duty:** Requirement placed on Councils ‘to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.’

**Breach:** Where there has been failure to comply with an aspect of the Contract Standing Orders.

**Concession Contract:** a form of contract where consideration consists in the right to exploit the work, or services, that are the subject of the contract, or that right to exploit together with a payment and shall always imply an operating risk of economic nature involving the possibility that it will not recoup the investments made and the costs incurred in operating those works or services.

**Conflict of Interest:** Any direct or indirect personal, professional, or financial interest which could inappropriately influence an Officer in the execution of their duties and responsibilities as an employee of the Council.

**Contract Register:** Means the formal Contract Register of the Council to comply with the Local Government Transparency Code 2015 see [www.supplyingthesouthwest.org.uk](http://www.supplyingthesouthwest.org.uk)

**Contract Standing Orders (CSOs):** Means this document and referenced Procedural Notes that form the overall rules around how the Council shall consider public procurements.

**Corporate Contracts:** Means contracts that have been set up with the expressed intention of supporting the delivery of Supplies, Services or Works across the whole of the Council.

**Corporate Plan:** Sets out the vision for the city and the Council and reflects the Council’s mission, values, and priorities to support this.

**Dynamic Purchasing System:** A type of procurement procedure that allows contracting authorities to set up a list of pre-qualified suppliers who can be invited to participate in tenders for specific contracts during the life of the DPS.

**Emergency:** an unforeseen and sudden situation that poses an immediate risk to human, animal or plant life or health, or public order or safety, or property or serious disruption to Council services or significant financial losses.

**Framework Agreement:** an agreement or arrangement between one or more procurers and one or more suppliers, the purpose of which is to establish the requirement and the contract conditions that will apply to future orders or contracts that the procurer(s) may enter into during the period for which the framework agreement is established.

**GPA Thresholds:** Meaning the defined thresholds that apply for the purposes of the Public Contracts Regulations 2015, Utilities Contracts Regulations 2016, the Concession Contracts Regulations 2016 and the Defence and Security Public Contracts Regulations 2011 (“the UK regulations”).



**Grant:** shall mean a payment from a funder (e.g. the Council) to help a recipient (e.g. charity) as a form of donation. The intention is not to form a legally binding contract and no supplies, services or works are delivered directly in return. The funder may set general conditions as to how the grant should be used but cannot place detailed expectations on the recipient in the form of underlying obligations, if they do this becomes a contract and is subject to procurement rules.

**Local Government Transparency Code:** Refers to the Local government transparency code 2015 which sets out the minimum data that local authorities should be publishing, the frequency it should be published and how it should be published.

**Procedural Note:** Means detailed guidance issued by the Head of Procurement, may include standard documents and forms, which supports the practice and the implementation of these Rules.

**Procurement:** Procurement professionals within the Procurement Service or Officers with formal Procurement-related positions in Strategic Cooperative Commissioning.

**Procurement Policy Note:** Formal guidance issued by central government on best practice procurement in the public sector.

**Quotation:** A quotation is a statement from a supplier setting out the estimated cost for supplies, services or works in accordance with the Council's specification

**Regulations:** Means any set of relevant Procurement Regulations including but not limited to the Public Contracts Regulations 2015 the Concession Contracts Regulations 2016 and The Health Care Services (Provider Selection Regime) Regulations 2023

**Responsible Officer:** Means the Officer who has direct responsibilities from an operational / client perspective for the Supplies, Services and Works.

**Sealed Contract:** being a contract executed under seal by the parties (signed by the parties, witnessed and most importantly made clear that it is executed as a deed) with the intentions to secure limitation period of 12 years, for example specifically relevant in the case of Works contracts

**Services:** means the provision of Service from a Supplier(s) to the Council as a Contracting Authority. See also "Public Service Contract" as defined in the Regulations <http://www.legislation.gov.uk/ukxi/2015/102/regulation/2/made>

**SME:** Small and Medium Enterprises defined as a business having less than 250 employees with turnover equal to or less than £50 million or a balance sheet equal to or less than £43million.

**Social Value:** Plymouth City Council's working definition of social value is 'a process whereby the organisation procures and commissions goods, services and works in a way that achieves value for money on a whole life basis in terms of generating benefits to society and the economy, whilst minimising damage to the environment'. <http://democracy.plymouth.gov.uk/mgConvert2PDF.aspx?ID=99353>

**Sole Source:** Where there is only one supplier who can provide the required supplies, services or works, where no reasonable alternative or substitute exists, and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement. For example, related to licencing requirements, subscriptions to specific organisations and where a supplier has an exclusive right.

**Sourcing Strategy:** means the approach to determining how to secure supplies, services, or works on behalf of the Council.

**Supplier:** means a third party who either is already contracted with the Council or is taking part in a procurement activity. Also used in general terms to define potential third parties who provide contracted arrangements to others.

**Supplies:** means the provision of Supplies from a Supplier(s) to the Council as a Contracting Authority. See also “Public Supplies Contract” as defined in the Regulations <http://www.legislation.gov.uk/ukxi/2015/102/regulation/2/made>

**Teckal:** The right to award contracts for Supplies, Services or Works from the controlling authority to the Council Owned company (or vice-versa). See the Regulations regulation 12 for more details: <http://www.legislation.gov.uk/ukxi/2015/102/regulation/12/made>

**Teckal Company / Council Company:** A company owned in whole or in part by the Council which benefits from contracts for supplies, services or works, from its controlling Contracting Authority (e.g. the Council) (or vice-versa) without having to go through a competitive tender process.

**Tender:** A tender is a formal offer to supply goods or services or perform work that becomes legal binding if accepted.

**Works:** means the provision of Works from a Supplier(s) to the Council as a Contracting Authority. See also “Public Work Contract” as defined in the Regulations: <http://www.legislation.gov.uk/ukxi/2015/102/regulation/2/made>



## **Rules Applying to the Disposal of Land and Property**

- I When do the land and property disposal rules apply?
  - 1.1 The land and property disposal rules apply to all disposals of land and property by the Council. They require each service department to formally determine whether a property is surplus to its requirements, after which all other service departments are given the opportunity to consider its re-use for operational purposes, before disposal. The respective ward Councillors are also notified of the pending disposal for their information
  - 1.2 The rules aim to generate additional capital receipts, relating to property transactions.
  - 1.3 As disposal of land held by Councils can be contentious it is important that officers follow the Council's land and property disposal guidelines to demonstrate good practice, avoid allegations of impropriety and avoid or defeat legal challenge. Where a disposal also involves construction works advice should be obtained from procurement or legal services to establish whether the contract standing orders in relation to works contracts also apply.
- 2 Need to follow these rules
  - 2.1 In order to comply with legislation and best practice it is essential that the procedures adopted for land disposals seek to obtain the best terms reasonably available:
    - (i) allowing all interested parties an equal opportunity to lease or purchase
    - (ii) avoiding partiality or bias
  - 2.2 In respect of each disposal (or series of disposals) the corporate property team will declare the land/property surplus to requirements and available for disposal.
  - 2.3 In respect of each disposal the Service Director for Economic Development will evaluate all relevant matters to the disposal of the property concerned and make a recommendation on the most appropriate method of disposal and in the case of disposal by private treaty, whether a special purchaser be offered direct negotiations. The evaluation will include the financial costs or benefit to the Council of the method of disposal recommended.
  - 2.4 Every disposal of land by way of tender must comply with these rules and no exception from any of the following provisions of these rules shall be made otherwise than by the direction of the Council.
- 3 Tenders

**3.1** Where land/property is to be disposed of by way of tender the Service Director for Economic Development will advertise the Council's intention in a suitable publication. The advertisement will include the following:

- a description of the property to be disposed of
- an indication that particulars are available from the commercial property service
- the date by which tenders should be returned

**3.2** Tenderers shall be requested when returning the tender to provide such evidence of their financial standing as is deemed appropriate in respect of each disposal.

**4** Use of select list tenders

**4.1** Where land/property is to be disposed of by select list tender in order to facilitate development, the Service Director for Economic Development will publish an advertisement in a suitable publication inviting expressions of interest in the property to be disposed of.

**4.2** All persons/organisations responding to the advertisement will be issued with particulars which will include details of the property to be disposed of and, if appropriate, an outline of the Council's objectives in securing disposal.

**4.3** The particulars will stipulate the information that prospective purchasers will provide in order to be considered for invitation to tender. This will include:

- the prospective purchasers experience of property development
- copies of the prospective purchasers audited accounts covering the previous three years
- where appropriate, preliminary drawings of the development proposed

**4.4** The closing date for deposit of submissions to the Council shall be stipulated in the particulars.

**4.5** Invitations to tender shall be sent to not fewer than four of the persons who have deposited submissions in response to the advertisement. If fewer than four such persons apply, all shall be invited to tender if, in the opinion of the Service Director for Economic Development, they are suitable tenderers and subject to financial appraisal by the Responsible Finance Officer.

**5** Information to be given to tenderers

Each invitation to tender, or where the tender is by way of open tender, the tender documents, shall state that no tender will be received except in a plain sealed envelope addressed to:

Legal Services  
Plymouth City Council

Ballard House  
West Hoe Road  
Plymouth  
PL1 3BJ

which must bear the word TENDER and indicate the land/property to which it relates.

**5.2** clearly specify the date and time before which the tender must be returned. Any tender returned after the specified time shall not be considered and must not be opened but kept in a safe place by an officer delegated by the head of legal services until the tender has been awarded. After award, the late tender may be opened to find out the name and address of the tenderer and returned to it, with a note recording the circumstances of its return.

**5.3** that any indication on the envelope identifying the tenderer will invalidate the tender.

**6** Receipt of tenders

**6.1** All tenders will remain in the custody of the head of legal services until the time appointed for their opening.

**6.2** The head of legal services will record, in a book to be kept for the purpose; the tenders received and indicate on each tender envelope received the date and time of such receipt.

**7** Opening of tenders

**7.1** Tenders will be opened at the appointed time by the head of legal services and Service Director for Economic Development or other senior officers authorised by them.

**7.2** The representative of the head of legal services will list the names of the tenderers and where practicable the respective amount thereof.

**7.3** The Service Director for Economic Development will initial the tenders and arrange for their immediate tabulation and any necessary further negotiation and checking.

**7.4** The Service Director for Economic Development will give written notice to the Cabinet member of the time appointed for the opening of the tenders so that he/she may be present at the time.

**8** Acceptance of tenders

**8.1** No tender other than the highest tender will be accepted by the Cabinet member unless s/he and the monitoring officer have considered a written report from the Service Director for Economic Development.

**8.2** As soon as possible after the opening of the tenders the Service Director for Economic Development will write to the unsuccessful tenderers informing them of the outcome of the tender exercise.

**9** Informal and negotiated tenders

**9.1** The preceding paragraphs will apply to informal and negotiated tenders unless they are inconsistent with this paragraph.

**9.2** Following the opening of the tenders the Service Director for Economic Development or an officer authorised by him/her will enter into negotiations regarding the fulfilment of conditions but will not seek to increase the basic tenders put forward nor accept increased offers from unsuccessful tenderers.

**9.3** In cases where the scale, complexity or perceived sensitivity of the negotiation is of particular importance, the negotiating officer will, whenever possible, be accompanied to meetings by another Council officer. (The requirement for a second Council officer will be deemed to be met if the negotiations are attended by an officer of another local authority or government department or by a representative of external advisers appointed by the Council).

**9.4** Meetings will normally take place at the Council's offices or at the offices of the Council's advisers, on site, at the premises of the prospective purchaser/lessee or those of their advisers or at the offices of another local authority or government department. Any departure from this practice will be formally recorded on file and notified to the head of service.

**9.5** Notes of meetings and telephone calls should be recorded at the time on the file.

**9.6** Where external consultants have been appointed to advise the Council, these rules apply equally to the external consultants as they would to Council officers.

**10** Councillors role in land and property transactions

**10.1** Councillors should not be involved in negotiations on land and property transactions with third parties. Councillor involvement in the discussion of initial scheme proposals (e.g. the assessment of schemes at expression of interest or formal tender stage) will occasionally be necessary but this should only be in the format of proper meetings and presentations organised in consultation with the Cabinet member and head of service. Such meetings must be recorded and noted on the file. Where a third party attempts to involve a Councillor in negotiations, the Councillor will refer the same to the Monitoring Officer and will have no further part in the transaction concerned.

**10.2** No Councillor shall issue any order in respect of works required on any Council site or property.

**10.3** Similarly, no Councillor shall claim any right to enter upon land and premises not in Council ownership but which the Council has a right or duty to inspect.

- 10.4** Any Councillor proposing to inspect any Council building or works shall not do so without the authority of the Head of Partnerships and Operations, in consultation with the Cabinet member responsible for property and shall report back to the Cabinet member.'
- 10.5** The Leader, Cabinet and Cabinet members will take executive decisions about land and property transactions based on written reports from officers.
11. Surplus Property Procedures

**What are the procedures which apply when disposing of surplus operational property (excluding Minor Garden Land Disposals)?**

**A Advance Notification**

Where there is potential for any property to become surplus to requirements, the relevant departmental officers will consult with the Cabinet member, departmental management team and with the relevant officers in the corporate property team at the earliest possible stage

**B Surplus Property Declaration**

Where property is no longer required for the purpose for which it was originally acquired or held, or has become unsuitable for purpose or is significantly underused, the responsible controlling head of service will, in consultation with the Cabinet member and departmental Strategic Director, make a recommendation to the Head of Partnerships and Operations to declare the property surplus to requirements.

**C Interim Management**

Management of property declared surplus to requirements will immediately transfer to the corporate property team.

**D Options for re-use**

Upon being advised of property being declared surplus, the Head of Partnerships and Operations will inform all Council departments of its availability and a minimum of 14 days will be allowed for them to indicate any requirements for service provision. Ward Councillors will also be notified of impending disposal.

If surplus property is required for service provision and has a value in excess of £250,000, the head of service requiring the property will, following consultation with the Cabinet member, Head of Partnerships and Operations and departmental Strategic Director, prepare a report for consideration by the corporate management team, which will determine whether the property should be retained, or proceed to disposal. If the property has a value less than £250,000 the decision to retain the property or proceed to disposal will be made by the Head of Partnerships and Operations in consultation with the Cabinet member responsible for asset management.



## **E Requirement for Service Provision**

If the corporate management team determines that a property will be retained for future service provision, management will transfer to the head of service seeking the property or, in the case of public open space, revert to the original responsible head of service.

## **F Disposal**

If surplus property is not required for service provision, the Head of Partnerships and Operations and/or Service Director for Economic Development or other nominee will proceed to make arrangements for its disposal in accordance with the Council's land and property disposal guidelines.

If land declared surplus to requirements is underused public open space or allotments that by virtue of legislation require advertisements and the invitation of objections, an appropriate advertisement will be placed in the local press.

If objections are received in response to an advertisement of intention to dispose of public open space, the Head of Partnerships and Operations and/or Service Director for Economic Development will consult with the Cabinet member and prepare a report for consideration by the corporate management team to determine whether disposal should proceed.

## **G Minor Property Interests**

Where land being prepared for disposal has a value of less than £200,000 and an area of less than 0.25 hectares, in the case of no alternative use having been put forward, the Head of Partnerships and Operations and/or Service Director for Economic Development may declare the property surplus to requirements.

However, the surplus property disposal procedure does not apply to minor garden/amenity land disposals (see policy for disposal of amenity land).

Non-operational property

## **H Leases Incorporating Options**

In all cases where the Council is contractually committed to sell through clauses in existing agreements, the properties will be declared unconditionally surplus to requirements and the appropriately authorised officer will proceed to disposal in accordance with contract requirements.

## **I Other Income Producing Properties**

The Service Director for Economic Development may declare property surplus to requirements if the following conditions are met:

- a) The property is an investment property – occupied and let in a non-operational capacity
- b) The property is not required for current or anticipated future service provision

Properties to be sold or let will proceed to disposal in accordance with the Council's land and property disposal guidelines.

## **J Vacant Investment Property**

If investment property is vacant or there is a reasonable likelihood of its becoming vacant and is no longer required for service provision, the Service Director for Economic Development will inform other Council departments of its availability for service provision and policies D, F and G above will apply.

## **K Formal Approvals**

Approval Procedures

Decisions reached by the Head of Partnerships and Operations in relation to surplus property declaration and re-use of surplus property will be subject to the approval of the relevant Cabinet member for the property service or Cabinet where necessary ([see Part C](#)).

## **L Investment properties (including employment land)**

Disposal Procedures

Sites and buildings which are held by the Council for economic policy reasons will be deemed to be surplus when disposals are contemplated with the objective of accommodating specific occupiers. In such circumstances, disposal negotiations will be undertaken by private treaty and based on normal market terms.

## Officer Scheme of Delegation of Functions

- I The scheme of delegation to Officers
  - 1.1 The intention of the scheme is to authorise the Chief Executive or a first tier officer, to carry out responsibilities for
    - (i) All Council functions which the Council has not reserved to itself or delegated to a Committee or Sub Committee in this constitution and which Council has not authorised an officer to carry out.
    - (ii) All Executive functions where the Leader has not reserved the decision to himself or herself or delegated it to Cabinet, a committee of Cabinet, or a Councillor in this constitution, or in his or her scheme of delegation of functions, and which the Leader, the Cabinet, that Committee of Cabinet or Councillor has not authorised an officer to carry out.
  - 1.2 The fact that an Officer is authorised to carry out a function does not require that Officer to give the matter his or her personal attention and the Officer may authorise an officer of suitable skills and experience to carry out that function. Any such authorisation must be set out in writing, kept by the Strategic Director and notified to the Monitoring Officer.
  - 1.3 Where an Officer is authorised to carry out a function he or she will authorise another officer or officers to carry out that function in his absence, or as required by him or her.
  - 1.4 Officers do not have to deal with all matters where they have authority to do so: they can refer the matter back to the Council a Committee or a Sub Committee or to the Leader the Cabinet a Committee of Cabinet or a Councillor.
- 2 Interpreting these rules
  - 2.1 The scheme delegates functions of the Council or the Cabinet to officers and should be interpreted widely rather than narrowly. In cases of dispute as to the interpretation of this scheme the interpretation of the Monitoring Officer shall apply.
  - 2.2 In the scheme “officer” means the holder of any post named in this scheme.  
“Council functions” means those functions which are prescribed as Council functions by regulation  
“Executive functions” means those functions which are prescribed as the responsibility of the Executive by regulations  
“First tier officer” means an officer who reports directly to the Chief Executive and who does not carry out a role which has the primary function of carrying out an administrative or secretarial support role

“Second tier officer” means an officer who reports directly to a First Tier officer and who does not carry out a role which has the primary function of carrying out an administrative or secretarial support role.

- 2.3 This scheme operates under the Local Government Act 1972, the Local Government Act 2000, the National Health Service Act 2006, the Localism Act 2011 and all other legislation conferring powers and responsibilities on the Council as amended consolidated or re-enacted from time to time.
- 2.4 Any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted.
- 2.5 Where an Officer is authorised to carry out a function within this scheme of delegation or elsewhere in the Constitution, he or she has authority to do anything necessary to carry it out that function (unless it was forbidden when the responsibility was delegated).

Examples of this are the authority to sign all necessary documents, determine applications, authorise payments, authorise prosecutions, implement national agreements, issue and serve statutory and other notices, authorise entry to land in pursuance of statutory powers, and take statutory action if:

the Officer has management or budget responsibility for the function concerned, and the law or the Council’s standing orders do not require the action to be taken by someone else and the decision maker has had regard to any advice from the Chief Financial Officer under Section 114 of the Local Government Finance Act 1988 and the Monitoring Officer under section 5 of the Local Government and Housing Act 1989.

## 2.6 Limitations

This scheme does not delegate to officers:-

- Any matter which by law may not be delegated to an officer;
- Any matter reserved to full Council and which Council has not authorised an officer to carry out;
- Any decision that has been delegated to a Committee or sub Committee of Council and which that Committee or subcommittee has not authorised an officer to carry out;
- Any decision that has been reserved to the Leader or delegated to the Cabinet a committee of Cabinet or a Councillor; and which the Leader, Cabinet, Committee of Cabinet, or Councillor has not authorised an officer to carry out;
- Any matter which is a new policy or is a departure from the existing and agreed policy framework of the Council.
- Any decision that is not in accordance with the budget.
- Any matter in which the officer has a personal interest.

- 2.7 Any exercise of delegated powers shall be subject to:-
- Any statutory restriction
  - The Council's Constitution
  - The Council's budget and policy framework
  - Any other policies
- 2.8 In exercising delegated powers officers shall keep Members properly informed of activity arising within the scope of these delegations.
- 2.9 Any delegations or authorisations will remain in place until superceded.

## Appointment of Proper Officers

The Following table, subject to 2 and 3 below, sets out the proper officer appointments of the Council.

Legislation in these tables includes any amendments, re-enactments and subordinate legislation.

In relation to any other Proper Officer appointments which are contained with legislation, whether that legislation was made before or after this list was approved and requiring a proper officer appointment, the or authorised officer Chief Executive shall (or the Assistant Chief Executive in their absence) shall be delegated the responsibility to allocate all such functions to appropriate officers, in consultation with the Leader and Leader of the opposition.

<b>Legislation</b>		<b>Responsibility</b>	<b>Proper officer</b>
Local Government Act 1972	Section 83(1) to (4)	Witnessing and receiving declarations of acceptance of office	Chief Executive Or Monitoring Officer
	Section 84(1)	Receiving a Councillor's resignation	Chief Executive Or Monitoring Officer
	Section 88 (2)	Calling a Council meeting to elect a chair if there is a casual vacancy	Chief Executive
	Section 89(1)	Giving notice of a casual vacancy	Chief Executive
	Section 100B	Access to Agenda and Connected Reports	Monitoring Officer
	Section 100C	Inspection of minutes and other documents after the meeting	Head of Governance, Performance and Risk
	Section 100D	Listing background papers for reports and making copies available for the public to look at	All Service Directors

	Section 100F	Additional right of access to documents for members	Monitoring Officer
	Section 115(2)	Receiving money due from officers	Responsible Finance Officer
	Section 146(1)(a) and (b)	Making declarations and certificates about transferring securities	Responsible Finance Officer
	Section 191	Receiving applications under Section 1 of the Ordnance Survey Act	Head of Legal Services
	Section 225	Depositing documents	Head of Legal Services
	Section 228(3)	Making accounts available for Councillors to look at	Responsible Finance Officer
	Section 229(5)	Certifying photocopies of documents	Head of Legal Services
	Section 234 *	Authenticating documents	Head of Legal Services and all Service Directors
	Section 238	Certifying byelaws	Head of Legal Services
	Section 248	Keeping a list of freemen of the city	Monitoring Officer
	Schedule 12, paragraph 4(2)(b)	Signing the summons to Council	Chief Executive
	Schedule 14, paragraph 25	Certifying resolutions passed under this paragraph	Head of Legal Services
Local Government Act 1974	Section 30(5)	Giving notice that copies of an ombudsman's report are available	Strategic Director for Resources
Local Government (Miscellaneous Provisions) Act 1976	Section 41(1) Section 4 (2A)	Certifying copies of resolutions and minutes	Monitoring Officer

Local Authorities Cemeteries Order 1977	Regulation 10 and schedule 2	Signing exclusive burial rights	Head of Public Protection Service
Local Elections (Principal Area) Rules 1986	Rule 46	Keeping documents after an election and making them available for the public to look at	Electoral Registration Officer
Local Authorities (Referendum) (Petitions and Directions) Functions Regulations 2000	Part 2	Petitions and Referendums	Chief Executive
Local Authorities (Conduct of Referendums) (England) Regulations 2012		Conducting Referendums	Chief Executive
Local Government and Housing Act 1989	Section 2(4)	Keeping the list of politically restricted posts	Service Director for Human Resources and Organisational Development
Local Government (Committees and Political Groups) Regulations 1990		Dealing with political balance on committees	Monitoring Officer
Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012	Section 7	Access to agenda and connected reports for public meetings	Monitoring Officer
	Section 10	General exception to publication and access duties	Head of Governance, Performance and Risk  Or Monitoring Officer
	Section 12	Record of executive decisions at meetings	Head of Governance, Performance and Risk



	Section 13	Record of executive decisions by individuals	Head of Governance, Performance and Risk
	Section 14	Inspection of documents following executive decisions	Head of Governance, Performance and Risk
	Section 15	Inspection of background papers	All Service Directors
	Section 16	Additional access rights for members of the overview and scrutiny committees	Monitoring Officer
	Section 20	Confidential Information and exempt information	Monitoring Officer
Local Authorities (Standing Orders) (England) regulations 2001		Giving notice of appointments and dismissals of officers in accordance with the regulations	Service Director for Human Resources and Organisational Development
Local Government Act 2000		Acting as proper officer for all the responsibilities in the Local Government Act 2000 and subordinate legislation	Monitoring Officer
Localism Act 2011	Section 33	To receive written requests and grant dispensations	Monitoring Officer
Freedom of Information Act 2000	Section 36	Qualified Person	Monitoring Officer
Public Health Act 1936	Section 84	Cleansing of filthy and verminous articles	Director of Public Health  Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon,

			Cornwall and Somerset Public Health England Centre or by any successor agency or unit
Public Health Act 1936	Section 85(2)	Cleansing of filthy and verminous persons and their clothing	Director of Public Health  Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit
Public Health Act 1961	Section 37	Controlling verminous things	Strategic Director of Public Health  Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit
Public Health (Aircraft) Regulations 1979	Regulation 5 and including all subsequent reference to medical officers		Director of Public Health  Consultant in Communicable Disease Control (CCDC), and any

			equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit (as Medical Officer of Health)
Public Health (Ships) Regulations 1979	Regulation 5 and including all subsequent reference to medical officers		Director of Public Health  Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit (as Medical Officer of Health)
Public Health (Control of Disease Act) 1984 as amended	Section 61 and 62	Powers to enter premises for health protection purposes, and supplementary powers of entry	Director of Public Health  Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit

<p>Public Health (Control of Disease Act) 1984 as amended</p>	<p>Section 48</p>	<p>Certification for removal of bodies to mortuary or for burial.</p>	<p>Director of Public Health  Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit</p>
<p>Health Protection (Local Authority Powers) Regulations 2010</p>	<p>Regulations 8 (1) and 8 (2)</p>		<p>Director of Public Health  Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit</p>
<p>Health Protection (Notification Regulations) 2010</p>	<p>Regulations 2, 3, and 6</p>	<p>Receipt and disclosure of notification of suspected notifiable disease, infection or contamination in patients and dead persons</p>	<p>Director of Public Health  Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public</p>

			Health England Centre or by any successor agency or unit
Health Protection (Part 2A Orders) regulations 2010		Preparation of application for Part 2A Order	Director of Public Health
Building Act 1984	Section 78	Power to authorise action in relation to dangerous structures	Service director for Strategic Planning and Infrastructure
Food Safety Act 1990	Section 49	Form and authentication of documents	Strategic Director of Public Health

Registration Services Act 1953		Power to act as proper officer for the registration service	Service Director for Customer Services
National Assistance Act 1948	Section 47	Taking people in need of care and attention to a suitable place	Head of Strategic Commissioning
National Assistance (Amendment) Act 1951	Section 1	Certifying the need for immediate action	Head of Strategic Commissioning
Money Laundering Regulations 2003	Regulation 7	Being told about suspected money laundering	Responsible Finance Officer
Local government data handling guidelines under the Data Protection Act		Manage information risk within the Council's risk management framework	Responsible Finance Officer
Local Democracy, Economic Development and Construction Act 2009	Sections 31 and 32	Promote the role of and provide support to the overview and scrutiny committees; provide support and guidance to members and officers in relation to the scrutiny function.	Head of Governance, Performance and Risk
Registration Services Act		Proper officer for registration of births, marriages and deaths	Service Director for Customer Services

Regulation of Investigatory Powers Act 2000	Section 21, 22, 27, 28 and 29	Designation of officers empowered to grant authorisation for the carrying out of directed surveillance, to authorise the use of covert human intelligence sources, and communications data checks.  The RIPA Monitoring Officer	Information Governance Manager
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\* In relation to appointments of Proper Officers under section 234 of the Local Government Act 1972 the appointments shall be to each of the officers to sign any notice, order or other document required to be made, given or issued to give effect to the powers delegated to them only where:

- a. they or one of their staff has budgetary or management responsibility for that function; and
- b. the officer appointed is qualified to carry out the functions of a Proper Officer; and
- c. the Council's standing orders or the law does not require the function to be carried out by someone else.