

**Report to:** Audit Governance and Improvement Review Committee  
Cabinet

**Date:** 23<sup>rd</sup> April 2008  
24<sup>th</sup> April 2008

**Subject:** Amendments to the Constitution

**Report of:** Service Director Borough Solicitor, Business Support  
Services

**Contact officer:** Peter Hassett (Telephone: 01942 827381)

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**PURPOSE/SUMMARY:**

To seek the views of Members regarding the following proposed changes to the Council's Constitution prior to a report being submitted to Council:

1. amendments to delegations to officers arising from the structural changes pursuant to the Support Services review;
2. amendments to delegations to officers containing a financial limit on their use
3. amendments to Key Decision categories
4. amendments to delegations to the Director of Environmental Services following changes in legislation
5. miscellaneous amendments
6. amendments to the Contract Procedure Rules
7. amendments to the Financial Procedure Rules

**ALTERNATIVE OPTIONS CONSIDERED AND REASON FOR SELECTING THE ONE RECOMMENDED:**

The various options are identified in the report. Whilst there is also the option of not amending the Council's Constitution, in relation to amendments to the scheme of delegations pursuant to the support services restructure these are required.

**RECOMMENDATION/DECISION:**

- That Audit/Governance Improvement Review Committee consider this report and make any recommendations thereon to

Cabinet.

- That Cabinet consider this report and decide whether to recommend to Council that Council resolve to amend the Council's Constitution as described in paragraphs 5, 6, 8, 9, 11, 12, 13 and 14 of this report.

**Key Decision:**

This report does not involve a key decision.

**Risks / Implications:**

Financial:	Increases in the financial limits of delegations will need to be supported by increased levels of review
Staffing:	None anticipated
Policy:	Amendment to Wigan Council Constitution
Equal Opportunities - Has a Diversity Impact Assessment been conducted?	None considered appropriate
Wards affected:	All

**Property Implications– Does the proposal involve a reduction, addition or change to the Council's asset base or its occupation?**

No

**If yes have the property implications been agreed with the Corporate Property officer?**

**Does this proposal have significant implications for the Council and the local population?**

No

**Does this proposal involve a new policy or procedure or significant changes to an existing policy or procedure?**

No

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Has the Director of Legal and Property Services confirmed that the recommendations within this report are lawful and comply with the Council's Constitution?	<b>Yes</b>
Has the Director of Finance and IT confirmed that any expenditure referred to within this report is consistent with the Council's budget?	<b>No</b>
Are any of the recommendations within this report contrary to the Policy Framework of the Council?	<b>No</b>

\* delete which applicable

**For Cabinet reports only :**

Categorisation of the report:	<b>X</b>
Discussion leading to a decision	<b>X</b>
Monitoring	
Sharing for corporate understanding	

	<b>x</b>
Discussion	
Decision	
Information	

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**Tracking/Process:**

	Consultation	Ward Members	Partners
Panel	Overview & Scrutiny	Cabinet	Council
Audit Governance Improvement Review Committee 23 <sup>rd</sup> April 2008		24 <sup>th</sup> April 2008	14 <sup>th</sup> May 2008

List of Background Papers in accordance with Section 100D of the Local Government Act 1972:

Document	Date	File Reference	Place of Inspection
Wigan Council Constitution			Service Director Borough Solicitor, Town Hall, Library Street, Wigan

Proper Officer Kevin Lawson

Date 15<sup>th</sup> April 2008

## **BACKGROUND:**

1. Members are reminded that Article 15 of the Council's Constitution requires the Monitoring Officer to monitor and review the operation of the Council's Constitution.
2. In that regard this report invites Members to consider whether the Council's Constitution should be amended in relation to the matters detailed in this report.
3. Throughout this report wording suggested to be removed from the Constitution is underlined and wording suggested to be added to the Constitution is shown in **[bold]**.

## **AMENDMENTS TO DELEGATIONS TO OFFICERS ARISING FROM THE SUPPORT SERVICES REVIEW**

4. Attached as Appendix One is a list of the delegations contained within Part 3, Section 6 of the Council's Constitution (Responsibility for Executive Functions – Officers) to the Deputy Chief Executive, the Director of Legal and Property Services, the Director of Finance and Information Technology, the Assistant Chief Executive and the Head of Personnel. Members will be aware that with effect from 1<sup>st</sup> April 2008 the functions of the Legal and Property Services Department, the Finance and Information Technology Department and the Corporate Personnel Section were largely moved into the new Business Support Services Department with Dr David Smith as its Executive Director.
5. It is recommended therefore that the Council's Constitution be amended by adopting the delegations to the Executive Director of Business Support Services, the Service Director – Corporate Services, and the Service Director Borough Solicitor in Appendix Two in substitution to those contained at Appendix One and also in respect to amendments to the list of substitute proper officer appointments. Because the above officer appointments took effect on the 1<sup>st</sup> April 2008, but the delegations are only to be amended on 14<sup>th</sup> May 2008 it is recommended that Council ratify any decisions taken by affected officers in the intervening period provided that those decisions fall within the previous scheme of delegations.
6. It is further recommended that:
  - 1) Any references in the Constitution to “the Director of Legal and Property Services” be amended to read “Service Director Borough Solicitor”
  - 2) Any references in the Constitution to “the Director of Finance and Information Technology” be amended to read “Service Director – Corporate Services”

- 3) Any references in the Constitution to “the Head of Personnel” be amended to read “Executive Director, Business Support Services”
- 4) Any references in the Constitution to “the Assistant Chief Executive” be amended to read “the Deputy Chief Executive”
- 5) The Constitution be amended to record that the Service Director – Corporate Services is appointed as the Officer having responsibility for the administration of the Council’s financial affairs pursuant to Section 151 of the Local Government Act 1972 and the Head of Financial Services is designated as Deputy Section 151 Officer and so will deputise in the absence of the Service Director – Corporate Services
- 6) All the delegations to the former Assistant Chief Executive in relation to leisure functions be transferred to the Director of Adult Services as client officer for the Wigan Leisure and Culture Trust
- 7) All the delegations to the former Director of Legal and Property Services in relation to the management and control of parking services be transferred to the Director of Environmental Services

#### **AMENDMENTS TO DELEGATIONS TO OFFICERS CONTAINING FINANCIAL LIMITS**

7. Other than the delegations in relation to property matters, the financial limits within the Scheme of Delegations have not been reviewed for a number of years. It would now seem opportune to review the financial limits with a view to expediting the decision making process and enable the Cabinet to have more time to concentrate on key strategic issues and major decisions
8. As detailed above Appendix Two contains the recommended delegations to the Executive Director of Business Support Services, the Service Director – Corporate Services and the Service Director Borough Solicitor. Within Appendix Two are suggested amendments to the financial limits of those delegations. Attached as Appendix Three is a list of other delegations contained within Part 3, Section 6 of the Council’s Constitution (Responsibility for Executive Functions – Officers) that contain a financial limit. Within Appendix Three are recommended amendments to the financial limits of those delegations. The proposed significant amendments to financial limits are:
  - 1) Remove the £500,000 limit on the disposal of land and property but including a provision that any disposal must comply with section 123 of the Local Government Act 1972 that requires a local authority to obtain the best consideration that can be reasonably obtained. This effectively means that provided the disposal follows the appropriate process a decision could be made by the Head of Property on receipt of acceptable tenders. The provisions contained within the Financial Procedure Rules regarding disposal of land must also be complied

with. Ward Members will continue to be consulted regarding proposed land disposals.

- 2) Increase the financial limit on granting, taking, determining or varying leases from £50,000 to £150,000 but only increasing the corresponding key decision level to £100,000. Given increases in property values this increase will avoid delays in decision taking.
- 3) Increase the financial limit on the granting or taking easements and rights of access from £50,000 to £150,000 but only increasing the corresponding key decision level to £100,000.
- 4) Increase the financial limit on writing off sundry debtor accounts from £10,000 to £15,000
- 5) Increase the financial limit on giving budget release for capital expenditure within the approved capital programme from £150,000 to £250,000 but only increasing the corresponding key decision level to £200,000.
- 6) Increase the financial limit on settling civil or criminal proceedings from £10,000 to £15,000
- 7) To remove the £150,000 financial limit on chief officers incurring capital expenditure but only increasing the corresponding key decision level to £250,000.
- 8) Increase the financial limit the transfer of estimates within and between specified groups of headings in the Budget from £50,000 to £150,000
- 9) Increase the financial limit on determining individual requests for employment benefits from £5,000 to £10,000
- 10) Remove the £5,000 financial limit on Chief Officers declaring land surplus to the requirements of their department
- 11) Remove the £150,000 financial limit on accepting tenders but provide that tenders can be accepted provided they have budget approval
- 12) If other than the lowest tender is to be accepted the chief officer must be satisfied, after having first consulted with the Service Director – Corporate Services, that the tender represents the most economically advantageous tender and the best value for money and shall submit a report to a subsequent meeting (quarterly) to the Audit, Governance and Improvement Review Committee or appropriate Panel

9. It is recommended that a number of the delegations listed in Appendix Two and Appendix Three which contain a financial limit be amended as detailed in bold within each delegation. The justification for the increases in the financial limits are:
- 1) To increase the number of decisions delegated to officers so that the number of reports being taken to Cabinet is reduced to enable Cabinet to have more time to concentrate on key strategic issues and major decisions.
  - 2) To make the decision process smoother and quicker
  - 3) In part to keep pace with the effects of inflation
10. The following checks and balances are proposed to ensure that the increases in financial limits to officer delegations are properly monitored and reviewed:
- 1) Whilst it is considered that some key decision levels need to be increased it is not considered necessary to increase those levels by the same amount as the increases to the corresponding delegation. More of the decisions taken by officers will therefore be key decisions. Such key decisions taken by officers will continue to be published and circulated to the Members of the Overview and Scrutiny Committee to enable them to be called-in for consideration by the Overview and Scrutiny Committee. Should a decision taken by an officer be for an amount less than the increased key decision financial levels it will nevertheless be a key decision on key decision categories one or two if it is likely to have a significant effect on communities living or working in two or more Wards, or if it is likely to have a major impact on the day to day life of a community living or working in one Ward, respectively. The Key decision increases referred to in the Appendices to this report are to the following categories:
    - a) “Category 6 – It involves capital expenditure which is estimated to exceed £150,000 [**£250,000**] or is not within the Budget.” The recommended corresponding increase in delegation limit is also to £250,000.
    - b) Category 10 – It involves the granting, determination or variation of leases, licences, easements or wayleaves at rents/consideration in excess of £50,000 [**£100,000**] per annum. The recommended corresponding increase in delegation limit is to £150,000.
    - c) Category 11 – It involves the taking of licences or leases at rent values of more than £10,000 [**£100,000**] per annum. The recommended corresponding increase in delegation limit is to £150,000.
  - 2) If an officer intends to take a Key Decision under delegated powers he cannot take such a decision unless his intention to do so has been

included 15 days in advance on the published Forward Plan, subject to the rules on general exceptions (which require five days notice to be first given to the Chairman of the Overview and Scrutiny Committee) or Special Urgency (which require the consent of the Mayor to take the decision).

- 3) This report contains a new recommendation that if an officer takes a delegated decision above £250,000 in value or if the decision is of strategic significance to the Council then he must report the exercise of the delegation to a subsequent meeting (quarterly) of the Audit, Governance and Improvement Review Committee or relevant Panel. This will enable Members to review and discuss the exercise of such delegations
- 4) The provisions of the Constitution governing the taking and record of decisions taken will be strictly overseen and enforced by the Executive Director of Business Support Services and the Service Director Borough Solicitor.

#### **AMENDMENTS TO DELEGATIONS TO DIRECTOR OF ENVIRONMENTAL SERVICES FOLLOWING CHANGES IN LEGISLATION**

11. Attached as Appendix Four are recommended amendments (**shown in bold**) to the housing delegations to the Director of Environmental Services to take into account the commencement of the relevant parts of the Housing Act 2004 and the repeal of older legislation, together with some general updating and the inclusion of two new delegations regarding homelessness decisions.

#### **MISCELLANEOUS AMENDMENTS TO THE CONSTITUTION**

12. Attached as Appendix Five are recommended amendments (**shown in bold**) to the Constitution to correct procedural irregularities that have come to light since the Constitution was last updated. The suggested amendments to the Constitution in Appendix Five are briefly:
  - 1) A provision that meetings of the Council, Cabinet, Committees and Panels cannot be recorded (in accordance with the motion passed by Council on 7<sup>th</sup> February 2008)
  - 2) A motion can be moved without notice to refer a matter to Cabinet, a Committee, Panel or Council Officer
  - 3) To allow the Chief Executive to take procedural decisions or actions in connection with the Council's interests as a member of any company
  - 4) Remove the provision that Cabinet has the function of approving internal audit plans and reports on internal audit work because this

responsibility now rests with the Audit, Governance and Improvement Review Committee

- 5) Remove the date before which Standards Committee can determine breaches of the Members Code of Conduct
- 6) Include a provision that if an officer takes a delegated decision above £250,000 in value or if the decision is of strategic significance to the Council then he must report the exercise of the delegation to a subsequent meeting (quarterly) of the Audit, Governance and Improvement Review Committee or relevant Panel. This will enable Members to review and discuss the exercise of such delegations

#### **PART 4 OF THE CONSTITUTION - CONTRACT PROCEDURE RULES**

13. The Council's Contract Procedure Rules have not been reviewed for a number of years. It is recommended that the amendments to the Contract Procedure Rules as detailed in Appendix Six attached be adopted. It is possible that a further review of these Rules may be necessary as a result of an ongoing review of procurement issues.

#### **PART 4 OF THE CONSTITUTION - FINANCIAL PROCEDURE RULES**

14. The Council's Financial Procedure Rules have not been reviewed for a number of years. It is recommended that the amendments to the Financial Procedure Rules as detailed in Appendix Seven attached be adopted. The majority of changes are to amend reference to the "Director of Finance and Information Technology" to read "Service Director – Corporate Services"

#### **RECOMMENDATION:**

15. That the Audit, Governance and Improvement Review Committee consider this report and make any recommendations thereon to Cabinet.
16. That Cabinet consider this report and decide whether to recommend to Council that Council resolve to amend the Council's Constitution as described in paragraphs 5, 6, 8, 9, 11, 12, 13 and 14 of this report.

Kevin Lawson  
Service Director Borough Solicitor  
Business Support Services

## **APPENDIX ONE - CURRENT DELEGATIONS**

### **The Deputy Chief Executive**

- (1) To determine applications for charitable status in relation to the use of rooms in buildings used for Central Administrative purposes.
- (2) To determine all matters in respect of the licensing of premises for civil marriages provided no objections have been received.

### **The Director Of Legal And Property Services**

Delegations 23 to 28, 30 to 33, 38, 47 and 49 may also be exercised by the Corporate Property Manager

- (1) To institute or defend criminal or civil proceedings or seek injunctions following a recommendation from any other Head of Department concerned.
  - (2) In conjunction with any other Head of Department to settle any civil or criminal proceedings where the value of the proposed settlement does not exceed £10,000.
  - (3) To take all steps incidental to completing or obtaining the confirmation of any order or other formal proceedings made by the Council or the Executive
  - (4) To serve any notice or requisition for information under any act requiring the owner or occupier of or any person having an interest in or managing any land or premises to give information to the local authority.
  - (5) To make applications for repayment of unclaimed compulsory purchase compensation.
  - (6) The maintenance of the Land Charges Register and the response to Local Searches.
  - (7) To sign or witness the sealing of formal documents.
  - (8) Following a recommendation from any other Head of Department concerned, the power to take all necessary steps to secure the removal of any person or persons from land.
- (Development Control Functions)
- (9) To authorise the service of Enforcement, Listed Building Enforcement and Stop Notices (with the concurrence of the Director of Environmental Services).
  - (10) Jointly with the Director of Environmental Services to make directions restricting permitted development under the Town and Country Planning

General Development Order, subject to a report of the action taken being submitted to the Planning Committee.

- (11) Jointly with the Director of Environmental Services power to enter into agreements regulating development or use of land under section 106 Town and Country Planning Act 1990

(Education Functions)

- (12) To take all necessary action regarding accident claims.

- (13) Jointly with the Director of Children and Young People's Services to commence and pursue prosecutions and care or supervision proceedings in relation to school non-attendance.

(Highways and Works Functions)

- (14) Jointly with the Director Environmental Services to accept or reject blight notices in respect of new or existing highway proposals.

(Housing Functions)

- (15) To commence or defend proceedings relating to secure tenancies, including proceedings for possession, and proceedings relating to the right to buy.

- (16) Jointly with the Director of Environmental Services to determine disrepair claims.

(Environment Functions)

- (17) On the recommendation of the Director of Environmental Services to serve notices of intention to apply for closure orders in respect of premises or stalls at which a food business is carried on.

- (18) The certification of the date when evidence came to the Council's notice for the purpose of health and safety at work prosecutions.

- (19) Registration of common land and village greens and the exercise of protective powers under the relevant legislation.

(Social Services Functions)

- (20) Removal of persons in need of care and attention on recommendation of Proper Officer.

- (21) To appeal against any decision of a Court relating to the Council's child care functions.

- (22) Following a recommendation from the Director of Children and Young People's Services:-

- (i) to commence and defend family proceedings within the limits of the Council's statutory powers.
- (ii) to commence all proceedings for the enforcement of the Council's rights in relation to children in care.

(Legal and Property Functions)

- (23) The declaration of land not estimated to exceed £500,000 in value as surplus to the Council's requirements.
- (24) The disposal of land and property which has been declared surplus to requirements including the settling of the purchase price and other terms of disposal where the estimated value of the land and property does not exceed £500,000.
- (25) To grant, determine or vary the terms of leases or licences of any nature at a rent less than £50,000 per annum.
- (26) The acquisition of land and property and the setting of compensation payments within approved estimates and the settling of the purchase price and other terms of acquisition where the estimated value of the land and property does not exceed £500,000
- (27) The acquisition of land and property under Blight and Purchase Notices and the settling of the purchase price and other terms of acquisition where the estimated value of the land and property does not exceed £500,000 within approved estimates.
- (28) To deal with consents for assignment, sub-letting, alterations, change of use etc. under leases.
- (29) To deal with the service of Notice to Quit under the Landlord and Tenant Act 1954 for the purpose of negotiating the rent or terms of leases.
- (30) The granting of easements and wayleaves and the taking of easements and rights of access at a consideration not exceeding £50,000.
- (31) The determination of dilapidation claims and compensation payments not exceeding £500,000 within approved estimates where a payment is to be made by the Council.
- (32) To authorise the disposal of structures forming new gable ends of privately owned dwellings and the land on which they are constructed.
- (33) To dispose of the Council's reversionary interest in residential properties under the Leasehold Reform Act 1967 or successor legislation.
- (34) Following consultation with the Director of Finance and Information Technology to cancel notices of offences under the car parking pay and display system and to write off debts arising therefrom where it is considered expedient to do so.
- (35) Powers to make safe any dangerous buildings owned by the Council on land accessible to the public.

- (36) The control of the Council's central fund and administrative budget for repair and maintenance including the power to accept tenders and quotations therefrom which do not exceed £150,000.
- (37) The appointment of architects and consultants from lists approved by the Executive where the consultancy work is estimated not to exceed £150,000.
- (38) To authorise release or variation of restrictive covenants on land in, and formerly in, the ownership of the Council.
- (39) The powers to serve notices requiring information as to the quality, value and origin of goods on sale in markets.
- (40) The day-to-day control of markets.
- (41) The powers to deal with notices in respect of temporary markets.
- (42) In cases concerned with the discipline and conduct of the Council's markets and the conduct of market traders (with the exception of cases of assault or other serious criminal offence):
  - i. to determine whether a matter should be referred to the Regulation Committee or whether an attempt should be made to reach a settlement with the parties concerned;
  - ii. in cases where she has determined that an attempt should be made to reach a settlement with the parties involved:-
    - a. to conduct hearings with the parties;
    - b. if satisfied that an agreement has been reached that is acceptable to all parties and consistent with the good conduct of the market, to take any necessary action to implement that agreement; and
    - c. if not satisfied as set out in (b) above, or if she is of the view that the only solution is to terminate a trader's licence, to refer the matter to the Regulation Committee
- (43) To permit car boot sales which fall within such guidelines as the Council may from time to time approve.
- (44) The general control including the power to engage and dismiss labour of any Council Direct Labour Organisation or Direct Service Organisation under his control.
- (45) The granting of licences for market stalls and the determination of requests for variations to user clauses.
- (46) The management and control of parking enforcement including the enforcement of penalties and the commencement of withdrawal of proceedings

- (47) The taking of leases and licenses of any nature at rentals not exceeding £10,000 per annum subject to a source of funding being approved by the relevant Head of Department.
- (48) To make, amend and revoke off-street parking orders and to amend the wording of traffic regulation orders resulting from changes in the law or guidance except where the proposal:
  - (i) has resulted in a request being received from a Member of the Council for the matter to be referred to Cabinet; or
  - (ii) has resulted in ten or more objections from separate addresses being received in writing (for clarification, a petition and/or a bundle of standard letters shall be regarded as one objection); or
  - (iii) has resulted in a significant objection from a statutory consultee
- (49) To determine the appropriate holding department for sites to be retained by the Council following the non-operational land review process.

#### **The Director Of Finance And Information Technology**

- (1) All executive decisions on borrowing, investment or financing in accordance with the approved Treasury Policy Statement.
- (2) The investment of the Council's funds in accordance with such policy as the Executive may from time to time approve and with a view to achieving such enhanced returns as is consistent with security and liquidity.
- (3) The day-to-day management of the Collection Fund and the disbursement of monies therefrom.
- (4) To recover Council Tax, Community Charge and Rates and to write off sums outstanding in respect thereof as irrecoverable.
- (5) Administration of Rent Rebate, Housing Benefit, Council Tax Rebate and Community Charge Rebate Schemes including Council tenants.
- (6) To grant rate relief to charities and other similar bodies within principles laid down by the Executive
- (7) The maintenance of insurance cover.
- (8) The accounting arrangements of the Council.
- (9) To write off sundry debtor accounts provided that where an account written off exceeds £10,000 and the debtor is not in liquidation or bankrupt the Director shall advise the Executive of the amounts written off.
- (10) By arrangement with the Director of Legal and Property Services to institute proceedings for the recovery of debts due to the Council.

- (11) To write off accounts for work in default in cases where it is considered that further recovery action would be fruitless.
- (12) The raising of finance by leasing of vehicles, plant and equipment where the acquisition of the item concerned has all necessary approvals.
- (13) To increase telephone allowances to take account of increases in telephone charges.
- (14) To give Budget release for capital expenditure which is within the approved Capital Programme where the project is not estimated to exceed £150,000.
- (15) To grant additional Housing Benefit , Community Charge Benefit and Council Tax Benefit to individual claimants occupying the Housing Temporary Accommodation Unit and to other claimants in exceptional circumstances.
- (16) To backdate entitlement to Housing Benefit, Council Tax Benefit and Community Charge Benefit in accordance with DWP guidance as to "good cause".
- (17) To agree increases in benefit required under Regulation 13 of the Local Government Pension Scheme (Transitional Regulations) 1997 as and when cases are notified by the Administering Authority.
- (18) To take all steps incidental to completing or obtaining the confirmation of any order or other formal proceedings made by the Council
- (19) To calculate and declare the Local Average Rate of Interest for mortgages every six months, including those mortgages contained in the Small Dwellings Act and those prior to the Housing Act 1980.
- (20) The consideration and determination of one-off applications for Council Tax reductions in respect of the financial years 2004/05
- (21) With effect for the financial year 2005/06 and thereafter the setting of the Council Tax Base

(Social Services Function)

- (22) Receivership of the property of the mentally ill.
- (23) The approval of and making of mortgage advances to applicants qualified under such criteria as may from time to time be determined by the Executive.

## **THE ASSISTANT CHIEF EXECUTIVE**

- (1) The granting of exclusive rights of burial.
- (2) The acceptance or refusal of gifts of works or exhibits for museums.

- (3) Powers to purchase unused grave spaces at the current price for such spaces.
- (4) Powers to exclude persons from the Council's cemeteries and to prohibit the erection of memorials by persons where this is considered desirable for the proper management, regulation and control of the cemeteries.
- (5) To authorise car allowance/loan facilities for full-time peripatetic teachers subject to any limitations imposed by approved Human Resource Policies or the Executive
- (6) To grant additional maternity leave beyond statutory entitlement
- (7) To authorise the transfer or continuance of car loans to officers transferring to undesignated posts, whether within the Council's service or from another authority, and the grant of new loans to previous borrowers at an earlier date than is provided under the approved Human Resource Policies.
- (8) To agree to early retirement applications including those under Regulation 31(4) of the Local Government Pension Scheme Regulations 1997 where there is no direct cost to the Council.
- (9) To increase casual rates of pay each year as follows:-
  - (i) apply the National Minimum Wage with effect from the appropriate date and in accordance with the regulations; and
  - (ii) the National Pay Award for NJC for Local Government Services with effect from 1st April for employees not covered by the regulations

### **Head Of Personnel**

- (1) To authorise car allowance/loan facilities for full-time peripatetic teachers subject to any limitations imposed by approved Human Resource Policies or the Executive
- (2) To grant additional maternity leave beyond statutory entitlement
- (3) To authorise the transfer or continuance of car loans to officers transferring to undesignated posts, whether within the Council's service or from another authority, and the grant of new loans to previous borrowers at an earlier date than is provided under the approved Human Resource Policies.
- (4) To agree to early retirement applications including those under Regulation 31(4) of the Local Government Pension Scheme Regulations 1997 where there is no direct cost to the Council.
- (5) To increase casual rates of pay each year as follows:-

- (i) apply the National Minimum Wage with effect from the appropriate date and in accordance with the regulations; and
- (ii) the National Pay Award for NJC for Local Government Services with effect from 1st April for employees not covered by the regulations.

Part 3, Section 6 of the Constitution under the title “Officer Appointments” at paragraph 6(11) details substitutes for officer appointments and provides as follows:

“(11) In the event of any of the officers mentioned in the foregoing paragraphs being for any reason unable to act or of any of their posts being vacant, the officers specified in column 2 of the Table hereunder opposite the designation of that officer in column 1 are appointed to act in his/her stead, whether as proper officer or otherwise:-

Officer	Substitute Officer
(i) Chief Executive	Either the Deputy Chief Executive or the Director of Legal and Property Services or the Director of Finance and Information Technology
(ii) Director of Legal and Property Services	Deputy Director of Legal and Property Services
(iii) Director of Finance and Information Technology	Deputy Director of Finance and Information Technology
(iv) Director of Environmental Services	Deputy Director of Environmental Services In respect of function formerly conferred on the Surveyor in pre-1974 legislation Deputy Director of Environmental Services In respect of the function of authenticating under Section 234 of the Local Government Act 1972 notices under the legislation mentioned in subparagraph (b) opposite that Section in the Table in Paragraph (7) above or in respect of other functions under the Building Act 1984, Deputy Director of Environmental Services

**APPENDIX TWO – NEW DELEGATIONS TO THE EXECUTIVE DIRECTOR AND SERVICE DIRECTORS OF BUSINESS SUPPORT SERVICES WITH EFFECT FROM 1<sup>ST</sup> APRIL 2008**

**EXECUTIVE DIRECTOR, BUSINESS SUPPORT SERVICES**

**All the delegations to the Executive Director, Business Support Services listed below at 1) to 22) may also be exercised by the Service Director - Corporate Services, Service Director - Customer Services and the Service Director Borough Solicitor.**

People's Services Issues

Delegations 1) to 6) may also be exercised by the Head of People's Services

- 1) To authorise car allowance/loan facilities for full-time peripatetic teachers subject to any limitations imposed by approved Human Resource Policies or the Executive
- 2) To grant additional maternity leave beyond statutory entitlement
- 3) To authorise the transfer or continuance of car loans to officers transferring to undesignated posts, whether within the Council's service or from another authority, and the grant of new loans to previous borrowers at an earlier date than is provided under the approved Human Resource Policies.
- 4) To agree to early retirement applications including those under Regulation 31(4) of the Local Government Pension Scheme Regulations 1997 where there is no direct cost to the Council.
- 5) To agree increases in benefit required under Regulation 13 of the Local Government Pension Scheme (Transitional Regulations) 1997 as and when cases are notified by the Administering Authority.
- 6) To increase casual rates of pay each year as follows:-
  - i) apply the National Minimum Wage with effect from the appropriate date and in accordance with the regulations; and
  - (ii) the National Pay Award for NJC for Local Government Services with effect from 1st April for employees not covered by the regulations.

Property Functions

Delegations 7) to 22) may also be exercised by the Head of Property, **provided that if the exercise of the delegation involves income or expenditure estimated to exceed £250,000 or involves a decision of strategic significance to the Council the Head of Property may only exercise the delegation after having first consulted with a Business Support Services Service Director.**

- 7) The declaration of land not estimated to exceed £500,000 in value as surplus to the Council's requirements.
- 8) The disposal of land and property which has been declared surplus to requirements including the settling of the purchase price and other terms of disposal where the estimated value of the land and property does not exceed £500,000 [provided that all such disposals are conducted in compliance with Section 123 of the Local Government Act 1972].

**Note for Members**

- **Section 123 of the Local Government Act 1972 gives power to local authorities to dispose of land held by them in any manner they wish. The section further provides that except with the consent of the Secretary of State, a local authority shall not dispose of land under the section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.**
- **It is recommended that the £500,000 financial limit in Article 13.03(b)(i)8 of the Constitution (Key Decisions) remain unaffected**

- 9) To grant, **[take]**, determine or vary the terms of leases or licences of any nature at a rent less than £50,000 [£150,000] per annum.

**Note to Members – It is recommended that the £50,000 per annum financial limit on granting and the £10,000 per annum financial limit on taking leases, etc in Article 13.03(b)(i)10 and 11 of the Constitution (Key Decisions) be increased to £100,000**

**Note for Members – It is recommended that the following delegation be deleted because of the amendment to the above delegation to avoid duplication.**

The taking of leases and licenses of any nature at rentals not exceeding £10,000 per annum subject to a source of funding being approved by the relevant Head of Department.

- 10) The acquisition of land and property, **[including under Blight and Purchase notices]** and the setting of compensation payments within approved estimates and the settling of the purchase price and other terms of acquisition where the estimated value of the land and property does not exceed £500,000.

**Note for Members – It is recommended that the following delegation be deleted because of the amendment to the above delegation to avoid duplication.**

The acquisition of land and property under Blight and Purchase Notices and the settling of the purchase price and other terms of acquisition where the

estimated value of the land and property does not exceed £500,000 within approved estimates.

- 11) To deal with consents for assignment, sub-letting, alterations, change of use etc. under leases.
- 12) To deal with the service of Notice to Quit under the Landlord and Tenant Act 1954 for the purpose of negotiating the rent or terms of leases.
- 13) The granting of easements and wayleaves and the taking of easements and rights of access at a consideration not exceeding £50,000 [**£150,000**].

***Note to Members – It is recommended that the £50,000 financial limit in Article 13.03(b)(i)10 of the Constitution (Key Decisions) be increased to £100,000***

- 14) The determination of dilapidation claims and compensation payments not exceeding £500,000 within approved estimates where a payment is to be made by the Council.
- 15) To authorise the disposal of structures forming new gable ends of privately owned dwellings and the land on which they are constructed.
- 16) To dispose of the Council's reversionary interest in residential properties under the Leasehold Reform Act 1967 or successor legislation.
- 17) Powers to make safe any dangerous buildings owned by the Council on land accessible to the public.
- 18) The control of the Council's central fund and administrative budget for repair and maintenance including the power to accept tenders and quotations therefrom which do not exceed £150,000.

***Note for Members – It is recommended that the words underlined above be deleted because there is a power to all Chief Officers to accept tenders elsewhere in the scheme of delegations.***

- 19) The appointment of architects and consultants from lists approved by the Executive where the consultancy work is estimated not to exceed £150,000 [**or following a competitive procurement process conducted in compliance with the Contract Procedure Rules and the Financial Procedure Rules**].

***Note for Members – It is recommended that the words underlined above be deleted to reflect the suggested change to delegation (6) to all chief officers (referred to in Appendix Three) that will allow them to accept tenders of an unlimited amount providing that budget approval is in place. I recommend that the new wording in bold be added to ensure that appropriate checks and balances are in place.***

- 20) To authorise release or variation of restrictive covenants on land in, and formerly in, the ownership of the Council.
- 21) To determine the appropriate holding department for sites to be retained by the Council following the non-operational land review process.
- 22) To determine applications for charitable status in relation to the use of rooms in buildings used for Central Administrative purposes.

## **THE SERVICE DIRECTOR - CORPORATE SERVICES**

**All the delegations to the Service Director – Corporate Services listed below at 1) to 21) may also be exercised by the Head of Financial Services (provided that if the exercise of the delegation involves a decision of strategic significance to the Council the Head of Financial Services may only exercise the delegation after having first consulted with a Business Support Services Service Director) or, in the absence of the Service Director – Corporate Services and the Head of Financial Services, by the Executive Director, Business Support Services.**

- 1) All executive decisions on borrowing, investment or financing in accordance with the approved Treasury Policy Statement.
- 2) The investment of the Council's funds in accordance with such policy as the Executive may from time to time approve and with a view to achieving such enhanced returns as is consistent with security and liquidity.
- 3) The day-to-day management of the Collection Fund and the disbursement of monies therefrom.
- 4) The maintenance of insurance cover.
- 5) The accounting arrangements of the Council.
- 6) To write off sundry debtor accounts provided that where an account written off exceeds £10,000 **[Andrew Taylor recommends change to £15,000]** and the debtor is not in liquidation or bankrupt the **[Service] Director [- Corporate Services]** shall advise the Executive of the amounts written off.
- 7) By arrangement with the Director of Legal and Property Services **[Service Director Borough Solicitor]** to institute proceedings for the recovery of debts due to the Council.
- 8) To write off accounts for work in default in cases where it is considered that further recovery action would be fruitless.

- 9) The raising of finance by leasing of vehicles, plant and equipment where the acquisition of the item concerned has all necessary approvals.
- 10) To increase telephone allowances to take account of increases in telephone charges.
- 11) To give Budget release for capital expenditure which is within the approved Capital Programme where the project is not estimated to exceed £150,000 [**£250,000**].
- 12) To take all steps incidental to completing or obtaining the confirmation of any order or other formal proceedings made by the Council
- 13) To calculate and declare the Local Average Rate of Interest for mortgages every six months, including those mortgages contained in the Small Dwellings Act and those prior to the Housing Act 1980.
- 14) With effect for the financial year 2005/06 and thereafter The setting of the Council Tax Base.
- 15) Receivership of the property of the mentally ill.
- 16) The approval of and making of mortgage advances to applicants qualified under such criteria as may from time to time be determined by the Executive.
- 17) **[To approve the Council acting as guarantor in respect of organisations becoming admitted bodies to the local government pension scheme]**

***Note for Members – It is recommended that the above delegation be added to enable the Service Director – Corporate Services to allow existing Council employees transferred to outside bodies following outsourcing of a service to remain in the local government pension scheme and formalises an existing delegation made by Cabinet on the 22<sup>nd</sup> September 2005***

#### Council Tax and Benefits Functions

**Delegations 18) to 21) may also be exercised by the Service Director - Customer Services and the Head of Benefits Services and the Head of Revenue Services (provided that if the exercise of the delegation involves a decision of strategic significance to the Council the Head of Benefits Services and the Head of Revenue Services may only exercise the delegation after having first consulted with a Business Support Services Service Director).**

***Note for Members - I recommend deletion of the following delegations:***

- Administration of Rent Rebate, Housing Benefit, Council Tax Rebate and Community Charge Rebate Schemes including Council tenants.
- To grant additional Housing Benefit , Community Charge Benefit and Council Tax Benefit to individual claimants occupying the Housing Temporary Accommodation Unit and to other claimants in exceptional circumstances.

- To backdate entitlement to Housing Benefit, Council Tax Benefit and Community Charge Benefit in accordance with DWP guidance as to "good cause".

**and their replacement with the following delegation 18) to combine and simplify the list of benefits delegations:**

- 18) **[The administration of Housing Benefit, Council Tax Benefit, Community Charge Benefit and free school meals, in accordance with appropriate legislation and guidance.]**
- 19) To recover Council Tax, Community Charge and **[Business]** Rates and to write off sums outstanding in respect thereof as irrecoverable.
- 20) The consideration and determination of one-off applications for Council Tax reductions in respect of the financial years 2004/05
- 21) To grant rate relief to charities and other similar bodies within principles laid down by the Executive

## **THE SERVICE DIRECTOR BOROUGH SOLICITOR**

**All the delegations of the Service Director Borough Solicitor listed below at 1) to 25) may also be exercised by the Head of Legal Services (provided that if the exercise of the delegation involves a decision of strategic significance to the Council the Head of Legal Services may only exercise the delegation after having first consulted with a Business Support Services Service Director).**

- 1) To institute or defend criminal or civil proceedings or seek injunctions following a recommendation from any other Head of Department concerned.
- 2) In conjunction with any other Head of Department **[Chief Officer]** to settle any civil or criminal proceedings where the value of the proposed settlement does not exceed £10,000 **[£15,000]**.
- 3) To take all steps incidental to completing or obtaining the confirmation of any order or other formal proceedings made by the Council or the Executive
- 4) To serve any notice or requisition for information under any act requiring the owner or occupier of or any person having an interest in or managing any land or premises to give information to the local authority.
- 5) To make applications for repayment of unclaimed compulsory purchase compensation.
- 6) The maintenance of the Land Charges Register and the response to Local Searches.

- 7) To sign or witness the sealing of formal documents.
- 8) Following a recommendation from any other Head of Department concerned, the power to take all necessary steps to secure the removal of any person or persons from land.
- 9) To determine all matters in respect of the licensing of premises for civil marriages provided no objections have been received

**10) [To authorise Council Officers to represent the Council in Court and Tribunal hearings]**

***Note to Members – I recommend the above delegation be added to authorise non Solicitor officers (such as officers training to become Legal Executives) to be authorised to represent the Council in Court and Tribunal hearings.***

Development Control Functions

- 11) To authorise the service of Enforcement, Listed Building Enforcement and Stop Notices (with the concurrence of the Director of Environmental Services).
- 12) Jointly with the Director of Environmental Services to make directions restricting permitted development under the Town and Country Planning General Development Order, subject to a report of the action taken being submitted to the Planning Committee.
- 13) Jointly with the Director of Environmental Services power to enter into agreements regulating development or use of land under section 106 Town and Country Planning Act 1990

Education Functions

- 14) To take all necessary action regarding accident claims.
- 15) Jointly with the Director of Children and Young People's Services to commence and pursue prosecutions and care or supervision proceedings in relation to school non-attendance.

Highways and Works Functions

- 16) Jointly with the Director Environmental Services to accept or reject blight notices in respect of new or existing highway proposals.
- 17) To make, amend and revoke off-street parking orders and to amend the wording of traffic regulation orders resulting from changes in the law or guidance except where the proposal:
  - i. has resulted in a request being received from a Member of the Council for the matter to be referred to Cabinet; or

- ii. has resulted in ten or more objections from separate addresses being received in writing (for clarification, a petition and/or a bundle of standard letters shall be regarded as one objection); or
- iii. has resulted in a significant objection from a statutory consultee

#### Housing Functions

- 18) To commence or defend proceedings relating to secure tenancies, including proceedings for possession, and proceedings relating to the right to buy.
- 19) Jointly with the Director of Environmental Services to determine disrepair claims.

#### Environment Functions

- 20) On the recommendation of the Director of Environmental Services to serve notices of intention to apply for closure orders in respect of premises or stalls at which a food business is carried on.
- 21) The certification of the date when evidence came to the Council's notice for the purpose of health and safety at work prosecutions.
- 22) Registration of common land and village greens and the exercise of protective powers under the relevant legislation.

#### Social Services Functions

- 23) Removal of persons in need of care and attention on recommendation of Proper Officer.
- 24) To appeal against any decision of a Court relating to the Council's child care functions.
- 25) Following a recommendation from the Director of Children and Young People's Services:-
  - i. to commence and defend family proceedings within the limits of the Council's statutory powers.
  - ii. to commence all proceedings for the enforcement of the Council's rights in relation to children in care.

***Note to Members - I recommend that the following delegation be moved into the list of delegations available to all chief officers:***

The general control including the power to engage and dismiss labour of any Council Direct Labour Organisation or Direct Service Organisation under his control.

Because of changes in chief officers following recent departmental reviews I recommend the substitutes for proper officer functions detailed in the table in Part 3, Section 6 of the Constitution under the title “Officer Appointments” at paragraph 6(11) be amended to read as follows:

“(11) In the event of any of the officers mentioned in the foregoing paragraphs being for any reason unable to act or of any of their posts being vacant, the officers specified in column 2 of the Table hereunder opposite the designation of that officer in column 1 are appointed to act in his/her stead, whether as proper officer or otherwise:-

Officer	Substitute Officer
(i) Chief Executive	Either the Deputy Chief Executive or the <b>[Executive Director of Business Support Services or the Service Director Borough Solicitor]</b>
(ii) <b>[Service Director Borough Solicitor]</b>	<b>[Head of Legal Services]</b>
(iii) <b>[Service Director – Corporate Services]</b>	<b>[Head of Financial Services]</b>
(iv) Director of Environmental Services	<b>[Any of the Environmental Services Department five Heads of Service]</b> In respect of function formerly conferred on the Surveyor in pre-1974 legislation Deputy Director of Environmental Services In respect of the function of authenticating under Section 234 of the Local Government Act 1972 notices under the legislation mentioned in subparagraph (b) opposite that Section in the Table in Paragraph (7) above or in respect of other functions under the Building Act 1984, <b>[any of the Environmental Services Department five Heads of Service]</b>

**I further recommend that the Director of Environmental Services be appointed as Proper Officer for the purposes of section 4 of the Housing Act 2004 (official complaints about the condition of any residential premises).**

## **APPENDIX THREE – SUGGESTED AMENDMENTS TO DELEGATIONS CONTAINING A FINANCIAL LIMIT**

### **Delegations to all Chief Officers**

- (3) To incur capital expenditure within the Policy Framework and the Budget provided that:-
- (i) the project is included in the approved Capital Programme; and
  - (ii) the project is not estimated to exceed £150,000; and
  - (iii) the requirements of this Constitution have been complied with; and
  - (iv) Budget Release has been obtained. from the Service Director – Corporate Services, Business Support Services if the project is estimated not to exceed £150,000 and otherwise from the Executive.

***Note to Members – It is recommended that the corresponding £150,000 financial limit in Article 13.03(b)(i)6 of the Constitution (Key Decisions) be increased to £250,000. There is a provision elsewhere in the Constitution that budget release can be granted by the Executive or by the Service Director – Corporate Services.***

- (4) The transfer of estimates within and between specified groups of headings in the Budget provided that:-
- (i) each item or the total of related items does not exceed £50,000 [150,000]; and
  - (ii) the Service Director – Corporate Services has certified that the appropriate Financial Regulations governing virement have been observed; and
  - (iii) each transfer is for one year only and does not create a continuing obligation in the following financial year.
- (5) The acceptance of tenders or quotations up to £50,000 provided that:-
- (i) the requirements of this Constitution have been complied with, and
  - (ii) all the tenders or quotations for any one contract are opened at the same time by a member of the departmental management team and one other officer graded PO or above; and
  - (iii) in the case of the acceptance of a tender or quotation other than the lowest (or the highest where payment is to be made to the Council) a report on the action taken is submitted to the next meeting of the Executive stating the reasons therefor **[then before accepting such tenders the Chief Officer must first be satisfied, after having first consulted with the Service Director – Corporate Services that the tender represents the most economically advantageous tender and the best value for money and shall submit a report to a subsequent meeting (quarterly) of the Audit, Governance and Improvement Review Committee or relevant Panel stating the reasons therefore].**
  - (iv) **[the contract has budget approval]**

- (6) The acceptance of tenders or quotations up to £150,000 above **[£50,000]** provided that:-
- (i) the requirements of this Constitution have been complied with, and
  - (ii) all the tenders or quotations for any one contract are received by the Chief Executive or an officer designated by him and are opened at the same time by the Chief Executive or an officer designated by him and the appropriate Chief Officer or an officer designated by him; and
  - (iii) in the case of the acceptance of a tender or quotation other than the lowest (or the highest where payment is to be made to the Council) a report on the action taken is submitted to the next meeting of the Executive stating the reasons therefor [then before accepting such tenders the Chief Officer must first be satisfied, after having first consulted with the Service Director – Corporate Services that the tender represents the most economically advantageous tender and the best value for money and shall submit a report to a subsequent meeting (quarterly) of the Audit, Governance and Improvement Review Committee or relevant Panel stating the reasons therefore]**
  - (iv) [the contract has budget approval].**

***Note to Members – It is recommended that delegations (5) and (6) above be amended as described above to provide that acceptance of tenders other than the lowest are to be reported to the Audit, Governance and Improvement Review Committee or appropriate Panel, to reduce the number of reports to Cabinet. As a new check and balance the change also provides that before a chief officer accepts a tender other than the lowest he must first consult with the Service Director – Corporate Services.***

- (7) To sign contracts (except for the acquisition or disposal of land or of any interest in land) provided that:-
- (i) the contract does not exceed £150,000 **[£500,000]**; and
  - (ii) the requirements of this Constitution have been complied with, and
  - (iii) the Service Director Borough Solicitor has approved the form of contract as appropriate for the type of contract concerned; and
  - (iv) Notification of the exercise of the delegation is given to the Service Director Borough Solicitor and the Service Director – Corporate Services in such form and with such information as they may require; and
  - (v) Notification of the exercise of the delegation **[in respect of contracts with a value exceeding £150,000]** is placed before the next appropriate [a subsequent meeting (quarterly) of the Audit, Governance and Improvement Review Committee or relevant Panel Meeting] in such form and with such information as the Service Director – Corporate Services may require.
- (14) The determination of individual requests for employment benefits, pension benefits or the waiver of the Council's rights as employer where the cost to

the Council does not exceed in total £5,000 [**£10,000**] jointly with the Service Director – Corporate Services.

- (18) The declaration of land not exceeding £5,000 in value surplus to the requirements of their department.

***Note to Members – It is recommended that the financial limit be removed because the declaration of land as surplus to the Council as a whole requires a further decision to be taken by the Executive Director of Business Support Services or by Cabinet if not within his delegation limit.***

### **Delegations to the Director of Environmental Services**

- (42) The appointment of consultants for engineering works from lists approved by the Executive where the consultancy work is estimated not to exceed £150,000.

***Note to Members – It is recommended that the above delegation be deleted because there is a power to all Chief Officers to accept tenders and authorise contracts elsewhere in the scheme of delegations.***

- (80) In respect of land and property held for Economic Development purposes:-
- (i) in consultation with the Director of Legal and Property Services to grant, determine or vary the terms of leases or licences of any nature where the term does not exceed 7 years and the rent does not exceed £2,000 per annum;
  - (ii) in consultation with the Director of Legal and Property Services to settle the purchase price of properties within approved estimates and compensation for compulsory purchase where the compensation does not exceed £30,000;
  - (v) in consultation with the Director of Legal and Property Services the granting of easements and wayleaves and the taking of easements and rights of access at a consideration not exceeding £1,500.

***Note to Members - Delegation 80 above is no longer considered to be appropriate because all land matters should be processed by the Head of Property Services. It is therefore recommended that it be deleted.***

**APPENDIX FOUR – SUGGESTED AMENDMENTS TO THE HOUSING DELEGATIONS TO THE DIRECTOR OF ENVIRONMENTAL SERVICES TO TAKE INTO ACCOUNT THE COMMENCEMENT OF THE RELEVANT PARTS OF THE HOUSING ACT 2004 AND THE REPEAL OF OLDER LEGISLATION, TOGETHER WITH SOME GENERAL UPDATING.**

- 88) The signature, **issuing, making**, service, **variation, suspension and revocation** of any **approvals, authorisations, demands, licences, notices, orders and other documents**; **the** procuring of samples, **the** seizure of unsound food and articles and the execution of work to be carried out in default under legislation relating to animal health and welfare, anti-social behaviour, community safety, contaminated land, statutory nuisances, offensive trades, pest control, public health (including control of disease), infectious diseases, food and drugs, food safety, private sewers and drains, environmental protection, housing, pollution control, air quality, licensing, health and safety at work, health safety and welfare in agriculture, weights and measures, trading standards, underage sales, Sunday Trading and waste

N.B. 1. Notwithstanding the above, the Service Managers of the Department may sign, **issue, make, serve, vary, suspend and revoke approvals, authorisations, demands, licences, notices, orders and other documents and execute work to be carried out in default under the following legislation:-**

- i. Section 59, **60, 64, 66, 70** – Building Act 1984
- ii. Sections 16 and 35 – Local Government (Miscellaneous Provisions) Act 1976 (section 29 deleted)
- iii. Section 4 - Prevention of Damage by Pests Act 1949
- iv. Section 83 - Public Health Act 1936
- v. Section 17 - Public Health Act 1961
- vi. Section **34, 48, 49** - Housing Grants, Construction and Regeneration Act 1996 (section 86 deleted)
- vii. Section 29 - Local Government (Miscellaneous Provisions) Act 1982
- viii. Section 76 - Building Act 1984
- ix. Sections 6, 9, 10, 12, [13, 14, 19, 46, 47, 59 and 80] - Environmental Protection Act 1990
- x. Regulations 10, 17, 18, 21, [24, 25 and 28] Pollution Prevention Control Regulations 2000
- xi. Section 33 - Local Government (Miscellaneous Provisions) Act 1976
- xii. Section 14 - Consumer Protection Act 1987
- xiii. Section 7 - Animals Act 1971

- xiv. Sections 265, 270, **330, 331, 335, 338**, - Housing Act 1985 (as amended) (sections 264, 268, 271, 277 and 278 deleted)
- xv. Sections [8, 11, 12, **16, 17**], **20, 21, 22, 25, 26**, [28, 29], 40, **41, 43**, [50], 62, 64, **73, 86, 88, 96, 102, 113, 133, 136**, 139, 144, [**235, 239**], **255, 256 and Schedules 3, 5, 6, 7** – Housing Act 2004 (sections 49, 67, 69 and 70 deleted)

**[Forms of documents to be approved by the Service Director Borough Solicitor].**

N.B. 2. The signature and service of **documents** referred to at (i) - (vii) above and those enclosed within square brackets at (ix), (x) and (xv) above can also be exercised by the Principal Officers and Senior/Environmental Health Officers **of the Department**.

89) to 92) Current delegations to be deleted

- 89) To approve vary and refuse housing grants and assistance within the Council's policy.
- 90) The service of notices, certificates of disrepair etc. under the Rent Acts.
- 91) The service and execution of notices and orders under legislation relating to housing relating to unfit houses (but not closing or demolition orders), overcrowded houses, houses in disrepair and houses in multiple occupation (including work in default).
- 92) The making of demolition orders to which there is no objection and the making, varying and revoking of the prohibition notices, emergency prohibition orders and all types of management orders.

**89) New delegation – [To discharge the Council’s duty under section 184 of the Housing Act 1996 to make inquiries into a homelessness application and notify applicants of their decisions . This delegation may also be exercised by the Deputy Homelessness Advice Manager or in his/her absence by the Housing Policy Officers]**

**90) New delegation - [To discharge the Council’s duty under section 202 of the Housing Act 1996 to carry out reviews of decisions made under delegation 89 above. This delegation may also be exercised by the Service Manager Housing Strategy or in his/her absence by the Housing Policy Officers]**

***Note to Members – I recommend that the above two delegations be added as a result of legal advice received in connection with a recent homelessness case which indicated that these duties cannot be delegated to Wigan and Leigh Housing Company Limited***

- 93) To arrange for the reconnection or continuation of water, gas or electricity supply to private sector premises. **[This delegation may also be exercised by the Service Managers of the Department].**
- 94) To discharge the Council's duty under the Home Energy Conservation Act 1995. **[This delegation may also be exercised by the Service Managers of the Department].**
- 95) In relation to the Private Sector Housing Fitness Enforcement Policy Enforcement and Assistance on Housing Renewal Policy Framework:-
- i) to serve "minded to take action notices" under Section 86 of the Housing Grants, Construction and Regeneration Act 1996 and to consider any representations made thereon;
  - 1. to serve or renew deferred action notices under Section 81 of the Housing Grants, Construction and Regeneration Act 1996; and
  - iii) to waive the charge for enforcement action in the case of owner occupiers who are in receipt of specified relevant means tested benefits.
  - i) **[to serve an informal preliminary letter or notice in advance of a formal demand, notice or order under housing legislation and to consider any representations made thereon;**
  - ii) **to approve, vary and refuse housing assistance grants and loans;**
  - iii) **to serve notice on the owner(s) of a dwelling requiring them to furnish a statement showing how the housing assistance condition of occupancy or letting is being fulfilled;**
  - iv) **to waive the charge for enforcement action in the case of owner occupiers who are in receipt of specified relevant means tested benefits; and**
  - v) **to reduce the repayment of housing assistance, reduce the priority of any registered charge or remove any charge in exceptional circumstances].**

**[Delegation (i) above may also be exercised by the Service Managers, Principal Officers and Senior/Environmental Health Officers of the Department. Delegation (ii) and (iii) above may also be exercised by the Service Managers and Principal Officers of the Department. Delegation (iv) and (v) above may also be exercised by the Service Managers of the Department].**

- 121) To implement, on an annual basis, revised charges in respect of Trading Standards' Services as recommended by LACOTS [LACORS]
- 126) To discharge the Council's duties and exercise the Council's Powers under Part IIA of the Environment Protection Act 1990 (The Act) including:-

- i. the appointment of authorised officers under Section 108 of the Environment Act 1995 for the purpose of discharging the Council's duties under the Act in relation to contaminated land
- ii. the signing and serving of Notices under the authorisation of works in default under Sections 78B, 78C, 78E and 78N of the Act

Delegation (ii) above may also be exercised by the Services Manager[**s of the Department**].

## **APPENDIX FIVE – MISCELLANEOUS AMENDMENTS**

1. On 7<sup>th</sup> February 2008 Council resolved (minute 76 refers) that the recording of the Council meetings is not allowed. Accordingly, I recommend that a new Rule of Procedure 7A be introduced as follows:

**“[7A RECORDING OF COUNCIL MEETINGS  
The recording of meetings of the Council, Cabinet, Committees  
and Panels is not permissible.]”**

2. It is recommended that Rule of Procedure 10(d) be amended to read as follows:

**“The following motions may be moved without notice (d) to refer something to an appropriate body or individual, [including the Cabinet, a Committee or Panel or a Council Officer].”**

***Note to Members – It is recommended that the above rule be amended to clarify the that the referral need not be to an outside body or individual.***

3. It is recommended that a new delegation be granted to the Chief Executive as follows:

**“[To take all decisions and actions required in connection with the Council’s interests as a member of any company provided that such decisions or actions are of a procedural nature].”**

***Note to Members – It is recommended that the above delegation be added to authorise the Chief Executive to take procedural actions in respect of companies that the Council has an interest in without the need to refer them to Cabinet, with the inevitable delay.***

4. Part 3, Section 4 of the Constitution at paragraph 5 provides that one of the responsibilities of Cabinet is “the approval of Internal Audit plans and reports on Internal Audit work.” This responsibility now rests with the Audit, Governance and Improvement Review Committee and is within that Committee’s terms of reference. It is recommended therefore that in paragraph 5 that specific responsibility be removed.
5. It is recommended that Part 3, Section 3 of the Constitution at paragraph 3.5(xi) which details one of the functions and delegations of the Council’s Standards Committee be amended to read as follows:

**“(xi) To determine all matters in relation to alleged breaches of the National Code of Local Government Conduct occurring before**

31<sup>st</sup> January 2002 and to impose upon a Member such sanction as is appropriate and lawful.”

6. It is recommended that paragraph 3.1 of the Council’s Scheme of Delegations be amended to read as follows:

“3.1 In the exercise of Functions and Delegations Officers must comply with the following guidance:-

- a) All decisions must be in accordance with the approved Policy Framework and Budget
- b) All decisions must be taken in accordance with the requirements of law and of the Constitution. The Principles of Decision Making are set out in Article 13 para 13.02
- c) Before taking a Key Decision an Officer must ensure that all requirements relating to Key Decisions are met and must consult with the Executive Leader and the appropriate Portfolio Holder
- d) In deciding whether or not to exercise a delegated power Officers must have regard to the desirability of consulting with the appropriate Portfolio Holder or Chairmen
- e) Officers will always be entitled to refer matters for decision to the Council Meeting, the Executive or relevant Committee as appropriate
- f) **[If an officer takes a delegated decision above £250,000 in value or the decision is of strategic significance to the Council then he must report the exercise of the delegation to a subsequent meeting (quarterly) of the Audit, Governance and Improvement Review Committee or relevant Panel]**
- g) Urgent action may be taken by the Chief Executive or the appropriate Director (with the agreement of the Leader, the appropriate Portfolio Holder or the appropriate Chairmen if the issue is significant). Such action must be reported to the next available meeting of the Executive or appropriate Committee. In taking urgent action Officers must ensure that they have complied with all statutory provisions relating to the disposal of urgent business. Advice on this should be sought from the Service Director Borough Solicitor.”

***Note to Members – It is recommended the addition of the above paragraph (f) to the Scheme of Delegations to put in place an additional check and balance following the recommended increase in the financial limits of officer delegations. This will enable Members to review and discuss the exercise of such delegations.***

## **APPENDIX SIX – AMENDMENTS TO CONTRACT PROCEDURE RULES**

1. I recommend that Rule 1 be amended to read as follows:

“(1) Every contract shall comply with these Standing Orders, and no exception from any of the following provisions of these Standing Orders shall be made otherwise than by direction of the Executive, the Head of Paid Service, **[or, provided the contract is not a Business Support Services Contract, the Service Director – Corporate Services]**. Every proposal for making any such exception shall be the subject of a report to the Executive, **[or]** to the Head of Paid Service, **[or the Service Director – Corporate Services.]**

(2) Every **[All]** exceptions shall be reported to the Executive **[quarterly to the Audit, Governance and Improvement Review Committee or appropriate Panel]** and the report shall specify the emergency **[or reason]** by which the exception shall have been justified.

(3) Express note of any exception from any of the provisions of these Standing Orders and of the special circumstances, if any, by which the exception is justified shall, be recorded in the minutes of the Executive **[Audit, Governance and Improvement Review Committee or appropriate Panel]**”

***Note to Members – The above amendments to Rule 1 are recommended to enable the Service Director – Corporate Services to authorise exceptions to standing orders in addition to Cabinet and the Chief Executive to cover the situation when the Chief Executive is not available. To reduce the number of reports to Cabinet the granting of such exceptions are to be reported to the Audit, Governance and Improvement Review Committee or appropriate Panel.***

2. It is recommended that Rule 5(f) (which details the circumstances when the open tender requirements of the rules do not apply) be amended to read as follows:

(f) purchases from or under contracts **[or framework agreements]** which have been negotiated by the Yorkshire Purchasing Organisation, Local Authority Purchasing Partnership, **[Office of Government Commerce (OGC)]** or such other Local Authority or public body as the Executive **[or Service Director – Corporate Services]** may from time to time approve.

***Note to Members – The above amendment to Rule 5(f) is recommended to enable wider use of framework agreements negotiated by the Office of Government Commerce Buying Solutions for the benefit of local authorities.***

3. It is recommended that Rule 9 be amended to read as follows:

“(1) A tender other than the lowest, if payment is to be made by the Council, or the highest if payment is to be received by the Council, shall not be accepted until the Executive or Chief Officer concerned shall have considered a written or verbal report from the appropriate officer or other person provided that, where a tender other than the lowest (or highest as the case may be) is **[may only be]** accepted by a Chief Officer acting under delegated powers, **[if he is satisfied, after having first consulted with the Service Director – Corporate Services, that the tender represents the most economically advantageous tender and the best value for money]** and a written report shall be presented to the Executive **[quarterly to the Audit, Governance and Improvement Review Committee or appropriate Panel]**”

(2) Tenders shall be accepted in accordance with the Rules set out in the Scheme of Delegations in the Constitution

**(3) Tenders can be accepted up to 10% or £500,000 (whichever is the lower) above the approved budget release after consultation with the Service Director – Corporate Services**

***Note to Members – It is recommended that Rule 9(1) be amended as described above to provide that acceptance of tenders other than the lowest are to be reported to the Audit, Governance and Improvement Review Committee or appropriate Panel, to reduce the number of reports to Cabinet. As a new check and balance the change also provides that before a chief officer accepts a tender other than the lowest he must first consult with the Service Director – Corporate Services.***

4. It is recommended that Rule 10(1) be amended to read as follows:

“Except as provided in Standing Orders 1, 3, 4, or 5, no contract or series of contracts for the supply of goods or materials, the execution of any work, or the provision of any service, which exceeds £5,000 but does not exceed £150,000 shall be made unless the appropriate officer has obtained written quotations from not less than three persons believed to be suitably experienced. **[If the contract or series of contracts exceeds £5,000 but does not exceed £25,000 then written quotations need not be obtained if the Head of Risk Management or in his absence the Service Director – Corporate Services accepts that it is not practicable, or in the Council’s interest, to obtain written quotations from three persons.]**”

***Note to Members – It is recommended that Rule 10(1) be amended as described above to allow contracts to be entered into between £5,000 and £25,000 in value without the need to obtain written quotations or tenders provided that the Service Director – Corporate Services accepts that it is not practicable, or in the Council’s interest, to obtain written quotations from three persons***

5. It is recommended that Rule 13(3) be amended to read as follows:

“Chief Officers and Direct Service Managers may sign contracts relating to the exercise of their functions provided that the value of the contract does not

exceed £150,000 [**£500,000**] and the contract is in a form which has been approved by the Service Director Borough Solicitor as appropriate for the type of contract concerned. Two officers must sign each contract.”

***Note to Members – It is recommended that the £150,000 limit in Rule 13(3) above be increased to £500,000 to match the delegation to Chief Officers dealt with earlier in the report.***

## **Appendix Seven - Amended Financial Procedure Rules**

### **Financial Procedure Rules**

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#### **A . Financial Management**

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##### **A1. General Principles**

A1.1 These regulations lay down the principles to be followed in securing a proper administration of the Council's financial affairs. They apply to every Member and Officer of the Authority and anyone acting on its behalf and shall be reviewed at intervals of not more than three years.

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A1.2 Every Chief Officer shall bring these financial regulations and other internal regulatory documents to the attention of relevant staff and ensure they comply with them. They must also ensure an adequate supply of copies are available within their Department for reference. ( The rules can also be accessed via the Council's Web Site and can be found by navigating from the home page. Select 'The Council' followed by 'Constitution', Part 4 'Rules of Procedure')

A1.3 The Council has designated the Service Director – Corporate Services as the responsible officer under Section 151 of the Local Government Act 1972 and Part VIII of the Local Government Act 1988 for the proper administration of its financial affairs. The role of the Section 151 Officer is set out in Article 12 of the Constitution and in the CIPFA statement issued in January 2003 entitled "A Statement on the Role of the Finance Director in Local Government". The Head of Financial Services has been designated as Deputy Section 151 Officer and so will deputise in the absence of the designated Section 151 Officer

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A1.4 Each Chief Officer shall consult the Service Director – Corporate Services about any matter which may materially affect the finances of the Council before any commitment is incurred or before reporting thereon to the Executive or any other decision maker. The Service Director – Corporate Services may take any action he considers necessary, taking into consideration his duties under Section 114 of the 1988 Act.

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Section 114 requires the Service Director – Corporate Services to report to the full Council, Executive and External Auditor if the Authority or one of its Officers:-

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- Has made or is about to make a decision which involves incurring unlawful expenditure.
- Has taken or is about to take an unlawful action which has resulted or would result in a loss or deficiency to the Authority.
- Is about to make an unlawful entry in the Authority's accounts.

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A1.5 References in these regulations to Chief Officers are to Chief Officers who are heads of Departments or of the Council's Direct Service Organisations.

A1.6 The Council has approved separate Financial Regulations for the delegation of financial management to schools under the Education Reform Act 1988.

A1.7 The Service Director – Corporate Services shall report to the Council any significant failure to comply with these regulations which comes to his attention.

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## A2. Accounting

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A2.1 The Service Director – Corporate Services shall determine all accounting procedures, systems and accounting records of the Council and its officers. (The Accounts & Audit Regulations 2003, Section 5).

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All Departments must use the Council's corporate, integrated accounting system for their financial management requirements. The Service Director – Corporate Services shall be consulted on any proposal to develop alternative systems. Approval for such developments shall be made by the Executive following the submission of a joint report from the Chief Officer and the Service Director – Corporate Services outlining the potential benefits of the proposal.

Deleted: Where such procedures and records are maintained in a Department other than that of the Director of Finance and I.T. he shall, before making any determination, consult the Chief Officer of the Department concerned.

A2.2 The Service Director – Corporate Services shall prepare and maintain a manual of financial and accounting procedures to be operated in the Authority.

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(The Manual can be found on the Council's Web Site. From the Home Page select 'Council Services': 'Financial Services': 'Financial and Accounting Manual'.)

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A2.3 Chief Officers shall submit promptly all relevant information to the Service Director – Corporate Services who shall be responsible for the timely submission of all grant claims. The Accounts & Audit Regulations 2003 provide that proper accounting records shall, in particular, be kept in relation to Government Grants, whether paid by a Government Department, an agency or grants from E.U. institutions.

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A2.4 The Service Director – Corporate Services Director of Finance and I.T. shall ensure that accounting records determined by him are observed and that the accounts of the Council and supporting records are kept up to date. (The Accounts & Audit Regulations 2003, Section 5)

A2.5 The Service Director – Corporate Services shall ensure the preparation of the accounts of the Authority for Audit and public inspection in accordance with the timetable included at Section 10.5 of the Accounts and Audit Regulations 2003.

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A2.6 The Council shall publish a Statement of its Accounts in accordance with the timetable included at Section 11.3 of the Accounts and Audit Regulations 2003 following the financial year to which the accounts relate. The Statement will

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conform to the Code of Practice on Local Authority Accounting in the U.K. : 'A Statement of Recommended Practice' (CIPFA/LASAAC).

A2.7 At the end of the financial year each Chief Officer shall supply information to the Service Director – Corporate Services in such form and by such a date as he may determine to enable him to close the Council's accounts promptly.

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A2.8 The following principles shall be observed in the allocation of accounting duties:-

- i. The duties of providing information regarding sums due to or from the Council and of calculating, checking and recording these sums, shall be separated as completely as possible from the duty of collecting or disbursing them.
- ii. Officers charged with the duty of examining and checking the accounts of cash transactions shall not be engaged in any of these transactions.

## **B. Financial Planning**

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### **B1. Budget**

#### **B1.1 General**

The full Council is responsible for adopting the budget within which the Executive operates as set out in Part 2 Article 4.01b of the Constitution. This includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirements, the control of its capital expenditure and the setting of virement limits.

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(Budget and Policy Framework Procedure Rules can be found within the Constitution "Rules and Procedures" Part 4.)

B1.2 The form of capital and revenue estimates shall be determined by the Director of Finance and I.T., who shall prepare a budget manual for the general guidance of Departments.

B1.3 Revenue and capital estimates shall be prepared by Chief Officers under the direction of the Service Director – Corporate Services and within budget guidelines set by the Council, and reported to the Chief Officers' Management Team, and the Executive.

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B1.4 Chief Officers are responsible for the continuous exercise of budgetary control throughout the financial year. They shall nominate appropriate budget holders within their Department to be responsible for designated areas of the budget.

B1.5 Any proposal to the Executive or to Council, which involves expenditure or income, shall be supported by a statement of financial implications and

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budgetary provision in a report of the Chief Officer concerned, following consultation with the Service Director – Corporate Services .

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B1.6 Any proposal in respect of any new purpose or project or in pursuance of a new policy or an extension of an existing policy involving continuing financial commitment, unless specifically approved in the annual revenue estimates, must be the subject of a report to the Executive and to Council.

B1.7 It shall be the responsibility of each Chief Officer, in consultation with the Service Director – Corporate Services , to submit regular budget monitoring statements to the Executive on both revenue and capital account in a form approved by him. The Service Director – Corporate Services shall submit such composite monitoring reports, as he considers appropriate.

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B1.8 Where the Council operates in partnership or other arrangement, the roles and responsibilities of all parties must be clearly defined within a sound framework of effective controls. All proposed financial arrangements must be subject to the prior approval of the Service Director – Corporate Services and subject to such subsequent compliance checks as he shall deem necessary.

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## **B2. Capital Expenditure Programme**

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B2.1 Capital estimates shall be submitted to the Executive for inclusion in the Council's capital programme.

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B2.2 Information supplied for capital estimates shall be determined by the Service Director – Corporate Services .

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B2.3 Irrespective of the inclusion of any scheme in the approved capital programme, the following procedures must be followed before such a scheme can be carried out:-

(i) For schemes estimated to cost in excess of £250,000 the Executive shall consider a report, prepared by the Chief Officer concerned and the Service Director – Corporate Services , on the estimated capital and revenue costs of the scheme and approve budget release.

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(ii) For schemes estimated to cost less than £250,000 the Chief Officer may seek approval to budget release from the Service Director – Corporate Services , who has delegated power to so approve schemes. The Service Director – Corporate Services is required to report periodically to the Executive upon the exercise of his delegated power.

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## **B3. REVENUE BUDGETS**

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B3.1 The Council is required to set its Council Tax for any financial year by the 11th March of the preceding year (Section 30 (6) Local Government Finance Act 1992)

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B3.2 Proposed revenue budgets for the following financial year shall be submitted to the Executive not later than February in each year.

B3.3 Revenue budgets shall be prepared on an out turn basis and shall be treated as being cash limited for the purposes of budgetary control. The Council may provide centrally for such contingencies as it may see fit. Requests for the release of such contingency sums will only be granted following a report from the Service Director – Corporate Services.

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B3.4 With the approval of the Executive or in accordance with the current Scheme of Delegation to Officers as contained within the Constitution Part 3, Section 6 (5:4), virement may be exercised so as to transfer sums between heads of approved estimates.

B3.5 The following conditions shall apply to virement :

- i. Virement shall only take place between heads of expenditure, which are directly under the control of the Chief Officer.
- ii. Virement shall not be used to create a commitment beyond the end of the financial year in which it is exercised.
- iii. The Service Director – Corporate Services has certified that the Financial Regulations governing virement have been observed.

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(Detailed rules for the exercise and approval of virement are contained within the Budget Manual which may be found on the Council's Web Site. From the Home Page select 'Council Services' : 'Financial Services' : 'Revenue Budget Manual' .Sec'n 17)

B3.6 Where it appears that the amount of any head of estimate of approved expenditure may be exceeded or the amount of any head of approved income may not be reached, it shall be the duty of the Chief Officer conc Service Director – Corporate Services erved, after consultation with the Service Director – Corporate Services as the case may be, to inform the Executive.

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B3.7 The Service Director – Corporate Services shall satisfy himself that such systems and information as are used by Chief Officers for the exercise of budgetary control are adequate.

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B3.8 The Executive is responsible for agreeing procedures for carrying forward under and over-spending on budget headings.

## **C. Risk Management And Control Of Resources**

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### **C1. Risk Management And Insurance**

C1.1 The Service Director – Corporate Services shall prepare and promote the Council's risk management policy statement and develop risk management controls in conjunction with other Chief Officers.

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C1.2 Chief Officers shall be responsible for the identification, classification and control of all risks falling within their areas of responsibility. The risks identified shall be entered into departmental Risk Registers and notified to the Service Director – Corporate Services and shall be subject to periodic review at no more than annual intervals.

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C1.3 Chief Officers shall take responsibility for risk management within their areas of responsibility, having regard to advice from the Service Director – Corporate Services, and other specialist Officers (e.g. crime prevention, fire prevention, health and safety), and shall undertake regular reviews of risk within their own Departments.

C1.4 The Service Director – Corporate Services, shall be responsible for all the arrangement of commercial insurance, and will deal with all insurance claims in consultation with other officers where necessary.

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**Deleted:** The Director of Legal & Property Services shall deal with all claims concerned with Public Liability, Employer's Liability and Personal Accident Insurance (except statutory Highway Authority Liability).¶

C1.5 The Service Director – Corporate Services, shall prepare and maintain a manual of Insurance procedures to be followed within the Authority.

C1.6 Chief Officers shall give prompt notification to the Service Director – Corporate Services of all new risks, properties or vehicles which require to be insured and of any alterations affecting existing insurances.

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C1.7 Chief Officers shall immediately notify the Service Director – Corporate Services, in writing, of any loss, liability or damage or any event likely to lead to a claim, and inform the police in respect of theft or criminal damage. Chief Officers shall provide the Service Director – Corporate Services with all claims and settlement information necessary for the evaluation of the risk.

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C1.8 All appropriate employees of the Council shall be included in suitable fidelity guarantee insurance.

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C1.9 The Service Director – Corporate Services, shall annually, or at any other time he may consider necessary, review all insurances in consultation with other Chief Officers as appropriate.

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C1.10 The Service Director – Corporate Services, shall offer insurance cover to Schools in accordance with Fair Funding Arrangements.

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C1.11 The terms of any indemnity which the Council is requested to give shall be settled by the Service Director – Corporate Services in consultation with other appropriate officers.

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## C2. Audit

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C2.1 The Council shall maintain an adequate and effective system of internal audit of the accounting records and control systems. The Service Director – Corporate Services is the responsible officer for the purposes of this requirement. (The Accounts & Audit Regulations 2003, Section 6).

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The Internal Audit function will have due regard to the Auditing Practices Board guidelines as interpreted in the CIPFA Code of Practice for Internal Audit in Local Government in the U.K.

The Service Director – Corporate Services shall submit audit plans and periodic progress reports to the Audit, Governance and Improvement Review Committee.

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C2.2 The Service Director – Corporate Services, or his authorised representative shall have authority to:-

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- i. Enter at all reasonable times on any Council premises or land.
- ii. Have access to all systems, records, documents and correspondence relating to any financial and other transactions of the Council.
- iii. Require and receive such explanations as are necessary concerning any matter under examination.
- iv. Require any employee of the Council to produce cash, stores or any other Council property under his/her control.

C2.3 It shall be the duty of a Chief Officer to inform the Service Director – Corporate Services, as soon as possible, of any matter which involves or may involve irregularities concerning cash, stores or other property of the Council or any suspected irregularity in the exercise of the functions of the Authority. The Service Director – Corporate Services shall investigate and report as necessary.

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C2.4 The Service Director – Corporate Services may investigate and report on any matter which he believes involves or may involve irregularities concerning cash, stores or other property of the Council or any suspected irregularity in the exercise of the functions of the Authority.

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C2.5 Police Referrals - Where there are sufficient grounds to believe that a criminal act may have been committed in relation to issues referred to in Paragraphs C2.2; C2.3; C2.4 above, the chief officer shall consult with the Service Director – Corporate Services, and, as appropriate, with the Service Director – Borough Solicitor, before referring the matter to the police for investigation. A central log of matters referred to the police will be maintained by Internal Audit.

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C2.6 Any confirmed irregularities falling within the terms of Paragraphs C2.3, C2.4 and C2.5 above may result in the Council taking disciplinary action against those responsible.

### C3. Banking Arrangements And Cheques

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C3.1 All arrangements with the Council's bankers shall be made by or under arrangements approved by the Service Director – Corporate Services, who shall be authorised to operate such accounts, with the Council's bankers or the Girobank, as he consider necessary.

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C3.2 All cheques other than cheques drawn on authorised imprest accounts, shall be ordered only on the authority of the Service Director – Corporate Services who shall make proper arrangements for their safe custody.

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C3.3 Cheques on the Council's main banking accounts shall be signed by the Executive Director, Business Support Services or other officer authorised to do so, or shall bear the facsimile signature of the Director of Business Support Services.

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#### **C4. Investments, Borrowing And Trust Funds**

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C4.1 The Council has adopted the key recommendations of the CIPFA Treasury Management Code of Practice: Code of Practice (the Code), as described in Section 4 of that Code.

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C4.2 Accordingly the Council will create and maintain, as the cornerstones of effective treasury management:-

- A Treasury Management Policy statement, stating the policies and objectives of its treasury management activities.
- Suitable Treasury Management Practices (TMPs) setting out the manner in which the Council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.

C4.3 The Cabinet will receive reports on its treasury management policies, practices and activities. These will include an annual strategy and plan in advance of the year and, at least twice a year, a report on the operation and exercise of delegated treasury management powers, followed by an annual report after its close. The annual report will be presented no later than 31 st July of the succeeding financial year in the form prescribed in the TMPs.

C4.4 This Council has delegated responsibility for the implementation and monitoring of its treasury management policies and practices to the Cabinet, and for the execution and administration of treasury management decisions to the Service Director – Corporate Services, who will act in accordance with the Council's policy statement, TMPs and the CIPFA Standard of Professional Practice on Treasury Management.

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C4.5 The Service Director - Borough Solicitor, shall hold all securities, which are the property of, or are in the name of the Council, or its nominees, and the title deeds of all property in its ownership.

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C4.6 All borrowings shall be arranged in the name of the Council.

C4.7 The Service Director – Corporate Services, shall be the Council's registrar of stocks, bonds and mortgages and shall maintain records of all borrowing of money by the Council.

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C4.8 All trust funds shall wherever possible be in the name of the Council.

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C4.9 All officers acting as trustees by virtue of their official position shall deposit all securities, etc., relating to the trust with the Service Director - Borough Solicitor unless the deed otherwise provides. Where funds are held on behalf of third parties, the responsible officers must arrange for their secure administration, as approved by the Service Director – Corporate Services and maintain written records of all transactions.

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C4.10 The Code of Practice for Longer Term Borrowing by Local Authorities shall be deemed to be incorporated into these financial regulations.

C4.11 The Service Director – Corporate Services shall operate such bank accounts as are considered necessary. Opening or closing any bank account shall require the approval of the Service Director – Corporate Services.

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## C5. Estates

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C5.1 The Head of Property Division shall maintain an asset register in compliance with the appropriate Accounting Codes of Practice and statutory requirements in consultation with the Service Director – Corporate Services.

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C5.2 The Service Director – Borough Solicitor shall have the custody of all title deeds under secure arrangements.

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C5.3 The Council's process and procedures regarding the disposal of surplus land and property are attached as Appendix 1 to this document.

## C6. Stocks And Stores

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C6.1 Each Chief Officer shall be responsible for the care and custody of the stocks and

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stores in his/her Department.

C6.2 Excessive stocks shall not be held.

C6.3 Chief Officers shall arrange for periodical test examinations of stocks by persons other than store-keepers and shall ensure that all stocks are checked at least once in every year.

C6.4 The Service Director – Corporate Services shall receive from each Chief Officer such information, as he requires in relation to stores for the accounting, costing and financial records. Surplus materials, stores or equipment shall be disposed of by competitive tender or public auction unless the Chief Officer and Portfolio Holder concerned decide otherwise

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## C7. Inventories

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C7.1 All Departments shall maintain inventories in which must be recorded an adequate description of all moveable, valuable property. The form in which the inventories shall be kept is to be determined by the appropriate Chief Officer with the agreement of the Service Director – Corporate Services.

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C7.2 Each Chief Officer shall be responsible for providing means of identification on all items on their departmental inventory, for undertaking an annual check of all items on the inventory, for taking action in relation to surpluses or deficiencies and updating the inventory.

C7.3 The Council's property shall only be used for the Council's business, unless the Chief Officer concerned issues specific directions.

C7.4 Disposal of surplus to requirement property shall be by competitive tender or public auction unless the Chief Officer in consultation with the relevant Portfolio Holder concerned decide otherwise in a particular case.

## **C8. Protection Of Private Property**

C8.1 The Director of Adult Services shall ensure that an itemised inventory is prepared of private property belonging to any person admitted to residential care by the Council or resident in a supported accommodation scheme property:-

- (a) where it is necessary to prevent loss or damage, or
- (b) where financial assessment purposes may require.

Two officers must prepare such an inventory at the same time.

C8.2 The Director of Adult Services shall hold all valuables such as jewellery, watches, and other small articles of a similar nature and documents of title in safe custody. If circumstances warrant, he should consult with the Service Director – Corporate Services.

## **C9. Security**

C9.1 Each Chief Officer is responsible for maintaining proper security at all times for all buildings, stocks, stores, furniture, equipment, cash, documentation and information under his/her control. He/she shall consult the Service Director – Corporate Services, (and the Service Director-Borough Solicitor if appropriate) in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.

C9.2 Maximum limits for cash holdings shall be agreed with the Service Director – Corporate Services and shall not be exceeded without his express permission.

C9.3 Keys to safes and similar receptacles are to be carried on the person of those responsible at all times. The loss of any such keys must be reported to the Service Director – Corporate Services forthwith.

C9.4 The Service Director – Corporate Services shall be responsible for maintaining the security of the Council's network installations. Each Chief Officer shall be responsible for maintaining proper security and privacy as respects information held within the Council's installations, or for its use, in respect of those systems for which he/she is registered as the responsible person under the Data Protection Act.

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C9.5 All Chief Officers shall comply with the standards and principles set down in the I.T. Security Policy and Code of Practice.

C9.6 Waste materials such as paper, discs, tapes etc., containing confidential data must be kept in a secure environment until disposed of. Disposal must be carried out under controlled conditions which ensures the effective destruction of the material concerned.

## **C10. Protocols And Policies – Including Fraud And Corruption**

Attention is drawn to the Council's Web site which is a prime source of information and the following documents can be found by navigating from the following Home Page icons:-

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### **(a) Policies**

- Antil-Fraud and Corruption Policy Statement
- Anti-Fraud and Corruption Strategy
- Code of Conduct (Employees)
- Code of Conduct (Members)
- E-mail User Guide (Microsoft Exchange)
- I.T. Security Policy
- Member/Employee Protocol
- Misuse of the Internet
- Protocol for the Use of Electronic Mail
- Statement on Corporate Government Arrangements
- The Government's Guide to Data Protection
- Whistleblowing Policy – Guidance for Managers

### **(b) Financial Information**

- The Financial and Accounting Manual

### **(c) The Council**

- 'The Constitution' – which contains the Council's Standing Orders, Financial Procedures, Delegations and much more.

## **D. Financial Systems And Procedures**

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### **D1 Imprest Accounts**

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D1.1 The Service Director – Corporate Services shall provide imprest accounts for such officers of the Council as may need them. Imprest accounts shall be operated strictly within the procedures set by the Service Director – Corporate Services in any accounting manual or other guidance.

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(The Manual can be found on the Council's Web Site. From the Home Page select 'Council Services': 'Financial Services': 'Financial and Accounting Manual'.)

## D2. Income

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D2.1 The arrangements for the collection of all money due to the Council shall be determined by the Service Director – Corporate Services.

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D2.2 Each Chief Officer shall be responsible for the prompt raising of debtor accounts in connection with work completed, goods supplied or services rendered and of all other amounts due. Where such income has not been raised through the corporate debtors system, the Chief Officer is also responsible for the recovery of amounts due. The Service Director – Corporate Services shall satisfy himself that the arrangements for raising such debtor accounts and recovering income are adequate. The Service Director – Corporate Services shall otherwise ensure the recovery of income due.

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D2.3 The Service Director – Corporate Services shall be notified promptly of all money due to the Council and of contracts, leases and other agreements and agreements entered into which involve the receipt of money by the Council and the Service Director – Corporate Services shall have the right to inspect any documents or other evidence in this connection as he may decide.

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D2.4 All receipt forms, books, tickets and other such items shall be in a form approved by the Service Director – Corporate Services. Arrangements for ordering, storing and issuing such controlled stationery shall also be subject to his approval.

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D2.5 All money received by an officer on behalf of the Council shall without delay be paid to the Service Director – Corporate Services or, as he may direct, to the Council's banking or Girobank account or transmitted directly to any other body or person entitled thereto. No deduction may be made from such money unless the Service Director – Corporate Services specifically authorises. Each officer who so banks money shall provide a reference to the related debt (such as the receipt number or the name of the debtor, or otherwise indicate the origin of the cheque). On the reverse of each cheque the officer shall enter the name of his/her Department, office or establishment.

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D2.6 Personal cheques shall not be cashed out of the money held on behalf of the Council.

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D2.7 Every transfer of official money from one member of staff to another will be evidenced in the records by the Departments concerned by the signature of the receiving officer.

D2.8 All arrangements for the Collection of Income by electronic means shall be subject to the approval of the Service Director – Corporate Services.

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### D3. Orders For Work, Goods And Services

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D3.1 All Officers and Members of the Authority have a duty to declare any links or personal interests that they may have with purchasers, suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the Council, in accordance with the appropriate Codes of Conduct.

D3.2 Official orders shall be in a form approved by the Service Director – Corporate Services and are to be authorised only by officers so designated by the appropriate Chief Officer. The Chief Officer shall be responsible for official orders issued from his/her Department and for ensuring that the cost is within approved estimates.

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D3.3 Official orders shall be issued for all work, goods or services to be supplied to the Council except for automatic supplies from statutory undertakers (e.g. gas, water and electricity), for periodical payments such as rent or rates, for petty cash purchases or such other exceptions as the Service Director – Corporate Services may approve.

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D3.4 Each order shall conform with the Council's Purchasing Policy.

(The Policy can be found on the Council's Web Site. From the Home Page select 'Council Services': 'Financial Services': 'Financial and Accounting Manual' :Specific Guidance: Purchasing)

D3.5 Each order which is issued in respect of work, goods or services which are not the subject of a contract in writing shall include such provisions and conditions as the Service Director-Borough Solicitor may direct.

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D3.6 The procurement of work, goods or services must not be broken down into units in order to bring it below the quotation or tendering threshold, thereby circumventing the intention of Standing Orders.

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Officers should, so far as possible, aggregate the total value of supplies over a twelve-month period. The total estimated value of purchases in the twelve-month period should be used to determine whether quotations or tenders are required. It is acceptable to invite quotations or tenders on the basis of an estimated annual requirement and then draw off from the contract at the tendered price whenever deliveries are required.

D3.7 Official orders must not be used for any personal, private or unofficial purchases nor must personal or private use be made of Council contracts or similar arrangements.

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#### D4. Payment Of Accounts

D4.1 Apart from petty cash payments from departmental imprest accounts, the normal method of payment of money due from the Council shall be by cheque or other instrument (including approved electronic transfers) drawn on the Council's banking account or Girobank account by the Service Director – Corporate Services.

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D4.2 Payments by other instruments shall be fully supported by proper, certified documentation in all cases. Loans, leases or rental agreements as methods of payment must not be entered into without the prior approval of the Service Director – Corporate Services.

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D4.3 Chief Officers are responsible for examining, verifying and certifying all invoice(s) for which they have issued an order, and equally for any other payment vouchers or accounts arising from sources in their Department. Such certification shall be in writing by or on behalf of the Chief Officer. The names of officers authorised to sign such records shall be sent to the Service Director – Corporate Services by each Chief Officer together with specimen signatures and shall be amended on the occasion of any change. The certification of invoices shall be by the personal signature (NOT just the initials, or a facsimile) of the officer authorised to certify and not in the name of the Chief Officer or any other officer other than the signatory.

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D4.4 Before certifying an account, the certifying officer shall be satisfied that:-

- a. The work, goods or services to which the account relates have been received, carried out, examined and approved; in exceptional circumstances, where there is demonstrable financial benefit to the Council, the Chief Officer or his/her nominated Deputy may authorise payment in advance.
- b. The prices, extensions, calculations, trade discounts, other allowances, credits and tax rates are correct;
- c. The relevant expenditure has been properly incurred and is within the relevant estimate provision;
- d. Appropriate entries have been made in inventories, stores records or stock books as required.
- e. The account has not been previously passed for payment and is a proper liability of the Council.
- f. Where it is not self-evident, the account shall be endorsed with a description of the goods or services supplied.

D4.5 Duly certified accounts shall be passed without delay to the Service Director – Corporate Services who shall examine them to the extent that he considers necessary, and shall be entitled to ask for such information and explanations as

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he may require. (Payments should be made in compliance with the Council's Payment policy and the statutory requirements regarding prompt payment.)

D4.6 Payments should not be made on any photocopied or faxed invoice, statement or document other than a formal invoice. Any amendment to an account shall be made in ink and initialled by the officer making it, stating briefly the reasons where they are not self-evident. No amendments must be made to VAT amounts.

D4.7 Each Chief Officer shall, as soon as possible after 31st March in each year, notify the Service Director – Corporate Services of all outstanding expenditure relating to the previous financial year.

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## D5. Salaries, Wages And Pensions

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D5.1 The payment of all salaries, wages, compensation and other emoluments to all employees or former employees of the Council shall be made by the Service Director – Corporate Services or under arrangements approved and controlled by him.

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D5.2 Each Chief Officer shall notify the Service Director – Corporate Services as soon as possible and in the form prescribed by him, of all matters affecting the payment of such emoluments, and in particular:-

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- a. appointments, resignations, dismissals, suspensions, secondments and transfers;
- b. changes in remuneration, other than normal increments, and pay awards and agreements of general application;

- by using the prescribed format within the Corporate Personnel System or as otherwise laid down by the Head of People Services.

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D5.3 Each Chief Officer shall notify the Service Director – Corporate Services as soon as possible, and in a form prescribed by him, of the following:-

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- a. absences from duty for sickness or other reason, apart from annual leave entitlement;
- b. information necessary to maintain records of service for pension purposes, income tax, National Insurance and the like.

D5.4 Appointment of all employees shall be made in accordance with the regulations of the Council and the approved establishments, grades and rates of pay.

D5.5 All time records or other instruments for payment shall be in a form prescribed or approved by the Service Director – Corporate Services. Hard copy documents shall be signed by or on behalf of the Chief Officer. The names of officers authorised to sign such records shall be sent to the Service Director –

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Corporate Services, by each Chief Officer together with specimen signatures and shall be amended on the occasion of any change. The certification of records shall be in the personal signature or identifiable initials of the officer authorised to certify and not in the name of the Chief Officer or any other officer other than the signatory.

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D5.6 Where Electronic (E) forms are available for payment purposes, these should be used in accordance with the Council's protocols regarding completion, authorisation and input to the relevant payment system. A list of Officers designated to authorise payment shall be kept by each Chief Officer and updated as necessary. The list (and all subsequent amendments) shall be notified to the Service Director – Corporate Services.

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## **D6. Travelling, Subsistence And Financial Loss Allowances**

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D6.1 All claims for payment of car allowances, subsistence allowances, travelling and incidental expenses shall be submitted to the Service Director – Corporate Services, duly certified in a form approved by him. The names of officers authorised to sign such records shall be sent to the Service Director – Corporate Services, by each Chief Officer together with specimen signatures and shall be amended on the occasion of any change. The certification of claims shall be in the personal signature or identifiable initials of the officer authorised to certify and not in the name of the Chief Officer or other officer other than the signatory.

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Where E forms are available for submission of expense claims, these should be used in accordance with the Council's protocols regarding completion, authorisation and input to the relevant payment system.

A list of Officers designated to authorise such claims shall be kept and updated as necessary.

D6.2 Payments to Elected Members and Co-opted Members of the Council or its Committees or Panels who are entitled to claim travelling or other allowances will be made by the Service Director – Corporate Services upon receipt of the prescribed form duly completed. All claims for a financial year are to be submitted within one month of 31st March.

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D6.3 The certification by or on behalf of the Chief Officer shall be taken to mean that the certifying officer is satisfied that the journeys were authorised, the expenses properly and necessarily incurred and that the allowances are properly payable by the Council.

D6.4 Officers' claims submitted more than six months after the expenses were incurred will be paid only with the express approval of the Service Director – Corporate Services.

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## **D7. Taxation**

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D7.1 The Service Director – Corporate Services is responsible for proper administration of the procedures to identify the Council's liability to taxation and entitlement to tax relief.

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D7.2 The Service Director – Corporate Services shall ensure that financial control systems bring all tax liabilities to account and that tax is recovered to the fullest possible extent as early as possible.

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D7.3 The Service Director – Corporate Services shall issue appropriate guidance and provide necessary instruction and training, as he deems necessary.

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D7.4 The Service Director – Corporate Services shall report periodically on the Council's tax affairs to the Executive.

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D7.5 Chief Officers shall consult with the Service Director – Corporate Services as soon as possible about expenditure or income proposals, which may have tax implications. Reports to the Council (and its Executive, Committees or Panels) should identify tax implications where appropriate.

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## **D8. Contracts**

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### **D8.1 General Principles**

For information relating to contracts in general, reference should be made to the Constitution Part 4, Rules of Procedure, Contract Procedure Rules.

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Those responsible for procuring work, goods or services on behalf of the Council must adhere to the requirements both of Contract Procedure Rules and Financial Procedure Rules. They must also ensure that the most commercially advantageous terms are obtained and that acquisitions can be justified and clearly linked to approved service objectives.

D8.2 Contracts For Building Construction, Maintenance, Engineering Work & Contracts Let Under The Provisions Of Part Ii Of The Local Government Act 1988 (Non-Commercial Considerations)

D8.3 In this financial regulation the term "Supervising Officer" shall mean one of the following:

With reference to contracts for Building construction, Maintenance or Engineering Work:-

- a. The Director of Environmental Services, the Director of Legal & Property Services or other officer nominated by them in writing.  
With reference to contracts let under the provisions of Part II of the Local Government Act 1988:-
- b. Such Chief Officer as is determined by reference to the type of contractor concerned and the Council's scheme of delegation.

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- c. A private architect, engineer or other consultant engaged by the Council.

D8.4 In this financial regulation the term "Contractor" shall mean either of the following:-

- a. An external contractor
- b. An in-house direct service organisation awarded work under the provisions of Part II of the Local Government Act 1988.
- c. An in-house direct service organisation awarded work under the provisions of the Part I of the Local Government Act 1988

D8.5 Where a contract provides for payments to be made under a certificate issued by a Supervising Officer the Service Director – Corporate Services, shall arrange for the keeping of a contract register or registers to show the state of account between the Council and the Contractor, together with any other payments and related professional fees.

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D8.6 Contract sums - procedures for dealing with variation orders/instructions.

The Council has approved the following thresholds for reporting variation orders/instructions or any other contract price increase:-

Approved Budget Release	Report required when Cost Variation reaches
Less than £500,000	10% or <u>£500,000</u> which ever is the less
Over £500,000	<u>10%</u> or <u>£500,000</u> which ever is the less

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1. Variation orders or instructions in excess of the above thresholds and price increases due to re-measurement or any other reason whatsoever, shall not be allowed unless:-
  - i. The Supervising Officer has reported in writing to the Executive giving reasons for the variation, and
  - ii. The Executive has approved the variation.
2. Contract sums exclude contingency allowances, and shall take no account of any cost fluctuations under the contract or any previously approved variations for the purposes of the calculation under 1. above.
3. If the Supervising Officer considers
  - i. a variation order or instruction is unavoidable & essential for the contract to proceed, or
  - ii. immediate action is necessary to avoid the possibility of financial loss to the Council.

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He/she may issue a variation order or instruction and shall submit a written report and financial statement as soon as possible to the relevant Panel as defined.

D8.7 Variation orders or instructions shall be in writing and signed by the Supervising Officer.

D8.8 The final certificate for payment under any contract shall not be issued until the Supervising Officer has produced to the Service Director – Corporate Services, a detailed statement of account and all relevant documents if required.

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D8.9 The Service Director – Corporate Services shall, to the extent he considers necessary, examine interim and final accounts for contracts and shall be entitled to make all such enquiries and receive such information and explanations as he may require in order to satisfy himself as to the accuracy of the accounts.

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D8.10 The Service Director – Borough Solicitor and the Service Director – Corporate Services shall be consulted before any settlement is reached in a claim in respect of matters not clearly within the terms of any existing contract.

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D8.11 Where completion of a contract is delayed beyond the agreed completion date it shall be the duty of the Supervising Officer to claim whatever liquidated or other damages may be due under the terms of the contract and to report his /her action in the next financial statement.

D8.12 All appointments of works consultants (architects, surveyors, engineers etc.) must be made in accordance with the Scheme of Delegations. Payments must be made on a certificate and be processed by the Service Director – Corporate Services.

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D8.13 Where private architects, engineers or consultants are employed it shall be the duty of the relevant Council Supervising Officer to draw their attention to the requirements of these financial regulations.

## **Financial Procedure Rules Appendix 1 - Disposal Of Surplus Land And Property**

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### **1. Disposal Methods**

The disposal of surplus land and premises has been achieved by various methods depending on the circumstances of each case. However, four main methods have been identified and commented upon by various bodies including the Valuation Liaison Group which issued a professional guidance note in 1985 on the matter of disposals of landed interests by local authorities. It has been the practice of the Estates Sector staff in dealing with the land disposal process to refer to the guidance by the V.L.G. whilst observing the statutory requirement to obtain best consideration as required by Section 123 of the Local Government Act 1972.

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#### **(a) Private Treaty**

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A sale by private treaty occurs where negotiations are carried out between the vendor and prospective purchasers privately and in comparative secrecy, normally without any limit on the time within which they must be completed before contracts are exchanged.

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The advantages of the private treaty method are that it allows a flexible approach; time pressures are seldom imposed on either the vendor or the purchaser and it is widely understood and accepted by the general public (it is the method of sale most commonly adopted by the private sector).

The major disadvantages of private treaty sales is that proceedings cannot always overcome suspicions of unfair dealings and for this reason sales by private treaty are avoided if possible. Nevertheless, suitable cases for the use of private treaty sales would include; most dwellinghouses, sales to sitting tenants, sales to adjoining owners, sales of access to land already held by the purchaser, sales of part interests where amalgamation of interests could release substantial 'marriage value' and sales of repetitive lots where the market is well established. Where the market is depressed or otherwise difficult or the property is of an unusual type for which there is a limited market, sale by private treaty may be considered to achieve better results than open market competition which would be unlikely to produce a full overbid from some special purchaser.

#### **(b) Public Auction**

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An auction may quickly conclude competition and identify the successful bidder who will sign a binding contract at the sale. There is, therefore, a degree of immediacy provided by the auction process which is absent in all other methods of sale.

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Auctions are particularly suitable for properties for which there is likely to be keen competition from a wide market of potential cash purchasers or for properties of an unusual nature but for which there is likely to be a ready market. An auction will be inappropriate for properties where the majority of purchasers will prefer to submit offers subject to contract to enable completion of feasibility studies, structural surveys, planning applications etc.

#### **(c) & (d) Formal Tender and Sealed Offers**

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The submission of formal tenders or sealed offers minimises possible accusations of impropriety and, as a consequence, these are the favoured disposal methods.

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Formal tenders are employed where there is a defined market and a perceived demand for the land to be sold. It is the preferred disposal method for all sites with development potential where the likely capital receipt will adequately offset the additional costs involved in preparing formal contract documents ahead of the marketing exercise. As there is no flexibility in the post-tendering procedures, it is often felt that the use of this method restricts the market since interested purchasers may need to incur considerable costs before submitting offers (which,

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if accepted, become legally binding) without any assurance that they will be successful. Nevertheless, where significant development sites are involved (and the significance of the site may be in terms of its size, location, special suitability etc.), the prospect of substantial profits has encouraged major developers to enter into the bidding process.

The sealed offer process is relatively simple and cheap both in terms of the Council's administration and financial commitment. It is a flexible process and does not preclude the successful purchaser or vendor from seeking to renegotiate more favourable terms even when the sale is at a fairly advanced stage to take account of any change in circumstances; any risks inherent in this can be partly overcome by stipulating time limits for exchanging contracts.

As sealed offers are not contractually binding, it is possible to invite bids on the basis of a pre-set closing date (where a site is of relatively low value but there is a perceived demand) or without a closing date in the case of premises where there is no evident demand and an indefinite marketing period is warranted).

## **2. Disposal By Building Agreement**

The Council has facilitated the development of its surplus land through the use of Building Agreements which have several advantages for the Council as original landowner and the developer of the site.

In essence, disposal by building agreement means that the developer enters into a licence arrangement with the Council to construct an agreed number of houses on the site for sale to owner-occupiers. The developer has not legal title to the site which is ultimately conveyed on a plot basis to each householder on the completion of the acquisition of the 'bricks and mortar' from the developer.

The introduction of building agreements was originally intended to promote the development of 'difficult' sites and encourage small local firms to compete successfully with the largest national building companies. These objectives were achieved by the acceptance of the licence fee on a phased plot-by-plot payment arrangement. In other words, the developer could pay a pro-rata proportion of the total licence fee as each unit was completed and sold to the householder. In practice, small builders with insufficient capital reserves, would be precluded from the bidding process despite the phased payment arrangements, as it would prove difficult to raise development finance without the ability to offer title to the development site as collateral.

Nevertheless, many sites were disposed of on the plot-by-plot arrangements in the early days of the active land disposal programme. In more recent times, with the reliance of the Council's capital programme on land disposal activity the phased payment arrangements have been all but abandoned in favour of the payment in full of the licence fee at the commencement of the building agreement. It is worth noting that phased payments are still considered appropriate in dealing with problematical sites where successful redevelopment

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is required on planning or other non-commercial grounds. Appropriate recommendations in relation to these sites will be made to the Cabinet.

The advantages to the Council in employing building agreements are that control over the development of the site is maintained separately from the planning process since the Council retains ownership during the development period. The building agreement terms can

allow for further licence fee payments where adverse ground conditions or market forces are found to be less onerous than originally anticipated. The Council, as landowner, has the ability to retain a reversionary interest in the redeveloped site through the disposal of long leaseholds rather than freeholds where it is in the Council's interests to do so. This, in turn, reserves an annual ground rental payment from each house plot to the Council.

The continued use of building agreement disposals for major redevelopment sites (including industrial / commercial schemes) is recommended as the preferred method of disposal. Authority will be sought from the Cabinet for the use of alternative disposal / development arrangements on an individual basis.

### 3. Valuation Matters

D. o E. Circular 48/76 implemented the recommendations of the Borner Report on the use of Valuers in the Public Service and introduced a system of selective checking by the District Valuer of notifiable transactions (i.e. transactions in land which was the subject of loan sanction, grant or subsidy from Central Government).

A subsequent Circular No. 18/80 abolished the requirement for selective checking since when local authorities have been free to rely on the advice provided by their own professional valuers either directly employed by the Authority or engaged from external sources.

It has been the practice for this Council to accept the advice given by the Chartered and Incorporated Surveyors employed in the [Property Division](#) in relation to general land valuation matters. Where specialised knowledge is required in order to form an opinion as to value then recourse has been had to the District Valuer Service on a consultancy basis. Such specialised knowledge may include town centre schemes, licensed premises, minerals, limited or national markets. It is important to stress that the current reference to the District Valuer is made on the grounds of specialised knowledge and not as a consequence of a preset valuation limit.

The [Service Director – Corporate Services and the Head of Property Services](#) are content that the arrangements currently in place for the appointment of the district Valuer in appropriate cases, together with procedural regulations introduced following an Internal Audit review will ensure that the advice provided to Members on land valuation matters will continue to be objective and fully considered.

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#### 4. Direct Sales By Private Treaty

▲ In certain circumstances, the Council may achieve the best consideration on the disposal of an asset by a private 'off-market' transaction, as noted above. Concern has been expressed in the Audit review that such transactions, if not independently monitored, may lead to the Authority and its officers being accused of unfairness or impropriety.

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As noted above, local authorities are no longer required to submit notifiable transactions for selective checking and there is no obligation for the Council to introduce a requirement that all 'off-market' disposals above a preset value threshold should be referred to the District Valuer. It is acknowledged that such transactions need to be handled in a particularly sensitive manner given the potential for claims of impropriety from disgruntled observers and it should be possible to introduce a system of independent internal vetting which would satisfy future probity enquiries.

In order that officer time is not taken up in defending accusations of impropriety the [Executive Director of Business Support Services](#) will be consulted in cases where direct land sales are proposed and where the [Executive Director of Business Support Services](#) believes it would be in the interests of the Authority to seek external confirmation of any element of the proposed agreement for sale, he will advise the [Service Director – Corporate Services](#) to seek such confirmation from appropriate independent third parties (which includes the District Valuer).

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