

**Deputy Chief Executive's Office**

A. Faulder (Interim)

**TO: ALL MEMBERS OF THE COUNCIL**

Your Ref:

Our Ref: CA/SAHC

Please ask for: Mrs S Cole

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5 November 2009

Dear Councillor,

**YOU ARE HEREBY SUMMONED** to attend the meeting of the Herefordshire Council to be held on **Friday 13 November 2009** at The Shirehall, St Peter's Square, Hereford. at 10.30 am at which the business set out in the attached agenda is proposed to be transacted.

Please note that car parking will be available at the Shirehall for elected Members.

Yours sincerely



**C. ADAN**  
**ASSISTANT CHIEF EXECUTIVE (INTERIM), LEGAL AND DEMOCRATIC**



# AGENDA

## Council

Date: **Friday 13 November 2009**

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Time: **10.30 am**

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Place: **The Shirehall, St Peter's Square, Hereford.**

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Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

**Sally Cole, Committee Manager Executive**

Tel: 01432 260249

Email: [scole@herefordshire.gov.uk](mailto:scole@herefordshire.gov.uk)

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If you would like help to understand this document, or would like it in another format or language, please call Sally Cole, Committee Manager Executive on 01432 260249 or e-mail [scole@herefordshire.gov.uk](mailto:scole@herefordshire.gov.uk) in advance of the meeting.

# Agenda for the Meeting of the Council

## Membership

**Chairman**

**Councillor J Stone**

**Vice-Chairman**

**Councillor JB Williams**

**Councillor PA Andrews**

**Councillor LO Barnett**

**Councillor DJ Benjamin**

**Councillor WLS Bowen**

**Councillor ACR Chappell**

**Councillor PGH Cutter**

**Councillor H Davies**

**Councillor BA Durkin**

**Councillor MJ Fishley**

**Councillor JHR Goodwin**

**Councillor DW Greenow**

**Councillor KS Guthrie**

**Councillor MAF Hubbard**

**Councillor RC Hunt**

**Councillor JA Hyde**

**Councillor JG Jarvis**

**Councillor MD Lloyd-Hayes**

**Councillor RI Matthews**

**Councillor R Mills**

**Councillor AT Oliver**

**Councillor RJ Phillips**

**Councillor PD Price**

**Councillor A Seldon**

**Councillor RV Stockton**

**Councillor AP Taylor**

**Councillor AM Toon**

**Councillor WJ Walling**

**Councillor DB Wilcox**

**Councillor WU Attfield**

**Councillor CM Bartrum**

**Councillor AJM Blackshaw**

**Councillor H Bramer**

**Councillor ME Cooper**

**Councillor SPA Daniels**

**Councillor GFM Dawe**

**Councillor PJ Edwards**

**Councillor JP French**

**Councillor AE Gray**

**Councillor KG Grumbley**

**Councillor JW Hope MBE**

**Councillor B Hunt**

**Councillor TW Hunt**

**Councillor TM James**

**Councillor P Jones CBE**

**Councillor G Lucas**

**Councillor PJ McCaull**

**Councillor PM Morgan**

**Councillor JE Pemberton**

**Councillor GA Powell**

**Councillor SJ Robertson**

**Councillor RH Smith**

**Councillor JK Swinburne**

**Councillor DC Taylor**

**Councillor NL Vaughan**

**Councillor PJ Watts**

**Councillor JD Woodward**

## **GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS**

The Council's Members' Code of Conduct requires Councillors to declare against an Agenda item(s) the nature of an interest and whether the interest is personal or prejudicial. Councillors have to decide first whether or not they have a personal interest in the matter under discussion. They will then have to decide whether that personal interest is also prejudicial.

A personal interest is an interest that affects the Councillor more than most other people in the area. People in the area include those who live, work or have property in the area of the Council. Councillors will also have a personal interest if their partner, relative or a close friend, or an organisation that they or the member works for, is affected more than other people in the area. If they do have a personal interest, they must declare it but can stay and take part and vote in the meeting.

Whether an interest is prejudicial is a matter of judgement for each Councillor. What Councillors have to do is ask themselves whether a member of the public – if he or she knew all the facts – would think that the Councillor's interest was so important that their decision would be affected by it. If a Councillor has a prejudicial interest then they must declare what that interest is. A Councillor who has declared a prejudicial interest at a meeting may nevertheless be able to address that meeting, but only in circumstances where an ordinary member of the public would be also allowed to speak. In such circumstances, the Councillor concerned will have the same opportunity to address the meeting and on the same terms. However, a Councillor exercising their ability to speak in these circumstances must leave the meeting immediately after they have spoken.

## AGENDA

Pages

<b>1.</b>	<b>PRAYERS</b>	
<b>2.</b>	<b>APOLOGIES FOR ABSENCE</b> To receive apologies for absence.	
<b>3.</b>	<b>DECLARATIONS OF INTEREST</b> To receive any declarations of interest by Members in respect of items on the Agenda.	
<b>4.</b>	<b>MINUTES</b> To approve and sign the Minutes of the meeting held on 24 July 2009.	1 - 26
<b>5.</b>	<b>CHAIRMAN'S ANNOUNCEMENTS</b> To receive the Chairman's announcements and petitions from members of the public.	
<b>6.</b>	<b>QUESTIONS FROM MEMBERS OF THE PUBLIC</b> To receive questions from members of the public.	27 - 42
<b>7.</b>	<b>FORMAL QUESTIONS FROM COUNCILLORS TO THE CABINET MEMBERS AND CHAIRMEN UNDER STANDING ORDERS</b> To receive any written questions from Councillors.	
<b>8.</b>	<b>NOTICES OF MOTION UNDER STANDING ORDERS</b> Three Notices of Motion have been submitted.  <b>NOTICE ONE:</b>  Councillors: RJ Phillips and JP French submitted the following Notice of Motion as a matter of urgency.  <i>"This Council affirms that the sustainable future for our City and County depends on creating more and better paid jobs, significantly increasing the number of homes, particularly affordable, improving leisure and shopping and procuring the supporting infrastructure. This must include another bridge crossing over the Wye and relief roads for Hereford and Leominster."</i>  <b>NOTICE TWO:</b>  Councillors: MAF Hubbard, DJ Benjamin, JD Woodward and MD Lloyd-Hayes submitted the following Notice of Motion as a matter of urgency.  <i>"In the light of the recent economic crisis and other changes to environmental, economic or social factors, Herefordshire Council calls on the Executive to suspend, defer and/or delay the implementation of the current proposals for retail development on the current cattle market site and the related link road.</i>  <i>The Council wishes to provide time for the development of Hereford City to be reconsidered and to determine whether the original merits of such proposals have fundamentally altered and what is possible and what is desirable.</i>	43 - 46

*The Council asks that the Executive urgently examines regeneration measures that will enhance the historic core of the city; support and enhance existing businesses; promote urgently needed, affordable and sustainable housing; improve public transport and the public realm; provide new and imaginative civic amenities; and encourage new leisure facilities, particularly for younger citizens.”*

### **NOTICE THREE:**

Councillors: AT Oliver and WLS Bowen submitted the following Notice of Motion as a matter of urgency.

*“With reference to the Council’s objective to reduce CO2 emissions as set out in the Local Development Framework, Herefordshire Council recognises that it is a vital part of this strategy that all new buildings, whether houses, offices or industrial, should be low/zero carbon buildings, incorporating the best available technology, including renewable energy generation on site. All new developments of 10 Houses or more should have to include energy from renewable sources on site. As part of Herefordshire Council’s commitment to combat climate change this policy should be adopted at the earliest opportunity.*

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| <b>9. NEW CONSTITUTION</b>  | 47 - 58   |
| To seek approval of the Council’s new Constitution.   |           |
| Please note that Members have been issued with the draft Constitution prior to this agenda.   |           |
| <b>10. LGO MALADMINISTRATION REPORT</b>   | 319 - 340 |
| To consider a report and its recommendations from the Local Government Ombudsman.   |           |
| <b>11. CABINET</b>  | 341 - 346 |
| To receive the report and to consider any recommendations to Council arising from the meetings held on 30 July, 10 September, 24 September (reconvened on 1 October) and 29 October 2009. |           |
| <b>12. PLANNING COMMITTEE</b>   | 347 - 354 |
| To receive the report and to consider any recommendations to Council arising from the meetings held on 7 August and 23 October 2009.  |           |
| <b>13. STANDARDS COMMITTEE</b>  | 355 - 356 |
| To receive the report of the meeting of the Standards Committee held on 2 October 2009.   |           |
| <b>14. STRATEGIC MONITORING COMMITTEE</b>   | 357 - 364 |
| To receive the report and to consider any recommendations to Council arising from the meetings held on 21 September and 19 October 2009   |           |
| <b>15. REGULATORY COMMITTEE</b>   | 365 - 368 |

To receive the report and to consider any recommendations to Council arising from the meetings held on 10 August, 9 September; 6 October and 3 November 2009.

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| <b>16. AUDIT AND CORPORATE GOVERNANCE COMMITTEE</b>  | 369 - 370 |
| To receive the report and to consider any recommendations to Council arising from the meeting held on 28 September 2009  |           |
| <b>17. WEST MERCIA POLICE AUTHORITY</b>  | 371 - 380 |
| To receive the reports of the meetings of the West Mercia Police Authority held on 14 July and 20 October 2009. Councillor B Hunt has been nominated for the purpose of answering questions on the discharge of the functions of the Police Authority. |           |
| <b>18. HEREFORD &amp; WORCESTER FIRE AND RESCUE AUTHORITY</b>  | 381 - 384 |
| To receive the report of the meetings of the Hereford & Worcester Fire and Rescue Authority held on 14 September 2009.   |           |



# **The Public's Rights to Information and Attendance at Meetings**

## **YOU HAVE A RIGHT TO:-**

- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of the Cabinet, of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50, for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.
- A member of the public may, at a meeting of the full Council, ask a Cabinet Member or Chairman of a Committee any question relevant to a matter in relation to which the Council has powers or duties or which affects the County as long as a copy of that question is deposited with the County Secretary and Solicitor more than seven clear working days before the meeting i.e. by close of business on a Tuesday in the week preceding a Friday meeting.

Please Note:

Agenda and individual reports can be made available in large print, Braille or on tape. Please contact the officer named on the front of the agenda in advance of the meeting who will be pleased to deal with your request.

The meeting room is accessible for visitors in wheelchairs via the main entrance by prior arrangement. Please telephone 01432 272395

A map showing the location of the Shirehall can be found opposite.

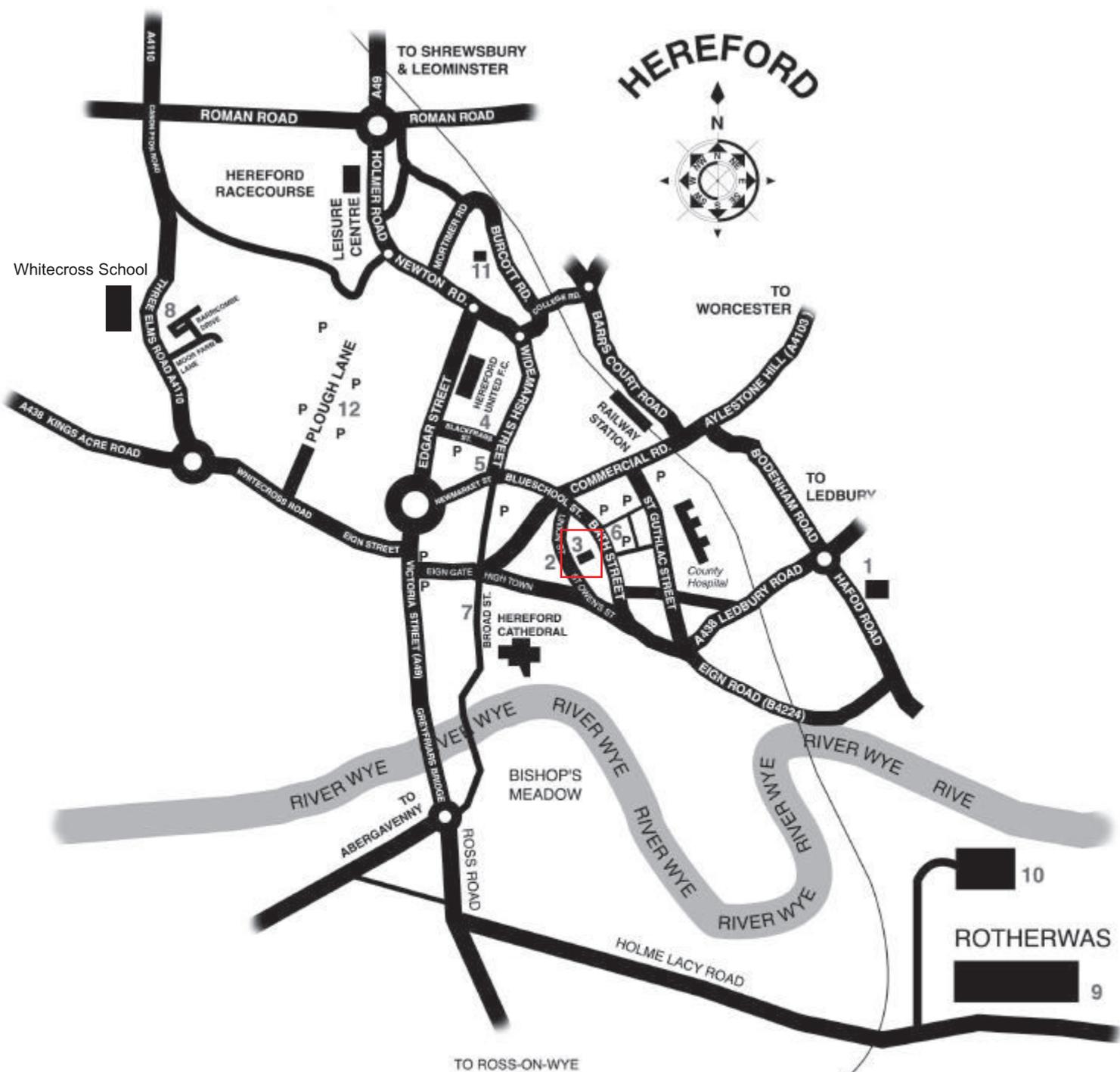
## **Public Transport Links**

The Shirehall is within ten minutes walking distance of both bus stations located in the town centre in Hereford. A map showing the location of the Shirehall is found opposite.

If you have any questions about this Agenda, how the Council works or would like more information or wish to exercise your rights to access the information described above, you may do so either by telephoning Democratic Services on 01432 260249 or by visiting in person during office hours (8.45 a.m. - 5.00 p.m. Monday - Thursday and 8.45 a.m. - 4.45 p.m. Friday) at the Council Offices, Brockington, 35 Hafod Road, Hereford.



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Whitecross School

- |   |                  |    |                                   |
|---|------------------|----|-----------------------------------|
| 1 | Brockington      | 7  | Kemble House                      |
| 2 | Town Hall        | 8  | Trinity House                     |
| 3 | Shire Hall       | 9  | Thorn Office Centre               |
| 4 | Education Centre | 10 | Herefordshire Commercial Services |
| 5 | Garrick House    | 11 | Merchant House                    |
| 6 | Bath Street      | 12 | Plough Lane                       |



# **FIRE AND EMERGENCY EVACUATION PROCEDURE**

## **IN CASE OF FIRE**

**(no matter how small)**

1. Sound the Alarm
2. Call the Fire Brigade
3. Fire party - attack the fire with appliances available.

## **ON HEARING THE ALARM**

Leave the building by the nearest exit and proceed to assembly area on:

## **GAOL STREET CAR PARK**

**Section Heads will call the roll at the place of assembly.**



HEREFORDSHIRE COUNCIL

**MINUTES of the meeting of Council held at The Shirehall, St Peter's Square, Hereford on Friday 24 July 2009 at 10.30 am**

**Present:** Councillor J Stone (Chairman)  
Councillor JB Williams (Vice Chairman)

Councillors: PA Andrews, LO Barnett, CM Bartrum, AJM Blackshaw, WLS Bowen, H Bramer, ACR Chappell, ME Cooper, PGH Cutter, GFM Dawe, BA Durkin, PJ Edwards, MJ Fishley, JP French, JHR Goodwin, AE Gray, DW Greenow, KG Grumbley, KS Guthrie, JW Hope MBE, MAF Hubbard, B Hunt, RC Hunt, TW Hunt, JA Hyde, TM James, JG Jarvis, Brig P Jones CBE, MD Lloyd-Hayes, G Lucas, RI Matthews, R Mills, PM Morgan, AT Oliver, JE Pemberton, RJ Phillips, GA Powell, PD Price, SJ Robertson, A Seldon, RH Smith, RV Stockton, JK Swinburne, AP Taylor, AM Toon, NL Vaughan, PJ Watts, DB Wilcox and JD Woodward

**26. PRAYERS**

The Very Reverend Michael Tavinor, Dean of Hereford, led the Council in prayer.

**27. APOLOGIES FOR ABSENCE**

Apologies were received from Councillors WU Attfield, DJ Benjamin, SPA Daniels, H Davies, P McCaull, DC Taylor and WJ Walling.

**28. DECLARATIONS OF INTEREST**

There were no declarations of interest.

Councillor JK Swinburne advised Council that her name had been omitted from the Council membership list on the agenda and confirmed that she continued to be a Councillor.

**29. MINUTES**

The minutes of the Annual Meeting held on 22 May 2009 were approved as an accurate record.

The minutes of the Extraordinary Meeting held on 12 June 2009 were approved as an accurate record.

**30. CHAIRMAN'S ANNOUNCEMENTS**

On behalf of Council, the Chairman wished Councillor H Davies well as she was soon to receive hospital treatment.

The Chairman informed Council that Herefordshire had received two Royal Visits recently. The Princess Royal toured the Ryefield Centre in Ross-on-Wye and Princess Alexandra visited St Michael's Hospice and the Flower Festival at Lyde Arundel as part of St Michael's Hospice's 25<sup>th</sup> Anniversary celebrations. The Chairman emphasised the wonderful and dedicated work that took place in the Hospice and commended the Cabinet Member Social Care Adults, Councillor LO Barnett for the tremendous support she had provided to St Michael's Hospice during its 25 years.

The Parade by 1<sup>st</sup> The Queen's Dragoon Guards and by B Company 1<sup>st</sup> Battalion, The Rifles in Hereford held on 14 July proved particularly significant with the loss of Rifleman William Aldridge from Bredenbury and four of his fellow Riflemen in Afghanistan only a few days before. A minute's silence was held at Castle Green for William Aldridge and his colleagues and on behalf of the Council the Chairman expressed sympathy to Rifleman Aldridge's family and friends. The Chairman thanked the Dean for remembering Rifleman Aldridge in the Council's opening prayers. The Chairman stated that support for our troops as they marched through Hereford from demanding tours of duty in Iraq and Afghanistan was heartening. The Chairman also recently attended a reception for The Rifles in Coleford in the Forest of Dean.

The Chairman encouraged Members to attend his reception at the Three Choirs Festival on Sunday 9 August at the Bishop's Palace. He stated that Members were looking forward to the Three Choirs Festival which brought great pleasure to the people of Hereford and was good for tourism and the local economy.

Referring to the "No Prejudice in Herefordshire" Motion that was carried unanimously at the Annual Meeting, the Chairman informed Councillors that they would be invited to a Multi-Faith event at Holmer CE Primary School on Monday 19 October and observe workshops for primary school children, run by members of four faith communities, and to take part in a discussion with faith community members. The Chairman of SACRE would send invitations to the event to Councillors shortly.

The Chairman highlighted the success of skate parks in both Hereford and Ledbury, and the opening of a park within Beaumont Gardens. He welcomed such facilities for young people in Herefordshire.

### **31. QUESTIONS FROM MEMBERS OF THE PUBLIC (Pages 1 - 10)**

Copies of all public questions, received by the deadline, with the written answers were distributed prior to the commencement of the meeting. The Chairman advised Members that in line with the Council's agreed process, each Member of the Public who had lodged a written question was permitted to ask one supplementary question, should they so wish. Mr Lee, Mr Clay, Ms Evans, Mr McKay and Ms Roberts asked supplementary questions. A copy of the public questions and written answers together with the supplementary questions and answers are attached as to these minutes.

### **32. FORMAL QUESTIONS FROM COUNCILLORS TO THE CABINET MEMBERS AND CHAIRMEN UNDER STANDING ORDERS**

#### **Question from Councillor AT Oliver to the Cabinet Member Economic Development & Community Services**

If the new retail market goes ahead the Council has undertaken to review it after 12 months.

1.1 *What criteria is the Council going to use to judge success. Is success for the new market traders to have traded profitably in the 12 months, or is success to have increased total footfall in Hereford's city centre?*

1.1.2 *What appraisal has been done by the economic regeneration department about projected turnover from 25 market stalls, trading twice a week, and how much of this turnover will be replacement spending from existing shops?*

## **Answer from Councillor AJM Blackshaw Cabinet Member Economic Development & Community Services**

### 1.1 Judging success of market:

- a) Occupancy and retention rates of stalls will assess trader success.
- b) Monthly monitoring of the number of empty retail outlets in Commercial Street (though it is pertinent to note that a range of other factors could also influence this figure).
- c) Permanent installation of 'footfall' counters in the Buttermarket to ascertain Wednesday and Saturday figures in comparison to other trading days. This will assist in illustrating the contribution that the presence of the Retail Market will have on footfall there.
- d) Assessment of feedback to monthly 'Monitoring Panel' from shops/organisations/residents in vicinity of the Market.
- e) Questionnaire to shops at 'd' above in January 2010 requesting specific feedback on their individual footfall and turnover etc.
- f) Monitoring of Car Park occupancy in the vicinity of Commercial Street.
- g) Public consultation exercise planned for December 2009.
- h) Submission to Cabinet Member in Spring 2010 of the Retail Impact Study containing information in a. to f. above.

1.1.2 An appraisal of the projected financial turnover from the market stalls themselves cannot be accurately obtained. However in the creation of the Retail Market, avoidance of duplication with shops has been considered where possible. If there is duplication then there is at least a 10 metre distance between the shop and the stall. The Market should increase shopper footfall so theoretically more money to go around. Hopefully the shop retail offer can reciprocate support to the Market. It is impossible to quantify the amount of spend diverted from shops, but it is envisaged footfall increasing in the area, thus benefiting retail outlets. This has been seen at other locations around the Country e.g. at Nuneaton and Middleton.

## **Question from Councillor AT Oliver to the Cabinet Member Corporate & Customer Services & Human Resources**

- 1.2 *What was the total cost of salaries paid by the Council in the year to 31 March 2009, and what was the total number of employees at that date (non-school and schools)? Please break down the information between each of the Council's directorates.*
- 1.2.1 *What was the combined total cost of all basic salaries paid to the former Chief Executive and Directors of the Council in the twelve months prior to the appointment of the current Chief Executive, Chris Bull?*
- 1.2.2 *What is the total cost of the Herefordshire Connects Programme from its inception to 31 March 2009, broken down between items charged to capital and revenue costs?*
- 1.2.3 *What emergency planning is in place if we were to have a major outbreak of Swine Flu in the winter months and how might our schools and Council departments be affected?*

**Answer from Councillor JP French Cabinet Member Corporate & Customer Services & Human Resources**

1.2 The total cost of salaries by directorate:

Number of Employees	Directorate	Total Pay £
383	Adult Social Care	6,411,200.78
9	Chief Executive	676,086.78
3,897	Children and Young People	69,226,169.49
251	Deputy Chief Executive	5,162,019.23
59	Assistant Chief Executive Human Resources	980,462.82
65	Assistant Chief Executive Legal and Democratic	1,451,984.03
417	Environment and Culture	7,547,626.03
246	Regeneration	5,329,657.90
244	Resources	4,572,077.74
Total		101,357,284.80

1.2.1 The combined total cost of salaries for Chief Executive and Directors for 2006/07: £679,651.50

**Answer from Councillor PD Price Cabinet Member ICT Education and Achievement**

1.2.2 The information is being collated and will be provided to Councillor Oliver shortly.

**Answer from Councillor JP French Cabinet Member Corporate & Customer Services & Human Resources**

1.2.3 The Joint Emergency Planning Unit have a detailed plan in support of individual service plans to deal with any Swine Flu outbreak. It is impossible to predict the implications on schools or other Council services with any certainty. The plans will ensure that the critical services are prioritised and that the well being and safety of Herefordshire residents is paramount. We will of course follow current and future guidance issued by Central Government and Associated Agents.

**Question from Councillor JD Woodward to the Cabinet Member Highways and Transportation**

- 2.1 *The Flood Recorder on the River Wye is not working and has not done so for approximately 6 months. It was the responsibility of the Environment Agency but now is the responsibility of Herefordshire Council. It is a vital piece of equipment for the residents especially in Greyfriars Ave and Wye Terrace in the protection of their properties, when can we expect it to be in full working order.*

**Answer from Councillor DB Wilcox Cabinet Member Highways and Transportations**

- 2.1 Although historically this service was the only source of information available, the gauge to which Councillor Woodward refers is now of limited use as it only tells those who call it the current river level at the Old Wye Bridge, Hereford. In addition it has frequently been unobtainable to many callers during times of flood given its low call capacity.

The Council recommends that local residents use the Environment Agency's Flood line which provides information on both current and predicted levels and the timing of the peak flood; this information is of far greater value to all in their response to flood.

A flood warning service is also available, through the Flood line (Tel: 0845 9881188 or via the link on the Council's website). Through this service residents will receive flood warnings, which are accurate and should be regarded as a trigger for action.

**Question from Councillor MD Lloyd-Hayes to the Cabinet Member Resources**

- 3.1 *The Auctioneers on the Cattle Market entered into a 25 year agreement to operate on the new proposed cattle market site. In which year was this agreement made and signed?*

**Answer from Councillor H Bramer Cabinet Member Resources**

- 3.1 The decision to authorise the then Head of Property Services to conclude terms with the Hereford Market Auctioneers was taken on the 23 April 2003 and, following negotiations, the agreement was completed on 28 April 2004.

**33. NOTICES OF MOTION UNDER STANDING ORDERS**

Councillor GFM Dawe moved urgency to suspend standing orders in line with para 4.22 and 4.17 of the constitution, in order for Council to consider holding a special meeting of the Council to discuss the implications of announcement to delay the construction of an outer distributor road. Seconded by Councillor MD Lloyd Hayes.

A vote was taken to suspend standing orders. The motion was not carried.

The Leader advised Council that the announcement by Government regarding the outer distributor road was an important issue for the county and city and it should be discussed at the next Council meeting on 13 November 2009.

**34. A NEW CONSTITUTION FOR HEREFORDSHIRE COUNCIL - TIMETABLE AND PROCESS**

The Cabinet Member Corporate, Customer Services and Human Resources, Councillor JP French, presented the report and moved the recommendations. The Cabinet Member underlined the importance for Members to be provided the opportunity to consider and be briefed on the revised constitution. Whilst it had been recognised that the current constitution required revision, it was the view of the cross party Constitutional Review Working Group that work be progressed during the summer and autumn for final consideration at the Council meeting on 13 November.

In seconding the recommendations, the Leader of the Liberal Democrat Group, Councillor TM James endorsed the approach outlined in the report.

Several members articulated support to the report's recommendations and expressed the wish that the constitution be updated to provide clarity of language for the benefit of all, including the public. The view was also expressed and supported that the scope for ambiguity to be removed from a revised constitution.

**It was agreed unanimously THAT Council:**

- (a) requests that the Monitoring Officer in consultation with the Constitutional Review Working Group develops a new Constitution for Herefordshire Council in accordance with the brief (Appendix 1), process and timetable (Appendix 2) outlined in this report;**
- (b) requests the Monitoring Officer and the Constitutional Review Working Group consider the constitutional areas set out in Appendix 3 and have regard to the impact of the work set out in Appendix 4 and any imminent or pending legislative or other changes;**
- (c) requests that the Monitoring Officer present a report and new Constitution for consideration and agreement by the Council at its next meeting**

### **35. PROPOSED CHANGES TO THE DELIVERY OF PLANNING SERVICES IN HEREFORDSHIRE**

The Cabinet Member Environment and Strategic Housing, Councillor JG Jarvis, presented the report and advised Members that the Council should consider improving and innovating its planning system, as not doing so could negatively impact on the Council's reputation, open the processes to challenge and could affect the forthcoming CAA inspection regime.

Councillor JG Jarvis stated that the development industry, applicants and agents had received the opportunity to feed into the process. The Audit Commission report emphasised the need for the Council to upgrade its practices to best enable the facilitation of appropriate development in general and specifically the Growth Point initiative. Members were advised of the options for their consideration, the detail for which were outlined within the report; it was however emphasised that retaining the status quo was not an option, as this would not improve the effectiveness and efficiency of the planning system nor end the confusion of the current system.

The Cabinet Member Environment and Strategic Housing informed Members that he recommended Option 1 for Council's agreement, as a single Committee of 19 well trained councillors. This approach would allow a re-modelling of the whole service to reflect best practice. He highlighted the role of Members within the proposed planning

system and emphasised their important role as community leaders and their engagement with those involved in the application process. Acting as advocates, all ward members would be able to debate, discuss and would be free to get involved when an application in their ward was being considered. Members would be expected to ensure local views were expressed in discussions with officers in order that decisions could be made as to whether or not to call in the application or deal with it under delegated powers. Ward members would also be responsible for discussing with local parish and town councils potential 106 agreements and to liaise with the 106 officer and case officer. Councillor JG Jarvis advised Council that the rights of ward members at planning meetings would include opening the debate, making short closing remarks, and with the discretion of the chairman being involved in the debate, though Members would leave the chamber for the vote.

Members were informed of the call in process proposed and Councillor J Jarvis stated that local members would have an early discussion with the case officer on planning applications within their ward. In considering whether an application is called in Members would need to give sound planning reasons, however in addition to the current system, sensitivity would become a reason for call in. This major concession was totally dependant on the local knowledge of the ward member.

Councillor JG Jarvis stated that the current referral system was flawed and would be disposed of within the proposed Option 1. However should Members vote against the recommendation of officers, a mechanism would provide for the Head of Service to bring the item back to the next Planning Committee meeting with three reports (as outlined in the report) which would cut down on the appeal application and the cost and officer time involved. It will also demonstrate professionalism to the public.

Councillor JG Jarvis outlined how the proposed change would affect members of the public, which included providing clarity in the way in which we deal with applications, no confusion if members vote against officer recommendation, members of the public would be able in those circumstances to make amendments to satisfy the committee, the applicant could expect an answer from their ward member on their view and what support they could expect, applicants might in certain circumstances change their applications to satisfy members' concerns to allow an application to go through. Councillor RJ Phillips seconded the recommendations and reserved the right to speak later in the debate.

Councillor B Hunt moved two amendments to recommendation (a) as follows:

- (i) delete the word 'single' and replace with 'strategic'.
- (ii) Add to the end of the final sentence 'that all Councillors be appointed to one of two area planning committees on an appropriate geographic basis'.

Seconded by RI Matthews who reserved the right to speak later in the debate.

Following advice from the Assistant Chief Executive Legal and Democratic Services, regarding provisions relating to suspension of political proportionality, amendment (ii) was altered to read 'that all Councillors be appointed to one of three area planning committees'.

Councillor B Hunt advised Council that, whilst he welcomed the majority of the report, the proposed changes had a direct negative impact on democracy, a cost he was unwilling to support as he stated that the removal of the majority of Members from Planning Committee deliberations was to the detriment of the authority. He raised concerns regarding the unsubstantiated comments made within the Audit Commission's report and questioned the need to tamper with the existing committee system. In emphasising the view that any revised planning system needed to meet local needs and circumstances he stressed the expectation of the public in their local Councillor having a

vote on planning issues. Councillor B Hunt supported the view that the current referral system would discontinue.

Councillor MJ Fishley requested to know what the consequences would be of not actioning the Audit Commission's recommendations.

Councillor PJ Edwards requested of the Chairman that consideration be given to Members speaking more than once in the debate in order to allow new issues pertinent to the discussion to be aired. Councillor PJ Edwards additionally asked that, should a single committee be agreed in principle, that Council considered suspending political proportionality (as with Regulatory Committee and Strategic Monitoring Committee) as this would demonstrate the importance of democracy.

From her personal experience with the Audit Commission, Councillor AM Toon urged Council not to act too rashly and raised concerns regarding the possibility of changing the right of response process and questioned the fairness and transparency of a new system as it would change the responsibility of local members. Councillor AM Toon additionally stated that a new planning committee system would see an increase in the cost of site visits. The point was also raised that the current system supports the deliberations of complex planning matters e.g the recent application concerning the proposed development of 50+ houses on the former SAS site; whilst this application was opposed in Central Planning Committee (in applying the principles of the UDP), it was expected that in onward referral to main Planning Committee this decision could be overturned.

Councillor MD Lloyd Hayes emphasised that Councillors were elected to represent the public and those who did not have a vote on planning issues would be denied the opportunity to represent their constituents fully. In supporting the amendment, Councillor Lloyd Hayes drew attention to the current political representation of the area Planning Committees and expressed concern that major planning issues may be agreed at a single planning committee, decisions which may be opposed to the wider public opinion.

Councillor PA Andrews advised Council that whilst undertaking the Planning Services Scrutiny Review, no figures had been made available to assess the potential cost savings of a revised planning system. Councillor Andrews supported the concerns raised regarding the views of the Audit Committee and stated that political proportionality should not be required within a new planning committee structure.

Councillor RI Matthews, in seconding the motion advised Members that the recently published LGA guidance document 'Probity in Planning' stated that; *'the intention of the guidance is not to suggest that there is one best way of doing things. Local circumstances may well provide good reasons for local variations of policy and practice'*. Councillor Matthews informed Council that the new Shropshire Unitary Council, comparable in its rural geographical nature to Herefordshire, had established three area planning committees. He expressed concern that the Audit Commission report lacked an understanding of rural authority issues and that the report's recommendation went against current Government guidelines which sought to deliver more power to the locality through parish councils and ward members. On this basis, Councillor Matthews stated that any revised planning committee, other than that based on the amendment, was diluting democracy and could prove to be costly due to the likelihood of an increase in site visits required and which could be overturned in a future administration.

Councillor PM Morgan echoed the comments made regarding lack of information on supposed to efficiencies and cost reductions. However, should cost savings be delivered and the planning system improved, it would be to the benefit of both the Council and the public.

Councillor TM James informed the Council that he took exception to the comments of the Audit Commission that referred to Councillors as being too 'parochial', when government policy focussed on the 'localism' agenda. Reference within the Audit Commission report on the cost of appeals related to UDP costs. Councillor TM James was of the view that the planning system should not be a process of ticking boxes and should a single planning system be agreed, he considered it to be an undemocratic option which would deliver centralist policy and politicise planning unnecessarily merely to satisfy a non democratic quango. Councillor TM James commented that issues of the relationship between Members and Officers, and Officers and the public needed to be considered and be more constructive. He stated that as the sole Liberal Democrat Member on the Northern Area Planning Committee he worked with fellow members to determine decisions, and as such the current planning arena was an area within which all political groups worked together well and went on to say that it should be recognised that Council would at times make wrong decisions. Councillor James stated that as a general election would be called in the forthcoming months, dramatic changes would be expected in National Government which would directly impact on local government.

Councillor SJ Robertson, speaking in support of the amendment to retain three committees, stated that she wished to protect her vote on an area planning committee and expressed the view that Members on a single planning committee would have difficulty in forming a view on applications outside their area, and as such the number of site visits would increase. Councillor Robertson emphasised the importance of relevant training for all members as all Councillors would need to be kept updated on planning issues. Councillor Robertson supported the removal of the referral process.

Speaking in support of the amendment, Councillor A Seldon expressed concern that Councillors' planning role was being removed as he stated that the electorate considered this function to be important.

Councillor JD Woodward spoke in support of the amendment and stated that the retention of three area planning committees was vital as they were representative of the areas under consideration and emphasised the importance of the Members' vote, although was in agreement that the referral system should be stopped. Concern was expressed by Councillor Woodward that local ward members' views could be ignored within the proposed single planning committee system and that planning decisions could be made by those who were unfamiliar with the localities. She raised additional concerns that the current planning committee was not reflective of the county as it did not include representation from one of the Market Towns (Leominster) and a letter from a concerned Leominster organisation was read out to that effect.

Councillor JP French acknowledged the comments raised in debate regarding the Audit Commission report, however she emphasised that the debate on the need for a revised planning system had matured and that a new style system would enable members to be less constrained in their involvement in planning issues than as currently allowed. A revised system would provide Members with the ability to attend and listen to discussion. Training would need to be an integral part of supporting a new system as ward members would need to use planning reasons for call in processes. Councillor French emphasised that efficiency savings would need to be identified and delivered, however the delivery of a streamlined system was not about delivering service cuts or diminishing the democratic role. The concerns raised in the letter was acknowledged. She stated that having one committee and clarifying the role of the ward representatives would prove effective and emphasised that it was right that local members would not have a vote with applications in their wards and it was the role of Members to articulate their views together with the community's and make representation to the committee. Councillor JP French stated that she had come to the conclusion that a single committee was the way forward and would be supporting Option 1.

Councillor JK Swinburne stated that there was a perception that retaining the status quo would be beneficial as it delivered locally determined decisions as opposed to a centralist approach. However, should the system be changed, reassurance was required that strong mechanisms would be in place for all members to air their views and that these views should be acted upon appropriately. Member briefings on any new system was key to providing clarity and assurance in the process.

Councillor PJ Edwards expressed his support for a single planning committee as it provided more freedom for local members to fully represent their communities. He expressed the view that some issues would need to be resolved e.g hearing process, and he stated that further consideration needed to be given to this as the current proposal seemed to replace the referral system with another.

In his closing remarks as the proposer of the amendment, Councillor B Hunt urged members to maintain Herefordshire's democratic image by voting for the amendment. He emphasised that whilst he agreed in principle with the main points of the report, and acknowledged the Cabinet Members consultation with political groups, he considered retaining three area planning committees of paramount importance.

A named vote was taken on the amendment, which was lost.

In moving the debate to consider the recommendations as outlined in the report, Councillor RJ Phillips underlined planning's quasi judicial function and its relationship with the legal process. He highlighted that it was usual practice in many local authorities not to have all members represented in the planning committee system. Councillor RJ Phillips stated that further detail would be discussed within the cross party Constitutional Review Working Group. It was his view that the role of the local member be reconfigured in order that they be invited to contribute both at the opening and closing stages of the debate; as this would better inform the planning committee of all relevant local issues. Councillor Phillips stated that the planning system needed to be clear and transparent to the public and to applicants and emphasised that training would not to be limited to 19 members as all members must fully understand the quasi-judicial role and system of planning.

Councillor RV Stockton welcomed the change in the focus of relationship between elected members and planning officers, but stated that this aspect needed to be carefully considered in order that Members were assured that it was effective in practice.

Councillor KS Guthrie sought clarification on the role of the ward member in relation to a single planning committee.

Councillor RH Smith stated that he deeply regretted the shortcomings of the Audit Commission's report and viewed its assertions as questionable. He stated that given that increased delegation was implicit within the proposal, he sought assurance that ward members would be advised by officers if an application would be delegated in order that the call in process could be considered. Subject to these views, Councillor RH Smith informed Council that he would support the proposal.

Councillor ACR Chappell announced his support of a single planning committee but requested that the proposed size be reconsidered. He expressed the view that consideration needed to be given to the relationship between multi member wards and the planning committee as the opening and closing contributions of up to three members (possibly of differing political parties) per application could prove lengthy. Councillor Chappell welcomed the ability that the proposed system would provide for him to make representations on behalf of his ward and stated that such planning systems were being established across the country

Councillor RC Hunt welcomed the proposal and specifically the fact that local members could take part in the debate. He stated that the public on some occasions considered Members to be disinterested in their issues due to current constraints. Councillor RC Hunt noted the views articulated from the letter in respect of Leominster and stated that he was aware of them. In light of this, he expressed the view that issues relating to representation be considered within the membership of the planning committee. Additional consideration would need to be given on the frequency of meetings.

Responding to the comment regarding multi member wards, Councillor DB Wilcox stated that, regardless of political make up, members worked well for the benefit of their residents. He welcomed the opportunity the proposed system would have to increase ward members contribution and represent their electorate and stated that he would support Option 1.

Councillor MAF Hubbard stated that the rationale behind establishing a single committee in order to deliver savings and clarity was acknowledged, but sought assurance that the full experience of members would be considered when representation was determined. Councillor MAF Hubbard proposed an amendment to recommendation (a) which he considered would address these concerns and ensure that a breadth of experience was brought to the table:

'... and that the membership of the Planning Committee is carefully negotiated to ensure geographical representation of Hereford City, all our Market Towns and rural areas under a nem com rule which would enable Council to suspend political proportionality'.

Councillor MAF Hubbard stated that this would provide a democratic balance which could otherwise be viewed as a deficit e.g. representation of City, Market Towns and rural areas. He expressed his support to a single system.

The motion was seconded by Councillor PJ Edwards.

Councillor JP French suggested that this issue be considered by the Constitutional Review Working Group. This view was supported by Councillor TM James and he stated that there were related issues, such as political proportionality which would need to be considered as a whole.

Councillor JK Swinburne left the meeting.

The Assistant Chief Executive Legal and Democratic provided advice that this issue would be appropriate to be considered for further discussion at the Constitutional Review Working Group. On a technical legal point, and for accuracy the wording of the amendment was changed to include 'subject to the nem com rules on suspension of proportionality being adhered to'. Councillor Hubbard agreed to amend the wording of the amendment to; 'that membership of the Planning Committee be carefully negotiated to include geographical representation as best can, in line with political proportionality'.

Responding to the questions raised during debate, the Cabinet Member for Environment and Strategic Housing stated that ward members would be informed of planning applications and that provision of call in would be made available subject to meeting the relevant criteria. He supported the opportunity for CRWG to consider the issue of geographical representation of Planning Committee membership, which would remain politically proportionate in line with the current Planning Committee (as they both consisted of 19 members). Assurance was given that appropriate training would be provided to Members.

Members were requested to consider the recommendation (a) of the report 'The Council agrees Option 1 as set out in the report, namely to establish a single Planning Committee (19 Members)' and advice given that should Council agree in principle to the following amendment, the detail could be considered at a later date 'that membership of the Planning Committee be carefully negotiated to include geographical representation as best can, in line with political proportionality'.

A vote was taken on the recommendation and motion which was carried.

**RESOLVED That Council agreed in principle:**

- (a) The Council agreed Option 1 as set out in the report, namely to establish a single Planning Committee (19 Members)**
- (b) agreed the revisions to the scheme of delegation to officers;**
- (c) noted the proposed changes to the role of members in the planning process;**
- (d) agreed the revised arrangements for handling planning applications proposed to be determined contrary to officer recommendation; and**
- (e) authorised the Monitoring Officer and the Constitutional Review Working Group to reflect these changes in future revisions to the Constitution.**

Councillors Greenow and Durkin left the meeting

### **36. CABINET**

The Leader of the Council, Councillor RJ Phillips, presented the report of the meetings of Cabinet held on 4 and 25 June 2009.

Responding to comments raised by Councillor WLS Bowen regarding the Council's performance in communicating and responding to the public, the Leader requested that any examples of unsatisfactory response times be provided to the Chief Executive or Councillor JP French, Cabinet Member Corporate, Customer Services and Human Resources. Councillor JP French underlined the importance of good communications with the public and stated that the authority should strive for decent performance at all times. The Chief Executive would be requested to raise these issues with the Joint Management Team. Councillor RH Smith requested that it be recorded that he was awaiting the resolution of a long-standing issue which was currently being considered by the Deputy Chief Executive.

Referring to the item on ESG Retail Quarter Development Agreement (pg 59 para 7.2.1), Councillor MD Lloyd Hayes expressed concern that the Council was bringing disrepute on the county and Hereford city as the decision of the Cabinet to endorse the signing of the Development Agreement was far removed from public opinion.

Responding to a question raised by Councillor AM Toon regarding the Procurement Strategy (pg 60, para 11.3) and the suggestion that a seminar be held for small and medium sized local businesses, the Cabinet Member Resources, Councillor H Bramer advised Council that such seminars had been held and assured Members that additional briefings for local businesses were being held.

**RESOLVED: That the report from the meetings of Cabinet held on 4 and 25 June 2009 be received.**

**37. HEREFORDSHIRE UNITARY DEVELOPMENT PLAN 'SAVED' POLICIES**

The Cabinet Member Environment and Strategic Housing, Councillor JG Jarvis presented the report to Council. Councillor JG Jarvis advised Council that the proposed list of policies to be saved had been assessed against six criteria. The issues under consideration had previously been discussed at the Planning Committee and endorsed for Council's approval by Cabinet.

Councillor GFM Dawe objected to the saving of UDP policy T9 'Road Freight' on the basis that this policy would include the outer distributor road which was not now expected until 2014.

**RESOLVED THAT:**

- a) **Council approve those policies and proposals within the Herefordshire Unitary Development Plan that the Council wish to be saved as set out in Appendix 1 and those not to be saved as set out in Appendix 2 beyond the expiry of the three-year saved period; and**
- b) **The Secretary of State's agreement be sought to issue a direction to this effect.**

**38. PLANNING COMMITTEE**

Councillor TW Hunt presented the report of the meeting of the Planning Committee held on 15 May and 3 July 2009. Members were referred to page 76 para 2(c) and advised that the word 'staircase' should be added to the end of the final sentence.

Responding to a comment raised by Councillor AM Toon regarding the lack of numbers of appeals around delegated authority, Councillor TW Hunt stated that this matter was currently being looked into.

**RESOLVED: That the report of the meetings of the Planning Committee held on 15 May and 3 July 2009 be received.**

**39. STANDARDS COMMITTEE**

Mr David Stevens presented the report of the meeting of the Standards Committee held on 10 July 2009.

**RESOLVED: That the report of the meeting of the Standards Committee held on 10 July 2009 be received.**

**That Council approved the appointment of Councillors Mary Morris and Nicky Carless as alternative parish and town council representatives, and Councillors JE Pemberton and AE Gray as alternative local authority representatives of the Standards Committee, to substitute for corresponding Standards Committee members when required.**

**40. STRATEGIC MONITORING COMMITTEE**

Councillor PJ Edwards presented the report of the meeting of the Strategic Monitoring Committee held on 15 July 2009.

**RESOLVED: That the report of the meeting of the Strategic Monitoring Committee held on 15 July 2009 be received.**

**41. REGULATORY COMMITTEE**

Councillor Brig P Jones CBE presented the report of the meetings of the Regulatory Committee held on 9 June and 14 July 2009.

**RESOLVED: That the report of the meetings of the Regulatory Committee held on 9 June and 14 July be received.**

**42. AUDIT AND CORPORATE GOVERNANCE COMMITTEE**

Councillor ACR Chappell presented the report of the meeting of the Audit and Corporate Governance Committee held on 19 June 2009.

**RESOLVED: That the report of the meeting of the Audit and Corporate Governance Committee held on 19 June 2009 be received.**

**43. WEST MERCIA POLICE AUTHORITY**

Councillor B Hunt presented the report of the West Mercia Police Authority held on 5 May 2009. Members were advised that as part of the Planning Process 2010/2011 a stakeholder consultation evening would be held in Hereford during January 2010. Members' attention was also drawn to the launch of a new logo and motto 'Serving, Protecting and Making a Difference' and to the new structure which would be centred around five key panels.

Responding to comments from members, Councillors B Hunt and RH Smith advised that they would provide feedback to the Police Authority regarding their use of such language as 'stakeholder consultation event' and would encourage the use of more relevant language e.g. public meetings.

Members were advised that West Mercia Police was rated in the country's top three constabularies.

Referring to a specific question regarding bail raised by Councillor Chappell, Councillor B Hunt advised that he would provide a response outside the meeting.

**RESOLVED: That the report of the meeting of the West Mercia Police Authority held on 5 May 2009 be received.**

**44. HEREFORD & WORCESTER FIRE AND RESCUE AUTHORITY**

Councillor Brig P Jones CBE presented the report of the meetings of the Hereford & Worcester Fire and Rescue Authority which were held on 18 February and 26 June 2009.

Members noted that Councillor Brig P Jones CBE had been re-elected as Chairman of the Hereford and Worcester Fire and Rescue Authority.

Councillor JP French congratulated the service provided by the Fire and Rescue Authority in dealing with a recent severe fire in Leominster. A tremendous result was achieved due to the advance procurement of a new fire suppression system which was used for the first time during this incident.

Responding to a question posed, the Assistant Chief Executive Legal and Democratic advised Members that the post of Clerk/Monitoring Officer to the Fire and Rescue Authority received a fee, which was received by the authority, not the individual.

**RESOLVED: That the report of the meetings of the Hereford & Worcester Fire and Rescue Authority which were held on 26 June 2009 be received.**

The meeting ended at 1.05 pm

**CHAIRMAN**



## PUBLIC QUESTIONS TO COUNCIL – 24 JULY 2009

**Question from Ms M Burns, Hereford**

As the Cabinet Member has not answered the question:

What studies have Herefordshire Council undertaken into traffic movements (all modes) in and around Hereford since the Hereford Transport Review Multi-modal Study (pub. Feb 2003), and will the data from any of these studies be included in the report on transport for the Local Development Framework? If so, which ones?

(Answer from Councillor DB Wilcox Cabinet Member, Highways and Transportation: 'There has been extensive work and studies undertaken to update the 2003 study, and this work is nearing completion, under the working title of "Multi Modal Model". It is hoped that a final version will be published by the end of June 2009 so that it can inform the consultation exercise which the Council's Forward Planning is going to undertake on the emerging Core Strategy for the Council which is a key part of the Local Development Framework. The consultation is due to start later this year.')

Here is clarification:

- 1.1 *Please give the titles, dates, authors, public availability of all studies into traffic movements (all modes) undertaken by the Council since the 2003 Hereford Transport Review. Please indicate which of the listed studies will be taken into consideration in the forthcoming report on transport.*

**Answer from Councillor DB Wilcox, Cabinet Member Highways and Transportation**

- 1.1 A specific strategic transport study has been commissioned to help assess the transport requirements resulting from housing and employment land use options under consideration through the Local Development Framework. This study comprises the building of a new multi-modal transport model which has been developed from the model used for the Hereford Transport Review. As a multi-modal model, whilst the outputs are at a strategic level, it will provide a forecast of transport movements by all modes including car, public transport (bus and rail), cycle and walk. The outcome of this modelling work will be used to inform preferred housing distribution options in the Local Development Framework. The Final Forecasting Report and Local Model Validation Report resulting from this work will be published and made available to the public as part of the LDF process. The work is being undertaken by JMP Consultants and has been commissioned jointly by the Highways Agency and Herefordshire Council. Whilst it was hoped that this work would be complete by June 2009 it is now anticipated that the final reports will be available in the autumn of 2009.

In addition to the above, the Council has undertaken a range of specific transport studies since the Hereford Transport Review in 2003. These include:

**PUBLIC QUESTIONS TO COUNCIL – 24 JULY 2009**

<b>Transport Study Title</b>	<b>Date</b>	<b>Author</b>
Rotherwas Access Road Major Scheme Business Case	July 2005	Owen Williams
Hereford North Park and Ride Masterplan	December 2005	Owen Williams
Edgar Street Grid Car Parking Review	Ongoing	Crowd Dynamics
<b>Various Cycle Schemes:</b>		
Great Western Way Extension Holmer Cycle Way Feasibility Report	October 2005	Owen Williams
Community Street Audit report of St Owens Street	January 2009	Living Streets
Connect 2: Hereford-Holme Lacy Feasibility Report	April 2007	Amey

Where it is relevant any of the information in these reports will be used to inform the LDF process.

More detailed work will be progressed to fully assess the extent to which demand management/sustainable transport modes can be introduced in the longer term strategy for the Local Development Framework period. It is anticipated that this work will also be used directly in the Local Development Framework, forming a key component of the evidence base.

**No supplementary question was asked.**

## PUBLIC QUESTIONS TO COUNCIL – 24 JULY 2009

### Question from Mr A Lee, Herefordshire Area Chairman – The Ramblers Association

On 22 January 2009, Herefordshire Council announced its intention to go forward with the proposed contract with Amey Wye Valley for the management and delivery of a range of services including highways, parks, public open spaces and public rights of way. Our concern for all things relating to Public Rights of Way (PROW) in Herefordshire prompted several questions from The Herefordshire Ramblers.

We did receive answers and although not entirely happy with the responses, they were reluctantly accepted, as we were told in a letter from the Council on 19 May 2009 that “..... negotiations with Amey are continuing and it is anticipated these will be concluded shortly to enable the new arrangements to be put in place over the summer this year. Whilst the management and the delivery of these services would transfer to Amey, the responsibility remains with the Council and client and contract management arrangements are being put in place to ensure the services continue to be delivered and are improved where possible. ....”

We believe these negotiations are still ongoing, with no conclusion in sight. In the meanwhile many PROW issues are effectively held in abeyance pending a final outcome. PROW staff have left and there are vacancies within the PROW department that are not being filled. PROW personnel, part time and temporary staff are performing a valiant fire-fighting role but this is obviously not the way forward or even a solution to hold station.

- 2.1 *What steps is Herefordshire Council taking to ensure that PROW services continue to be delivered whilst negotiations continue?*
- 2.2 *What steps is Herefordshire Council taking to ensure that PROW services improve whilst negotiations continue?*

### Answer from Councillor DB Wilcox, Cabinet Member Highways and Transportation

- 2.1 Whilst negotiations continue, the Public Rights of Way Section continues to deliver the service ensuring priorities are given to hazardous maintenance issues on the network. With over 4000 calls and reports and over 2100 miles of network, the public rights of way section rely on members of the public and user groups to report defects and prioritise them as per the guidance in the Rights of Way Improvement Plan 2007 – 2011. The Public Rights of Way Service actively seeks to use volunteers where possible and has funded maintenance training programmes for groups to respond to issues on the network. Since April 2009 a further 10 parishes have been recruited onto the P3 Scheme (Parish Path Partnership Footpath Scheme) where a grant is provided to Parish Councils who then take responsibility for maintaining their own footpath network.
- 2.2 The feedback received from the 2009 Herefordshire Walking Festival which was “overwhelmingly good” and the provision of new Loop Walk Leaflets across the county is proving very popular with footpath users. The team is continually ensuring that improvements are being made to the network on the ground. This service has recently produced two Definitive Map Modification Orders with a view to adding

## **PUBLIC QUESTIONS TO COUNCIL – 24 JULY 2009**

additional routes to the network and demonstrates that improvements are still being made. Herefordshire Council recognises that Public Rights of Way are an increasingly important resource for the community in terms of enhancing health and well-being and appreciation of the rural environment.

### **Supplementary Question from Mr Lee.**

As the importance of the public rights of way network had been recognised within Council documents and strategies, would Herefordshire Council make adequate resources available, both in terms of financial and staffing resources, to support and protect the County's heritage, and specifically that of the Public Rights of Way network?

### **Answer from Councillor DB Wilcox, Cabinet Member Highways and Transportation**

The Public Rights of Way activity competed with other Council demands and cost centres all of which needed to deliver best value for money. No assurances could be provided on the availability of additional funds at this stage due in part to the current economic climate.

## PUBLIC QUESTIONS TO COUNCIL – 24 JULY 2009

### Question from Mr B Clay, Hereford.

- 3.1 *How many buses enter and leave Hereford City Centre each week day?*
- 3.2 *How many buses currently stop at Hereford Railway Station each week day?*
- 3.3 *What approximate forecast does the Cabinet Member Highways and Transportation have as to the number of buses that would enter and leave the 'Transport Hub' outlined in the ESG Masterplan?*

### Answer from Councillor DB Wilcox Cabinet Member Highways and Transportation.

- 3.1 Average of 478 arrivals and corresponding number of departures.
- 3.2 Average of 75 arrivals and corresponding number of departures.
- 3.3 If the transport hub replaces the Country Bus Station there will be an estimated 192 arrivals and corresponding number of departures based on current service levels.

### Supplementary question from Mr Clay.

The answers given imply a decrease in the number of bus services that would be arriving and departing from the transport hub and railway station than at the current time. No evidence had been provided that there would be an increase in public transport to assist traffic congestion and it appeared that buses and bus services were a low priority.

### Answer from Councillor DB Wilcox Cabinet Member Highways and Transportation.

For clarity, the answers provided at 3.3 related to the estimated number of arrivals and corresponding departures based on current service provision expected in the transport hub. The answer provided at 3.1 related to the number of bus services which enter Hereford City Centre. In having regard to the Integrated Transport Strategy, there were an ever increasing numbers of people travelling by trains and buses, with the use of train travel having increased by 20% since 2007. The number of bus service provision had increased overall. The increase in the use of public transport system was supported by the Council and reflected in the local Integrated Transport Plan's Improvement Plan.

## PUBLIC QUESTIONS TO COUNCIL – 24 JULY 2009

### **Question from Ms B Evans, Kings Thorn, Hereford.**

- 4.1 *What mode of travel would be recommended to a business person from London visiting Hereford for the day?*
- 4.2 *What mode of travel would be recommended to a Hereford business person visiting London for the day?*

### **Answer from Councillor DB Wilcox Cabinet Member Highways and Transportation.**

4.1 – 4.2 The recommendation would be rail.

### **Supplementary question from Ms B Evans.**

The Cabinet Member would be aware that the service from Hereford to London was poor, with passengers requiring to change trains at Newport and the restrictive train times especially during the afternoon. Would the Cabinet Member agree that a direct line from Hereford to London and Birmingham International Airport should be provided?

### **Answer from Councillor DB Wilcox Cabinet Member Highways and Transportation.**

On travelling to London yesterday the Cabinet Member stated that he caught the train from Hereford, which required a change at Newport, and used the tube system when in London. Major improvement works were currently being undertaken regarding twin tracking together with timetable improvements. The Cabinet Member and Chairman met with the Managing Director of London Midland during the early part of the franchise. Improvements were also being undertaken in respect of the direct line to London through Oxford.

## PUBLIC QUESTIONS TO COUNCIL – 24 JULY 2009

### **Question from Mr P McKay, Leominster, Hereford.**

I have put a number of questions to Council, engaged in the feedback system as encouraged to do, put forward suggestions for Scrutiny, and raised questions at scrutiny meetings re: agenda items, all relating to the value and importance of having complete and correct highway records, yet discovering that it would appear that the possible cost of maintenance of unrecorded ways discourages corrective action, i.e., there is a conflict of interest between your duty to protect the public right of passage v the possible cost of maintaining that passage, with the latter concern appearing to dominate.

- 5.1 *I have suggested in my feedback responses, and by means of question of scrutiny committee re: agenda item, both as yet without reply, that Council raises a report concerning the accuracy of its highway records, along with questionable errors and omissions, in order that the issues raised may be fully understood, discussed and policies concerning them agreed in a proper open and democratic manner, and I now ask the full Council if you will raise such a report?*

### **Answer from Councillor DB Wilcox Cabinet Member Highways and Transportation**

- 5.1 Herefordshire Council have a substantial network of highways to maintain including public rights of way and roads. The focus of resources is to ensure the safe and unhindered passage of users along the existing network. There are generally clear procedural methods by which applications can be made to amend that network either through the planning processes or the production of evidence which brings the current records, being the list of streets and the definitive map, into question. The council does not have the resources to go searching for changes to the current highway records, but application made by members of the public are investigated through the Definitive Map Modification Order process on a prioritised basis and changes are made to the network accordingly.

### **Supplementary question from Mr P McKay**

It was noted that the duty to comply with and correct definitive map records would be moving from the Council to Amey. When would the records be made available on-line?

### **Answer from Councillor DB Wilcox Cabinet Member Highways and Transportation**

The detail of the contract was currently being negotiated, however it was expected that current levels of service available would be at least maintained if not improved.

## PUBLIC QUESTIONS TO COUNCIL – 24 JULY 2009

### Question from Ms P Roberts, Leominster, Hereford.

- 6.1 *Road traffic is clearly a problem in Hereford, so why is the redevelopment of the train station and 'transport hub' only the third and final stage of the ESG link road plan?*

### Answer from Councillor DB Wilcox Cabinet Member Highways and Transportation

- 6.1 It is acknowledged that the amount of traffic on Hereford's roads can be problematic, however the ESG scheme is not designed, or expected, to alleviate the city's traffic issues, rather it will enable the smoother flow of traffic around the city and mitigate the traffic impact created by the development itself.

Solving the longer term transport issues in Hereford will only be achieved by using a combination of methods – for example Park and Ride, sustainable transport options, new cycle paths, and an Outer Distributor Road.

The Transport Hub proposals are one of the ESG scheme's key elements. However its achievement is strongly linked to the construction of the Link Road given that access to the station and "Hub" will be via the new road.

It is likely that the Link Road will be constructed on a West to East basis. One reason for this phasing is that it will enable road linkages between Edgar Street and Widemarsh Street to be constructed early in the development programme.

However there is also a wider issue to be considered with the Link Road and Transport Hub. The Link Road as a project has a local impact given that it will improve traffic movements around the city, whilst the Transport Hub has city, county and region wide impacts given that it will become the focal point for rail and bus access to the city.

This status requires dealing with a number of key stakeholders and interest groups, including the train operators and rail network operators, bus companies, passenger groups etc. Inevitably incorporating everyone's views and reaching an appropriate consensus will be a complicated process taking a considerable amount of time, hence the necessity for placing this element towards the final stages of the development process.

### Supplementary question from Ms P Roberts

Glad that the Cabinet Member supports the twin tracking and the 20% increase in the number of train passengers especially in light of the recent announcement that the outer distributor road may have a significant delay. However, as it appeared that the investment in the transport hub remained in the third and final stage of the ESG link road plan project, should this be reconsidered?

### Answer from Councillor DB Wilcox Cabinet Member Highways and Transportation

## **PUBLIC QUESTIONS TO COUNCIL – 24 JULY 2009**

The Cabinet Member highlighted paragraph four of the answer which stated that the phasing enabled road linkages between Edgar Street and Widemarsh Street to serve the retail quarter. There was currently no exact date for the transport hub implementation, but it would be progressed as fast as possible within the current economic climate. Discussions were underway regarding issues around the transport hub with stakeholders, which included both bus and train franchises and the public in general. A public exhibition had recently been held in Aylestone on the transport hub.

## PUBLIC QUESTIONS TO COUNCIL – 24 JULY 2009

### Question from Mr M Wilson, Lugwardine, Hereford.

Questions 7.1 to 7.4 refer to questions raised by Mr Wilson at the reconvened meeting of Council on the 17 February 2009.

- 7.1 *When is this Council going to require the Chairman of the Standards Committee to act in an open and transparent manner that allows Members and the public to have confidence in the reports and answers that he places before them?*
- 7.2 *What actions have been taken to ensure it does not happen in the future?*
- 7.3 *Were the decision notices valid?*
- 7.4 *Surely it is time that some scrutiny should be given to the work of these committees and their supporting officers?*

At the Standards Committee quarterly meeting on 10 July agenda item 8 was 'to consider the adoption of the Council's Stage 3 complaints procedure as a means of assisting aggrieved complainants.'

- 7.5 *Why were the first two key points on the agenda never even discussed?*

### Advice to Council from the Monitoring Officer

I am taking the step of providing advice to Council on this question. I am the relevant statutory officer and it is appropriate for me to do so.

I would advise the Council not to answer these questions. The operation of the standards framework is a matter for the Monitoring Officer, the local Standards Committee and the Standards Board for England.

I have seen the previous questions put to Council and the answers given.

I have also seen the recent correspondence sent by Mr Wilson to the Council that contained these questions and some of the earlier correspondence with the Council on this subject. I am concerned about the content. There is material in that correspondence that attacks the motives of Council officers and officials and is potentially defamatory.

As the Council's new Monitoring officer I have called for all the relevant papers and will review these issues on the Council's behalf. It is important that the Council has confidence in the local standards regime and accordingly I will report back my findings to the appropriate person or body within the Council. I do not believe it is appropriate for the Council to continue to receive and answer questions on these matters.

If any member has any question about this they should contact me.

### A supplementary question was not permissible.

<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>13 NOVEMBER 2009</b>
<b>TITLE OF REPORT:</b>	<b>QUESTIONS FROM MEMBERS OF THE PUBLIC</b>
<b>REPORT BY:</b>	<b>ASSISTANT CHIEF EXECUTIVE LEGAL AND DEMOCRATIC</b>

**CLASSIFICATION:** Open

### **Wards Affected**

County-wide

### **Purpose**

To receive any questions from members of the public deposited more than six clear working days before the meeting of Council.

### **Introduction and Background**

- 1 Standing Order 4.24 of the Constitution states that: A member of the public may ask a Cabinet Member or Chairman of a Committee any question relevant to a matter in relation to which the Council has powers or duties or which affects the County as long as a copy of that question is deposited more than six clear working days before the meeting i.e. by close of business on a Wednesday in the week preceding a Friday meeting.
- 2 Any question which contains defamatory material or the publication of which is likely to be detrimental to the Council's interests, may be rejected.
- 3 A total of 25 minutes shall be set aside for the answering of questions from members of the public save that the Chairman, or Vice-Chairman, if presiding, shall have absolute discretion to vary the period of time by making it shorter or longer as he/she considers appropriate. Any questions unanswered at the expiry of the time limit shall be dealt with by way of written reply to the questioner.
- 4 A member of the public who has lodged a written question (or series of questions) to Council is permitted to ask **one** supplementary question only.
- 5 Supplementary questions will be dealt with in the same order as the questions are presented in the Agenda i.e. the order in which they are received by post or electronically. Once each formal written question (or series of questions from the same person) has been answered, the Chairman may invite the person who submitted the written question to raise one supplementary question only, if they wish to do so.

### **Questions**

- 6 Seven questions have been received by the deadline and are attached at Appendix 1.



## **PUBLIC QUESTIONS TO COUNCIL – 13 November 2009**

### **Question from Ms P Roberts Leominster, Hereford**

- 1.1 *What funds have been made available to assist in the re-location of businesses affected by the proposed ESG Link Road?*
- 1.2 *How many businesses will have to close or re-locate to facilitate the proposed ESG Link Road and how many people are employed by these businesses?*



## PUBLIC QUESTIONS TO COUNCIL – 13 November 2009

### Questions from Mr B Clay, Hereford.

- 2.1 *What is the latest estimate of the total Capital costs of the new Cattle Market and related infrastructure?*
- 2.2 *What estimate does the Cabinet Member have of the costs to the Council of maintaining the new Cattle Market?*
- 2.3 *What is the Cabinet Member's latest information as to the number of houses to be built on the Edgar Street Grid? Please give figures for the "Urban Village", The "Retail Quarter" and the "New Area". How many of these houses will be Socially Affordable?*
- 2.4 *Would the Cabinet Member welcome a proposal for a new Multiscreen in the Centre of Hereford if it were not part of the development Agreement with Stanhope Plc.*



## PUBLIC QUESTIONS TO COUNCIL – 13 November 2009

### Question from Mrs U Clay, Hereford.

- 3.1 *What plans are there for a new Hereford City Library?*
- 3.2 *What are the practices / procedures in place to give learning disabled adults who wish to move into supported living / residential accommodation the choice to which the legal framework entitles them to?*
- 3.3.1 *What are the advantages / disadvantages for the Council to use bloc contracts for providing services for vulnerable adults?*
- 3.3.2 *What advantages / disadvantages for service users (clients) arise from the Council's use of bloc contracts?*
- 3.4 *How much notice were service users given of the closure of Workmatch and what alternative workplace experiences are now available for the users who lost that service?*
- 3.5 *How prepared are the Council for the end date for block contracts (next spring) and what procedures will be followed to ensure an open market as well as stability for providers and people funded through a block contract?*



## **PUBLIC QUESTIONS TO COUNCIL – 13 NOVEMBER 2009**

### **Question from Mr J Miller, Leominster, Herefordshire**

In June of this year the Deputy Chief Executive told both myself and the local newspapers that the cancellation of the June 25 Leominster by-election was the Council's fault, that the Council apologised and that the Council only wished to discover what went wrong so that this could never happen again.

- 4.1 Why then did the Council, in the High Court and on a very minor technicality, seek to stop my June 25 election petition, the effect of which would have been to prevent the Council's representatives repeating before an open court that what happened was the Council's fault, repeating that the Council apologised and finding out in open court what went wrong so that it can never happen again?
- 4.2 Who authorised a senior lawyer of the Deputy Chief Executive's office to send a letter of 14 September threatening to cripple me with punitive costs unless I withdrew my petition entirely?



## PUBLIC QUESTIONS TO COUNCIL – 13 November 2009

### Question from Mrs B Evans, Hereford

- 5.1 *What is the total financial contribution from the Council to the ESG company so far? Please provide outturn up to the end of the 2008/9 year, latest estimate for the current year and current estimate for the 2009/10 year.*



## PUBLIC QUESTIONS TO COUNCIL – 13 November 2009

### Questions from Mr G Thomas, Hereford

- 6.1 *Can Herefordshire Council explain why a JVC Company was selected as the preferred structure to deliver the regeneration of ESG?*
- 6.2 *Can the Council state the total quantum of expenses claimed by the board of ESG in addition to salaries, since the company's inception to current filed Company accounts as of today's date?*
- 6.3 *Can the Council Leader confirm if under his general powers 'To be responsible for the Corporate Strategy and Finance Programme Area of the Councils operations,' he has ever aborted a project for fiduciary reasons?*
- 6.4 *Can the Council confirm if the ESG Herefordshire Ltd is exempt from the Freedom of Information Act?*
- 6.5 *Can the Council state where and provide a map of the Air Quality Management Area in the City of Hereford and highlight where it is getting larger?*
- 6.6 *Can the Council confirm whether the ESG Supplementary Planning Document is fully compliant with Legislation as to monitoring and baseline indicators to show 'reasonable consultation has taken place'?*
- 6.7 *Is Cabinet satisfied with the ESG masterplan and that ESG is delivering it?*



## **PUBLIC QUESTIONS TO COUNCIL – 13 November 2009**

### **Questions from Mrs A Crowe, Ledbury**

- 7.1 *Can you supply details of usage of St Katherine's Car Park, Ledbury for the last three years based on the amount of parking tickets bought?*
  
- 7.2 *Can you promise the people of Ledbury that alternative car parking to cover this capacity will be found within the centre of Ledbury during the building work at the Masters House and new library?*



## NAMED VOTE LIST

13 November 2009

## Notice of Motion 1 – Councillors RJ Phillips and JP French

Councillor	FOR	AGAINST	ABSTAIN	Councillor	FOR	AGAINST	ABSTAIN
PA Andrews	X			TM James	X		
WU Attfield	X			JG Jarvis	X		
LO Barnett	X			P Jones CBE	X		
CM Bartrum	X			MD Lloyd-Hayes			X
DJ Benjamin	X			G Lucas	X		
AJM Blackshaw	X			P McCaull	X		
WLS Bowen	X			RI Matthews	X		
H Bramer	X			R Mills	X		
ACR Chappell	X			PM Morgan	X		
ME Cooper	X			AT Oliver	X		
PGH Cutter	X			JE Pemberton	X		
SPA Daniels	X			RJ Phillips	X		
H Davies	-----APOLOGIES -----			GA Powell	X		
GFM Dawe		X		PD Price	X		
BA Durkin	X			SJ Robertson	X		
PJ Edwards	X			A Seldon	X		
MJ Fishley	-----APOLOGIES -----			RH Smith	X		
JP French	X			RV Stockton	-----APOLOGIES -----		
JHR Goodwin	X			J Stone	X		
AE Gray	-----APOLOGIES -----			JK Swinburne	X		
DW Greenow	-----			AP Taylor	X		
KG Grumbley	X			DC Taylor	X		
KS Guthrie	X			AM Toon	X		
JW Hope MBE	X			NL Vaughan	X		
MAF Hubbard			X	WJ Walling	-----APOLOGIES -----		
B Hunt	X			PJ Watts	X		
RC Hunt	X			DB Wilcox	X		
TW Hunt	X			JB Williams	-----APOLOGIES -----		
JA Hyde	X			JD Woodward			X

<b>TOTALS</b>	<b>FOR</b>	47	<b>AGAINST</b>	1	<b>ABSTAIN</b>	3
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# 2

## HEREFORDSHIRE COUNCIL

### NAMED VOTE LIST

13 November 2009

#### Notice of Motion 2 – Councillors MAF Hubbard, DJ Benjamin, JD Woodward and MD Lloyd-Hayes

Councillor	FOR	AGAINST	ABSTAIN	Councillor	FOR	AGAINST	ABSTAIN
PA Andrews			X	TM James			X
WU Attfield	X			JG Jarvis		X	
LO Barnett		X		P Jones CBE		X	
CM Bartrum			X	MD Lloyd-Hayes	X		
DJ Benjamin	X			G Lucas		X	
AJM Blackshaw		X		P McCaull			X
WLS Bowen			X	RI Matthews	X		
H Bramer		X		R Mills		X	
ACR Chappell			X	PM Morgan		X	
ME Cooper		X		AT Oliver			X
PGH Cutter		X		JE Pemberton		X	
SPA Daniels	-----			RJ Phillips		X	
H Davies	-----APOLOGIES -----			GA Powell			X
GFM Dawe	X			PD Price		X	
BA Durkin		X		SJ Robertson	X		
PJ Edwards		X		A Seldon			X
MJ Fishley	-----APOLOGIES -----			RH Smith		X	
JP French		X		RV Stockton	-----APOLOGIES -----		
JHR Goodwin		X		J Stone		X	
AE Gray	-----APOLOGIES -----			JK Swinburne		X	
DW Greenow		X		AP Taylor			X
KG Grumbley		X		DC Taylor		X	
KS Guthrie		X		AM Toon			X
JW Hope MBE		X		NL Vaughan		X	
MAF Hubbard	X			WJ Walling	-----APOLOGIES -----		
B Hunt			X	PJ Watts		X	
RC Hunt		X		DB Wilcox		X	
TW Hunt		X		JB Williams	-----APOLOGIES -----		
JA Hyde		X		JD Woodward	X		

<b>TOTALS</b>	<b>FOR</b>	<b>8</b>	<b>AGAINST</b>	<b>31</b>	<b>ABSTAIN</b>	<b>12</b>
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<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>13 NOVEMBER 2009</b>
<b>TITLE OF REPORT:</b>	<b>NEW COUNCIL CONSTITUTION</b>
<b>REPORT BY:</b>	<b>ASSISTANT CHIEF EXECUTIVE LEGAL AND DEMOCRATIC</b>

**CLASSIFICATION:** Open

**Wards Affected**

County-wide

**Purpose**

To seek approval of the Council's new Constitution

**Key Decision**

This is not a Key Decision.

**Recommendation(s)**

**THAT Council**

- a) **Adopts its new Constitution to take effect on 1 January 2010**
- b) **Confirms the composition and members of the Planning Committee**
- c) **Designates its Community Services Scrutiny Committee as its Crime and Disorder Committee**
- d) **Instructs the Chief Executive to prepare and adopt scheme of delegation in accordance with the new Constitution by no later than 1 January 2010**
- e) **Instructs the Monitoring Officer to:**
  - i. **complete Parts 6 and 7 of the Constitution before 1 January 2010**
  - ii. **complete Part 8 of the Constitution as soon as possible after 1 January 2010**
  - iii. **incorporate any amendments agreed by Council into the new Constitution**
  - iv. **correct any typographical or other errors**
  - v. **deliver training as appropriate on the new Constitution.**
- f) **Agrees that the Monitoring Officer be authorised to finalise the Constitution in consultation with the Chairman of the Council.**
- g) **Recommends that the Monitoring Officer undertake the following:**
  - i. **to complete the web-enabling of the Constitution,**

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Further information on the subject of this report is available from  
Charlie Adan, Assistant Chief Executive – Legal and Democratic on (01432) 260200

- ii. to review the deferred matters referred to in this report
  - iii. to consult with the Standards Committee about whether the new Constitution promotes high standards of conduct within the Council
  - iv. to consult and seek our partners and the public on the new Constitution; and
  - v. present further report as necessary reflecting that further work; and
  - vi. carry out this work with the Constitutional Review Working Group
- h) Agrees that the Constitutional Review Working Group be retained to assist with such further work as it determines

### **Key Points Summary**

- 1 On 24 July 2009 the Council agreed to review its Constitution and that the Monitoring Officer report at this meeting on the review with her proposals for a new Constitution.
- 2 The review process and the matters discussed by the Constitutional Review Working Group are set out in this report. The report also explains other steps taken to engage Councillors in the review process.
- 3 The report contains an explanation of the format and content of the new Constitution.
- 4 Further work is needed to implement the new Constitution and the Council is asked to agree that it take effect on 1 January 2010.
- 5 There were some matters not dealt with as part of this review and the Monitoring Officer recommends further review work is undertaken in those areas.

### **Alternative Options**

- 6 The alternative options in each of the areas of the Constitution were discussed at the Constitutional Review Working Group.
- 7 The Council now has the following options:
  - a. To accept the Constitution as drafted
  - b. To accept the Constitution as drafted with amendments
  - c. To reject the new Constitution and retain its existing Constitution.

### **Reasons for Recommendations**

- 8 The new Constitution reflects the principles and details agreed informally by the Constitutional Review Working Group and views of some members more generally gathered at the member seminar.
- 9 The new Constitution is presented in a simpler and more accessible format and explains more easily how the Council operates. The Council's current Constitution is in a more complicated format and is more difficult to follow and understand. It also contains some inconsistencies and areas of duplication.
- 10 The new Constitution reflects the relevant law and ensures compliance with all legal requirements. It is also in the recognised and recommended statutory modular format.

## **Introduction and Background**

- 11 At its meeting on 24 July 2010 the Council agreed that:
  - a. The Monitoring Officer in consultation with the Constitutional Review Working Group develops a new Constitution for Herefordshire Council in accordance with an agreed brief, process and timetable outlined in a report to that meeting
  - b. The Monitoring Officer and the Constitutional Review Working Group consider the constitutional areas and have regard to the impact of the work set out in the report to that meeting and any imminent or pending legislative or other changes;
  - c. The Monitoring Officer present a report and new Constitution for consideration and agreement by the Council at its next meeting
- 12 The report explains the purpose and brief for the review and the constitutional areas and other work referred to above.
- 13 The Monitoring officer has worked with the Constitutional Review Working Group and the report reflects those highlighting the new format and principle changes that the Group agreed the Monitoring Officer should include within the new Constitution.
- 14 It also highlights a range of other matters raised by Councillors during the review process.
- 15 It is proposed that the Constitution be implemented on 1 January 2010 and the Council is also asked to consider the steps needed to achieve that.

## **Key Considerations**

- 16 The purpose of the new Constitution agreed by Council on 24 July 2009 was
  - a. To ensure that Councillors, Council staff and partners know how the Council functions
  - b. To ensure that the people of Herefordshire know how the Council functions
  - c. To ensure that the Council adheres to the principles of good governance
  - d. To ensure that the Council delivers on its promises in its Code of corporate governance
  - e. To ensure that the Council has in place the necessary rules and protocols to
  - f. ensure that it can conduct its affairs effectively and efficiently and with probity
  - g. To ensure that it is compliant in all respects with the legislative framework and statutory guidance
  - h. To ensure that it is accessible and easily understood
- 17 The brief for the Monitoring Officer was:
  - a. To keep it simple and produce a constitution that is tidy concise and easy to follow
  - b. To ensure that the development of the constitution takes into account governance best practice and reflects advice and guidance available
  - c. To ensure that the Constitution reflects and balances all the different roles of Councillors

- d. To ensure that the Constitution provides a framework for partnership working, community participation and that it helps the Council focus on achieving outcomes
  - e. That it reduces bureaucracy and streamlines the constitutional systems and processes
  - f. That it provides flexibility for the Council to develop its governance arrangements
  - g. to meet future changes and is a blueprint for new ways of working Herefordshire that are developing
- 18 On 24 July, the Council also agreed that the constitutional arrangements in the following areas should be considered as part of the review:
- a. The arrangements for Cabinet meetings
  - b. Scrutiny arrangements
  - c. Planning Committee arrangements –reflecting the decisions of Council on 24 July 2009
  - d. The Full Council meeting
  - e. The role and functions of Chairman and Vice Chairman of Committee
  - f. Forward planning, agenda management and key decisions
  - g. Delegations to officers
  - h. The Policy framework and policy hierarchy
  - i. Joint working and partnership arrangements – flexibility for the future
  - j. Councillor call for action and petitions
- 19 A cross party Constitutional Review Working Group has met every week during September and October 2009. That Group considered the purpose and the brief and during its meetings considered a range of matters as follows

20 The following principles were agreed and have been reflected in the new Constitution.

#### Format of the Constitution

- 21 The new Constitution is in plainer English and is in a simple format. The new Constitution is in 8 parts.
- 22 The Council is asked to approve the first 5 parts which have been provided in full as follows:
- a. Part 1 – contains a list of the contents of the Constitution, an introduction to the Council and to its Constitution. This part is intended to provide an overview and should be easily understood by the public who want to know in summary how the Council operates. This is new and is not covered in the current Constitution.
  - b. Part 2 – contains a contents list which shows each of the areas covered by 13 Articles. The Articles gives a concise explanation of each element of the constitutional arrangements. Most of this information is available in the current constitution but is not easily found. There is more information than in the current constitution about Councillors, the rights and responsibilities of citizens, working with partners including reference to the partnership with the PCT and a new section on access to information.
  - c. Part 3 – contains the Functions Scheme and details who is responsible for what functions. This contains the information that has traditionally been referred to as the Scheme of Delegation. This content of the Functions Scheme is explained in more detail in the section on decision making below.

- d. Part 4 – sets out the procedure rules for the conduct of Council business and is set out in sections relating to the bodies carrying out council functions and about specific activities. The Council Rules in Section 1 deal with the Council meeting but also apply to the rest of the Council’s activities except where the other rules in Part 4 override them.
  - e. Part 5 – contains the Codes that must be observed by Councillors and Council staff in the conduct of Council business and detail the way in which certain specific matters are dealt with. The codes dealing with the role of the Chairmen of Committees have been updated and the codes on Councillor Call for Action, Petitions and Audit and Governance Codes (to reflect CIPFA best practice) are new Codes. Some of the Codes and Protocols in the current Constitution have been removed because they duplicated other provisions elsewhere in the Constitution.
- 23 The Council is asked to agree that Parts 6-8 should be completed by the Monitoring Officer before the Constitution is implemented. Having this information in the last 3 sections of the Constitution enables amendments to be made more easily when changes are made. These parts are as follows:
- 24 Part 6 – will contain the Members Allowances scheme that is approved by Council from time to time on recommendation of its independent remuneration panel. It is a legal requirement that this information is set out in the Council’s Constitution
- 25 Part 7 – will contain:
- a. The details of the number of Cabinet members and the portfolio of each as decided from time to time by the Leader of the Council. The law requires that this information is included within the Constitution and it is clearer and more easily found if this is included in Part 7 rather than in the detailed provisions found in Part 3. The Leader is not intending to make any changes to these arrangements at this time but if any changes are made they can be easily made by simply replacing the relevant section of Part 7.
  - b. The 5 Scrutiny Committees current areas of responsibility. The only change is that the Council is required to nominate one of these Committees as its Crime and Disorder Scrutiny Committee and it is intended that the Communities Scrutiny Committee should be so designated. The Council determines the remit of its Scrutiny Committees at its Annual meeting.
  - c. The Management structure is the responsibility of the Chief Executive in consultation and within the overall establishment budget agreed by Council. The law requires that this be included in the Council’s Constitution. If this is in Part 7 the Constitution can be more easily changed if the Chief Executive makes changes to the management structure.
- 26 The Monitoring Officer is authorised by the Constitution to make changes to Parts 6 and 7 to reflect any changes decided by the Council, the Leader and the Chief Executive to those arrangements.
- 27 Part 8 is a glossary of terms used in the Constitution which will be maintained by the Monitoring Officer.

#### Decision taking

- 28 The Functions Scheme at Part 3 is greatly simplified and is based on the following principles.
- 29 By law, the Cabinet fulfils all functions that are not either defined by law as Council functions (set out in Part 3 – Section 2) or have been allocated to the Council or some other body in its Constitution (known as Local Choice Functions – and allocated in Part 3 Section 4). Those Council and Local Choice functions can in turn be delegated to an officer to carry them out on behalf of the Council.
- 30 Cabinet functions must be carried out by either the Cabinet collectively, a Cabinet committee or an individual Cabinet Member. Those functions can also be delegated to an officer. In Part 3 Section 3 there is an explanation of the criteria for deciding what functions must be carried out by the Cabinet collectively and those which may be carried out by individual Cabinet members. There are no formal Cabinet committees. Where a matter requires a decision of more than one Cabinet member those decisions are taken by the individual Cabinet Members (usually at the same or about the same time). All Cabinet functions that are not within the criteria set out in that section, are carried out by an officer.
- 31 All key decisions must be taken by Cabinet or a Cabinet Member. The definition of key decision is found in Part 4 – Section 2 – the Access to Information Rules and has been changed. The financial level is now stated as £1m but the definition makes it clear that is not the only criteria by which a key decision is defined.
- 32 Scrutiny functions are described in Part 3 – Section 5 and other functions such as planning and regulatory functions are allocated to the relevant Committees or other bodies at Part 3 – Section 6.
- 33 The informal arrangements that also operate to support the formal decision making are set out at Part 3 – Section 7. The role of Group Leaders is a new addition not currently in the Council’s Constitution. Similarly the role of the Ward Councillor is reflected in this part.
- 34 In Part 3 – Section 8 all functions to be carried out by an officer are allocated to the Chief Executive. In the current Constitution, functions are delegated to a variety of officer posts.
- 35 This is a different approach to the current Constitution and has the benefit of clarity and avoids the need to change the Constitution if the management structure changes.
- 36 Having a Functions Scheme that provides for the Chief Executive to fulfil all functions not specifically allocated to the Council, the Cabinet, individual Cabinet Members or another Council body has the benefit of certainty and is comprehensive. This avoids any possible risk that a decision cannot be taken because there is no constitutional provision for a specific function. It is also simpler to understand. The current Constitution contains various lists of specific functions allocated to specific Council bodies or officers and there is a risk that if those lists are inconsistent or not comprehensive, a decision may be taken without due authority.
- 37 Some legal powers require the Council to designate one of its officers as the proper officer for that function. At Part 3 – Section 9 the Council designates the Chief Executive as its proper officer for all such purposes.
- 38 However, as it is impractical for all decisions to be taken personally by the Chief Executive, an officer scheme of delegation (referred to as the Chief Executive’s Scheme

of Delegation) is needed. Work is underway to complete this before the new Constitution is implemented on 1 January 2010 and this information will be provided to all Councillors and made publicly available.

#### Scrutiny arrangements

- 39 The Scrutiny arrangements at Part 3 – Section 5 reflect the decisions taken by members during the review of scrutiny work facilitated by the Leadership Centre and Cllr John Lamb.
- 40 The call-in procedures in the Scrutiny Rules (Part 4 – Section 5) have been developed so that they more accurately reflect the legal framework and purpose of the call-in procedure.

#### Forward planning and agenda management

- 41 The greater scrutiny involvement in policy development and pre-decision scrutiny and the changes to the Functions Scheme requires a more effective forward planning and agenda management regime. This is not a matter for the Constitution but the Constitutional Review Working Group discussed how this could be achieved and how the informal arrangements need to be developed. The Group recognised that there was a need for greater member involvement in forward planning to enable items for pre-decision scrutiny to be identified earlier and built into work programmes and for key decisions and those meeting the criteria for Cabinet decision to be readily identified and agreed.

#### Partnership working

- 42 It is not appropriate for the Council Constitution to detail all the governance arrangements relating to its partnerships. Partnerships are constitutionally separate to the Council and should have their own joint governance arrangements agreed between the partners.
- 43 However, the new Constitution contains more details of the partnership arrangements at Article 9 in Part 2.
- 44 Some functions may be delegated to officers who work for both the Council and the PCT but are employees of the PCT. In order for those officers to carry out Council functions under the Chief Executive's Scheme of Delegation, the Council must designate those PCT employees as officers of the Council. This is provided for in Part 3 – Section 8.

#### Access to Information

- 45 Article 13 in Part 2 contains details of the information available to Councillors and to the public and explains the interaction between the different information regimes. This area is very complex and the Monitoring Officer will be providing additional guidance and training on these matters to supplement the information in the Constitution.

#### The Council meeting

- 46 The main changes to the rules relating to the Council meeting can be found in the Council Rules (Part 4 – Section 1). These are:
  - a. The rules relating to public questions have been tidied up; in particular, the criteria for questions being rejected are now clearer.

- b. There is a time limit for dealing with questions; half an hour maximum for public questions, the same for members' questions and an overall time limit for questions of 1 hour maximum.
- c. The time for submission of questions has been changed slightly to allow more time for answers to be produced.
- d. There is a time limit for motions for debate.
- e. The agenda for the ordinary meetings has been slightly changed to reflect the nature of reports and recommendations from the Cabinet
- f. The arrangements for setting the budget and policy framework have changed slightly to allow for the budget setting meeting in February and the setting of the Council tax at the March Council meeting. The law provides that a period for any objections raised by Council to the budget recommended to it by Cabinet which requires this slight change to the Council rules. The detailed rules for setting the budget and policy framework are set out in Part 4 – Section 3.
- g. The role of the Chairman in exercising discretion in the conduct of the meeting is restated in the Council Procedure Rules.

### The Cabinet meeting

- 47 The Cabinet Procedure Rules at Part 4 – Section 3 explain the arrangements for decision making by Cabinet and the conduct of the Cabinet meeting. The role of non-Cabinet members is more clearly explained. The Constitutional Review Working Group has recommended that the layout of the meeting is changed to ensure that the role of those attending is clearer and more properly reflects the division of responsibility between Cabinet and non Cabinet members. These changes will be agreed with the Leader of the Council and explained to all regular member and officer attendees before they are implemented. The rules require that the Leader explains who is at the meeting at its start so that the public are clearer about the roles of each of those present.

### Planning

- 48 The changes to the Planning arrangements agreed by Council on 24 July 2009 are reflected in the Functions Scheme (Part 3 – Section 6) “Planning Committee Functions”, in the Planning Rules (Part 4 – Section 8) and in a revised Planning Code (Part 5 – Section 14).
- 49 The Planning Committee of 19 members must be politically proportionate. It is not possible to have a constitutional requirement that members are drawn from across the County and are representative of both urban and rural wards. Such a requirement would contradict and could conflict with the statutory political balance rules. Instead, the Constitutional Review Working Group suggested that when making nominations Group Leaders should be asked to have regard to the need to reflect geographic diversity in the membership of the Committee.
- 50 The current Planning Committee complies with the composition and political balance requirements and the Council is asked to confirm membership of that Committee. Alternatively, the Council could choose to change the membership at this time.

### Employment matters

- 51 The role of members in employment matters has been simplified and narrowed to reflect the legal requirements in that regard. The new arrangements can be found in Part 3 – Section 6 (the functions of the Employment Panel and the Employment Appeals Panel) and in the Employment Rules at Part 4 – Section 9.

52 Those rules will be applied in conjunction with the Council's recruitment policies and procedures.

53 It remains the intention that members will have an informal role in some other key appointments as is currently the case.

#### Deferred matters

54 The following matters have been deferred for further work:

- a. The functions and procedure rules for Regulatory Committee
- b. The procedures for Standards Committee assessments, reviews and determination hearings which it was felt should be in the Constitution
- c. A review of the Contractual and Financial Procedure Rules

55 The member seminar raised the following further issues for consideration:

- a. Use of plain English – securing the crystal mark for the Constitution
- b. The production of a diagram that shows the Council's Functions Scheme
- c. A review of representation on outside bodies and clearer guidance on conflicts of interest and other issues arising from such appointments
- d. Public feedback on the new Constitution – is it more accessible?
- e. Greater public involvement – the duty to involve community representatives in Council activities building on the PACT meetings and the recent Hearts of Herefordshire pilot activities

#### Implementation and further action

56 These deferred matters will be built into a continuing work programme and it is recommended that Council retains the Constitutional Review Working Group to continue this work with the Monitoring Officer.

#### Web-enabling and version control

57 The Constitutional Review Working Group agreed that the Constitution should be available on the Council's website. Initially it will be available in PDF format. However, to improve accessibility the aim is to make the document fully interactive and web-enabled so that it is possible to move between related parts of the Constitution more easily. The Constitutional Review Working Group received a demonstration of the way in which North East Derbyshire District Council has done this and would like a similar facility to be made available in Herefordshire Council.

58 The Monitoring Officer will introduce a system of version control so that any updates and amendments are incorporated into all hard copies of the Constitution and changed on the internet version as soon as agreed in future.

#### Implementation

59 In order to implement the Constitution on 1 January 2010, the Council is asked to instruct the Monitoring Officer to undertake the further work in Recommendation (f).

#### **Community Impact**

60 The new Constitution more clearly explains the Council's vision, aims and objectives for the County and its partnership arrangements. This should enable the public to

understand more clearly what the Council and its partners are trying to achieve and how they work together to do that.

- 61 The format and content of the new Constitution should make it simpler and more accessible to the public and should enable communities within the County to understand more clearly how the Council operates.
- 62 The rights and responsibilities of citizens and the arrangements for public involvement in Council business are more clearly set out in the new Constitution.
- 63 The rights of the public to Council information is summarised in the Constitution and the follow up guidance on rights to information which is planned should enable the public to gain easier access to information about the Council and its services.

### **Financial Implications**

- 64 The changes to the Constitution will require some changes to the way the Council works. However, the aim has been to streamline governance arrangements and to avoid duplication and unhelpful or overly bureaucratic processes in the constitutional arrangements. The impact of these changes of the staffing resources both within Legal and Democratic Services and elsewhere within the Council have not been fully assessed but it is envisaged that these changes will not have an impact on the level of resources needed to properly support the Council's governance and financial arrangements.
- 65 There have been no substantive changes to the Council's current Financial or Contract Procedure Rules (Part 4 – Sections 7 and 8).

### **Legal Implications**

- 66 The new Constitution reflects the statutory requirements and guidance and is in accordance with the modular format established as part of the guidance following the introduction of the changes in the Local Government Act 2000.

### **Risk Management**

- 67 There are no risk management implications

### **Consultees**

- 68 The Constitutional Review Working Group has been consulted on a weekly basis from 3 September to 30 October on the proposals in this report.
- 69 A seminar for all members of the Council took place on 27 October 2009 and the views from that seminar have been taken into account in the preparation of this report and in the Council's new Constitution.
- 70 This report proposes that the public and our partners are consulted on the new Constitution and their views reported to Council in due course.

## **Appendices**

71 The new Constitution has been circulated separately and there are no other appendices to this report.

## **Background Papers**

72 The following have been used in the preparation of this report and the new Council Constitution:

- a. The Local Government Act 2000 and regulations and guidance issued in relation thereto
- b. The Local Government (Public Involvement in Health) Act and regulations and guidance issued in relation thereto
- c. The New Council Constitutions Guidance Pack Volume 1 and 2
- d. The Council's current Constitution
- e. Constitutional Review Working Group reports and papers including action notes and schedule of "follow up" actions – these papers have been updated after each meeting and made available to all Councillors in the Group rooms within the Council offices





**Herefordshire Council  
Draft Constitution  
13 November 2009**



# PART 1

## INTRODUCTION AND SUMMARY

### Contents

1. Our Constitution
2. Location
3. About Herefordshire Council
4. Who we are and how we work
5. Our vision
6. Our Corporate Plan
7. Our Partners
8. A Summary of Our Constitution
9. Councillors
10. The Council
11. The Leader of the Council and the Cabinet
12. The Chairman of the Council
13. The Chief Executive
14. Monitoring Officer and Chief Finance Officer
15. Overview and Scrutiny
16. Planning and Regulatory
17. Standards
18. Audit and Governance
19. Partners and Communities Together (PACT)



# PART 1

## CONTENTS INTRODUCTION AND SUMMARY

### Our Constitution

- 1 We have adopted a Constitution which sets out how we operate and how we make decisions. There's a lot of information in our Constitution, so we've made a summary of it.
- 2 Our constitution is in several different parts:-
  - a Part 1 is a summary of our Constitution together with an introduction to the Council.
  - b Part 2 contains 13 articles which explain how key parts of the Council work;
  - c Part 3 who does what;
  - d Part 4 contains detailed rules about how particular things operate;
  - e Part 5 provides more details about how Councillors and Council staff work together;
  - f Part 6 sets out the allowances that Councillors get paid;
  - g Part 7 contains the Cabinet and Scrutiny Committee portfolios and the Council's management structure; and
  - h Part 8 explains in an A-Z the meanings of particular words used in the Constitution.

### An Introduction to Herefordshire Council

#### Location

- 3 Herefordshire is located in the southwest corner of the West Midlands region bordering Wales.
- 4 Covering 840 square miles, and with some of the most beautiful scenery in the country, the County is home for approx 180,000 people and is a popular visiting place for ramblers and tourists. It is a rural county with five market towns together with the City of Hereford.
- 5 The Council services are delivered across the County; the City of Hereford, the towns and rural areas, with the biggest population centres being:
  - a Hereford City 55,000
  - b Leominster 11,100
  - c Ross-on-Wye 10,000

- d Ledbury 9,800
- e Bromyard 4,600
- f Kington 3,200

### **About Herefordshire Council**

- 6 Herefordshire Council is a Unitary Council and is responsible for the following main services:
- a Education
  - b Environmental Health
  - c Some housing functions
  - d Highways
  - e Leisure & Recreation
  - f Libraries
  - g Passenger Transport
  - h Planning applications
  - i Revenue collection
  - j Social Services
  - k Strategic Planning
  - l Transport planning
  - m Waste collection
  - n Waste Disposal

### **Who we are and how we work**

- 7 The Council is governed by 58 Councillors elected by local people. Those Councillors work in party political and other groups. The Leader of the group with the majority of Councillors is known as the Leader of the Council.
- 8 Across our services more than 5,000 people in Herefordshire work in some way for the Council. Some of our staff deliver integrated services on behalf of both NHS Herefordshire, the local primary care trust, and Herefordshire Council. The Chief Executive is responsible for all the staff and their day to day activities.
- 9 We have a Constitution which sets out how we work and what we can do.

### **Our Vision**

- 10 Our vision for 2020 is:-

**Herefordshire will be a place where people, organisations and businesses, working together within an outstanding natural environment, will bring about sustainable prosperity and well-being for all.**

### **Our Key Ambitions**

#### **Our Corporate Plan**

- 11 Our plans to meet the major challenges for the County and achieve our strategic objectives are reflected in our Corporate Plan.

#### **Our Partners**

- 12 Herefordshire Council works very closely with other service providers in the County. In particular, Herefordshire Council has a formal partnership with NHS Herefordshire. Both organisations have the same Chief Executive and a single management team.
- 13 The Council and NHS Herefordshire are also members of the wider Herefordshire Partnership. This Partnership includes the major organisations working in the County. They collectively set priorities so that all their resources can be best targeted at achieving the outcomes needed by people and businesses in Herefordshire. These are set out in the Herefordshire Sustainable Community Strategy.
- 14 More details of these partnership arrangements are set out in Part 2 of the Constitution (Article 9).

### **A Summary of Our Constitution**

- 15 This summary gives a short description of how the Council is run and the key bodies and people who take decisions.

#### **Councillors**

- 16 Your Council is governed by 58 Councillors who are elected every four years. Each Councillor has a duty to the whole community and in particular to represent all the people living and working in the area of the County (known as a ward) where they were elected. Some wards have more than one Councillor.
- 17 Councillors have a Code of Conduct to make sure they follow high standards in the way that they carry out their role. (See Article 2 for more detail.)

#### **The Council**

- 18 All Councillors meet together about five times a year in the Council meeting. The Council meeting decides what is known as the Budget and Policy Framework and sets the

Budget each year. The Council Meeting also appoints the Leader of the Council and the Chair of the Council. (See Article 4 for more detail.)

### **The Leader of the Council and the Cabinet**

- 19 The Leader of the Council appoints the Cabinet and chairs its meetings. The Cabinet may consist of up to 10 Councillors including the Leader. The Councillors in the Cabinet each have responsibility for areas of the Council's work allocated to them by the Leader.
- 20 The Councillors in the Cabinet can only make decisions within the scope of the overall Budget and Policy Framework set by the Council. If the Cabinet wants to make a decision outside the Budget and Policy Framework then it has to get the Council to agree. (See Article 5 for more detail.)

### **The Chairman of the Council**

- 21 The Chairman of the Council is the non-political and ceremonial representative of the Council and is in charge of the Council Meeting. (See article 4 for more detail.)

### **The Chief Executive**

- 22 The Chief Executive and Directors run the day to day work of the Council (and NHS Herefordshire), working with the Leader of the Council and the Cabinet, and supported by the Council's staff. (See Article 10 for more detail.)

### **Monitoring Officer and Chief Finance Officer**

- 23 Along with the Chief Executive, two other members of staff have special roles to help make sure the Council follows the law and manages its finances well. These are the Monitoring Officer and the Chief Finance Officer (also known as the s.151 Officer).

### **Overview and Scrutiny**

- 24 Overview and Scrutiny Committee and five Scrutiny Committees are the bodies in which Councillors who are not in the Cabinet work together to oversee the work of the Cabinet and also enquire into issues of local concern. In some cases, they can call in a decision which has been made but not yet carried out and can ask the Cabinet to reconsider that decision if they think that is necessary. (See article 6 for more detail.)

### **Planning and Regulatory**

- 25 Some Councillors are members of a Planning Committee that is responsible for the Council's statutory town and country planning and development control functions
- 26 Some Councillors are members of a Regulatory Committee that is responsible for the enforcement of the Council's responsibilities under legislation on trading standards and

consumer protection and animal health and welfare. A Licensing Sub-Committee hears appeals against refusal of any licences and conditions imposed under this legislation. (See Article 8 for more detail.)

### **Standards**

- 27 The Standards Committee which comprises both Councillors and independent non Councillors promotes high standards of conduct by members of Herefordshire Council and Town and Parish Councillors within the County. It deals with complaints against Councillors where a person thinks that a Councillor has not complied with the Code of Conduct. (See Article 7 for more detail.)

### **Audit and Governance**

- 28 The Audit and Governance Committee considers the Council's governance arrangements and ensures that the financial affairs of the Council are properly conducted. (See Article 8 for more detail.)

### **Partners and Communities Together (PACT)**

- 29 The Council and partners hold PACT meetings across the County to which the public and local community representatives are invited. (See Article 3 for more detail.)



# PART 2

## ARTICLES

### Contents

- 1 The Council and the Constitution
- 2 Councillors
- 3 Citizens, Partners and the Council
- 4 The Council
- 5 The Leader and the Cabinet
- 6 Scrutiny
- 7 The Standards Committee and Audit and Governance Committee
- 8 Planning, Regulatory and Other Functions
- 9 Working with Health and other organisations
- 10 The Chief Executive and other staff
- 11 Decision making
- 12 Financial, Contractual and Legal matters
- 13 Information

Schedule to the Articles – Description of Executive Arrangements



## PART 2

### Schedule to the Articles

### A Description of Executive Arrangements

#### Article 1

#### The Council and the Constitution

This article explains what the Council's mission and values are and how this Constitution works.

##### **Strategic Vision and Values of the Council**

##### **Vision**

- 1 The Council and its partners have a Sustainable Community Strategy that sets out the outcomes that it and its partners are aiming to achieve for the people and communities of Herefordshire for the next 15 years. The Sustainable Community Strategy is reviewed and updated periodically so that it can continue to meet the changing economic social and environmental needs of the County and its communities
- 2 The Council has a Corporate Plan that sets out its vision (set out in Part 1 of the Constitution), its specific aims and objectives which should make that vision a reality and how it intends to achieve those aims and objectives. The Corporate Plan also sets out how the Council is performing against those aims and objectives and is refreshed annually. The Council and NHS Herefordshire are developing a joint corporate plan to reflect their partnership working.
- 3 The Council has agreed a set of outcomes and performance targets with central government and with its partners and these are set out in its Local Area Agreement. Some outcomes and targets relate to an area that extends beyond the boundaries of Herefordshire and need co-operation and collaboration between the Council and neighbouring Councils. Those outcomes and targets are set out in its Multi Area Agreement.

##### **Values**

- 4 The Council is committed to maintaining high standards of conduct by its staff and Councillors and has adopted the following values that underpin its work:-
  - People
  - Excellence
  - Openness
  - Partnership
  - Listening

- Environment
- 5 All public bodies should adhere to the 10 principles of public life and these principles are described in more detail in Part 5 of the Constitution.
- 6 This Constitution sets out how the Council will ensure that it meets its commitment to the 10 standards of public life, the 6 principles of good governance and its own Code of Corporate Governance.
- 7 The Council and the way it conducts its business will reflect the principles of good governance:

#### **Focusing on the Organisation's Purpose and on Outcomes For Citizens and Service Users**

- Being clear about the Council's purpose and its intended outcomes for citizens and service users in Herefordshire
- Making sure that citizens and service users receive a high quality service
- Making sure that it delivers value for money

#### **Performing Effectively in Clearly Defined Functions and Roles**

- Being clear about the functions of the Council
- Being clear about the responsibilities of Councillors and its staff and making sure that those responsibilities are carried out
- Being clear about relationships between the Council, its partners and the people and communities of Herefordshire

#### **Promoting values for Herefordshire and demonstrating the values of good governance through behaviour**

- Putting its organisational values into practice
- Individuals behaving in ways that uphold and exemplify these principles of effective governance

#### **Taking informed, transparent decisions and managing risk**

- Being rigorous and transparent about how decisions are taken
- Having and using good quality information, advice and support
- Making sure that an effective risk management system is in operation

#### **Developing the capacity and capability of the Council to be effective**

- Making sure that Councillors and staff have the skills, knowledge and experience they need to perform well
- Developing the capability of Councillors and staff and evaluating Council performance through constructive scrutiny and performance management respectively

#### **Engaging citizens, service users and communities and making accountability real**

- Understanding formal and informal engagement activities with citizens, service users and communities in Herefordshire
- Taking an active and planned approach to dialogue with and accountability to the public
- Taking an active and planned approach to responsibility to staff

*(Good Governance Standard for Public Services – adapted for Herefordshire Council)*

### **Powers of the Council**

- 8 The Council's duties and powers are set out in the law of England. Its powers are contained in Statute as supplemented by secondary legislation; contained in statutory instruments. The arrangements are complex and detailed.
- 9 The Council has an overriding power to do anything to promote the social economic and environmental wellbeing of its area and has set out in its Sustainable Community Strategy and Corporate Plan how it intends to exercise that power.
- 10 The Council will follow the general law and this Constitution when it carries out its powers and duties.
- 11 These powers are exercised by the Council and its functions are carried out in accordance with the Functions Scheme (Part 3)

### **The Constitution**

- 12 This Constitution and all its appendices is the Constitution of the County of Herefordshire District Council ("Herefordshire Council").

### **Purpose of the Constitution**

- 13 The purpose of the Constitution is to:-
- help the Council lead Herefordshire
  - help citizens understand how the Council conducts its affairs
  - promote partnership and collaboration with other public sector bodies;
  - to help engage citizens in the work of the Council and its partners;
  - help Councillors represent citizens effectively;
  - make sure decisions are taken efficiently, appropriately and effectively;
  - make sure those who take the decisions can be held to account;
  - make sure that no one reviews or scrutinises a decision that they have been directly involved in;
  - make sure that citizens know who in the Council takes decisions and why they have taken them; and
  - provide a way of improving the delivery of services to the community.

### **Meaning of the Constitution**

- 14 If the Constitution gives the Council a choice about what to do, the Council must choose the option that it thinks is closest to the purposes of the Constitution in paragraph 13 above.
- 15 The decision of the Chairman of the Council on the meaning of the Constitution or on any proceedings of the Council cannot be challenged by anyone at a Council Meeting. The Chair of Council must have regard to the purposes of the Constitution when making a decision.

**Review of the Constitution**

- 16 The Monitoring Officer must monitor and review how the Constitution is working to make sure it gives full effect to the purposes in paragraph 13 above.
- 17 The Monitoring Officer may also make changes to Parts 6 and 7 of the Constitution to reflect decisions taken by the Council, the Leader of the Council or the Chief Executive from time to time.

**Changes to the Constitution**

- 18 Constitutional changes can only be approved by the Council Meeting. The Monitoring Officer may make any associated changes to the Constitution to reflect what the Council has agreed or reflect any changes to the law that require changes to this Constitution.

**Suspension of the Constitution**

- 19 The Articles cannot be suspended. The Council Meeting or other body may suspend the operation of the Rules in Part 4 so far as permitted by law in accordance with the provisions of this Constitution.

**Publication**

- 20 The Chief Executive will make sure that every Councillor has access to the Constitution and that it is made widely available to staff and citizens.

FINAL DRAFT FOR COUNCIL

# Article 2

## Councillors

- 1 This article explains who Councillors are, what they must do and how long they serve as Councillors. You can find out who your councillor is on our website and at Council contact centres and also find out information on how to stand for election as a councillor.

### Number of Councillors and Areas They Represent

- 2 The Council will have 58 members called Councillors. Each Councillor represents an area of the County known as a ward. The voters of each Ward elect Councillor(s) to represent them. Some wards are represented by more than one Councillor (known as multi-member wards).

### Who can be a Councillor

- 3 Anybody aged 18 years or over who:-
- (a) is a citizen of the European Union, and
  - (b) is registered to vote in local government elections in the County, or who has lived or worked there in the last 12 months, and
  - (c) is not stopped by law from holding office as a Councillor may stand for election as a Councillor.

### Elections

- 4 Electors are registered on the electoral register and anyone over 18 residing in the County is entitled to vote and be included on the electoral register. Electoral registration is the responsibility of the Electoral Registration officer.
- 5 The running of the elections is the responsibility of the Returning Officer.
- 6 In Herefordshire, the Chief Executive of the Council is the Electoral Registration officer and Returning Officer and Herefordshire Council has an Elections Office that helps the Chief Executive discharge these functions.
- 7 Electoral registration and elections are subject to strict rules and further information can be obtained from the Council's Elections Office or the Electoral Commission.

### When Elections Happen and How Long Councillors are Elected For

- 8 Elections for all Wards will take place on the first Thursday in May every four years. The next election will take place in 2011 and thereafter every four years. People elected as Councillors start being Councillors on the fourth day after being elected and finish on the fourth day after the next election.

### **Roles and Functions of all Councillors**

- 9 All Councillors must:
- (a) together be the makers of overall policy for the County in relation to its functions
  - (b) contribute to plans and policies jointly with partners in matters that require co- operation and collaboration between those partners
  - (c) represent, and speak up for their communities
  - (d) deal with individual casework and speak up for citizens
  - (e) balance different interests within their *Ward* and represent it as a whole
  - (f) be involved in Council decision making
  - (g) be available to represent the Council on other bodies; and
  - (h) maintain the highest standards of conduct and ethics

### **Rights to Information**

- 9 Councillors have rights of access to Council information. These rights and the restrictions on them are described in Article 13 and in the Access to Information Rules (Part 4). Some information that Councillors receive is confidential and must not be made public. If a Councillor releases confidential information that may amount to a breach of the Councillor's Code of Conduct (in Part 5 of the Constitution)

### **Responsibilities**

- 10 Councillors must follow the Councillor Code of Conduct and should follow this Constitution and the rules, principles and codes within it whilst conducting Council business.

### **Allowances**

- 11 Councillors will be entitled to receive allowances in accordance with the Members Allowance Scheme (Part 6)

### **Stopping Being a Councillor**

- 12 A Councillor will stop being a Councillor if:-
- (a) they resign by giving written notice, or
  - (b) they fail to attend meetings of the Council for a period of six months without prior approval of the Council Meeting, or
  - (c) if they are stopped by law from holding office, or
  - (d) the period for which they were elected has come to an end and they have not been re-elected.

### **Political or Other Groups**

- 14 Councillors usually join a group of 2 or more Councillors who belong to the same political party or have some other basis for forming a group within the Council. These political groups are recognised by law and in the Constitutional arrangements within the Council.

- 15 The group with an overall majority of the Councillors as members is known as the “Administration” and has overall control of the Council.
- 16 The number of places that each group has on the Council determines how many places are allocated to members of that group on Council committees and other bodies. The Administration will usually determine the outcome of decisions of the Council. This is not always so because there is no constitutional or legal requirement that a member of a group vote on any matter in the same way as his group. Usually on policy matters a group will have a collective view and will vote together on the issue.
- 17 There are certain functions of the Council that are regulatory or quasi judicial and must be decided without political or group influence.

FINAL DRAFT FOR COUNCIL



# Article 3

## Citizens, Partners and Council

- 1 Herefordshire Council is keen to engage with citizens and involve them in Council activities. This article describes Herefordshire citizens' rights to participate and their responsibilities when doing so.

### **CITIZENS' RIGHTS**

#### **Petitions**

- 2 Subject to the Council Procedure Rules (Part 4), and the Petitions Code (Part 5) citizens have the right to sign and present a petition to the Council

#### **Information**

- 3 Citizens have the right to information as set out in Article 13 and in the Access to Information Rules (Part 4).

#### **Taking Part**

- 4 Citizens have the right:
- (a) to take part in question time at a Council meeting;
  - (b) speak during public speaking time at meetings of the Planning Committee;
  - (c) contribute to investigations by Scrutiny Committees;
  - (d) to be consulted or in some other way participate in Council decision making in accordance with the arrangements the Council has for such consultation and participation; and
  - (e) to participate in Partners and Communities Together meetings in their locality.
- 5 Contact can be made with the Council through its customer contact points (details on the Council website), through our website or citizens can make contact with their local ward Councillor(s) through the contact details on our website or at a local Councillor surgery.

#### **Complaints**

Citizens have the right to complain to:

- (a) the Council under its complaints scheme
- (b) the Ombudsman after using the Council's own complaints scheme
- (c) to the Council's Standards Committee about a breach of the Councillors Code of Conduct (Part 5).

**Citizens' Responsibilities**

- (a) When attending meetings or otherwise participating in Council activities citizens must not behave improperly, be offensive or interrupt the business of the meeting. If they do, they will be removed and excluded from the meeting.
- (b) Citizens will not be violent, abusive or threatening to Councillors or Council officers and must not deliberately damage items owned by the Council, Councillors or Council officers.

**Partners and Communities Together (PACT)**

- 6 The Council and its partners hold meetings (known as PACT meetings) across Herefordshire to which the public and local community representatives, including Parish and Town Councillors are invited.
- 7 There is a PACT meeting held regularly (our aim is to do that once a quarter) in each of the following areas:
 

St Martins and Hinton	Hereford Rural
St Nicholas and Three Elms	Ledbury
Kington	Belmont
Bromyard	Ross on Wye
Leominster	Aylestone, Tupsley and Central
Hereford Rural South	Golden Valley
- 8 The purpose of these meetings is to provide an opportunity for the public and communities to ask questions of their local ward Councillors, Council officers and representative of the Council's partners and other public organisations and to raise issues of local concern. It also provides an opportunity for the Council and its partners and other organisations to consult and engage with the public and local communities.

## Article 4

# The Council Meeting

- 1 This article explains the role of the Council meeting and the Council (which is when all Councillors attend a formal meeting). This is different to other meetings involving Councillors which may be committee meetings, less formal working groups or meetings of partnerships in which the Council is involved.
- 2 The Chairman of Council has a special role to play and not only runs Council meetings but also has an important position as the non political representative of the Council on ceremonial and other occasions.

### Council Meetings

#### Types of Council Meetings

- 3 There are three types of Council Meetings:-
  - (a) The Annual meeting
  - (b) Ordinary meetings
  - (c) Extraordinary meetings

#### Rules applying to Council Meetings

- 4 The Council Rules (in Part 4) will apply to Council Meetings.

#### Functions of the Council meeting and Functions Scheme

- 5 The Council will have the functions set out in the Functions Scheme (Part 3), which it will maintain.

### Chairman of Council

#### Election

- 6 The Chairman of the Council and the Vice-Chairman are elected by the Council annually.

#### Functions

- 7 The Chairman of the Council and in their absence, the Vice-Chairman will have the following roles and functions:
  - (a) to uphold and promote the purpose of the Constitution;
  - (b) to decide what the Constitution means if there is a dispute, on advice from the Monitoring Officer;
  - (c) to chair Council meetings so that decisions can be taken efficiently and with regard to the rights of Councillors and the interests of the community;

- (d) to make sure that Council Meetings are a place for debating matters of concern to the local community and the place at which members who are not on the Cabinet are able to hold the Cabinet to account;
- (e) to promote public involvement in the Council's activities and in the democratic process;
- (f) to be the conscience of the Council;
- (g) to attend those civic and ceremonial functions which they or the Council consider appropriate; and
- (h) to approve as urgent decisions which will not be subject to Call In, when no chair of a Scrutiny Committee is available.

### Roles

- (a) **Ceremonial Role** - The Chairman is the ceremonial head of the whole Council and its countywide representative at civic and social occasions. The Chairman has considerable discretion in exercising the ceremonial aspects of the office.
- (b) **Apolitical Role** - It is important that the Chairman maintains an apolitical stance especially when chairing Council meetings. The Chairman must act entirely neutrally allowing different opinions to be fully and fairly presented and debated subject to any relevant Procedure Rules.
- (c) **Chairman's Announcements** - Any Group Leader may approach the Chairman before a Council meeting to suggest items for the Chairman to use in making announcements to full Council. The Chairman has complete discretion as to which items he or she may think appropriate to announce.
- (d) **Rules of Debate** - The Chairman's role in conducting meetings is to enforce the Council rules at the Council meeting as set out in Part 4. It is important the Chairman demonstrates political neutrality in deciding on who and in what order Members should be allowed to contribute to a debate.
- (e) **Casting Vote** - The Chairman has a casting vote and it is essential that this is exercised in the event of a tie at a Council meeting.

## Article 5 - The Leader and the Cabinet

- 1 This article explains how the Leader of the Council (also known as “The Leader”) is appointed and what they do. The Leader of the Council is the Councillor who is the political head of the Council.
- 2 It also explains how the Cabinet works and what it does.
- 3 The Cabinet is a group of Councillors including the Leader who work with Council staff to run the Council and take most decisions except those about major policy issues or setting the annual budget (which only the Council Meeting can do) or decisions on regulatory matters such as whether to give planning permissions or licenses which only committees established for those purposes can do.
- 4 Councillors who are not in the Cabinet have a range of other functions (see Article 2) and in particular fulfil a role known as Scrutiny holding the Cabinet to account (a bit like the Select Committees in Parliament hold the Government to account). The Herefordshire scrutiny arrangements are set out in Article 6.

### **Leader of the Council**

#### **Appointment**

- 5 At each annual meeting the Council will elect a Councillor to be the Leader.

#### **Role**

- 6 The Leader is the political leader of the Council who together with the Chief Executive provides overall leadership of the Council and its staff.
- 7 The Leader will normally chair meetings of the Cabinet, will lead in the formulation, co-ordination and presentation of the Cabinet’s policies and liaise with the Chief Executive on the carrying out of policies by the Council.

### **Stopping being Leader of the Council**

- 8 The Leader will stay as the Leader of the Council until:
  - (a) the date of the Council’s annual meeting although they may stand for re-election;
  - (b) they resign from office;
  - (c) they are suspended from being a Councillor although they may resume office at the end of the period of suspension;
  - (d) they are no longer a Councillor; or
  - (e) they are removed from office by resolution of the Council Meeting.

### **The Cabinet**

**Role**

- 9 The Cabinet has responsibility for all functions of the Council which are not the responsibility of the Council, another part of the Council, whether by law or under the Functions Scheme.

**Membership**

- 10 The Cabinet will consist of the Leader and a maximum of 9 other Councillors appointed by the Leader.

**Functions of Individual Members of the Cabinet**

- 11 The Leader will decide what functions will be carried out by individual e Cabinet Members. The Leader of the Council will notify the Chief Executive and the Monitoring Officer of these functions in writing. The Monitoring Officer will make sure that they are set out in Part 7 of the Constitution.

**Meetings of the Cabinet**

- 12 Meetings and other activities of the Cabinet must comply with the Cabinet Rules.

FINAL DRAFT FOR COUNCIL

## Article 6

### Scrutiny

- 1 Scrutiny is a role fulfilled by all Councillors who are not Members of the Cabinet. It is a statutory function and the arrangements set out in this Constitution reflect the statutory arrangements for the operation of scrutiny.
- 2 The role of scrutiny is to help develop policy, to carry out reviews of Council and other local services and to hold the Cabinet to account for its actions and decisions and those of individual Cabinet members.
- 3 Scrutiny committees are similar to select committees in Parliament. They can look at areas of policy or performance and make recommendations to the Cabinet or the Council Meeting. They can also look at proposed decisions and examine a decision of the Cabinet which has been taken but called in for review before it is carried out.

#### **The Scrutiny Committees**

- 4 The Council establishes the scrutiny arrangements, decides the number and remit of the scrutiny committees and how many Councillors shall be members of each.
- 5 Currently the Council has decided that the Overview and Scrutiny Committee coordinates the work of the themed scrutiny committees, oversees the scrutiny function and carries out some scrutiny activities. The Overview and Scrutiny Committee is also responsible for liaison with the Leader and the Cabinet.
- 6 The functions of the Overview and Scrutiny Committee and the scrutiny committees are set out in Part 3 and the Scrutiny Rules they operate under are set out in Part 4.
- 7 The Public can also get involved with the Scrutiny process and help shape and inform decision making and policy.

FINAL DRAFT FOR COUNCIL



## Article 7

# The Standards Committee and the Audit and Governance Committee

- 1 The Council should ensure that it meets its statutory and other obligations to maintain proper systems of governance and accountability, must ensure that it is accountable for the public money that it receives and spends and that its Councillors and its officers and employees conduct themselves properly and with probity at all times.
- 2 All Councillors, officers and employees are individually and collectively responsible for ensuring that happens. As an extra safeguard and as required by law, the Council has established a Standards Committee and an Audit and Governance Committee.

### **The Standards Committee**

- 3 The Council is by law required to establish a Standards Committee and Herefordshire Council has done so.
- 4 The Standards Committee is a committee of Councillors and independent people which help Councillors (including Town and Parish Councillors) in Herefordshire to maintain high standards of ethical conduct and follow a national code of conduct. It also deals with complaints about Councillors who may have broken the code of conduct.
- 5 The Standards Committee has established three sub-committees for the purposes of fulfilling its functions. These are:
  - An Assessment sub-committee
  - A Review sub-committee

### **Role**

- 6 The Standards Committee has the roles and functions set out in Part 3.

### **Composition of the Standards Committee**

- 7 The Council has established a Standards Committee of eight members comprising:-
  - Two Councillors other than the Leader of the Council appointed by the Council to serve on this Committee
  - Four Independent Members who are independent members of the public in Herefordshire appointed by the Council to serve on its Standards Committee and who have the same voting rights as other members of the Committee
  - Two Parish Members who are members of a Parish or Town Council in Herefordshire appointed by the Herefordshire Association of Local Councils to serve on the Standards Committee and who have the same voting rights as other members of the Committee

- 8 The Standards Committee is chaired by one of its independent members.
- 9 The Council has also appointed two Councillors to serve on this Committee and to serve on any sub-committees of the Committee in the absence of its nominated Councillor members and two Parish and Town Council representatives to serve on this Committee and to serve on any sub-committee in the absence of its nominated Parish and Town Councillor members.

### **Composition of Sub-Committees of the Standards Committee**

- 10 Sub-committees of the Standards Committee comprise at least three members; one of which must be an independent member who must chair the Sub-Committee (and when considering matters relating to a Parish or Town Councillor) one who must be a Parish or Town Council member.

### **Proceedings**

- 11 The proceedings of the Standards Committee and its sub-committees are conducted in accordance with the rules in Part 4.
- 12 Independent Members and the Parish and Town Council Members will be entitled to vote at meetings.

### **The Audit and Corporate Governance Committee**

- 13 The Audit and Governance Committee is responsible for overseeing the work of the Council's internal and external auditors, making sure the Council is well run and has good arrangements for managing money and risks.
- 14 The Audit and Governance Committee is established and its membership determined by the Council.

### **Role**

- 15 The Audit and Governance Committee has the roles and functions set out in Part 3.

### **Composition**

- 16 The Audit and Governance Committee comprises 7 members of the Council and may also include an independent person who is not a Councillor Committee and who has the same voting rights as other members of the Committee

### **Proceedings**

- 17 The proceedings of the Audit and Governance and its sub-committees are conducted in accordance with the rules in Part 4.

### **Joint working of Standards and Audit and Corporate Governance Committees**

- 18 The Standards Committee and the Audit and Governance Committee will co-operate on governance matters and will have the right to report directly to the Council Meeting on those matters.

## Article 8

# Planning, Regulatory and Other Functions

- 1 The Council has a number of other committees and bodies that fulfil functions on behalf of the Council. The functions of each are set out in detail in Part 3.
- 2 The Council has created the following committees and bodies:
  - The Planning Committee
  - Regulatory Committee
  - Employment Panel
  - Employee Appeals Panel
  - Social Care Appeals Panel

### **Planning Committee**

#### **Composition**

The Planning Committee comprises 19 Councillors.

#### **Role**

- 3 The Planning Committee has the roles and functions set out in the Functions Scheme at Part 3.

### **Regulatory Committee**

#### **Composition**

The Regulatory Committee comprises of 11 Councillors.

#### **Role**

- 4 The Regulatory Committee has the roles and functions set out in the Functions Scheme at Part 3 and must meet at least once a year by law.

### **Regulatory Sub-Committee**

#### **Composition**

- 5 The Regulatory Sub-Committee comprises any three members of the Regulatory Committee.

#### **Role**

- 6 The Regulatory Sub-Committee has the roles and functions set out in the Functions Scheme.

## **The Social Care Appeals Panel**

### **Composition**

- 7 The Social Care Appeals Panel comprises 3 Councillors drawn from a number of Councillors appointed by the Council for this purpose. The Council shall not appoint any member of the Cabinet to this Panel.

### **Role**

- 8 The Social Care Appeals Panel has the roles and functions set out in the Functions Scheme at Part 3.

## **Employment Matters**

- 9 Statutory regulations set out the roles that Councillors may have in employment matters.
- 10 The Council has established the Employment Panel and the Employee Appeals Panel to fulfil those functions.

## **The Employment Panel**

### **Composition**

- 11 The Employment Panel comprises a minimum of 3 Councillors and will be established in accordance with the Employment Rules at Part 4.
- 12 In order to fulfil its functions in relation to employment matters relating to employees employed by a partner organisation who fulfil functions or do work for the Council or relating to employees employed by the Council who fulfil functions or do work for a partner organisation, the Employment Panel is permitted to fulfil its functions in consultation and/or jointly with the body fulfilling those functions on behalf of a partner organisation.

### **Role**

- 13 The Appointments Panel has the roles and functions set out in the Functions Scheme at Part 3

## **The Employee Appeals Panel**

### **Composition**

- 14 The Employee Appeals Panel comprises 3 Councillors drawn from members appointed by Council to fulfil this function.

### **Role**

- 15 The Employee Appeals Panel has the roles and functions set out in the Functions Scheme at Part 3

## Article 9

# Working with Health and Other Organisations

- 1 Working in partnership with other organisations is an important way that the Council expects to achieve its aims and objectives and secure the outcomes agreed in its sustainable community strategy and corporate plan.
- 2 This article explains how the Council can enter into joint arrangements with partners to provide a range of services.
- 3 Herefordshire's Council and Health partnership is explained in this Article.
- 4 The article sets out arrangements for joint committees. It gives details of who can appoint members of joint committees and how rules dealing with access to information apply to the committees.
- 5 The article also sets out and links to arrangements for Community Partnerships across the County and also arrangements for contracting out work.

### **Arrangements to Promote Well-Being and the Local Strategic Partnership**

- 6 The Council may work with other councils, other public bodies, commercial and voluntary organisations to promote the economic, social or environmental well-being of the County.
- 7 The Council is under a duty to co-operate with those partners and does this through being a member of the Local Strategic Partnership for Herefordshire known as The Herefordshire Partnership.
- 8 The Local Strategic Partnership has developed and agreed a Sustainable Community Strategy and each organisation is committed to making a contribution to achieving the aims objectives and outcomes set out in that strategy.
- 10 Those commitments are reflected in a Local Area Agreement that Herefordshire Council has entered into with central Government setting out the targets it is aiming to achieve for Herefordshire.

### **Herefordshire Council and Primary Care Trust Joint Arrangements**

- 11 The Council and the Primary Care Trust in Herefordshire have established a joint governance and management arrangement for both organisations.
- 12 There is a joint steering group comprising the Chairman and nominated Non Executive Directors from the Primary Care Trust and the Leader and Councillors nominated by the Council. The steering group provides direction to the joint activities of the Council and the Primary Care trust and oversees the joint management of the two organisations by the Chief Executive and the Joint Management Team.
- 13 The Council Chief Executive is also the Chief Executive of the Primary Care Trust and is supported by a Joint Management Team.

- 14 The Joint Management Team comprises the Deputy Chief Executive, Assistant Chief Executives and Directors from both the Council and the Primary Care Trust. Those Directors of the Primary Care Trust who have roles and functions that include Council roles and functions are designated by the Council as its officers so far as necessary for those purposes.
- 15 The Council and the PCT are developing these arrangements and this Constitution shall be kept under review, amended and interpreted so as to give effect to those arrangements from time to time agreed by the Council.

### **Joint Arrangements Generally**

#### **Joint Arrangements for Council Functions**

- 16 The Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise Council Functions in any of the participating authorities, or advise the Council on any matter. These arrangements may involve the appointment of a joint committee with these other local authorities.
- 17 Herefordshire Council has established a joint waste management arrangement with Worcestershire Council

#### **Joint Arrangements for Executive Functions**

- 18 The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are Executive Functions. These arrangements may involve the appointment of joint committees with these other local authorities.
- 19 Herefordshire Council has an established formal joint arrangement and is a member of West Mercia Supplies with Shropshire County Unitary Council, Worcestershire County Council and Telford and Wrekin Council.

### **Joint Committees**

#### **Local Strategic Partnership and Other Joint Committees**

- 20 The Council has established the Local Strategic Partnership as set out above but has not created any formal joint committees with any other local authorities.

#### **Appointments to Joint Committees**

- (a) Except as below, the Cabinet may only appoint members of the Cabinet to a joint Committee and those members need not reflect the political composition of the Council as a whole.
- (b) The Cabinet may appoint Councillors who are not members of the Cabinet if the joint committee has functions for a part of the County smaller than two fifths of the County by area or population. In such cases, the Cabinet may appoint a Councillor who represents a ward wholly or partly in the area covered by the joint committee.

#### **Access to information**

- 21 The rules on access to information and confidentiality as set out in Article 13 will apply to members of joint committees in the same way as they do to members of the Council

**Delegation to and from Other Local Authorities**

- 22 The Council Meeting or the Cabinet may delegate their powers and functions to another local authority or, in certain circumstances, the Executive of another local authority.
- 23 The decision whether or not to accept such delegation from another local authority will only be taken by the Council Meeting.
- 24 The Council has made no such delegations to date.

**Contracting Out****Functions which the Cabinet can decide to Contract Out**

- 25 The Cabinet may contract out to another body or organisation functions which may be carried out by an Officer and which are:-
- (a) subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994, or
  - (b) under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles,
- and there is no delegation of the Council's discretionary decision making.

FINAL DRAFT FOR COUNCIL



# Article 10

## The Chief Executive and Other Staff

### Chief Executive

- 1 The Council employs a Chief Executive who carries out the functions in the Functions Scheme at Part 3 on behalf of the Council and the Cabinet.
- 2 The Chief Executive is in charge of the Council's staff (called Officers) and works with Councillors, especially the Leader to carry out the aims and objectives of the Council.

The Chief Executive is required to fulfil these functions together with similar functions on behalf of the Primary Care Trust

### The establishment and staffing budget

- 3 The Council may employ such Officers as it considers necessary to carry out its functions. It must do so on the advice of the Head of Paid Service who has responsibility for establishing a management structure within the overall staffing establishment and budget agreed by Council.

### Senior Officers

- 4 The Council will employ persons in the senior posts who will assist the Chief Executive and report to him. Those senior officers may carry out the functions allocated to the Chief Executive in the Functions Scheme in accordance with any delegations given to them by the Chief Executive which are detailed in the Chief Executive's Scheme of Delegation as explained in the Functions Scheme.
- 5 The Primary Care Trust employs Directors who are designated as officers of the Council for the purposes of fulfilling those functions as set out in the Functions Scheme in Part 3.

### Statutory Officers

- 6 The council is required by law to designated three senior officers who have additional roles as the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer.
- 7 All three roles exist in every district, county and unitary council.
- 8 The Chief Executive is designated as the Head of Paid Service and is responsible for reporting to the Council on how the staff is organised and deployed in the Council.
- 9 The Assistant Chief Executive – Legal and Democratic is designated as the Monitoring Officer and is responsible for reporting the actual or potential breach of a legal requirement to the Council Meeting or Cabinet and for dealing with complaints of breaches of the code of conduct by Councillors.

- 10 The Director of Resources is designated as the Chief Finance Officer (also known as the s.151 Officer) and is responsible for reporting the actual spending or potential misspending of money to the Council Meeting or Cabinet.
- 11 The Council will provide the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer with such Officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

**Structure**

- 12 The Chief Executive will decide the overall staff structure of the Council and make public a description of it.

**Conduct**

- 13 Officers will comply with the Officer Code of Conduct and will follow the Protocol on Officer/Member Relations in Part 5.

**Employment**

- 14 The recruitment, selection and dismissal of Officers will comply with the Officer Employment Rules in Part 4.

FINAL DRAFT FOR COUNCIL

# Article 11

## Decision-Making

1 This article sets out how the Council takes decisions

### **Principles of Decision Making**

2 When the Council takes a decision it will:

- (a) make sure the action is proportionate to what the Council wants to happen;
- (b) consult properly and have regard to the professional advice from its Officers;
- (c) consider equality, diversity and respect for human rights;
- (d) make the decision public unless there are good reasons for it not to be;
- (e) be clear about what the Council wants to happen and how it will be achieved;  
and
- (f) explain what options were considered and give the reasons for the decision.

### **Responsibility for Decision Making**

3 The Council will prepare and keep up to date a Functions Scheme. The Functions Scheme will show what sorts of decisions can be made and who by. The Functions Scheme is set out in Part 3 of the Constitution.

### **Decisions Reserved to the Council Meeting**

4 Decisions reserved to the Council Meeting in the Functions Scheme set out in Part 3 will be made by the Council Meeting and not be delegated.

### **Key Decisions**

5 Some Council decisions are defined as Key Decisions. The definition of a Key Decision is set out in Part 4. A decision maker may only make a Key Decision in accordance with the Cabinet Rules. The Cabinet rules are also set out in Part 4.

### **Decision Making by the Council Meeting**

6 Subject to the provision on natural justice and human rights set out below the Council Meeting will follow the Council Rules set out in Part 4 when considering any matter.

### **Decision Making by the Cabinet**

7 Subject to the provision on natural justice and human rights set out below the Cabinet will follow the Cabinet Rules set out in Part 4 when considering any matter.

### **Activities of Scrutiny Committees**

- 8 Scrutiny Committees will follow the Scrutiny Rules in Part 4 when considering any matter.

### **Decision Making by Other Committees or Groups Established by the Council**

- 9 Subject to the provision on natural justice and human rights set out below other Council committees or groups will follow those parts of the Council Rules as apply to them.

### **Natural Justice and Human Rights in Decision Making**

- 10 If any decision maker acts as a tribunal or in judgment of an issue in a way that might affect any person, they must follow the rules of natural justice as required by Article 6 of the European Convention on Human Rights.

### **Codes**

- 11 In making decisions and conducting its business the Council and the bodies and person(s) exercising functions on its behalf will have regard to the Codes set out in Part 5 of this Constitution.

FINAL DRAFT FOR COUNCIL

# Article 12

## Financial, Contractual and Legal Matters

- 1 The management of the Council's money and the making of contracts by it (especially when buying services and supplies) must follow special rules.
- 2 The Council's Monitoring Officer is authorised to take legal action, to sign legal documents and to use the official seal on the Council's behalf.

### Financial Management

- 4 The management of the Council's financial affairs will comply with the Financial Procedure Rules set out in Part 4.

### Contracts

- 5 Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 4.

### Legal Proceedings

- 6 The Monitoring Officer is authorised to defend or take part in any legal proceedings on the Council's behalf where such action is necessary to give effect to decisions of the Council or where they consider that such action is necessary to protect the Council's interests.
- 7 The Monitoring Officer can designate nominated officers to carry out this function on their behalf.
- 8 The role and functions of the Monitoring Officer are set out in the Functions Scheme in Part 3.

### Authentication of Documents

- 9 Where any document is necessary to any legal procedure or proceedings, it will be signed by the Monitoring Officer unless any enactment otherwise authorises or requires, or the Council has given authority to some other person.
- 11 The Monitoring Officer can designate nominated officers to carry out this function on their behalf.

### Common Seal of the Council

- 12 The Common Seal of the Council will be kept in a secure place in the custody of the Monitoring Officer.
- 14 A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision.
- 15 The Common Seal will be affixed to those documents which in the opinion of the Monitoring Officer should be sealed or as required by the Contracts Rules. The

Monitoring Officer can designate nominated officers to carry out this function on their behalf.

- 16 The affixing of the Common Seal will be attested by the Monitoring Officer, Chief Executive or together with the Chairman of the Council, or in their absence, another Councillor. An entry of every sealing shall be made and consecutively numbered in a book kept for the purpose. The Chief Executive and Monitoring Officer can designate nominated officers to carry out this function on their behalf.

FINAL DRAFT FOR COUNCIL

# Article 13

## Access to Information and Data Protection

- 1 The Council holds and processes information for a variety of purposes. Information can be classified in a number of different ways and may be accessible by the public generally, by a private individual and by Councillors. Who is entitled to what information and what anyone who receives information may do with that information is regulated by a number of statutory and legal rules. Those rules are complex and can be summarised as follows.

### Public Access to Information

- 2 The public can access information as follows:
- Attendance at public parts of meetings of the Council Meeting, the Cabinet and committees;
  - Finding out from the Forward Plan what Key Decisions will be taken by the Cabinet and when;
  - Examining public reports and background papers, and any records of decisions made by the Council Meeting, the Cabinet, individual members of the Cabinet and committees;
  - Inspecting the Council's accounts when those accounts are open for inspection;
  - Accessing the Council's Publication Scheme that explains all the information that the Council has published and obtaining information listed in the scheme;
  - Making a request under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 and, provided the information requested is not protected from disclosure under the provisions of that legislation, receiving that information.

### Protection of Private Information

- 3 A private individual can access information held by the Council that relates to them personally by making a subject access request under the Data Protection Act 1998. The Council must process the personal data it holds in accordance with that Act.
- 4 The Council must not disclose information that is protected under the Data Protection Act 1998 otherwise than in accordance with that Act.
- 5 There are other provisions relating to specific categories of private personal data that the Council must follow that may restrict access and control how the Council handles such data, for example the Pupil Records Regulations and the Access to Medical Records Act 1990.

### Confidential Information

- 6 The Council will hold information that is confidential either because it is deemed confidential by law or because it has received the information on a confidential basis and must maintain that confidentiality. There may be information that appears to be confidential but which the public may have access to under the Freedom of Information Act 2000. The Council takes

great care to ensure that any information it receives or holds is properly dealt with. Those persons or an organisation dealing with the Council and providing the Council with confidential information should be aware that information once in the custody of the Council may in some circumstances be accessible by the public under the Freedom of Information Act 2000.

- 7 If any report or papers for Council, Cabinet or Committee meetings contain information that is confidential by law, then the public must be excluded from any part of the meeting during which that information is discussed.

### **Exempt Information**

- 8 There is a further category of information; exempt information. That is information which falls within one of the categories of exempt information set out in legislation. If any report or papers for Council, Cabinet or Committee meetings contain exempt information then the public may be excluded from any part of the meeting during which that information is discussed. The report and/or papers containing exempt information will not be published with the agenda and before any discussion on that item at the meeting, the Council, the Cabinet or the Committee must decide whether or not to consider the matter in private or in public. That decision must be taken having regard to the public interest.
- 9 If the matter is considered in public, then the exempt information can be publicly disclosed and copies of the report and papers containing the exempt information will be made available to any member of the public who requests it.
- 10 If the matter is considered in private, then the exempt information will be confidential and shall not be disclosed to the public in accordance with S100(A)(4) of the Local Government Act 1972.

### **Councillors' Access to Information**

- 11 Councillors have greater rights to information than the public. Councillors have a right to information which they need to have access to in order to fulfil their functions as Councillors. That means that generally Councillors will have a right to receive information; whether confidential or exempt, that is contained in reports and papers for meetings of bodies of which he/she is a member. Councillors may also have a right to that information; whether confidential or exempt, if they are not members of the body to which that information is being presented. Councillors will need in those circumstances to demonstrate that they have a need to know that information. Councillors will not generally have a right to sensitive personal data; unless they can demonstrate a need to know that information and that information can be shared with the Councillor without breaching any other statutory provision such as the Data Protection Act. Councillors can rely on the Freedom of Information Act 2000 to gain access to information but should not be required to do so.

### **Councillors' use of Information**

- 12 The Code of Conduct for members and the provisions of the Data Protection Act 1998 apply to Councillors in respect of the uses to which confidential information may be put.

## Schedule to the Articles Description of Executive Arrangements

The following parts of the Constitution comprise the Executive Arrangements:-

- 1 Article 5 in Part 1 of the Constitution – the Leader of the Council and the Cabinet, and the Cabinet Rules
- 2 Article 6 in Part 1 of the Constitution – Scrutiny and Overview, and the Scrutiny Rules
- 3 Article 9 in Part 1 of the Constitution – Working with other organisations
- 4 Article 11 in Part 1 of the Constitution – Decision making
- 5 The Functions Scheme and the Cabinet Members' Portfolio Scheme in Part 3 of the Constitution
- 6 Access to Information Rules in Part 4 of the Constitution

FINAL DRAFT FOR COUNCIL



# PART 3

## THE FUNCTIONS SCHEME

### CONTENTS

### PAGE

1	Introduction	2
2	Council Functions	4
3	Cabinet functions	7
4	Local choice Functions	12
5	Overview and Scrutiny Functions	15
6	Other Functions	18
7	Informal Arrangements	27
8	Officer Functions	29
9	Proper Officer Functions	31

FINAL DRAFT FOR COUNCIL



# The Functions Scheme

## Section 1

### Introduction

- 1 The Functions Scheme is a document which sets out in detail which part of the Council and/or which people are responsible for particular activities. There are 9 sections of the Functions Scheme as shown above.
- 2 By law, there are four areas of responsibilities:-
  - a) Firstly, there are responsibilities of the Council (all Councillors acting collectively in the Council meeting). These are called Council Functions and are set out in Section 2 (Council Functions) below. The Council has delegated many of these functions to its Committees and to its Chief Executive. These delegations are explained in Section 6 (Other functions) and Section 8 (Officer Functions) below.
  - b) Secondly, all responsibilities that are not Council functions are by law the responsibility of the Cabinet. These are called Cabinet Functions and are set out in Section 3 (Cabinet Functions) below. The Cabinet delegates some of those functions to individual Cabinet members and the Chief Executive. These delegations are explained in Section 3 (Cabinet Functions) and in Section 7 (Officer Functions) below. The functions allocated to individual Cabinet members is explained in Section 3 below. The areas of responsibility of each Cabinet Member (known as “portfolios”) is set out in Part 7.
  - c) Thirdly, there are responsibilities which the Council can choose to make the function of the Council or the Cabinet. These are called Local Choice Functions. Section 4 below (Local Choice Functions) explains who is responsible for those functions.
  - d) Fourthly, Councillors who are not in the Cabinet are responsible for a function known as overview and scrutiny and hold the Cabinet to account for the way it carries out its functions and the way the Chief Executive carries out hi/hers functions.
- 3 These formal arrangements are supplemented by Councillors and others fulfilling advisory, informal and political functions. These arrangements are set out in Section 7 (Informal arrangements) below.
- 4 Section 8 explains the functions that Chief Executive carries out and the arrangements he/she can make for those functions to be carried by other officers of the Council.

- 5 Some statutory Council functions must be carried out by an officer nominated by the Council for that purpose, known as the Proper Officer. The Proper Officer arrangements are set out in Section 9 (Proper Officer provisions) below.
- 6 These 9 sections in this Part of the Constitution are known as the Functions Scheme. The Functions Scheme should be read in conjunction with the Articles (Part 2), the Procedure Rules (Part 4) and the Chief Executive's Scheme of Delegation to ascertain who is responsible for which functions.
- 7 References in the Scheme to the Functions Regulations are to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended. Any reference in this Constitution to any function, and any delegation of function or responsibility includes all action associated with that function or power and all related enforcement and other actions.

FINAL DRAFT FOR COUNCIL

# The Functions Scheme

## Section 2

### Council Functions

- 1 This section explains the Council Functions and who carries them out. Council Functions are local authority functions which by law cannot be carried out by the Cabinet.

#### Delegation of Council functions

- 2 The Council has decided that the functions in Column 1 will be carried out by the body or officer in Column 2.

<b>Column 1</b> <b>What is the function</b>	<b>Column 2</b> <b>Who can carry the function out</b>
Adopting and changing the Constitution	Council Meeting Monitoring Officer (technical changes or those required by law only)
Approving or adopting the Policy Framework, the Budget and any application to the Secretary of State in respect of any Housing Land Transfer	Council Meeting only
Subject to the Urgency Procedure in the Access to Information Rules, making a decision contrary to the Policy Framework or the Budget, or part of it	Council Meeting only
Appointing the Leader of the Council	Council Meeting only
Setting the terms of reference of committees, deciding on their composition and allocating seats on them	Council Meeting only
Appointing representatives to outside bodies	Council Meeting unless the appointment is an Executive Function or has been delegated by the Council
Agreeing the Members Allowances Scheme	Council Meeting only
Changing the name of the area	Council Meeting only
Giving someone a civic honour or title	Council Meeting only
Planning and development control functions including enforcement for which the Council is responsible in Schedule 1 of the Functions Regulations	Planning Committee/Chief Executive as set out in this Functions Scheme
Hedgerow and tree preservation functions for which the Council is responsible in Schedule 1 of the Functions	Planning Committee/Chief Executive as set out in this Functions Scheme

<b>Column 1</b> <b>What is the function</b>	<b>Column 2</b> <b>Who can carry the function out</b>
Regulations	
Rights of way functions for which the Council is responsible in Schedule 1 of the Functions Regulations	Regulatory Committee/Chief Executive as set out in this Functions Scheme
Licensing and registration functions for which the Council is responsible in Schedule 1 of the Functions Regulations	Regulatory Committee/Chief Executive as set out in this Functions Scheme
Health and safety at work functions (other than those relating to the Council itself as an employer) for which the Council is responsible in Schedule 1 of the Functions Regulations	The Chief Executive
Elections functions in Schedule 1 of the Functions Regulations	Council Meeting Chief Executive(as Returning Officer and Electoral Registration Officer)
Byelaw Functions in Regulation 2 and Schedule 1 of the Functions Regulations	The Council
Power to promote or oppose local or personal bills set out in Regulation 2 and Schedule 1 of the Regulations	Council Meeting only
Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal)	Council Meeting / Employment Panel/ Chief Executive as set out in the Functions Scheme
Duty to make arrangements for the proper administration of financial affairs	Council Meeting/Chief Executive/s.151 Officer as set out in the Functions Scheme and the Financial Procedure Rules
Power to appoint Officers for particular purposes (otherwise called the appointment of proper officers)	Council Meeting /Monitoring Officer as set out in the Functions Scheme
Approval of the appointment of the Chief Executive and duty to designate an Officer as the Head of Paid Service	Council Meeting only
Duty to designate Officers as the Monitoring Officer and the s 151 Officer and to provide staff	Council meeting only
Duty to approve the Council's statement of accounts,	Council Meeting only

<b>Column 1</b> <b>What is the function</b>	<b>Column 2</b> <b>Who can carry the function out</b>
income and expenditure and balance sheet, or record of payments	
Powers relating to overview and scrutiny	Council meeting/Overview and Scrutiny Committee/Scrutiny Committees as set out in the Functions Scheme

<b>FUNCTIONS RELATING TO COMMUNITY GOVERNANCE</b>	
<b>Column 1</b> <b>What is the function</b>	<b>Column 2</b> <b>Who can carry the function out</b>
Duties relating to community governance reviews	Council meeting only
Functions relating to community governance petitions.	Council meeting only.
Functions relating to terms of reference of review.	Council meeting only.
Power to undertake a community governance review.	Council meeting only.
Functions relating to making of recommendations.	Council meeting only.
Duties when undertaking review.	Council meeting only.
Duty to publicise outcome of review.	Council meeting only.
Duty to send two copies of order to Secretary of State and Electoral Commission.	Council meeting only.
Power to make agreements about incidental matters.	Council meeting only.



# The Functions Scheme

## Section 3

### Cabinet Functions

1 Cabinet Functions are all executive functions vested in it by the Functions and Responsibilities Order and those Local Choice functions that the Council has decided should be Cabinet functions as set out in Section 4 (Local Choice Functions) below.

2 The following functions shall be carried out by the Cabinet:

#### **Recommendations to Council**

3 The Cabinet shall make recommendations to the Council including:

- a The budget and Policy framework
- b Any other Council functions (as set out in Section 2 above or Section 4 below) that should in the opinion of the Leader be recommended to Council

#### **Decisions**

4 The Cabinet shall carry out and make all decisions in relation to all matters other than:

- a Council Functions, or
- b Overview and Scrutiny Functions
- c Local Choice Functions not defined as Cabinet functions, or
- d Matters delegated to another Council body, or
- e Functions carried out by the Chief Executive.

#### **Exercise of Cabinet Functions**

5 Cabinet functions and decisions shall be carried out either:

- a by the Cabinet collectively,
- b by Cabinet Members individually
- c by a Cabinet Committee

#### **Delegation of Cabinet decisions**

6 The Cabinet has decided that the Chief Executive should carry out its functions except as provided for in paragraphs 7 and 8 below.

7 Cabinet should only take decisions that are;

- a Key decisions that relate to more than one Cabinet portfolio
- b Strategically important or relate to or involve significant new policy issues

- c Significant in terms of economic environmental or social wellbeing of the county or a substantial part of it or of its communities
  - d Of sufficient public interest that a decision at a public meeting of Cabinet is required
  - e Significantly controversial or likely to be so
  - f Decisions that are reserved to Cabinet by virtue of the Financial Procedure Rules (see Part 4)
  - g Decisions which in all the circumstances should properly be taken by the Cabinet acting collectively
- 8 Individual Cabinet Members should only take decisions that are:
- a Key decisions relating to his/her portfolio
  - b Significant in terms of economic environmental or social wellbeing of the county or a substantial part of it or of its communities but related only to his/her portfolio
  - c Strategically important or related to or involve significant new policy issues related to his/her portfolio
  - d Significantly controversial relating to his/her portfolio
  - e Decisions that are reserved to an individual Cabinet Member by virtue of the Financial Rules (Part 4)
  - f Decisions relating to his/her portfolio which should properly be taken by the Cabinet Member
- 9 The Chief Executive should take decisions and deal with matters that fall outside the definitions above. The Chief Executive is responsible for identifying decisions that fall within the criteria at paragraphs 7 and 8 above.
- 10 The Chief Executive should in the event of any uncertainty consult with the Leader (for matters falling within paragraph 7 above) and to the relevant Cabinet Member (for matters falling within paragraph 8 above) to determine whether any matter is one that should be determined by the Cabinet or an individual Cabinet Member.
- 11 In the event of any disagreement about who should deal with any Cabinet Function, the Leader will determine whether the matter should be dealt with by the Cabinet collectively, an individual Cabinet member or by the Chief Executive.
- 12 The principle that any person who has delegated authority can refer a decision to the body or person from whom such delegation derives applies. A decision of the Leader pursuant to paragraph 11 above cannot prevent the Chief Executive from referring a matter to an individual Cabinet Member or the Cabinet or an individual Cabinet Member from referring a matter to Cabinet, if he/she so wishes in exceptional circumstances.

### Key decisions

- 13 A key decision is one taken by the Cabinet or an individual Cabinet Member in connection with the discharge of a function which is the responsibility of the Cabinet and which is likely:

- a to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
  - b to be significant in terms of its effects on communities living or working in an area comprising one or more wards in the County.
- 14 For the purposes of 13 (a) above £1m shall generally be regarded as significant in terms of expenditure or savings. A matter involving a lesser sum may be regarded as significant in terms of expenditure or savings in exceptional circumstances including but not limited to:
- a where a lesser sum is involved but other non financial factors make the matter significant in terms of the service or function to which the decision relates,
  - b or where a lesser sum is involved but it has significant impact on the budgets for other services or functions or on the Council's budget as a whole
- 15 For the purposes of 13 (b) above any issue which, in the opinion of the Leader of the Council, is likely to have a significant effect or impact any group(s) of people shall be regarded as significant in terms of impact on communities. In deciding whether an issue has a significant effect or impact on any group(s) of people the Leader shall have regard to:
- a whether the decision may incur a significant social, economic or environmental risk or benefit
  - b the likely extent of the impact of the decision both within and outside the County
  - c whether the decision is likely to be a matter of political or other controversy
  - d the extent to which the decision is likely to result in or attract substantial public interest.
- 16 The Chief Executive will maintain a list of anticipated Cabinet decisions that may be key decisions and shall consult with the Leader who will determine those which are to be treated as "key decisions".

#### **Residual authority of the Leader**

- 17 The Leader retains authority in relation to all matters relating to Cabinet functions delegated to the Cabinet, to Cabinet members or to the Chief Executive, where there is no individual available (or willing) to exercise those functions or where in all the circumstances he believes he should do so. Such authority should be exercised only in exceptional or unusual circumstances.
- 18 The Leader of the Council also has authority to determine:
- a The size of the Cabinet
  - b The appointment of Cabinet Members
  - c The allocation of portfolios and responsibility to Cabinet Members
  - d The Cabinet functions that can be carried out by Cabinet Members individually (paragraph 8 above)
  - e A Cabinet function that can be carried out by the Chief Executive (Section 8 below)

**Cabinet Member portfolios**

- 19 The Leader is responsible for appointing a Cabinet comprising a maximum of 10 (including the Leader) and for allocating areas of responsibility to each Cabinet Member. Each area of responsibility is known as a Cabinet member portfolio
- 20 The Leader shall, from time to time, keep under review and may amend the various Cabinet Member portfolios. The Leader will maintain and publish a list of Cabinet Members, titles and portfolios. The Monitoring Officer will ensure that list is in Part 7 of this Constitution.
- 21 By their nature, the Cabinet Member portfolios cut across the various functions of the Council and in cases of uncertainty as to which Cabinet Member is responsible for any function, the Leader shall decide which Cabinet Member(s) will deal with such matter.
- 22 Cabinet Members can make any decision within their portfolio that is within the Budget and Policy Framework and in accordance with the criteria set out in paragraph 8 above.
- 23 Cabinet Members cannot make a decision which is:
- a a Key Decision unless advance notice of the proposed decision has been included in the Forward Plan or the urgency provisions have been invoked, or
  - b a decision that has been reserved to the Council, the Cabinet, Regulatory Committee or delegated to the Chief Executive.
- 24 If a Cabinet Member wishes to take a decision contrary to the advice of the Chief Executive, Monitoring Officer, s.151 Officer or relevant Director(s) then the Cabinet Member must refer the issue to the Cabinet for a decision.
- 25 If the Cabinet Members consider that any decision they are being asked to take is likely to be so sensitive or controversial that the circumstances are exceptional, the decision may be referred to the Cabinet.

**Cabinet Rules**

- 26 When the Cabinet or a Cabinet Member is making a decision the Cabinet Rules in Part 4 must be followed.

# The Functions Scheme

## Section 4

### Local Choice Functions

The Council must choose by law who carries out some functions (known as Local Choice Functions) set out in the Functions Regulations.

#### Allocation of functions

The Council has decided that the functions in Column 1 will be carried out by the body or officer in Column 2.

<b>Column 1</b> <b>What is the function</b>	<b>Column 2</b> <b>Who can carry the function out</b>
Any function under a local Act other than a function specified or referred to in regulation 2 or Schedule 1.	Cabinet/Cabinet Member as set out in the Functions Scheme
The determination of an appeal against any decision made by or on behalf of the authority.	Cabinet/Chief Executive as set out in the Functions Scheme
The appointment of review boards under regulations under subsection (4) of section 34 (determination of claims and reviews) of the Social Security Act 1998.	Cabinet/Chief Executive as set out in the Functions Scheme
The making of arrangements in relation to appeals against the exclusion of pupils from maintained schools pursuant to section 52 of the Education Act 2002 and the subordinate legislation made under that section.	Cabinet/Chief Executive as set out in the Functions Scheme
The making of arrangements pursuant to sections 94(1) (1A) and (4) of the 1998 School Standards and Framework Act (admissions appeals)	Cabinet/Chief Executive as set out in the Functions Scheme
The making of arrangements pursuant to section 95(2) of, and Schedule 25 to, the 1998 Act (children to whom section 87 applies: appeals by governing bodies).	Cabinet/Chief Executive as set out in the Functions Scheme
The making of arrangements under section 20 (questions on police matters at council meetings) of the Police Act 1996 for enabling questions to be put on the discharge of the functions of a police authority.	Chairman of the Council

<b>Column 1</b> <b>What is the function</b>	<b>Column 2</b> <b>Who can carry the function out</b>
The making of appointments under paragraphs 2 to 4 (appointment of members by relevant councils) of Schedule 2 (police authorities established under section 3) to the Police Act 1996.	Cabinet/Chief Executive as set out in the Functions Scheme
The conducting of best value reviews in accordance with the provisions of any order for the time being having effect under section 5 (best value reviews) of the Local Government Act 1999.	Cabinet/Chief Executive as set out in the Functions Scheme
Any function relating to contaminated land.	Landowner responsibilities: Cabinet Member (Environment) Other Functions: Regulatory Committee
The discharge of any function relating to the control of pollution or the management of air quality.	Strategic and Policy: Cabinet Member (Environment) Other functions: Regulatory Committee
The service of an abatement notice in respect of a statutory nuisance.	Cabinet/Chief Executive as set out in the Functions Scheme
The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area.	Cabinet/ Cabinet Member (Environment)
The Inspection of the authority's area to detect any statutory nuisance.	Cabinet/Chief Executive as set out in the Functions Scheme
The investigation of any complaint as to the existence of a statutory nuisance.	Cabinet/Chief Executive as set out in the Functions Scheme
The obtaining of information under section 330 of the Town and Country Planning Act 1990.	Cabinet/Chief Executive as set out in the Functions Scheme
The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.	Cabinet/Chief Executive as set out in the Functions Scheme
The making of agreements for the execution of highways works.	Cabinet/Chief Executive as set out in the Functions Scheme
The appointment of any individual (a) to any office other than an office in which he is employed by the authority; (b) to any body other than (i) the authority; (ii) a joint committee of two or more authorities; or	Cabinet/ Chief Executive as set out in the Functions Scheme

<b>Column 1</b>	<b>Column 2</b>
<b>What is the function</b>	<b>Who can carry the function out</b>
(c) to any committee or sub-committee of such a body, and the revocation of any such appointment.	

FINAL DRAFT FOR COUNCIL



# The Functions Scheme

## Section 5

### Overview and Scrutiny Functions

- 1 Councillors who are not in the Cabinet are responsible for a function known as overview and scrutiny and hold the Cabinet to account for the way it carries out its functions and the way the Chief Executive carries out his/her functions.
- 2 The Council is responsible for determining its Overview and Scrutiny arrangements and has decided that it shall have an Overview and Scrutiny Committee and up to a maximum of 5 themed Scrutiny Committees.

#### **Scrutiny Rules**

- 3 When the Overview and Scrutiny Committee and the Scrutiny Committees are exercising overview and scrutiny functions the Scrutiny Rules in Part 4 must be followed.

#### **The Overview and Scrutiny Committee**

- 4 The Overview and Scrutiny Committee will:
  - a undertake the overview scrutiny role in relation to Corporate Strategy, Finance and Resources, Corporate, Customer Services and Human Resources
  - b examine on behalf of the Council the strategic policy direction and priorities being followed and make recommendations
  - c oversee co-ordinate and approve the work programmes of the Scrutiny Committees and approve its annual work programme
  - d periodically review its and the Scrutiny Committee work programmes to ensure that overview and scrutiny is effective, that there is an efficient use of scrutiny resources and that potential duplication of effort by scrutiny members is minimised
  - e commission work from any Scrutiny Committee and ensure that proactive policy or review work at the request of the Council Meeting or Cabinet, or arising from community concerns, is undertaken
  - f receive requests from the Cabinet and/or Council for overview and scrutiny reviews, to determine whether any such review should be carried out and to allocate the review work appropriately
  - g determine which Scrutiny Committee should deal with any matter that falls within the remit of more than one Scrutiny Committee and to resolve issues of dispute between Scrutiny Committees

- h establish and maintain a system to ensure that referrals to and from Scrutiny Committees are managed efficiently and that the appropriate Council body or person responds in a timely and effective way
- i exercise the powers as set out in Section 21 (2) (a) of the Local Government Act 2000 (call-in powers) in relation to Cabinet decisions made but not implemented within its own remit
- j exercise an oversight and co-ordinating role in relation to the exercise of call-in powers by the Scrutiny Committees
- k report to the Council Meeting annually on the scrutiny function and its work
- l respond as requested to consultation on the Cabinet's budget proposals in accordance with the Budget and Policy Framework Rules
- m develop and spread good practice in overview and scrutiny activities within the Council and its scrutiny functions, and
- n establish time limited and task focused informal review working groups from time to time as resources available to it permit to carry out overview and scrutiny work on its behalf and to report its findings to the Committee.

### **Scrutiny Committees**

- 5 The Council will at its annual meeting agree to establish up to a maximum of 5 Scrutiny Committees and will identify the areas of functions or themes for each Committee.
- 6 If during the year, the Overview and Scrutiny Committee identifies that there is an area of functions or theme which is within the statutory remit of overview and scrutiny but not within the area of function or theme for any Scrutiny Committee, it may allocate that area of function or theme to one of the Scrutiny Committees. Having done so, the Overview and Scrutiny Committee will report that allocation to the next Council meeting and seek ratification of its decision.
- 7 The number, title and areas of function and the themes for each Scrutiny Committee will be published annually and any publication amended if any changes are made in accordance with paragraph 6 above.
- 8 Within its area of activity or theme, each Scrutiny Committee will:-
  - a review and scrutinise decisions made by and the performance of the Cabinet, individual Cabinet Members and the Chief Executive in relation to the Cabinet functions carried out by each.
  - b review the performance of the Council and its partners (where the law so permits) in relation to outcomes for local people and communities, policy objectives, performance targets and/or particular service areas
  - c question members of the Cabinet and those carrying out Cabinet functions about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions

- d make reports and recommendations to the Cabinet arising from work undertaken by it
- e exercise the powers as set out in Section 21 (2) (a) of the Local Government Act 2000 (call-in powers) in relation in relation to Cabinet decisions made but not implemented within its own remit
- f assist the Cabinet in the development of the budget and policy framework
- g liaise with external organisations operating in Herefordshire in the fulfilment of their overview and scrutiny role to ensure that the social, environmental and economic wellbeing of the area is enhanced by collaborative working
- h report annually through the Overview and Scrutiny Committee on their work and make recommendations on its future work programme
- i invite public participation at their meetings and in their work so as to enhance their performance
- j receive information and evidence from experts and other witnesses to support them in their work and to question and gather evidence from any person with their consent
- k scrutinise any matter affecting the area or its inhabitants and to review the performance of other public bodies in the area and invite reports from them by asking them to address the Scrutiny Committee about their activities and performance
- l collaborate with other Scrutiny Committees and other bodies carrying out similar functions outside the Council, and
- m establish time limited and task focused informal review working groups from time to time as resources available to it permit to carry out overview and scrutiny work on its behalf and to report its findings to the Committee.



# The Functions Scheme

## Section 6

### Other Functions

- 1 This section contains a description of those bodies who exercise functions on behalf of the Council.
- 2 Those functions are those carried out as follows:
  - a Planning Functions
  - b Regulatory Functions
  - c Audit and Governance Functions
  - d Employment Functions
  - e Standards Functions
  - f Social Care Appeals functions

#### Planning Functions

- 3 The Planning Committee and its composition will be agreed by Council at its annual meeting.
- 4 When the Planning Committee carries out its functions it will follow the Planning Rules (Part 4) and the Planning Code (Part 5)
- 5 The Planning Committee functions are to determine planning and listed building consent in those cases where:
  - a The application has been called in for Committee determination by the relevant Ward member in accordance with the Call-in procedure
  - b The application is submitted by the Council, by others on Council land or by or on behalf of an organization or other partnership of which the Council is a member or has a material interest, and where objections on material planning considerations have been received, or where the proposal is contrary to adopted planning policy
  - c The application is submitted by a Council member or a close family member such that a Council member has a material interest in the application
  - d The application is submitted by a Council Officer who holds a politically restricted post and/or is employed in the Planning and Transportation service
  - e The application, in the view of the Head of Planning and Transportation, raises issues around the consistency of the proposal, if approved, with the adopted development plan
  - f The application, in the reasonable opinion of the Head of Planning and Transportation, raises issues of a significant and/or strategic nature that a Planning Committee determination of the matter would represent the most appropriate course of action, or

- g In any other circumstances where the Head of Planning and Transportation believes the application is such that it requires a decision by the Planning Committee

## Regulatory Functions

### The Regulatory Committee

- 6 The Council has established a Regulatory Committee to undertake its general regulatory functions
- 7 The Regulatory Committee's role is:
  - a To exercise the powers and duties of the Council as the authority responsible for the enforcement of enactments relating to trading standards and consumer protection;
  - b To exercise the powers and duties of the Council as the authority responsible for the enforcement of enactments relating to animal health and welfare legislation;
  - c To exercise the powers and duties of the Council as the authority responsible for the enforcement of enactments relating to Environmental Health (Public Health, Control of Pollution (including noise), Contaminated Land, Environmental Protection (including statutory nuisance), Food Acts and related legislation);
  - d To hear appeals against refusal of any licences and conditions imposed including matters in relation to:
    - i. Hackney Carriages and Private Hire;
    - ii. Public Entertainments;
    - iii. Cinema and Theatre;
    - iv. House to House and Street Collections;
    - v. Betting and Gaming;
    - vi. Gaming Machines;
    - vii. Street Trading;
    - viii. Acupuncture, tattooing, ear piercing and electrolysis.
  - e To undertake all licensing and registration functions from Schedule 1 to the Functions Regulations as amended from time to time.
  - f To undertake all the Local Choice functions allocated to the Regulatory Committee in Section 4 above
  - g To undertake all miscellaneous functions from the schedule to Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001 as amended from time to time as allocated to the Regulatory Committee as follows.

<b>What is the function</b>	<b>Statutory power</b>
Power to create footpaths and bridleways	Section 26 of the Highways Act 1980
Power to stop up footpaths and bridleways	Section 118 of the Highways Act 1980
Power to determine application for public footpath extinguishment order	Sections 118ZA and 118C(2) of the Highways Act 1980
Power to make a rail crossing extinguishment order	Section 118A of the Highways Act 1980
Power to make a special extinguishment order	Section 118B of the Highways Act 1980
Power to divert footpaths and bridleways	Section 119 of the Highways Act 1980
Power to authorise stopping-up of a footpath or bridleway	Section 257 of the Town and Country Planning Act 1990
Power to extinguish public rights of way over land held for planning purposes	Section 258 of the Town and Country Planning Act 1980
Functions relating to Licensing	Section 5 to 8 of the Licensing Act 2003

### **The Regulatory Sub-Committee**

- 8 The Council has established a Regulatory Sub-Committee
- 9 The Regulatory Sub-Committee will consist of three Councillors drawn from the membership of the Regulatory Committee.
- 10 The Regulatory Sub-Committee will be responsible for determining individual applications for liquor licensing, gaming permits, public entertainment licences and cinema licences within Herefordshire.

### **Audit and Governance Functions**

- 11 The Council has established an Audit and Governance Committee to undertake audit and governance functions for the purpose set out in the Audit and Governance Code (Part 5)
- 12 The terms of reference are in line with the Chartered Institute of Public Finance and Accountancy's best practice guidance and are set out in full in the Audit and Governance Code (Part 5)
- 13 The role of the Audit and Corporate Governance Committee is:
- a To consider the effectiveness of the Council's risk management arrangements, the control environment and associated counter fraud and corruptions arrangements
  - b To seek assurance that action is taken on risk related issues identified by auditors and inspectors

- c To satisfy themselves that the Council's assurance statements, including the annual governance statement, properly reflect the risk environment and any actions required to improve it
- d To approve internal audit's strategy and plan and oversee its performance
- e To review summary internal audit reports and the main issues arising and seek assurance that action is taken where necessary
- f To receive the annual report of the Head of Internal Audit
- g To consider reports of external audit and inspection agencies and take appropriate action where relevant to the remit of the Audit and Governance Committee
- h To ensure that there are effective relationships between external and internal audit, inspection agencies and other relevant bodies
- i To ensure that the Council actively promotes the value of the audit function and processes
- j To review the financial statements, the external auditor's opinion and reports to members and oversee management action in response to the issues raised by external audit
- k Any other matters not covered by the best practice guidance for Audit Committees but which are appropriate for the Audit and Governance Committee and are not within the remit of any other Council Committee or body

### **Employment Functions**

- 14 The Council has agreed that an Employment Panel be established and will fulfil the functions of the Employment Panel as set out in the Employment Rules (Part 4 Section 9).
- 15 The Council has agreed that an Employment Appeals Panel will be established in accordance with the Council's employment policies and procedures
- 16 The Employment Appeals Panel shall exercise the following functions:
  - a To consider an appeal by another person against any decision relating to the appointment of that other person as a member of staff of the authority; or
  - b To consider an appeal by any member of staff against any decision relating to the dismissing of, or taking of any disciplinary action against or of any response to any grievance raised by that employee where all other possible appeal and review processes have been exhausted and in accordance with the Council's policies in that regard
- 17 Nothing in these terms of reference shall permit the Employment Appeals Panel to undertake any functions specifically assigned to the Chief Executive as Head of Paid Service or to the Employment Panel.

### **Standards Committee Functions**

#### **Standards Committee**

- 18 The role of the Standards Committee is:

- a Promoting and maintaining high standards of conduct by Councillors and co-opted members of the Council.
  - b Assisting Councillors and where appropriate co-opted members to observe the Council's Code of Conduct.
  - c Advising the Council on the re-adoption or revision of the Councillors' Code of Conduct
  - d Advising the Council on the adoption or revision of the protocol for member-officer relations.
  - e Monitoring the operation of the Council's Code of Conduct.
  - f Advising, training or arranging to train the Councillors and co-opted members of the Council on matters relating to the Councillors' Code of Conduct.
  - g Exercising the above function in relation to Town and Parish councils for which it is the responsible authority and the members of those councils.
  - h Granting dispensations to Councillors, co-opted members and church and governor representatives from requirements relating to interests set out in the Councillor's Code of Conduct.
  - i Dealing with any reports from the case tribunal or interim case tribunal and any report from the Monitoring Officer or any matter which was referred by Standards for England to the Monitoring Officer.
  - j To assess and review complaints about Councillors
  - k To conduct determination hearings.
  - l To receive reports, and comment on complaints procedures and/or reports from Local Government Ombudsman or external auditors, which are relevant to the Standards Committee's responsibilities.
  - m To advise the Council on the appointment of independent members.
  - n To consider the compliance of the Constitution with the ethical framework.
  - o To consider any application received from any officer of the Council for exemption from political restriction under sections 1 and 2 of the Local Government and Housing Act 1989 in respect of the post held by that officer and, if it thinks fit, to direct the Council that the post shall not be considered to be a politically restricted post and that the post be removed from the list maintained by the authority under section 2.2 of that Act; and
  - p Upon the application of any person, or otherwise, to consider whether a post should be included in the list maintained by the Council under section 2.2 of the 1989 Act and, if it thinks fit, to direct the Council to include a post in that list.
- 17 The Standards Committee has established sub-committees to conduct assessments and reviews on its behalf

**Assessment Sub-Committee**

- 18 The Assessment Sub-Committee has been established to receive allegations that a member of the authority has failed, or may have failed, to comply with the authority's Code of Conduct
- 19 Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Sub-Committee shall make an initial assessment of the allegation and shall then do one of the following:
- a refer the allegation to the Monitoring Officer, with an instruction to arrange a formal investigation of the allegation or arrange training, conciliation or such appropriate alternative steps as permitted by Regulations
  - b refer the allegation to Standards for England
  - c decide that no action should be taken in respect of the allegation, or
  - d where the allegation is in respect of a person who is no longer a member of the authority, but is a member of another relevant authority (as defined in section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority,
  - e and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.
- 20 Upon completion of an investigation by the Monitoring Officer, the Sub-Committee shall determine whether –
- a it accepts the Monitoring Officer's findings of no failure to observe the Code of Conduct;
  - b the matter should be referred for consideration at a hearing before the Standards Committee; or
  - c the matter should be referred to the Adjudication Panel for determination
- 21 Where the Sub-Committee resolves to do any of the actions set out in Paragraph 19.b or 20.c above, the Sub-Committee shall state its reasons for that decision

**Review Sub-Committee**

- 22 The Review Sub-Committee has been established to review upon the request of a person who has made an allegation that a member of the authority has failed, or may have failed to comply with the authority's Code of Conduct, a decision of the Assessment Sub-Committee that no action be taken in respect of that allegation.
- 23 Upon receipt of each such request and any accompanying report by the Monitoring Officer, the Sub-Committee shall review the decision of the Assessment Sub-Committee and shall then do one of the following:
- a refer the allegation to the Monitoring Officer, with an instruction to arrange a formal investigation of the allegation or take an alternative action as permitted by the Regulations

- b refer the allegation to Standards for England
  - c decide that no action should be taken in respect of the allegation, or
  - d where the allegation is in respect of a person who is no longer a member of the authority, but is a member of another relevant authority (as defined in section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority,
  - e and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision
- 24 Where the Sub-Committee resolves to do any of the actions set out in Paragraph 23 b above, the Sub-Committee shall state its reasons for that decision

#### **Social Care Appeals Panel**

- 25 The Social Care Appeals Panel's role will be to exercise the powers and duties of the Council in relation to:
- a Hearing recommendations in respect of complaints and representations made under the National Health Service and Community Care Act 1990; such recommendations being made by the Review Panel constituted for that purpose;
  - b Hearing recommendations, in conjunction with an independent person, regarding action to be taken in respect of complaints made under the Children Act 1989;
  - c Hearing representations from individuals who feel that it is not reasonably practicable for them to pay an assessed charge for either a home care service or an aid to daily living in accordance with Section 17 of the Health and Social Security and Social Services Adjudication Act 1983;
  - d Considering and determining exceptional individual cases arising in the field of personal social services.



# The Functions Scheme

## Section 7

### Informal Arrangements

#### **Establishment of Advisory Bodies and Working Parties**

- 1 The Council , the Cabinet and the Scrutiny Committees may from time to time establish working parties ore groups or advisory bodies which include in their membership Councillors and/or Officers and/or representatives from partner organisations or the local community.

#### **Status of bodies**

- 2 Those bodies have no formal decision making responsibilities but may provide advice or support to inform or assist those persons or bodies exercising Council functions in accordance with the Functions Scheme. Working parties or advisory bodies will not be constituted as committees and are not authorised to make decisions on behalf of the Council.

#### **List of Bodies**

- 3 A list of such bodies will be maintained by the Chief Executive.

#### **Ward Councillors**

- 4 Councillors are elected to represent a ward within the County and act as representatives of the people and communities of that ward. Ward Councillors should be made aware of any significant Council activities that are likely to impact on or effect any group of people or communities within their ward. The Chief Executive will put in place arrangements to ensure that ward councillors are properly informed about such matters and are allowed an opportunity to comment where appropriate on such matters.

#### **Political Management**

- 5 The Council comprises Councillors who may be members of political or other groups. Those groups are an important part of the way the Council operates and are formally recognised in the constitution of committees. The Leader of the Council is usually appointed from the political group comprising the majority of Councillors and the Leader usually appoints members of his Group to be Cabinet Members.
- 6 Each group appoints a Group Leader. The Group Leaders have an important informal role to play in relation to the Functions Scheme. This role is separate and distinct from any role or function that any Councillor who is a group leader has under the Functions Scheme. Other than those functions allocated to any Group Leader under the Functions Scheme, the Group Leaders have no authority to take decisions on behalf of the Council but do fulfil important informal political management functions.
- 7 In particular, the Group Leaders have the following informal functions:

- a To provide leadership to the Councillors in his/her group on all matters related to Council business
- b To act as a link between the political and other groups and to meet regularly with other Group Leaders to discuss matters relating to the political management of the Council
- c To ensure that the views of his or her Group are made known to the Council, the Cabinet and the Chief Executive
- d To help identify whether there is any consensus or other ways that the groups can work together on matters related to Council functions
- e To attend Council and other meetings as set out in the Constitution as a recognised Group Leader for the purpose of fulfilling these functions

### **Champions**

- 8 The Council may from time appoint individual Councillors or other individuals to champion a particular issue within the Council, with its partners, in communities, across the Council, regionally or nationally.
- 9 Such appointments will be made in consultation with the Chief Executive and the Leader of the Council and shall be approved by the Council, the Cabinet or the relevant Cabinet Member as appropriate depending on the scope of the role of that Champion.
- 10 Such Champions shall have no formal decision making power and shall not take or purport to take any decisions on behalf of the Council.

# The Functions Scheme

## Section 8

### Officer Functions

- 1 Except as set out in this Functions Scheme, the Chief Executive will exercise all functions on behalf of the Council.
- 2 Those functions are:
  - a Council Functions as set out in Section 2 of the Functions Scheme which will be exercised in consultation with the Council.
  - b Cabinet functions that are not reserved for Cabinet or individual Cabinet Member decision as set out in Section 3 of the Functions Scheme which will be exercised in consultation with the Leader of the Council or the relevant Cabinet Member.
  - c Local Choice Functions as set out in Section 4 of the Functions Scheme which will be exercised in consultation with either the Cabinet or the Council depending on whether the Council has designated those functions as Council or Cabinet functions. Where such functions are designated Council functions but have been delegated to another Council body, the Chief Executive will exercise his delegated functions in consultation with that body.
  - d Other functions (other than overview and scrutiny functions) not specifically reserved to another Council body in Section 6 of the Functions Scheme.
  - e The proper functions of the Head of Paid Service including any formal statutory functions pursuant to that statutory role including determining the management structure of the Council, which the Chief Executive will publish at Part 7 of this Constitution.
  - f The functions of Electoral Registration Officer and Returning Officer which he will do independently of the Council.
  - g Leadership and effective management of all Council staff.
- 3 The Council's designated Monitoring Officer and s.151 Officer will fulfil all statutory functions relating to those statutory roles.
- 4 The Chief Executive (as Head of Paid Service), the Monitoring Officer and the s.151 Officer will work together constructively but will maintain their discrete roles as necessary to enable them to fulfil their statutory functions.
- 5 The Chief Executive may arrange for an officer of the Council to carry out these functions.
- 6 For the purpose of carrying out any of these functions on behalf of the Chief Executive, the members of the Joint Management Team and other senior officers who are employed by the NHS Primary Care Trust are hereby appointed by the Council as officers of the Council to enable them to fulfil functions delegated to them by the Chief Executive

- 7 Any officer of the Council who has authority of the Chief Executive to carry out any of the Chief Executive's functions of the Council may delegate those functions to other officers. In most cases, it is not appropriate for those delegations to be given to any officer below the level of Head of Service or Service Manager in the organisation structure.
- 8 The Chief Executive will maintain a Chief Executive's Scheme of Delegation detailing all relevant delegations including the delegation of any proper officer functions (Section 8 below).
- 9 The Chief Executive's Scheme of Delegation will be regularly reviewed and updated to ensure that it contains all relevant delegations.
- 10 The Chief Executive's Scheme of Delegation will be published as part of the Council's Freedom of Information Publication Scheme and will be presented to the Council, the Cabinet and the Overview and Scrutiny Committee annually.

FINAL DRAFT FOR COUNCIL

# The Functions Scheme

## Section 9

### Proper Officer Functions

- 1 A number of statutes and statutory provisions relating to the functions of the Council require that the Council designates one of its officers as the “proper officer” for the purposes of that statutory provision.
- 2 The Council hereby designates the Chief Executive as its proper officer for all such purposes.
- 3 The Chief Executive may delegate the responsibility for fulfilling any proper officer function to another officer.
- 4 The Chief Executive will maintain and keep up to date the list of statutory proper officer functions that shows who (if any) other officer has delegated responsibility for fulfilling any proper officer function on his behalf. This list will form part of the Chief Executive’s scheme of delegation.
- 5 All officers exercising statutory proper officer functions on behalf of the Chief Executive must check to ensure that they are properly authorized to fulfil that function.
- 6 The content of the Chief Executive’s Scheme of Delegation shall be the primary source of such authorization but the Chief Executive may sign specific delegations for an officer to exercise such a function on his behalf should the need arise, notwithstanding that the list of Proper Officer functions in the Scheme of Delegation does not so provide for that officer to exercise that function.
- 7 The Chief Executive’s Scheme of Delegation shall be published as part of the Council’s Freedom of Information Act publication scheme and shall be submitted to Cabinet, to Council and the Overview and Scrutiny Committee annually for information.



# PART 4

## PROCEDURE RULES

### Contents

- 1 Council Rules
- 2 Access to Information Rules
- 3 Budget and Policy Framework Rules
- 4 Cabinet Rules
- 5 Scrutiny Rules
- 6 Contract Procedure Rules
- 7 Financial Procedure Rules
- 8 Planning Rules
- 9 Employment Rules



# Section 1

## Council Rules

### Council Procedure Rules

- 1 These rules set out how meetings of the Council, the Cabinet, Committees and other bodies will be conducted.

### Application

- 2 These rules apply to all formal meetings of Councillors and Council bodies except the rules relating to the business to be conducted at the Annual, Ordinary and Extraordinary meetings of the Council and notices of Motion.
- 3 Where there is any inconsistency between the Council Rules and the rules that follow in the remainder of Part 4 of the Constitution, the latter shall prevail.
- 4 In the application of these rules to meetings other than Council meetings, greater informality may be exercised at the discretion of the Chairman of the meeting.

### Interpretation

- 5 The ruling of the Chairman at the meeting as to the construction or application of the rules that apply to that meeting shall not be challenged at the meeting

### Appointment of Chairman

- 6 If at any meeting the Chairman appointed by Council in accordance with the Council Rules is absent or no chairman has been appointed by Council, the meeting shall appoint a chairman for that meeting only. The Monitoring Officer or his/her representative at the meeting shall at the commencement of the meeting invite nominations as chairman and will take a vote on a show of hands for those members nominated as chairman.

### Annual Council Meeting

- 7 In a year when there is an ordinary election of Councillors, the Annual Meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, the Annual Meeting will take place in March, April or May.
- 8 The Annual Meeting will:
  - a elect a person to preside if the Chairman of the Council is not present;
  - b elect the Chairman of the Council;
  - c appoint the Vice Chairman of the Council;
  - d receive any declarations of interest;
  - e approve the minutes of the last meeting;

- f receive any announcements from the Chairman and/or the Chief Executive;
- g elect the Leader of the Council;
- h appoint the Chairmen of Committees and other bodies;
- i appoint at least one Scrutiny Committee, a Standards Committee and such other Committees as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are Cabinet Functions;
- j decide the size and terms of reference for those Committees;
- k decide the allocation of seats to political or other groups in accordance with the political balance rules;
- l receive nominations of Members to serve on each Committee and outside body or in the absence of nominations agree that the Chief Executive may make such appointments on receipt of nominations from the Group Leaders in accordance with its decision to allocate seats to political or other groups; and
- m appoint to those Committees and outside bodies except where appointment to those bodies has been delegated by the Council or is exercisable only by the Cabinet;
- n agree the functions of those committees set out in Part 3 of this Constitution;
- o approve a programme of ordinary meetings of the Council for the year (if not already agreed); and
- p instruct the Monitoring Officer make the necessary consequential amendments to the Constitution to give effect to those decisions

### Ordinary Meetings

- 9 There shall be 5 ordinary Council meetings per year. Ordinary meetings of the Council will take place in accordance with a programme decided by the Council at venues determined by the Chairman.
- 10 Petitions and depositions will not form part of the business to be conducted at a Council meeting but if presented to a Council meeting will be dealt with in accordance with these Council Rules.
- 11 Ordinary meetings will:
  - a elect a person to preside if the Chairman or Vice- Chairman is not present;
  - b approve the minutes of the last Meeting;
  - c receive any declarations of interest from Members;
  - d receive any announcements from the Chairman of the Council, Leader, Members of the Cabinet or the Chief Executive;
  - e receive any questions from, and provide answers to, the public;
  - f receive any questions from and provide answers Members of the Council;

- g deal with any business from the last Council Meeting;
- h receive recommendations from Cabinet and reports from its officers on any matters within the Council Functions
- i receive reports from the Leader of the Council on the work of the Cabinet and the Council's Committees;
- j receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
- k consider motions and debate those motions in the order to be determined in accordance with these rules; and
- l consider any other business specified in the summons to the Meeting.

### **Budget and Policy Framework meetings**

- 12 At the Council meeting in February the Council will approve the budget (known as the budget meeting)
- 13 At the Council meeting in March the Council will:
  - a set the level of council tax and associated business rates
  - b deal with statutory plans or other matters within the Policy Framework that require Council approval

### **Time of meetings**

- 14 Meetings of the Council will be at 10.30 am or any other such time as the Chairman considers necessary and will continue for a maximum of 3 hours unless the Chairman determines that the meeting should continue beyond 3 hours or the Council so agrees
- 15 At the expiry of 3 hours, the Chairman may determine that the remaining business to be conducted at the meeting be:
  - a Deferred to the next meeting
  - b Deferred to an extraordinary meeting called for the purpose of dealing with any remaining business
  - c Put to the vote immediately in the order that the business appears on the agenda or in any order determined by the Chairman. The Chairman may determine that some business be put to the vote immediately in accordance with this rule and other business be deferred in accordance with rules (a) and (b) above
- 16 Meetings of other bodies will take place in accordance with the agreed programme of meetings
- 17 The Chairman has discretion to order adjournment of any meeting.

### **Extraordinary Meetings**

- 18 Those listed below may require the Chief Executive to call Council Meetings in addition to ordinary Meetings:
  - a the Council by resolution;

- b the Chairman of the Council;
  - c the Monitoring Officer; and
  - d any five Members of the Council if they have signed a requisition stating the grounds for the extraordinary meeting and the business to be conducted at that meeting and presented it to the Chairman and he/she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition.
- 19 When requested, the Chief Executive shall call a meeting of the Council unless he or she is of the opinion that the business to be discussed at the proposed can conveniently wait until the next ordinary meeting of the Council.
- 20 No business may be conducted at an extraordinary meeting other than that specified in the resolution, request or requisition which led to its being called.
- 21 Notice of an intended meeting shall be in accordance with the Access to Information Rules.

### **Notice of Meetings**

- 22 The Monitoring Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules.

### **Conduct of the meeting**

- 23 The Chairman's powers and responsibilities in relation to the conduct of a meeting may be exercised by the person presiding at the Meeting.

### **Quorum**

- 24 Subject to any specific statutory requirement, the quorum of a meeting will be one quarter of the whole number of Members or three voting Members, whichever is the greater.
- 25 If a quorum is not reached 15 minutes after the time appointed for the start of the meeting, the meeting will stand adjourned.
- 26 During any meeting if the person chairing the meeting counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately.
- 27 Remaining business will be considered at a time and date fixed by the person chairing the Meeting. If he/she does not fix a date, the remaining business will be considered at the next ordinary Meeting.

**Variations in order of business**

- 28 The Chairman has discretion to vary the order of business in relation to motions on notice or particular questions from the public or Members and the length of any debate on a motion on the agenda.
- 29 The Chairman cannot vary the order of business in respect of:-
- a The Annual Meeting
  - b Choosing a person to preside if the Chairman and vice-Chairman are absent.
  - c Dealing with any business require by statute to be done before any other business of the council.
- 30 A proposed variation may be moved by the Chairman or any other Member, except that where moved by the Chairman there is no need for it to be seconded. The variation will be put to the vote immediately without debate unless the Chairman determines otherwise.

**Petitions and Deputations**

- 31 Any person may present a Petition to an ordinary meeting of the Council. A petition must be about matters for which the Council has a responsibility or which affect the area (other than in respect of Planning and Licensing matters which should be directed to the appropriate Committee).
- 32 A person wishing to present a Petition at Council must give notice to the Monitoring Officer at least seven clear days before the Meeting. The petition must contain signatures from at least 15 people.
- 33 The Chairman will be available at a specified time before a Council meeting to receive petitions from local Members and members of the public and deputations from members of the public. The petition shall not be received if no signatory is present at the specified time to present the petition.
- 34 The Chairman may, on the advice of the Monitoring Officer, refuse a petition which is illegal, scurrilous, improper, out of order or relates to a planning or licensing matter.
- 35 A maximum of two Petitions only will be permitted at any meeting and will be selected in the order in which they were received. Only one Petition will be permitted if the Monitoring Officer receives notice of a Deputation to be dealt with at that meeting.
- 36 The Chairman will announce at the meeting that the Petition has been received and the subject that is concerned with.
- 37 The Chairman may invite a Councillor nominated by the person presenting a petition to address the Council meeting for up to three minutes.
- 38 No debate or vote will be taken on any Petition.
- 39 A Member may move that the subject matter be placed on the agenda of the next meeting of the relevant Committee. Such motion is to be moved and seconded formally and put without debate. If no such motion is moved or carried, the Petition will be referred to the Chief Executive and will be dealt with in accordance with the Petitions Code.

- 40 Deputations may be received at any meeting of the Council provided seven clear days written notice has been given to the Monitoring Officer. Deputations must relate to matters for which the Council has a responsibility or which affect the area. The notice must be signed by at least five persons and set out the subject which the deputation wishes to raise and how it relates to the Council's functions or affects the area.
- 41 The Chairman will be available at a specified time before a Council meeting to receive deputations.
- 42 The Chairman may, on the advice of the Monitoring Officer refuse a deputation which is illegal, scurrilous, improper, out of order or relates to a specific planning application or relates to a matter on which there has been a previous similar deputation within the preceding six months.
- 43 A maximum of two deputations only will be permitted at any meeting and they will be selected in the order notice is received. Only one deputation will be permitted if the Monitoring Officer receives notice of a petition.
- 44 The Chairman will announce at the meeting that the Deputation has been received and the subject that is concerned with.
- 45 The Chairman may invite a Councillor nominated by the deputation to address the meeting for up to three minutes.
- 46 There will be no debate or vote on a Deputation. A Councillor may propose that the subject matter be placed on the agenda of the next ordinary meeting of the relevant Committee. Such a motion is to be moved and seconded formally and put to the vote without discussion. If no such motion is moved or carried, the Deputation will be referred to the Chief Executive who will respond to it in writing within 28 days.

#### **Questions by the public**

- 47 Members of the public may ask questions of Cabinet Members or Committee or other Chairman which will be answered in writing immediately prior to the Council meeting, where such questions are not already subject to a Freedom of Information request.
- 48 Composite answers are acceptable where appropriate.

#### **Notice of Public Questions**

- 49 A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Monitoring Officer no later than midday eight clear working days before the day of the meeting. Each question must give the name and address of the questioner and must name the person to whom it is to be put.

**Order of Public Questions**

- 50 Questions will be answered in order of which they are received. Where it is not possible to supply a written answer immediately prior to the meeting of the Council, the answer will be supplied as soon as practicable after the meeting.

**Number of Public Questions**

- 51 A person may submit only one question at any meeting.

**Scope of Public Questions**

- 52 The Monitoring Officer may reject a question or a supplemental question if it:
- a is not about a matter for which the Council has a responsibility or which affects the County or a part of it;
  - b is illegal, scurrilous, defamatory, frivolous or offensive or otherwise out of order ;
  - c is substantially the same as or similar to a question which has been put at a meeting of the Council in the past six months or relates to the same subject matter or the answer to the question will be substantially the same as the previous answer;
  - d requires the disclosure of confidential or exempt information;
  - e relates to a planning or licensing application.
- 53 If a question is rejected, the person who submitted it will be notified in writing before the meeting and given the reasons for the rejection.

**Record of Questions**

- 54 The Monitoring Officer will record each question in a register open to public inspection and will immediately send a copy of the question to the person to whom it is to be put. Rejected questions will include reasons for rejection. Copies of all questions and answers supplied will be circulated to all Members and made available to members of the public who attend the Council meeting

**Supplementary Questions**

- 55 A questioner who has submitted a written question may also put one brief supplementary question without notice to the person (if he/she is present at the meeting) who has replied to his or her original question. A supplementary question must arise directly out of the original request or reply. The Chairman may reject a supplementary question on any of the grounds for rejecting written questions set out in these Council Rules or if the question is too lengthy, is in multiple parts or takes the form of a speech. In any event, any person asking a supplementary question will be permitted only 1 minute to do so.

### Written Answers

- 56 Any question or supplementary question which cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the person to whom it was to be put, will be dealt with by a written answer.

### Reference of Question to the Cabinet or a Committee

- 57 Unless the Chairman decides otherwise, no discussion will take place on any question or a supplemental question, but any Member may move that the matter raised by a question be referred to the Cabinet member or Committee. Once seconded, such a motion will be voted on without debate.

### Questions on reports

- 58 A Member may ask the Leader or the Chairman or Committee questions without notice about an item in a report of the Cabinet or of that Committee when it is being considered. Otherwise there will be no debate on matters contained reports.

### Questions on Notice at Council Meetings

- 59 A Member may ask the Chairman of the Council, the Leader, any Member of the Cabinet or the Chairman of a Committee a question about any matter in relation to which the Council has powers or duties or which affects the County in accordance with these Council Rules.

### Notice of Questions

- 60 A Member may only ask a question if either:
- a they have given at least 3 clear days notice in writing of the question to the Monitoring Officer; or
  - b the question relates to urgent matters, they have the consent of the Member to whom the question is to be put and the content of the question is given to the Monitoring Officer by 12 noon on the day before the Meeting.

### Scope of Questions

- 61 The Monitoring Officer may reject a question or a supplemental question if it:
- a is not about a matter for which the Council has a responsibility or which affects the district;
  - b is illegal, scurrilous, defamatory, frivolous, offensive or otherwise out of order;
  - c is substantially the same as or similar to a question which has been put at a meeting of the Council in the past six months or relates to the same subject matter or the answer to the question will be substantially the same as the previous answer;
  - d requires the disclosure of confidential or exempt information;
  - e relates to a planning or licensing application.

- 62 If a question is rejected, the member who submitted it will be notified in writing before the meeting and given the reasons for the rejection.

### **Response**

- 63 An answer may take the form of:
- a a direct oral answer;
  - b where the desired information is in a publication of the Council or other published work, a reference to that publication; or
  - c a written answer circulated to the questioner.
  - d an answer to be given to the Member where it is appropriate elsewhere on the agenda as part of a report before Council.

### **Supplementary Question**

- 64 A Member asking a question under these Council Rules may ask one supplementary question without notice. A supplementary question must arise directly out of the original question or reply.

### **Time for Questions**

- 65 There will be a time-limit of a maximum of half an hour for Public questions and of half an hour for Members' questions. If either public questions or Members questions are concluded in less than half an hour, then the Chairman may allow more time for either public or Members' questions within an overall time limit of one hour for all questions and supplementary questions. There will be no extension of time beyond one hour and questions not dealt with in this time will be dealt with by written response. The Chairman will decide the time allocated to each question.
- 66 There will be no public or member questions at the Budget meeting or the Annual meeting

### **Format of Questions**

- 67 Questioners and those responding must confine their contributions to questions and answers and not make statements or attempt to debate. The Chairman will decide whether a contravention of this rule occurs and stop the person contravening this rule from speaking further.
- 68 Every question asked in accordance with these Council rules, and the reply (or a summary of the reply), shall be recorded in the minutes of the Council.

### **Notice of Motions**

- 69 Except for motions which can be moved without notice under these Council rules, written notice of every motion, signed by at least one Member, must be delivered to the Monitoring Officer not later than midday on the seventh clear day before the date of the Meeting. These will be entered in a book open to inspection by the public. A Member cannot sign more than one motion per Meeting.

### **Motions Set Out in the Agenda**

- 70 Motions for which notice has been given will be listed on the agenda in the order in which notice was received, to a maximum of three, unless the Member giving notice states, in writing, that they propose to move it to a later meeting or withdraw it. Motions exceeding three not be able to be listed on the Agenda will be put over for listing on the Agenda for the next meeting in the order they were received.
- 71 A max of 1½ hours will be allocated for dealing with notices of motion but that time may be extended at the discretion of the Chairman.

### **Scope**

- 72 Motions must be about matters for which the Council has a responsibility or which affect the area. The Chairman may, on the advice of the Monitoring Officer, refuse a motion which is illegal, scurrilous, improper or out of order.

### **Exceptions**

- 73 Where a critical local situation arises a motion signed by two Members may be permitted in addition to the maximum of 3 and accepted by the Chairman or on the advice of the Monitoring Officer.

### **Motions and Amendments - Without Notice**

- 74 The following motions and amendments may be moved without notice:
- a to appoint a Chairman of the meeting at which the motion is moved;
  - b in relation to the accuracy of the Minutes;
  - c to change the order of business in the Agenda;
  - d to refer something to an appropriate body or individual;
  - e to appoint a Committee or Member arising from an item on the summons for the Meeting;
  - f to receive reports and recommendations of Committees or officers and to make any decisions necessarily arising;
  - g to withdraw a motion;
  - h to amend a motion;
  - i to proceed to the next business;
  - j that the question be now put;
  - k to adjourn a debate;
  - l to adjourn a Meeting;

- m that the meeting continue beyond 3 hours duration
- n to exclude the public in accordance with the Access to Information Procedure Rules;
- o not to hear a Member further or to require a Member to leave the Meeting;
- p to give the consent of the Council where its consent is required by this Constitution; and
- q to suspend any of these Council rule or rules

## Rules Of Debate

### No Speeches to be Made Until Motion Seconded

- 75 No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

### Right to Require a Motion in Writing

- 76 Unless notice of the motion has already been given, the Chairman may require it to be written down and handed to him or her before it is discussed.

### Secunder's Speech

- 77 When seconding a motion or amendment, a Member may reserve his or her speech until later in the debate.

### Content and Length of Speeches

- 78 Speeches must be directed to the matter being debated or to a personal explanation or point of order. No speech may exceed 5 minutes without the consent of the Chairman of the Council.

### When a Member May Speak Again

- 79 A Member who has spoken on a motion may not speak again whilst it is the subject of debate, except:
- a to speak once on an amendment moved by another Member;
  - b to move a further amendment if the motion has been amended since he or she last spoke;
  - c if his or her first speech was on an amendment moved by another Member, to speak on the main issues (whether or not the amendment on which he or she spoke was carried);
  - d to exercise a right of reply;
  - e on a point of order; and
  - f by way of personal explanation.

**Amendments to Motions**

- 80 An amendment must be relevant to the motion and may:
- a refer the motion to an appropriate body or individual for consideration or re-consideration;
  - b leave out words;
  - c leave out words and insert or add others;
  - d insert or add words;
- 81 as long as the effect is not to negate the motion.
- 82 (Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- 83 If an amendment is not carried, other amendments to the original motion may be moved.
- 84 If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- 85 After an amendment has been carried, the Chairman will read out the amended motion before accepting any further amendment, or if there are none, put it to the vote.

**Alteration of Motion**

- 86 A Member may alter a motion of which he or she has given notice with the consent of the Meeting. The Meeting's consent will be signified without discussion.
- 87 A Member may alter a motion which he or she has moved without notice with the consent of both the meeting and the seconder. The Meeting's consent will be signified without discussion.
- 88 Only alterations which could be made as an amendment may be made.

**Withdrawal of Motion**

- 89 A Member may withdraw a motion which he/she has moved with the consent of both the meeting and the seconder. The Meeting's consent will be signified without discussion. No Member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

**Right of Reply**

- 90 The mover of a motion has a right to reply at the close of the debate on the motion, immediately before it is put to the vote.

- 91 If an amendment is moved, the mover of the original motion also has a right of reply at the close of debate on the amendment, but may not otherwise speak on the amendment.
- 92 The mover of an amendment shall have no right of reply to the debate on the amendment.

### **Motions Which may be Moved During Debate**

- 93 When a motion is under debate, no other motion may be moved except the following:
- a to withdraw the motion
  - b to amend the motion;
  - c to proceed to the next business;
  - d that the question be now put;
  - e to adjourn a debate;
  - f to adjourn a Meeting;
  - g that the meeting continue for a further half hour;
  - h to exclude the press and public in accordance with the Access to Information Rules; and
  - i that a Member be not further heard or to exclude the Member from the Meeting.

### **Closure Motions**

- 94 A Member may move without comment the following motions at the end of a speech of another Member:
- a to proceed to next business;
  - b that the question be now put;
  - c to adjourn a debate; or
  - d to adjourn a Meeting.
- 95 If a motion to proceed to next business is seconded and the Chairman thinks the item under discussion has been sufficiently discussed, he or she will give the mover of the original motion a right of reply and then put the procedural motion to the vote.
- 96 If a motion that the question be now put is seconded and the Chairman thinks the item has been sufficiently discussed, he or she will put the procedural motion to the vote. If it is passed, he or she will give the mover of the original motion a right of reply before putting his/her motion to the vote.
- 97 If a motion to adjourn the debate or adjourn the meeting is seconded and the Chairman thinks the item has not been sufficiently discussed and cannot reasonably be discussed

on that occasion, he or she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

#### **Point of Order**

- 98 A Member may raise a point of order at any time and the Chairman will hear them immediately. A point of order may only relate to the alleged breach of these Council Rules or the law. The Member must indicate the rule or law and the way in which he or she considers it has been broken. The ruling of the Chairman on the matter will be final.

#### **Personal Explanation**

- 99 A Member may make a personal explanation at any time, A personal explanation shall only relate to some material part of an earlier speech by the Member which may appear to have been misunderstood in the present debate. The ruling of the Chairman on the admissibility of a personal explanation will be final.

#### **Conduct of the debate**

- 100 A Member shall stand when speaking and shall address the Chairman. If two or more Members rise, the Chairman shall call on one to speak.

#### **Motion to Rescind a Previous Decision**

- 101 A motion to rescind a decision arising from a motion moved and adopted at a Council meeting within the past six months cannot be moved unless the notice of motion is signed by at least one third of the Members of the Council.

#### **Motion Similar to one Previously Rejected**

- 102 A motion or amendment in similar terms to one which has been rejected at a Council meeting within the past six months cannot be moved unless notice of motion or amendment is given signed by at least one third of the Members of the Council.
- 103 Once a motion or amendment to which this Rule applies has been dealt with, no Member can propose a similar motion or amendment within the next six months.

**Voting Majority**

- 104 Unless this Constitution (or the law) provides otherwise any matter will be decided by a simple majority of those present and voting in the room at the time the question was put.

**Chairman of the Council's Casting Vote**

- 105 If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.

**On the voice and show of Hands**

- 106 Unless a recorded vote is demanded the Chairman will ask the meeting to signify agreement on the voice unless the decision on the voice is unclear in which case the Chairman will take the vote by a show of hands, or if there is no dissent, by the affirmation of the Meeting.

**Recorded Vote**

- 107 If eleven Members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

**Right to Require Individual Vote to be Recorded**

- 108 Where any Member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

**Voting on Appointments**

- 109 If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

**Keeping of minutes**

- 110 Minutes of the proceedings of each meeting of the Council will be prepared and entered in a book kept for the purpose.

**Signing the Minutes**

- 111 The Chairman will sign the minutes at the next available Meeting. The Chairman will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.
- 112 In the case of any question of the accuracy of the minutes this can only be raised where notice is given to the Monitoring Officer at least twenty four hours before the meeting at which this is to be raised unless the Chairman determines that questions of accuracy may be raised when the minutes are presented to the next meeting for agreement.

**No Requirement to Sign Minutes of Previous meeting at an Extraordinary Meeting.**

- 113 Where in relation to any meeting, the next meeting for the purposes of signing the minutes is an Extraordinary meeting, then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purpose of signing of minutes
- 114 Until the contrary is proved, a meeting of the Council shall be deemed to have been duly convened and held, and all the Members present at the meeting shall be deemed to have been duly qualified, where a minute of those proceedings has been made and signed in accordance with these Council rules.

**Exclusion of the public**

- 115 The public and press may only be excluded either in accordance with the Access to Information Rules or in the case of disturbance by the public in accordance with these Council Rules

**Members' Conduct**

- 116 When the Chairman stands during a debate any Member(s) then standing must sit down and the Council must be silent.
- 117 If a Member is guilty of misconduct by persistently disregarding the ruling of the Chairman of the Council, or by behaving irregularly, improperly or offensively, or by deliberately obstructing business, any Member may move that that Member is not further heard. If seconded, the motion will be voted on without discussion.
- 118 If the Member continues to behave improperly after such a motion is carried, any Member may move either that the Member leave the meeting or that the meeting be adjourned for a specified period. If seconded, the motion will be voted on without discussion.
- 119 If there is a general disturbance making orderly business impossible, the Chairman may adjourn the meeting for as long as he or she thinks necessary.
- 120 The decision as to whether misconduct is taking place shall rest with the Chairman who will have due regard to the Members' Code of Conduct.

**Disturbance by Public**

- 121 If a member of the public interrupts proceedings, the Chairman will warn the person concerned and, if the interruption continues, will order the person's removal from the meeting room.
- 122 If there is a general disturbance in any part of the meeting room open to the public the Chairman shall order that part to be cleared and the Chairman may for that purpose adjourn the meeting for as long as is needed.

**Suspension and Amendment of Council Rules**

- 123 Any of the Council Rules may be suspended for all or part of the business of a meeting at which suspension is moved by a motion.
- 124 Such a motion cannot be moved without notice unless at least two thirds of the whole number of Members of the Council is present.

### **Substitution**

- 125 A member of a committee who is unable to attend a meeting of that committee may propose a substitute to take their place at that meeting. Subject to the separation of functions of the Cabinet and Scrutiny as provided for in the Local Government Act 2000, the substitute may be a member of any political group or be an independent member.
- 126 There are no substitutes permitted at Cabinet or Strategic Monitoring Committee or any Scrutiny Review Group.
- 127 On receiving written notice of a substitution, the Monitoring Officer or their representative at the meeting, shall include the substitute member for that meeting and shall inform the Chairman and the meeting.
- 128 Subject to rule 130 below, the substitute member shall remain a member of the committee for the duration of the meeting and shall be entitled to vote and assume all of the responsibilities of the member for whom they are substituting at that meeting only.
- 129 If any meeting is separated into separate parts, a substitute may attend for the whole or any part of the meeting and a further substitute may attend for the remaining part or parts of the meeting. The minutes shall record who is acting as a substitute for each part of any such meeting.

FINAL DRAFT FOR COUNCIL APPROVAL



## Section 2

# Access to Information Rules

### Meetings covered by these Rules

- 1 These Rules apply to all meetings of:-
  - a the Council
  - b the Cabinet
  - c the Overview and Scrutiny Committee
  - d the Scrutiny Committees
  - e the Planning Committee
  - f the Regulatory Committee and its Sub-Committee
  - g the Employment Committee
  - h the Standards Committee
  - i all sub-committees except as provided for by law or elsewhere in this Constitution

### Additional rights to information

- 2 These Rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

### Rights to attend meetings

- 3 Members of the public may attend all Meetings subject only to the exceptions in these rules.

### Notice of meetings

- 4 The Council will give at least Five Clear Days' notice of any Meeting by posting details of the meeting at the Designated Office.

### Access to agenda and reports before the meeting

- 5 Copies of:
  - a the agenda, and
  - b those reports which are open to the publicshall be made available for inspection at the Designated Office at least Five Clear Days before the meeting, unless paragraphs 6 and 7 below apply.

- 6 If a Meeting is convened with less notice, copies of the agenda and reports must be open to inspection from the time the meeting is convened.
- 7 If an item is added to an agenda which is open to inspection, copies of the item and the revised agenda must be open to inspection from the time the item is added to the agenda.

### **Consideration of items of business**

- 8 An item of business may not be considered at a Meeting unless either:-
- a a copy of the agenda including the item (or a copy of it) is open to inspection by a member of the public for at least Five Clear Days before the meeting, or if the meeting was convened with less notice, from the time the meeting is convened, or
  - b the Chairman of the Meeting considers that for reasons of special circumstances, the item should be considered at the Meeting as a matter of urgency.
- 9 Rules in paragraphs 26 to 32 below apply if the item of business relates to a Key Decision.

### **Supply of copies**

- 10 The Council will supply copies of:
- a. any agenda and reports which are open to public inspection;
  - b. any further statements or particulars necessary to indicate the nature of the items in the agenda; and
  - c. if the Monitoring Officer thinks fit, copies of any other documents supplied to Councillors in connection with an item to any person on payment of a charge for postage and any other costs.
- 11 The Council may direct a member of the public seeking copies of documents referred to in paragraph 10 to the Council's website if copies of those documents are available there.

### **Access to Minutes etc After The Meeting**

- 12 The Council will retain for 6 years and make available copies of the following:
- a the minutes of the Meeting or records of decisions taken, together with reasons, for all meetings of the Cabinet excluding any part of the Minutes of proceedings when the meeting was not open to the public or which disclose Exempt or Confidential information;
  - b a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
  - c the agenda for the meeting; and
  - d reports relating to items when the Meeting was open to the public.

### **Background Papers**

- 13 Background Papers used or referred to in the preparation of a report will be listed in every report.
- 14 The Council will make available for public inspection a copy of each Background Paper for four years after the date of the Meeting.

### **Summary of Public's Rights**

- 15 A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept at and available to the public at the Council's principal office

### **Exclusion of Access by the Public to Meetings**

- 16 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that Confidential Information would be disclosed.
- 17 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that Exempt Information would be disclosed.
- 18 Confidential Information and Exempt Information is defined by law for these purposes. Advice is available from the Monitoring Officer on what is confidential information and exempt information.
- 19 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, the Council will give due consideration to the presumption in article 6 of the European Convention on Human Rights that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6. The Monitoring Officer can provide advice on Article 6.

### **Exclusion of Access by the Public to Reports**

- 20 If in the opinion of the Monitoring Officer any report contains confidential information (pursuant to paragraph 16 above) or exempt information (pursuant to paragraph 17 above), and will or are likely to be considered during that part of the meeting from which the public are excluded, those reports will not be published with the agenda for the meeting. Such reports will be marked "Not for publication" and will include a statement of the category of information contained within the report which will or is likely to give rise to the exclusion of the public from the meeting.
- 21 When a report is to be considered at a meeting which in the opinion of the Monitoring Officer contains confidential information pursuant to paragraph 16 above, the Chairman will ask the public to leave the meeting during consideration of that item.
- 22 When a report is to be considered at a meeting which in the opinion of the Monitoring Officer contains exempt information pursuant to paragraph 17 above, the Chairman will invite the members present at the meeting to consider whether in the circumstances the public should be excluded and, if the meeting agrees that the public should be excluded, the Chairman will ask the public to leave the meeting during consideration of that item. The decision will be based on a test of whether it serves the public interest better to deal with the matter in public or in private.

**Application of Rules to the Cabinet**

- 23 These rules apply to the public meetings of Cabinet and its committees.
- 24 If the Cabinet, its committees or an Cabinet Member meet:-
- a. to discuss a Key Decision to be taken individually or collectively, and
  - b. with an Officer other than a Political Assistant present,
  - c. within 28 days of the date in the Forward Plan by which it is to be decided,
- it must also comply with these Rules, unless paragraph 33 - 34, (General Exception) or paragraphs 35 - 37 (Special Urgency) apply.
- 25 The requirements in these Rules do not apply to meetings, whose sole purpose is for Officers to brief Councillors.

**Procedure before Taking Key Decisions**

- 26 Subject to paragraphs 33 - 34 and paragraphs 35 - 37 (Special Urgency), a Key Decision may not be taken unless:
- a A Forward Plan has been published in connection with the matter in question;
  - b at least Five Clear Days have elapsed since the publication of the Forward Plan; and
  - c where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

**The Forward Plan**

- 27 The Forward Plans will be maintained and published by the Chief Executive to cover a period of four months, beginning with the first day of any month. It will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.
- 28 The Forward Plan must be published at least 14 days before the start of the period covered.
- 29 The Forward Plan will contain matters which the Leader has reason to believe will be subject of a Key Decision to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, or under joint arrangements in the course of the discharge of a Cabinet Function during the period covered by the plan.
- 30 The Forward Plan will contain the following information so far as it is available or might reasonably be obtained:
- a the matter in respect of which a decision is to be made;
  - b where the decision taker is an individual, their name and title, if any and where the decision taker is a body, its name and details of membership;
  - c the date on which, or the period within which, the decision will be taken;
  - d the identity of the principal groups whom the decision taker proposes to consult before taking the decision;

- e the means by which any such consultation is proposed to be undertaken;
  - f the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
  - g a list of the documents submitted to the decision taker for consideration in relation to the matter.
- 31 The Monitoring Officer will publish a notice once a year in at least one newspaper circulating in the area, stating:
- a that key decisions are to be taken on behalf of the Council;
  - b that a forward plan will contain particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
  - c that the plan will contain details of the key decisions to be made for the four month period following its publication;
  - d that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;
  - e that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the plan;
  - f the address from which, subject to any prohibition or restriction on this disclosure, copies of, or extracts from, any documents listed in the forward plan is available;
  - g that other documents may be submitted to decision takers;
  - h the procedure for requesting details of documents (if any) as they become available; and
  - i the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.
- 32 Exempt information need not and confidential information must not be included in the Forward Plan.

### General Exception

- 33 If the matter which is likely to be a Key Decision has not been included in the Forward Plan, the decision may still be taken if:
- a the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next forward plan and until the start of the first month to which the next forward plan relates;
  - b the Monitoring Officer has informed the chair of the relevant Scrutiny Committee, or if there is no such person, each member of that Committee in writing, by notice, of the matter to which the decision is to be made;
  - c the Monitoring Officer has made copies of that notice available to the public at the Designated Office; and

d at least Five Clear Days have elapsed since the Monitoring Officer complied with (a) and (b).

34 Where such a decision is taken collectively, it must be taken in public, unless it involves consideration of exempt or confidential Information.

### **Special Urgency**

35 If because of the date by which a decision must be taken, paragraphs 33 - 34 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman of the body making the decision, obtains the agreement of the Chairman of the relevant Scrutiny Committee that the taking of the decision cannot be reasonably deferred.

36 If there is no Chairman of the relevant Scrutiny Committee, then the agreement of the Chairman of the Council, or in their absence the Vice-Chairman, will suffice.

37 The Cabinet will submit quarterly reports to the Council Meeting on the decisions taken in the circumstances set out in this Rule in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

### **Report to the Council Meeting**

38 If a Scrutiny Committee thinks that a Key Decision has been taken which was not:

- a included in the Forward Plan; or
- b the subject of the general exception procedure (paragraphs 33 – 34);
- c or the subject of the Special Urgency procedure (paragraphs 35 – 37),

the Committee may require the Cabinet to submit a report to the Council Meeting within such reasonable time as the committee specifies.

39 The power to require a report in paragraph 38 may be exercised by:-

- a resolution passed at a meeting of the relevant Scrutiny Committee, or
- b the Monitoring Officer, when so requested by the chair or any 3 members of the relevant Scrutiny Committee.

40 If required under paragraph 38, the Cabinet will prepare a report for submission to the next available Council Meeting. However, if the next Council Meeting is within 7 days of the receipt of the written notice, or the resolution of the Committee, then the report may be submitted to the meeting after that. The report to the Council Meeting will set out particulars of the decision, the individual or body making the decision, and if the Cabinet is of the opinion that it was not a Key Decision, the reasons for that opinion.

### **Record of Decisions**

41 After any meeting of the Cabinet or any of its committees, whether held in public or private, the Monitoring Officer or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon

as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

#### **Scrutiny Committees Access to Documents**

- 42 Subject to paragraph 43 below, a member of a Scrutiny Committee (including its sub-committees) will be entitled to copies of any document which is in the possession or control of the Cabinet or its committees and which contains material relating to:-
- a any business transacted at a meeting of the Cabinet or its committees;
  - b any decision taken by an individual member of the Cabinet;
- 43 A Scrutiny Committee or members of a Scrutiny Review Group will not be entitled to:
- a any document that is in draft form;
  - b any part of a document that contains exempt or confidential Information,

unless that information is relevant to an action or decision they are reviewing or intending to review. A Scrutiny Committee or members of a Scrutiny Review Group may be provided with information to which they are not entitled with the agreement of the Leader and in such circumstances, may be required to treat such information as confidential if so specified.

#### **Additional Rights of Access for Councillors**

- 44 Councillors will be entitled to inspect any document which is in the possession or under the control of the Cabinet or its committees and contains material relating to any business previously transacted at a private meeting unless it contains exempt Information.



## Section 3

# The Budget and Policy Framework Rules

### The Budget and Policy Framework

- 1 The Council is responsible for the adoption of the budget and policy framework and the Cabinet are responsible for implementing it as set out Part 1 (Article 4 and Article 5) and in the Part 3 (the Functions Scheme).

### Process for Developing the Framework

- 2 The Cabinet will publicise a timetable for making proposals to the Council for the adoption of any plan strategy or budget that forms part of the Budget and Policy Framework, and its arrangements for consultation after publication of those initial proposals.
- 3 The Cabinet will provide a copy of the timetable to the Chairman of the Council, the Chairman of the Overview and Scrutiny Committee and the Chairmen of the Scrutiny Committees. The Chairman of the Overview and Scrutiny Committee shall take steps to ensure that the Overview and Scrutiny Committee and the Scrutiny Committee work programmes include any such plan, strategy or budget to enable scrutiny members to be consulted on the Budget and Policy Framework.
- 4 The Cabinet will determine the methods to be used to publicise the timetable to ensure that the appropriate consultees are informed about the process and the timetable for adoption of any such plan, strategy or budget.
- 5 Budget consultees should include Town and Parish Councils, the Local Strategic Partnership, Health partners, the Schools Forum, Business Ratepayers, Council Taxpayers, the Trade Unions, Political Groups on the Council, the Overview and Scrutiny Committee and such other organisations and persons as the Leader shall determine.
- 6 Following consultation and having had regard to the responses to the consultation, the Cabinet will draw up firm proposals for the plan, strategy or budget under consideration.
- 7 The Chief Executive will report the recommendations of Cabinet to Council for any such plan, strategy or budget. The report from the Cabinet to Council recommending the adoption of the plans, strategies and plans that are part of the Budget and Policy Framework will include a summary of the responses to consultation including scrutiny responses.
- 8 In reaching a decision, the Council may adopt the Cabinet's proposals, amend them, refer them back to the Cabinet for further consideration, or in principle, substitute its own proposals in their place. The Council should ensure that it takes into account the advice of its officers to ensure that any decision is properly informed by professional advice.

- 9 If the Council accepts the recommendation of Cabinet without amendment, the Council may make a decision which has immediate effect. Otherwise, it may only make an in principle decision.
- 10 If the Council rejects or amends the Cabinet recommendation or substitutes its proposals in place of the Cabinet's recommendations, the Cabinet will not implement the proposed plan, strategy or budget until a further report to Council has been considered.
- 11 In the event that the Council rejects or amends the Cabinet recommendation or substitutes its proposals, immediately prior to the close of the meeting the Chairman of the Council will adjourn the meeting until a date (not less than 10 working days thereafter) to be agreed by the Leader. The Leader may agree that the matter be deferred to the next meeting of Council. At the reconvened or next meeting the Council will consider the matter again.
- 12 At least 5 working days before the date the adjourned meeting is to be reconvened, the Chief Executive will provide a further report to Council in which he will set out the Leader's response to the in principle decision of Council on its recommendations. That report must address all relevant issues and in particular, must include advice on the financial and legal implications. If the proposed plan, strategy or budget has legal implications for or impact on the Council's Medium Term Financial Management Strategy that exceed £500,000 then the report must contain advice from the s.151 officer on the implications or impact of any proposed amendments or substitute proposals.
- 13 The Leader may:
- a Submit a revision of the draft budget plan or strategy with the Cabinet's reasons for any amendments and any advice from officers for the Council to consider
  - b Inform the Council of any disagreement the Cabinet has with the Council's amendments or substitute proposals and the Cabinet's reasons for such disagreement
  - c Agree any in principle decisions of Council in whole or in part
- 14 If the Leader of the Council fails to agree a date for the reconvened meeting or that the matter may be deferred to the next meeting, the Chairman of the Council shall set the date of the reconvened meeting or decide that the matter be deferred to the next meeting.
- 15 At the reconvened or next meeting, the Council may approve the Cabinet's recommendation or approve a different decision that does not accord with the recommendation of the Cabinet
- 16 The decision shall then be made public and shall be implemented immediately.

### **Decisions Outside the Budget or Policy Framework**

- 17 Subject to the virement arrangements in the Financial Procedure Rules, the Cabinet, a Committee of the Cabinet or Cabinet Members may only take decisions that are in line with the budget and policy framework. If any of these bodies want to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by Council, then that decision may only be taken by the Council unless it is an urgent decision as defined in these Budget and Policy Framework Rules.
- 18 If the Cabinet, a Committee of the Cabinet or Cabinet members want to make such a decision, they shall take advice from the Chief Executive, Monitoring Officer and s.151 officer as to whether the decision they want to take would be contrary to the policy framework or contrary or not wholly in accordance with the budget. If the advice of any of those officers is that the decision would not be in line with the existing budget and policy framework, then the decision must be referred by that body to the Council for decision, unless the decision is a matter of urgency in which case the provisions relating to urgent decisions as defined in these Budget and Policy Framework Rules.

### **Urgent Decisions Outside the Budget or Policy Framework**

- 19 The Cabinet may take a decision which is contrary to the policy framework or contrary to or not wholly in accordance with the budget if the decision is a matter of urgency. The decision may only be taken:
- a If it is not practical to convene a quorate meeting of the full council;
  - b If it is taken by Cabinet collectively; and
  - c If the Chairman of the Overview and Scrutiny Committee agrees that the decision is a matter of urgency;
- 20 The reason why it is not practical to convene a meeting of Council must be clear and noted on the record of the decision.
- 21 The Chairman of the Overview and Scrutiny Committee's agreement must be noted on the record of the decision.
- 22 In the absence of the Chairman of the Overview and Scrutiny Committee, the consent of the Chairman of the Council, and if he/she is unavailable or unable to act, the vice-chairman of the Council, will suffice.
- 23 Following the decision, the Cabinet will provide a full report to the next Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

### **In Year Changes to the Budget or Policy Framework**

- 24 Any decisions that involve an in year change to the Budget and Policy Framework must be approved or adopted by the Council unless:
- a It is an urgent decision as provided for in these Budget and Policy Framework Rules

- b It will result in the closure or discontinuance of a service or part of service to meet immediate budgetary constraint
- c It is necessary to ensure compliance with the law, ministerial direction or government guidance;
- d It relates to the policy framework and is in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy does not provide for the matter under consideration
- e It is within the scope of an in-year decision that the Council has previously agreed can be made by Cabinet
- f It is otherwise within the Financial Procedure Rules

#### **Call-In of Decisions Outside the Budget and Policy Framework**

- 25 Where the Overview and Scrutiny Committee or the relevant Scrutiny Committee is of the opinion that a decision has been taken or is likely to be taken by the Cabinet, a Committee of the Cabinet or a Cabinet Member that is contrary to or not wholly in accordance with the Budget and Policy Framework, that committee shall seek advice from the Chief Executive, the Monitoring Officer and the s.151 Officer.
- 26 If the Chief Executive, the Monitoring Officer and/or the s.151 Officer are of the opinion that the decision was contrary to or not wholly in accordance with the Budget and Policy Framework, a report will be prepared and presented to the Council.
- 27 If the Chief Executive, the Monitoring Officer and/or the s.151 Officer are of the opinion that the decision was not contrary to or was wholly in accordance with the Budget and Policy Framework, a report will be prepared and presented to the Overview and Scrutiny Committee or the relevant Scrutiny Committee.
- 28 If the decision has yet to be or has been made but not implemented, and a report is presented to Council stating that the decision is one that is contrary to or not wholly in accordance with the Budget and Policy Framework, no further action will be taken in respect of that decision or its implementation until the Council has met and considered the matter. The Council shall meet within 10 days of the submission of a request for advice by the Overview and Scrutiny Committee or relevant Scrutiny Committee to the Chief Executive, s.151 Officer or Monitoring Officer.

## Section 4

# Cabinet Procedure Rules

### The Cabinet

- 1 The Leader and the Cabinet comprise the executive of the Council.
- 2 The Council appoints the Leader and the Leader appoints members of the Cabinet. The Leader is also the Chairman of Cabinet meetings. In his or her absence, the Deputy Leader chairs meetings of the cabinet.
- 3 The Leader determines the functions to be determined by the Cabinet and the individual portfolios to be allocated to Cabinet Members. These may be varied from time to time by the Leader giving notice to the Chief Executive.

### Who may make Executive Decisions?

- 4 The arrangements for the discharge of Cabinet functions are explained in Part 3 (The Functions Scheme). By law, the arrangements may provide for Cabinet functions to be discharged by:
  - a the Leader
  - b the Cabinet as a whole
  - c a Committee of the Cabinet
  - d an individual member of the Cabinet
  - e an officer
  - f joint arrangements
  - g another local authority
- 5 The Leader and the Cabinet may from time to time make such arrangements and if such arrangements are made, these will be formally recorded and the Council will be informed at its next meeting.
- 6 Some matters may require decisions by more than one Cabinet Member and in those circumstances, individual Cabinet Member decisions may be taken together.

### Sub-delegation of Functions

- 7 Unless the Leader directs otherwise:
  - a The Cabinet may delegate its functions to a Committee of the Cabinet, a Cabinet Member or an officer.
  - b A Committee of the Cabinet may delegate its functions to a Cabinet Member or an officer.
  - c A Cabinet Member may delegate his/her functions to an officer.

- d Any delegation shall be without prejudice to the powers of the delegating body to exercise the power.
- 8 The current system of delegation of Cabinet functions is set out in The Functions Scheme (Part 3).

### **Conflict of Interests**

- 9 Where the Leader or any member of the Cabinet has a conflict of interest this will be dealt with under the Council's Code of Conduct for Members in Part 5.

### **Cabinet Meetings – when and where?**

- 10 The Cabinet will meet in accordance with a programme of meetings agreed by the Leader. The Cabinet shall meet at the Council's main offices or another location to be agreed by the Leader.

### **Public and private meetings of the Cabinet**

- 11 There is a presumption that Cabinet meetings will be held in public in accordance with the Council's principles of openness in decision making set out in Article 11 of this Constitution. The Access to Information Rules in Section 2 of this Part of the Constitution set out the requirements covering public and private meetings.

### **Quorum**

- 12 The Quorum of the Cabinet is three. One of those must be the Leader or the Deputy Leader.
- 13 The quorum for a Cabinet Committee is two.

### **Who May Attend Cabinet?**

- 14 When a Cabinet meeting is held in public any person is permitted to attend. The press and public can be excluded in accordance with the Access to Information Rules in Section 2 of this part of the Constitution.
- 15 In addition the following rules apply:
- a. The Chairmen of Scrutiny Committees (or in their absence the Vice-Chairmen) have the right to attend Cabinet meetings for the purpose of reporting the views of his/her Committee on any matter under consideration at the meeting
  - b. The Chairman of a Review Group has the right to attend Cabinet meetings for the purpose of presenting a report of a review to Cabinet
  - c. The Group Leaders have the right to attend Cabinet meetings for the purpose of fulfilling their informal role(s) as outlined in Part 3 (The Functions Scheme)
  - d. A Ward Member or Members have the right to attend a Cabinet meeting where an item relating to an individual Ward or a group of Wards is included in the Agenda or is the subject of a report to a Cabinet Member.

- e. Others will be invitees at the discretion of the Chairman of the meeting.
- 16 All officers presenting reports shall attend and present those reports. In addition, such officers as are required to assist in presenting reports or provide support, advice or information required by the Cabinet will attend.
- 17 The Chairman shall invite any person in attendance under these rules to speak on an item in order to enable that person to fulfil the purpose of his/her attendance. The Chairman has responsibility for the conduct of the meeting and the order in which those in attendance will be invited to speak.
- 18 Members of the Cabinet will sit at the Cabinet table and all other invitees and attendees will be accommodated separately so as to make it clear to the public and others in attendance which person is fulfilling which role.
- 19 The Chairman of the Cabinet meeting will at the commencement of the meeting explain who is attending, in what capacity and for what purpose. The Minutes will also reflect this.
- 20 The Leader will agree with the Monitoring Officer who should be invited to which meeting of the Cabinet and Democratic Services will manage the process of invitation and attendance.
- 21 In general the meetings of the Cabinet are to be used as a means of taking final soundings from those attending on an issue for decision and are not the forum for detailed scrutiny of decisions, which should be referred to the relevant Scrutiny Committee.

### **Decision taking**

- 22 The Cabinet meeting is the forum in which members of the Cabinet take decisions collectively.
- 23 The Leader, the Cabinet and individual Cabinet Members may meet informally with officers to receive information and briefings but no Cabinet decisions will be taken by the Cabinet or any individual Cabinet Member at any such informal meeting.

### **Form of business**

- 24 The Cabinet will conduct the following business at its meetings:
- a Consideration of the minutes of the last meeting;
  - b Declarations of interest, if any;
  - c Consideration of reports from the Overview and Scrutiny Committee or Scrutiny Committees;
  - d Consideration of matters referred to the Cabinet (whether by an Overview and Scrutiny Committee or by the Council) for reconsideration by the Cabinet in accordance with the Scrutiny Rules or the Budget and Policy Framework Procedure Rules;

- e Reports from the Chief Executive or any officer nominated by him to so report;
  - f Decisions on any Cabinet function;
  - g Recommendations to Council on any Council functions; and
  - h Any other matters set out in the agenda for the meeting.
- 25 The agenda for the Cabinet meeting shall specify all the business to be conducted in accordance with the Access to Information Rules and shall identify any matter which requires a Key Decision.

### **Leader's Report**

- 26 The Leader will submit a report from the Cabinet to each meeting of the Council. This will report the work of the Cabinet since the last report and will include:
- a A summary of those matters decided by the Cabinet and other activities of the Cabinet since the previous Council meeting;
  - b Any recommendations of the Cabinet in respect of the Policy Framework and Budget;
  - c Any report to the Council required by a Scrutiny Committee; and .
  - d A Summary and Particulars of any urgent decision made under paragraphs 33 to 37 (Urgency and Special Urgency) below.

### **Forward Plan**

- 27 The Cabinet and Cabinet Members will take Key Decisions as defined in the Functions Scheme (Part 3) only in respect of items listed on the Forward Plan unless the rules on Urgency and Special Urgency in paragraphs 33 to 34 below apply.
- 28 The Forward Plan must be reviewed regularly at meetings of the Cabinet and the Chairman of the Overview and Scrutiny Committee will be asked to indicate those matters that in his/her view should be referred to a Scrutiny Committee. The Leader will determine which matters should be referred taking into account the views of the Chairman of Overview and Scrutiny Committee. Referred matters will be subject to a report to the relevant Scrutiny Committee prior to the decision being taken at Cabinet. The views of the Scrutiny Committee will be reported to the Cabinet before the decision is taken.

### **Decisions subject to call in by Scrutiny Committees**

- 29 Cabinet decisions made but not implemented may be called-in pursuant Section 21 (2) (a) of the Local Government Act 2000 (call-in powers) in accordance with the Scrutiny Rules.

### **Individual Cabinet Member Decisions**

- 30 Where individual Cabinet Members make Key Decisions they must take into account any report submitted to them before making the Key Decision.

- 31 Subject to the provisions relating to special urgency in the Access to Information Rules where any such report is to be taken into account in respect of a key decision the report must:
- a Be available for public inspection for not less than five clear days before the decision is due to be made.
  - b Include a reference to any background papers.
- 32 All decisions taken by a Cabinet Member will be recorded in a decision notice. All decision notices will be published and a copy will be provided to the Chairman of the relevant Scrutiny Committee(s)

**Urgency and Special Urgency**

- 33 There may be urgent need to take a Key Decision where inclusion of it on the Forward Plan is impracticable in the circumstances.
- 34 In that event the Key Decision may only be made in accordance with the Access to Information Rules.



## Section 5

# Scrutiny Rules

### Arrangements for Overview and Scrutiny

1. The Scrutiny arrangements for the Council are as laid out in article 6 and The Functions Scheme.

### Who may sit on a Scrutiny Committee?

2. All Councillors except members of the Executive may be members of the Scrutiny Committees. No Member may be involved in scrutinising a decision in which he/she has been directly involved.
3. The Chairmen and Vice-Chairmen of the Scrutiny Committees shall be members of the Overview and Scrutiny Committee.

### Co-Option

4. Co-opted Members may be appointed to each Scrutiny Committee as provided for in the Functions Scheme (Part 3 Section 5).
5. Co-optees shall not have the right to vote as a member of the Committee unless the statutory or other requirements under which they are appointed or required so provide or unless the Council at the time of the appointment designate the appointed co-optee as a voting member in which case any limitation on such voting rights shall also be specified.
6. Co-optees are not signatories for the purpose of triggering a call in under Rule 48 below.
7. Co-optees are appointed by the council annually. If vacancies arise in year then the Committee can appoint a replacement at the next Council meeting

### Quorum

8. The Quorum for a Scrutiny Committee is 25% of the membership of the Committee. If this is a part number it is rounded up.

### Review Groups

9. The Chairman of a Scrutiny Committee may propose and a Scrutiny Committee may appoint a Review Group for any scrutiny activity within that Committee's work programme. The relevant Scrutiny Committee will appoint the Chairman of any such Review Group.
10. The Review Groups may meet formally in public and if they do so, may exclude the press and public from any such meeting in accordance with the Access to Information Rules (Part 4 Section 2)

11. Review Groups will conduct most of the review work informally in private or public in which case no formal decisions may be taken as the Access to Information Rules. (Part 4 Section 2) will not apply.
12. Members of a Review Group may include Councillors who are not members of the Committee that appoints the Review Group.
13. All Review Groups will report their activities and any recommendations to the Committee that appointed them.

#### **The Appointment of Chairmen and members of the Scrutiny Committees**

14. The Chairmen and Vice Chairmen of the Overview and Scrutiny Committee and the Scrutiny Committees are appointed annually by the Council. The Council shall determine the number of members of those Committees annually or as required from time to time in compliance with the statutory rules on proportionality. The members of those Committees shall be appointed by the Chief Executive on nomination of the Group Leaders.

#### **Meetings of the Scrutiny Committees**

15. Scrutiny Committees will meet in accordance with the Council's schedule of meetings. Where a Scrutiny Committee feels it is appropriate to hold additional meetings it may do so. The Chairman of the Overview and Scrutiny Committee may also call additional meetings if he/she considers it necessary or appropriate. In so doing, the Committee or Chairman shall have regard to the resources available to support the work of the Committee.

#### **Programme of work of Scrutiny Committees**

16. The Scrutiny Committees, subject to the overseeing and supervision by the Overview and Scrutiny Committee, will be responsible for setting their own work programme. In setting the work programme the Overview and Scrutiny Committee and the Scrutiny Committees shall have regard to the resources (including officer time) available.

#### **Scrutiny Committee Agendas**

17. At each of their meetings the Overview and Scrutiny Committee and the Scrutiny Committees and any Sub-Committees shall consider the following business:
  - a. minutes of the last meeting;
  - b. any matter called-in in accordance with paragraph 40 below;
  - c. a review of its work programme
  - d. any request from Council or Cabinet for a review
  - e. any response of the Cabinet to reports of the Scrutiny Committees;

- f. any item requested to be placed on the agenda by a member of the Committee;
  - g. any Councillor Call for Action ,
  - h. any item arising from any petition or deputation to Council under the Council Rules (Part 4 Section 1), and
  - i. any business otherwise set out on the agenda for the meeting.
18. Any member of a Scrutiny Committee may give notice to the Chief Executive that he/she wishes an item relevant to the functions of the Committee to be included on the agenda for the next available meeting of the Committee. On receipt of such a request the Chief Executive shall ensure that it is included on the next available agenda.
19. The Scrutiny Committee shall also respond, as soon as its work programme permits, to requests from the Council and from the Cabinet to review particular areas of Council activity. On receipt of any such request from Cabinet the Scrutiny Committee shall firstly consider whether it wishes to conduct the review as requested. Where they do so, and in response to any request from Council, the Scrutiny Committee shall conduct the review as requested and report their findings and any recommendations back to the Executive and/or Council.

#### **Councillor Call for Action**

20. Any member of the Council shall be entitled to give notice to the Chief Executive if he/she wishes an item relating to a Councillor Call for Action to be included on the agenda for discussions at the next available meeting of the Committee.
21. On receipt of such a request and subject to it falling within the statutory definition of a matter that can be the subject of a Councillor Call for Action and it meeting the procedural and other requirements set out in the Councillors Call for Action Code (in Part 5) the Chief Executive shall ensure that it is included on the next available agenda of the relevant Committee.
22. Further guidance in respect of the Councillor call for action is contained in Part 5 Codes and Guidance.

#### **Policy Review and Development**

23. The role of the Scrutiny Committees in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules.
24. In relation to the development of the Council's approach to other matters not forming part of its budget and policy framework, the Overview and Scrutiny Committee or Scrutiny Committees may make

proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.

25. Scrutiny Committees may hold or commission enquiries and investigate the available options for future direction in policy development and may appoint advisers to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to advisers, assessors and witnesses a reasonable fee and expenses for doing so, having regard to the resources (including officer time) available. In determining how to conduct such activities the Chairman of the Committee should consult with the Chief Executive or his nominated officer.

### **Reports from Scrutiny Committees**

26. Following any investigation or review, the Committee or Review Group shall prepare a report. Any report from a Review Group will first be considered by the Scrutiny Committee that appointed that Review Group and if adopted will be dealt with in accordance with the following rules.
27. If any review is in response to a request from Council in accordance with paragraph 17 above, the Scrutiny Committee shall report its findings to Council.
28. In all other cases, it will be submitted to the Chief Executive for consideration by the Cabinet. If the recommendations are such that a decision can be taken by an individual Cabinet Member or more than one Cabinet Member acting within his/her portfolio in accordance with the Functions Scheme (Part 3 Section 3), the Chief Executive shall arrange for that/those Cabinet Member(s) to consider the report.
29. If the recommendations in the Scrutiny report are contrary to or not wholly in accordance with the budget and policy framework, the Cabinet shall consider the scrutiny recommendations and report the matter with its response to the scrutiny recommendations to the Council.
30. If the recommendations in the Scrutiny report are in line with the budget and policy framework, the Cabinet or the Cabinet Member(s) shall consider the scrutiny recommendations and report their decision to the Scrutiny Committee.

### **Making sure that Scrutiny reports are considered by the Cabinet**

31. The Cabinet agenda will include a standing item to deal with reports from the Overview and Scrutiny Committee and/or Scrutiny Committees. Any Report referred to the Cabinet will be considered under this item on the Cabinet agenda at the next Cabinet meeting following its submission to the Chief Executive. If such a report is to be considered by an individual Cabinet Member or more than one,

such report will be so considered within one month of its submission to the Chief Executive.

32. If any individual Cabinet Member does not accept any recommendations in a report from the Overview and Scrutiny Committee or a Scrutiny Committee, then the matter must be referred to the next meeting of the Cabinet to decide its response.
33. The Chief Executive will notify the relevant Scrutiny Committee of the response of the Cabinet and Individual Cabinet Member(s) within 2 months of a decision on the Scrutiny Report. Decisions of Council on any scrutiny recommendations will be recorded in the usual way.

### **Rights and Powers of Scrutiny Committee Members**

34. Where the Scrutiny Committee or Review Group conducts investigations or reviews and people attend to give evidence or otherwise assist the Committee meetings the following principles will apply:
  - a. that the investigation be conducted fairly and all Members of the Committee or Group be given the opportunity to ask questions of attendees, and to contribute and speak;
  - b. that those assisting the Committee by giving evidence be treated with respect and courtesy; and
  - c. that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

### **Members and Officers Giving Account**

35. The Overview and Scrutiny Committee or a Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any member of the Cabinet, the Chief Executive, and/or senior officer carrying out functions on the Chief Executive's behalf to attend before it to explain in relation to matters within their remit regarding:-
  - a. any particular decision or series of decisions;
  - b. the extent to which the actions taken implement Council policy; and/or
  - c. their performance.
36. It is the duty of those persons to attend if so required.
37. Where any member or officer is required to attend an Overview and Scrutiny Committee under this provision, the Chairman of that Committee will inform the Chief Executive. The Chief Executive shall inform the member or officer in writing giving at least ten working days notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced

for the Committee. Where the account to be given to the Committee will require the production of a report, then the member or officer concerned will be given sufficient notice to allow for preparation of that report.

38. Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the Overview and Scrutiny Committee shall in consultation with the member or officer arrange an alternative date for attendance.
39. Unless in exceptional circumstances, any witnesses required to attend any meetings called under paragraphs 35 to 38 above will be restricted to:-
  - a. any Cabinet member involved in the decision the subject of the Call In.
  - b. any Officer who in the view of the Chairman of the meeting would be able to supply evidence materially able to assist at the meeting.

#### **Call-In**

40. "Call-in" is a statutory right for members of Council to call in a decision of Cabinet or an individual Cabinet Member or Members after it is made but before it is implemented.
41. Call-in does not apply to Cabinet decisions that make recommendations to Council because those decisions will not be implemented in any event until the matter has been considered and agreed by Council.
42. Call-in is triggered by three members of the relevant Scrutiny Committee who are not all members of the same political group.
43. When a call-in has been triggered, the call-in process will be managed by the Monitoring Officer in consultation with the Chairman of the relevant Scrutiny Committee and the members who have triggered the call-in. The Chairman of the relevant Scrutiny Committee will maintain responsibility for the conduct of any meeting at which the decision called-in is considered.
44. Call-in should only be used in exceptional circumstances including but not limited to;
  - a. where there is evidence which suggests that issues have not been handled in accordance with the decision-making principles set out in this Constitution;
  - b. where a key decision has been taken which was neither published in accordance with the requirements for the Forward Plan, and is not subject to the urgency procedures set out in this Constitution; or

- c. where a decision is outside the policy or budgetary framework.
45. Advice should be sought from the Monitoring Officer on these matters.
46. When a decision is made by the Cabinet or an individual Cabinet Member that decision will be published widely by electronic means. This includes:-
- a. Displaying it at the principal Offices of the Council.
  - b. Sending a copy of the decision to all members of the relevant Scrutiny Committees.
  - c. Sending a copy of the decision to the Chairman of the Overview and Scrutiny Committee.
  - d. Appropriate publication by electronic means.
47. The decision will be in the form of a notice and bear the date upon which it is published and will specify that the decision will come into force, and may be subsequently implemented, at the expiry of three working days after the date of publication, unless it is called in under these call-in Rules.
48. To call the decision in a call-in notice must be received by the Monitoring Officer (or her nominated officer) in writing which:-
- a. Clearly states the decision(s) which is/are being called-in by reference to the decisions as set out on the decision notice
  - b. The grounds for the call in as laid out in rule 44 above as applied to each decision being called-in; and
  - c. Is signed by three members of the relevant Scrutiny Committee, none of whom are Co-optees; and who are members of at least two different political or other recognised groups.

#### **Limitations of Call Ins**

49. The call in procedure is restricted to any Cabinet or individual Cabinet Member decision and not decisions taken by officers.
50. Where a decision has been taken in circumstances where the general exception or special urgency rules in Access to Information Rules apply, it will not be subject to call in.
51. In other cases of urgency as follows:
- a. The call in procedure set out above shall not apply where the decision taken needs to be implemented urgently. A decision will be urgent if any delay likely to be caused by the call-in

process would seriously prejudice the Council's or the public interest.

- b. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is one that requires urgent implementation and the reasons why, and the Monitoring Officer should confirm that as such it is not subject to call in.
  - c. The Chairman of the appropriate Scrutiny Committee must agree both that the decision taken was reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Chairman of the Scrutiny Committee, the Chairman of the Overview and Scrutiny Committees consent shall be required. The Monitoring Officer will decide the appropriate Scrutiny Committee for this purpose.
52. The consent to the decision being taken as a matter of urgency must be recorded by the Chairman of the Scrutiny Committee and copied to the Leader, the Chief Executive, the Monitoring Officer and all Councillors.
53. Decisions taken, as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

#### **Post Call in**

54. The Monitoring Officer will determine the validity of the call in as soon as possible.
55. The Monitoring Officer will then advise the original decision maker of the Call In.
56. The Monitoring Officer shall then call a meeting of the relevant Scrutiny Committee on such a day as he/she shall determine in consultation with the Chairman of the relevant Scrutiny Committee and in any event within ten working days of the Monitoring Officer receiving the Call In notice subject to paragraph 64 below.
57. If, having considered the decision, the Scrutiny Committee is still concerned about it, then it may refer it back to the Cabinet or Cabinet Member(s) for reconsideration, setting out in writing the nature of its concerns.
58. If it is alleged that the decision appears to be outside the Budget and Policy Framework the Monitoring Officer shall advise the Cabinet on that or any other relevant legal issues raised by or in relation to the called in decision. The Cabinet shall consider that advice and shall reconsider its decision. If the matter is outside the budget and policy framework the Monitoring Officer shall refer the matter to the next Council Meeting.

59. The Cabinet or Cabinet Member(s) shall reconsider any decision referred to them following call-in, take into account any views expressed by the relevant Scrutiny Committee and may amend or confirm the original decision.
60. If the matter was referred to the next Council Meeting and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective.
61. If the Council Meeting does object, it has no right to make decisions in respect of a Cabinet decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council Meeting will refer any decision to which it objects back to the Cabinet together with the Council's views on the decision. The Cabinet shall choose whether to amend the decision or not before implementing it.
62. If the relevant Scrutiny Committee or the Council does not meet within the time permitted by these rules or such extended time as may be agreed in accordance with paragraph 64 below, or if it does but does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting or expiry of the period in which the Scrutiny Committee or the Council meeting should have been held, whichever is the earlier
63. The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

#### **Extension of Time limit**

64. In exceptional circumstances the time limit of ten days for convening a meeting of the Scrutiny Committee to consider the called in decision may be extended as agreed by the original decision maker and/or the Leader where practical considerations or any unforeseen factor make such an extension appropriate.

#### **Matters within the remit of more than one Scrutiny Committee**

65. Where a matter falls within the remit of more than one Scrutiny Committee, then the Chairman of the Overview and Scrutiny Committee will determine which Scrutiny Committee will handle the work.

#### **Party Whip**

66. Government Guidance views party or group “whipping” as incompatible with Overview and Scrutiny functions. Generally the party or group whip should not be applied to scrutiny committees and members should be free to comment and vote on matters under consideration.

67. That said there may be circumstances when a party or group whip is appropriate and in such circumstances if a party or group whip is in operation:
- a. When considering any matter that is subject to a party whip each Member must ensure the existence of the whip is declared; and
  - b. The details of the whipping arrangements shall be recorded in any Minutes.

FINAL DRAFT FOR COUNCIL APPROVAL

## Section 6

# Contracts Procedure Rules

### INTRODUCTION

- 1.1 The primary objective of the Council's Contract Procedure Rules is to ensure that all contracts for works, goods and services are entered into in a manner that secures value for money and is demonstrably free from impropriety.
- 1.2. The Council's Contract Procedure Rules also ensure that:
  - a) Contract selection and award procedures are conducted fairly, in a properly regularised manner and in accordance with relevant legal requirements.
  - b) Strategic service delivery and supply partners are used wherever possible to ensure value for money is obtained and the cost to procure is minimised.
  - c) Local firms are employed whenever they offer as good value for money as other firms and their selection is in accordance with the Council's legal obligations, for example in relation to European procurement rules.
  - d) The Council's strategic policies are taken into account, for example in promoting the economic development of Herefordshire and in relation to protecting the environment.
  - e) Alternative methods of procurement compatible with the objectives of the Contract Procedure Rules have been considered.
  - f) Procurement procedures are kept under review in order to ensure continuous improvements to services and provide Best Value to the community of Herefordshire.
  - g) Procurement of ICT equipment is achieved using the Council's on-line procurement system.
- 1.3 The Director of Resources has overall responsibility for the preparation of the Council's Contract Procedure Rules. The Head of Financial Services has delegated responsibility for implementing the Council's Contract Procedure Rules. The Strategic Procurement Manager assists the Head of Financial Services in this task.
- 1.4 The Head of Financial Services and Strategic Procurement Manager work very closely with the Assistant Chief Executive Legal and Democratic due to the significant legal issues involved in contracting and procurement activity.
- 1.5 It should be noted that the Council's Contract Procedure Rules should be read in conjunction with the Functions Scheme , Budget & Policy Framework Rules and Financial Procedure Rules.
- 1.6 **It should also be noted that failure to observe the Council's Contract Procedure Rules could lead to disciplinary action.**

1.7 Please note that all financial limits outlined in this document exclude Value Added Tax (VAT).

## **STANDARDS OF CONDUCT**

### **2.1 Declarations of Interest**

2.1.1 Members and officers must ensure that they comply with the provisions of the Code of Conduct (Members) including on the declaration and registration of interests and the Disclosure of Financial Interest requirements in Part 5 of the Constitution (officers) regarding the declaration of interests.

### **2.2 Gifts and Hospitality**

2.2.1 Any offer of gift, favour or hospitality made by any person or firm doing or seeking to do business with the Council must be treated with extreme caution.

2.2.2 Any such offers must be noted on the appropriate form and reported to the Assistant Chief Executive Legal and Democratic who shall maintain and make available to the Council's internal and external auditors a register of such matters.

2.2.3 Acceptance of gifts and hospitality must be in accordance with the Council's policies on such matters.

### **2.3 Honesty**

2.3.1 All Members must follow the Members' Code of Conduct.

2.3.2 All employees must follow the Employee Code of Conduct (as set out in the Council's Employee Induction Handbook and available from Human Resources).

2.3.3 All officers must make sure that employees involved in an in-house tender for a contract do not take part in the preparation of tender documentation or the decision on the award of such a contract.

## **OFFICER RESPONSIBILITIES**

### **3.1 Chief Executive's Responsibilities**

3.1.1 The Chief Executive is responsible for resolving issues concerning the operation of the Council's Contract Procedure Rules seeking advice as necessary from the Director of Resources and the Assistant Chief Executive Legal and Democratic.

### **3.2 Directors' Responsibilities**

3.2.1 All Directors are responsible for:

- a) Monitoring compliance with the Council's Contract Procedure Rules in relation to contracts funded by their Directorate budget.
- b) Appointing Contract Monitoring Officers (see 3.4 below) and ensuring they support them in their role and obtain regular briefings from them.

- c) Appointing a senior member of staff to the Corporate Procurement Group (see 3.5 below).
- d) Establishing, maintaining and utilising Approved Contractors Registers for their Directorate in accordance with section 4 of the Council's Contract Procedure Rules.
- e) Bringing the provisions of the Council's Contract Procedure Rules to the attention of their staff.
- f) Ensuring that the contracts within their Directorate are legal, comply with Contract Procedure Rules and Financial Procedure Rules and protect the Council's interests fully.
- g) Ensuring that the Council's Criminal Records Bureau policies and procedures are followed.

3.2.2 The Director of Resources has overall responsibility for the preparation and review of the Council's Contract Procedure Rules but must do so in agreement with the Assistant Chief Executive Legal and Democratic.

### **3.3 Head of Service Responsibilities**

3.3.1 The Assistant Chief Executive Legal and Democratic is responsible for:

- a) Providing legal advice and guidance to Members and officers on the operation of the Council's Contract Procedure Rules and all contracting and procurement activity.
- b) Working with the Director of Resources on the preparation and review of the Contract Procedure Rules.
- c) Assisting the Chief Executive with the resolution of questions regarding the interpretation of the Council's Contract Procedure Rules.
- d) Advising on the preparation of contract documentation.
- e) Maintaining a central Procedures Exemption Register.
- f) Informing relevant officers of any information received that calls into question the suitability of a contractor, consultant, agency or any other person carrying out work for the Council.

3.3.2 The Head of Financial Services is responsible for providing the professional lead on all the non-legal aspects of contracting and procurement relating to works, goods and services. The Head of Financial Services is also responsible for supervising the Corporate Procurement Group's activities (see 3.5 below) and maintaining a Contracts Register.

3.3.3 All Heads of Service are responsible for providing the Head of Financial Services with the information s/he requires to maintain a Contracts Register. This will include all contracts for purchases in total valued £10,001 and above and the name of the Contract Monitoring Officer or responsible officer.

### **3.4 Contract Monitoring Officers' Responsibilities**

3.4.1 Directors shall appoint one or more Contract Monitoring Officer(s) to take responsibility for contracts with an estimated total value (excluding VAT) in excess of £10,001. Directors shall nominate a Contract Monitoring Officer for each contract and nominate one of their Contract

Monitoring Officers to be responsible for the overall reporting and maintenance of contract records within the Directorate. A responsible officer shall be appointed for all contracts below £10,000.

- 3.4.2 Contract Monitoring Officers are responsible for liaising fully with Financial Services and Legal Services on all matters relating to contracting and procurement.
- 3.4.3 Contract Monitoring Officers are responsible for agreeing exemptions from the formal tendering procedures with the Head of Financial Services or the Strategic Procurement Manager **and** the Assistant Chief Executive Legal and Democratic. All exemptions are to be approved in writing and reported in line with the requirements of Section 10 of the Council's Contract Procedure Rules.
- 3.4.4 Contract Monitoring Officers are responsible for liaising with officers administering contracts regarding any reports concerning failures by contractors to comply with contractual obligations or otherwise satisfactorily complete work.
- 3.4.5 Contract Monitoring Officers are responsible for posting any information they receive concerning the suitability of a contractor to carry out work for the Council on the Contracts Watch sub-folder of the Procurement/Contract Management public folder on the Council's Intranet. The message should advise any officer who has employed or is considering employing the contractor to contact the Assistant Chief Executive Legal and Democratic for further information as the message should not state the reason for concern. The Contract Monitoring Officer should inform the Assistant Chief Executive Legal and Democratic in writing of the reasons for the alert.
- 3.4.6 Contract Monitoring Officers are responsible for emailing copies of their Approved Contractor Registers to the central Approved Contractor Register sub-folder of the Procurement/Contract Management public folder on the Council's Intranet. They are responsible for keeping their Approved Contractor Registers updated with any additions, suspensions or removals (section 4 of the Council's Contract Procedure Rules refers). A hard copy shall be provided to the Strategic Procurement Manager.
- 3.4.7 Contract Monitoring Officers are responsible for emailing copies of their Suspended and Removed Contractors Lists to the central Suspended and Removed Contractors List sub-folder of the Procurement/Contract Management public folder on the Council's Intranet. A hard copy shall be provided to the Strategic Procurement Manager.
- 3.4.8 Contract Monitoring Officers are responsible for maintaining records of the:
- a) Contractors included in their Approved Contractor Registers.
  - b) Contracts awarded including the nature and value of contracts and the names of successful tenderers.
  - c) Total value of contracts awarded to each successful tenderer during each financial year.
  - d) Names of unsuccessful tenderers and reasons why their tenders were not accepted if the reason is other than price.
  - e) Details of any failure by a tenderer to comply with instructions to tenderers.

- f) Details of the reasons for any tenders being withdrawn.
- g) Details of failures by contractors to submit tenders after having requested and been invited to do so.
- h) Contractors' performance.
- i) Reasons for opening late tenders (see section 5 of the Council's Contract Procedure Rules).
- j) Reasons for exceptions to tendering procedures (see section 10 of the Council's Contract Procedure Rules).

3.4.9 The lead Contract Monitoring Officer appointed by the Director is responsible for keeping their Director briefed on contract and procurement issues within the Directorate.

### **3.5 Strategic Procurement Manager's Responsibilities**

3.5.1 Working to the Head of Financial Services, the Strategic Procurement Manager is responsible for providing advice on all aspects of the Council's Contract Procedure Rules save for the legal issues. The responsibility for the legal aspects of the Council's Contract Procedure Rules rests with the Assistant Chief Executive Legal and Democratic.

3.5.2 The Strategic Procurement Manager is responsible for chairing the Council's Corporate Procurement Group. Each Director shall appoint a senior officer to be a member of the Corporate Procurement Group and the membership shall include the Assistant Chief Executive Legal and Democratic or their nominated representative.

3.5.3 The Council's Corporate Procurement Group will meet at least quarterly in order to fulfil the following responsibilities:

- a) Continually reviewing the Council's Procurement Strategy and making recommendations on appropriate enhancements to the Head of Financial Services to take forward in consultation with the Assistant Chief Executive Legal and Democratic for approval in line with the Council's arrangements for decision making as set out in the Constitution.
- b) Maintaining a register of current contracts.
- c) Monitoring compliance with the Council's Contract Procedure Rules and reporting non-compliance to the Head of Financial Services and Assistant Chief Executive Legal and Democratic for appropriate action.
- d) Preparing an annual report on the operation of and compliance with the Council's Contract Procedure Rules as a basis for the Head of Financial Services, in consultation with the Assistant Chief Executive Legal and Democratic, to report to the Audit & Corporate Governance Committee.
- e) Continually reviewing the Council's Contract Procedure Rules to ensure they keep pace with developing best practice and advising amendments as necessary.
- f) Prescribing the information needed from Contract Monitoring Officers and maintaining a central record of the information notified by Contract Monitoring Officers.

- g) Reviewing the Contract Procedure Rules Exemption Register and preparing an annual report on the exemptions recorded for the Assistant Chief Executive Legal and Democratic.
- h) Providing training and support for employees involved in procurement activities.

### 3.6 Responsibilities of all Officers

#### 3.6.1 All officers are responsible for:

- a) Following the Council's Contract Procedure Rules and any codes of practice, guidance or instructions provided by the Head of Financial Services or Strategic Procurement Manager and the Assistant Chief Executive Legal and Democratic.
- b) Following all relevant English and European procurement laws.
- c) Seeking advice from the Head of Financial Services or Strategic Procurement Manager and the Assistant Chief Executive Legal and Democratic in the case of any uncertainty.
- d) Ensuring that any departure from these Contract Procedure Rules is agreed with the Head of Financial Services or Strategic Procurement Manager and the Assistant Chief Executive Legal and Democratic.
- e) Following the Council's Employee Code of Conduct (a copy is included in the Employee Induction Handbook and can be obtained from Human Resources).
- f) Following the Council's Financial Procedure Rules and the systems and procedures that are in place to control budgets properly.
- g) Declaring any interest that could influence their judgement in contracting matters to their Director and the Assistant Chief Executive Legal and Democratic.
- h) Not taking part in any decisions relating to the procurement of work, goods or services if they are part of a formal in-house bid for that work.
- i) Reporting any suspected fraudulent, corrupt or other irregularity to the Chief Internal Auditor.
- j) Ensuring that value for money is evidenced through the procurement process.

### APPROVED CONTRACTOR REGISTERS

#### 4.1 Introduction

- 4.1.1 Approved Contractor Registers are very useful for some types of works, goods or services contracts and can be an efficient way of identifying suppliers.
- 4.1.2 **Contractors on an Approved Contractor Register must not be approached either formally or informally until after publication of the appropriate European contract notice for contracts governed by the European procurement rules.**
- 4.1.3 If an Approved Contractor Register exists and it is appropriate to use it then the register should be used.

4.1.4 If an Approved Contractor Register is to be used, a method for selecting the suppliers on it that will be invited to tender must be determined. The method chosen must ensure that all the suppliers on the relevant Approved Contractor Register have the same opportunity over time to tender for work (subject to suitability for particular work and financial limits under 4.2.6).

4.1.5 Officers may use Government-backed Approved Contractor Registers or other registers approved by the Corporate Procurement Group to select those to be invited to bid for a contract.

## **4.2 Managing an Approved Contractor Register**

4.2.1 Contract Monitoring Officers must advertise and invite applications from potential suppliers to be added to an Approved Contractor Register for any given type of contract for works, goods or services.

4.2.2 Advertisements inviting applications from potential suppliers to be included in an Approved Contractor Register should be placed in the relevant local and trade press and, if necessary, the EC Journal.

4.2.3 The information needed from potential suppliers in order to assess whether they are suitable for inclusion on an Approved Contractor Register should be gathered using the same method for all suppliers seeking inclusion on the Register.

4.2.4 When considering whether to include a contractor on an Approved Contractor Register, officers must look at each contractor's:

- a) Past performance on similar contracts (quality and costs).
- b) Technical capacity.
- c) Specialist experience in the type of products and services being procured.
- d) Financial situation.
- e) Public and employer's liability insurance arrangements.
- f) Health & safety arrangements.
- g) Equalities policy.
- h) Written references on the contractor's reputation.

4.2.5 Officers may add other criteria to help them select suppliers for inclusion on an Approved Contractor Register providing the additional criteria are relevant, do not prevent fair competition and do not illegally discriminate between suppliers. The Contract Monitoring Officer must establish the minimum standard required for each criterion before inviting applications for inclusion on the Approved Contractor Register.

4.2.6 An Approved Contractor Register must state the value of work that can be placed with each supplier at any one time.

- 4.2.7 An Approved Contractor Register should normally contain at least five suppliers. Advice and guidance must be sought from the Head of Financial Services/Strategic Procurement Manager where fewer than five suppliers qualify for inclusion as this might indicate that an Approved Contractor Register is not the most suitable route for the works, goods or services in question.
- 4.2.8 Officers must review their Approved Contractor Registers at least every two years using the criteria set out in 4.2.4 and 4.2.5 to assess whether a supplier should remain on the Register. The review should also consider whether the value of work that can be placed with each supplier at any one time should be revised.
- 4.2.9 Officers should consider suspending or removing suppliers from an Approved Contractor Register as a result of such a review or at other times if there are grounds to do so such as poor performance, disputes or poor financial standing. See 4.3 below for guidance on how to suspend or remove a supplier from an Approved Contractor Register.
- 4.2.10 Officers must advertise to compile subsequent Approved Contractor Registers at least every five years or earlier if fewer than five suppliers remain on the Register.
- 4.2.11 All contracts let using an Approved Contractor Register must comply with the Council's Contract Procedure Rules in every respect. The Head of Financial Services or Strategic Procurement Manager or Assistant Chief Executive Legal and Democratic are able to advise on any aspect of the Council's Contract Procedure Rules.

### **4.3 Suspending or Removing a Supplier from an Approved Contractor Register**

- 4.3.1 If an officer receives a materially adverse report concerning a contractor's performance or compliance with tendering procedures that suggests they should no longer be on an Approved Contractor Register, the officer must seek advice from the Head of Financial Services or Strategic Procurement Manager who will, in consultation with the Assistant Chief Executive Legal and Democratic, advise what further action is necessary.
- 4.3.2 If the Head of Financial Services or Strategic Procurement Manager determines after consultation with the Assistant Chief Executive Legal and Democratic that the supplier should be suspended or removed from an Approved Contractor Register, the officer shall follow this advice and amend the Register accordingly. The officer shall also include the contractor in a List of Suspended and Removed Contractors and notify the contractor accordingly.
- 4.3.3 An officer must seek approval as outlined in 4.3.1 and 4.3.2 to lift a suspension on a supplier or re-admit a supplier to an Approved Contractor Register.
- 4.3.4 If an officer concludes as a result of a routine review of an Approved Contractor Register that a supplier should be removed from that Register, then they must seek advice as outlined in 4.3.1 and 4.3.2.

## **FORMAL QUOTATION AND TENDERING PROCEDURES**

### **5.1 Introduction**

- 5.1.1 West Mercia Supplies (WMS) must be used for all purchases of office supplies and consumables, furniture, photocopiers, janitorial supplies and personal protective equipment.

- 5.1.2 Proposals to use an alternative supplier for such goods must be approved prior to an order being placed using a form prepared by the Strategic Procurement and Efficiency Review Manager.
- 5.1.3 Requests to use an alternative supplier to WMS will be approved or otherwise by the Head of Financial Services.
- 5.1.4 Failure to comply with the Council's policy on the use of WMS will lead to a corresponding budget reduction equivalent to the total price of the supply.
- 5.1.5 Officers must also use Council approved strategic service delivery partners if the work required is within the scope of the Council's strategic service delivery contracts.
- 5.1.6 Procurement of ICT equipment must be achieved using the Council's online procurement system.
- 5.1.7 The following procedures must be followed for all other types of procurement:
- a) **Purchases in total valued up to £1,000** – no requirement for formal quotations or tenders but officers must be able to demonstrate value for money has been obtained and that all other relevant aspects of the Council's Contract Procedure Rules have been followed.
  - b) **Purchases in total valued between £1,001 and £10,000** – two formal quotations must be obtained (see 5.2 below).
  - c) **Purchases in total valued between £10,001 and £50,000** – three formal quotations must be obtained (see 5.2 below).
  - d) **Purchases in total valued between £50,001 and up to relevant EU limit (£140,000)** – formal tendering arrangements must be followed (see 5.3 below).
  - e) **Purchases in total valued in excess of relevant EU limit (£140,001)** – European procurement rules must be followed (see section 6 of the Council's Contract Procedure Rules).
- 5.1.8 It is important to respect confidentiality in quotation and tendering processes. Officers must not therefore disclose any information they have about potential suppliers to other persons/suppliers potentially competing for the same contract.
- 5.1.9 Official orders should be raised for works, goods and services in line with the Council's Financial Procedure Rules.

## 5.2 Formal Quotation Procedure

- 5.2.1 The requisite number of formal quotations must be obtained for all purchases (other than those with WMS or within the scope of a strategic service delivery contract) where between £1,001 and £10,000 in total (see 5.1.7).
- 5.2.2 A quotation is a written estimate of the cost to execute works or supply goods, materials or services.

- 5.2.3 Officers must produce a description of the goods or specification of the services required before seeking quotations. This will enable a fair comparison of prices. The level of detail in the description or specification will depend on the value and type of goods or services being purchased. Advice can be obtained from the Strategic Procurement Manager
- 5.2.4 Formal quotations should contain as a minimum the following information:
- a) Date and reference number.
  - b) Supplier company details.
  - c) Council officer/department name.
  - d) Item/part number.
  - e) Description specification.
  - f) Quantity required.
  - g) Unit/service cost.
  - h) Total cost.
  - i) Delivery information.
  - j) Payment details.
  - k) Any special requirements.
  - l) Details of any discounts/rebates.
- 5.2.5 An appropriate Approved Contractor Register should be used if available to select the suppliers that will be asked to provide a quotation.
- 5.2.6 Every person or firm who makes a quotation must be treated fairly. Selection of the preferred supplier from the quotations received must be done in accordance with the principles set out in the formal tendering procedures (5.3 refers).
- 5.2.7 Any departures from the formal quotation procedures must be discussed with the Head of Financial Services or Strategic Procurement Manager who will agree or otherwise any exception in consultation with the Assistant Chief Executive Legal and Democratic. A record must be kept of the reasons for and approval given for departing from the formal quotation procedure.
- 5.2.8 Formal quotations for contracts up to £50,000 should be kept for a minimum of two years after the contract has been awarded.

### 5.3 Formal Tendering Procedure

#### Introduction

- 5.3.1 Formal tendering procedures apply to all contracts with a total value between £50,001 and the prevailing European procurement limit for supplies and services (currently £140,000) except for

those with WMS or a Council approved strategic service delivery contract. To ensure that European procurement rules are properly applied, Contract Monitoring Officers should liaise with the Strategic Procurement Manager for all contracts with an estimated value in excess of £50,000.

5.3.2 It is important to respect confidentiality during all stages of the formal tendering process. Officers must not therefore disclose any information they have about potential suppliers to other persons/suppliers potentially competing for the same contract.

5.3.3 Advice and guidance on how to describe the works, goods or services required for formal tendering purposes can be obtained from the Strategic Procurement Manager.

#### **Selecting Potential Tenderers**

5.3.4 An Approved Contractor Register should be used wherever possible for selecting potential tenderers for a contract. Officers must record the names of the persons/suppliers invited to tender from an Approved Contractor Register.

5.3.5 If an Approved Contractor Register does not exist or is unsuitable for selecting potential tenderers, officers will either need to advertise for potential tenderers or approach selected ones in cases where specialist works, goods or services are required.

5.3.6 If an Approved Contract Register is available but considered unsuitable for a specific contract, the Contract Monitoring Officer should discuss the reason with the Head of Financial Services or Strategic Procurement Manager. The Head of Financial Services or Strategic Procurement Manager should then consult with the Assistant Chief Executive Legal and Democratic. The Director and Contract Monitoring Officer shall be informed of the decision of the Head of Financial Services or Strategic Procurement Manager and Assistant Chief Executive Legal and Democratic.

5.3.7 Officers must also seek guidance as outlined in 5.3.6 above if they propose to approach selected persons or firms as potential tenderers.

5.3.8 Contract Monitoring Officers must keep a written record of the reasons for departing from the usual practice of selecting potential tenderers from an existing Approved Contractor Register and the approval given. They must also record the reasons for approaching selected tenderers and the approval given.

5.3.9 Advertisements for potential tenderers may be placed in relevant trade or professional journals, local and national newspapers, the Council's website and the EC Journal.

5.3.10 The method for collecting the information needed from potential suppliers to assess whether to invite them to submit a formal tender and the method of assessment must be agreed before the selection process begins.

5.3.11 A standard business questionnaire may be used to collect information from the potential suppliers but the same questionnaire must be used for all potential suppliers. Alternatively, information may be gathered by inviting potential suppliers to express an interest in writing covering the specifics identified by the officer in the advertisement or letter of invitation. Further advice can be obtained from the Strategic Procurement Manager.

5.3.12 The method for selecting tenderers must:

- a) Treat all tenderers in the same way.
- b) Keep the process clear and simple.
- c) Record all the selection decisions.

5.3.13 Officers must consider the following when selecting suppliers to be invited to tender for a particular contract:

- a) Past performance on similar contracts (quality and costs).
- b) Technical capacity.
- c) Specialist experience in the type of products and services being procured.
- d) Financial situation.
- e) Public and employer's liability insurance arrangements.
- f) Health & safety arrangements.
- g) Equalities policy.
- h) Written references on the contractors' reputation.
- i) Environmental policies.

5.3.14 Officers may also use information from referees and from company searches to assess which persons or firms to invite to submit a tender.

5.3.15 At least three suitable suppliers should be invited to tender. If there are only three suitable suppliers (e.g. due to the number of suppliers responding to an advertisement) they must all be invited to tender.

5.3.16 If there are only one or two suppliers indicating they wish to be considered then an exemption from the Contract Procedure Rules **must** be sought from the Head of Financial Services or Strategic Procurement Manager and Assistant Chief Executive Legal and Democratic and their approval given before proceeding. The names or details of suppliers must not be passed on to anyone at any time during the tendering process.

#### **Inviting Tenders**

5.3.17 Each potential supplier should be sent an invitation to tender, the contract documents, a tender form and a return label bearing the name of the contract and the word 'Tender' together with instructions on when and how the tenders should be returned. They must be instructed to return their tender in a plain envelope addressed to the Assistant Chief Executive Legal and Democratic. There should be no marks or writing on the envelope, other than the address and the return label. Tenderers must be advised not to use a franking machine if they propose posting their tender.

5.3.18 A copy the Council's standard contract terms should also be included so that the tenderer is aware of the terms and conditions that will form part of the final contract. When an industry

standard contract is used advice should be sought from the Assistant Chief Executive Legal and Democratic on which of the standard clauses to incorporate.

- 5.3.19 Tenderers must be told that tenders sent by fax or e-mail will not be accepted.
- 5.3.20 Tenders can be returned by hand or by post to the Assistant Chief Executive Legal and Democratic, Brockington, 35 Hafod Road, Hereford, HR1 1SH. Tenderers should be advised to use postal services that provide them with proof of postage and the time of sending.
- 5.3.21 Tenderers should be advised that tenders will be opened at the same time and no advantage is secured by seeking to delay submission until the last moment.
- 5.3.22 The invitation to tender **must** state that the Council does not bind itself to accepting the lowest or any tender.
- 5.3.23 The invitation to tender needs to explain how the Council will deal with any mistakes it identifies in the tender documentation submitted (see Assessing Tenders below).
- 5.3.24 The invitation to tender **must** set out the criteria that will be used to select the preferred supplier. The assessment criteria must not prevent fair competition or discriminate between tenderers in any way. They must also comply with relevant legislation.
- 5.3.25 The tender assessment criteria should include:
- a) Price.
  - b) Technical standard.
  - c) Experience and skills.
  - d) Financial proposals.
  - e) Financial standing.
  - f) Contract management arrangements.
  - g) Quality management proposals.
  - h) Delivery proposals.
  - i) Employment practices.
  - j) Environmental considerations.
  - k) Diversity issues.
- 5.3.26 If an officer wants to know whether the supplier has received an invitation to tender, they must enclose a 'Tender Received Confirmation Form' with the invitation to tender documentation. They must not contact the potential supplier to check they have received the documentation.
- 5.3.27 During the period allowed for preparing tenders, all communications with tenderers must be recorded. All communications should go through the Contract Monitoring Officer who can

obtain the information requested from others if necessary. If a tenderer raises a query during this period, it must be passed on to all other tenderers, together with the reply. The identity of the tenderer who has raised the query **must not** be revealed.

### **Receiving Tenders**

- 5.3.28 The original tender return date should be fixed and unchanged except in appropriate and necessary circumstances. Any extension should not provide either advantage or disadvantage to any of the tenderers. Any proposal to extend the closing date must be agreed by the Assistant Chief Executive Legal and Democratic.
- 5.3.29 Should it be necessary to extend the time limit for the submission of tenders all potential tenderers should be informed of the new date in good time before the original submission date.
- 5.3.30 Tenders should be recorded in a register that shows the time, date and name of the contract as they are received. Tenders delivered by hand should be acknowledged with a written receipt and the time, date and name of the contract similarly recorded in the register. All tender envelopes must be date stamped on receipt with the time of receipt written on the envelope and countersigned by the receiving officer.
- 5.3.31 Tenders must not be opened until the final deadline for receiving them. Tenders must be stored securely until it is time for them to be opened. The storage used should be locked and access to it available only to those officers in Legal & Democratic Services responsible for handling tenders and they must ensure that keys are secure at all times.
- 5.3.32 A Legal & Democratic Services officer shall be responsible for opening the tenders for a contract in the company of the Contract Monitoring Officer and the Strategic Procurement Manager or his/her representative. The Legal & Democratic Services officer must ensure the number of tender envelopes to be opened tallies with the number recorded in the tender register and shall sign the register to indicate that this is the case.
- 5.3.33 If a tender is opened by mistake before the deadline, a record of how this has happened should be attached to the packaging. The tender should be re-sealed immediately and its contents kept confidential.
- 5.3.34 If fewer tenders are received than expected, do not contact tenderers to ask whether they have sent one in.
- 5.3.35 In exceptional circumstances, Legal & Democratic Services, in consultation with the Head of Legal & Democratic Services, can accept a late tender (see below).

### **Opening & Recording Tenders**

- 5.3.36 The Assistant Chief Executive Legal and Democratic must make sure that the procedures for opening tenders are followed and that the correct records and documents are completed.
- 5.3.37 All tenders relating to a contract must be opened at the same session and opened one at a time. Each officer present must sign, date and write on the tender form the time that the tender was opened.
- 5.3.38 The key documents submitted by each tenderer must be recorded on a tender return form along with value. Each officer must check, sign and date the form.

5.3.39 The Contract Monitoring Officer must sign each page of the tender document unless it is very long. In this case, they may only sign the pages that include pricing information.

5.3.40 Once the tenders have been opened, they should be held in a secure place by the Contract Monitoring Officer.

#### **Late Tenders**

5.3.41 The Assistant Chief Executive Legal and Democratic must reject tenders that are received after the deadline unless none of the tenders submitted on time have been opened or there is proof that the tender was posted in enough time to meet the deadline (for example, the postmark date is the day before the deadline for a first class delivery or is three days before the deadline for a second class delivery).

5.3.42 If the Assistant Chief Executive Legal and Democratic decides to accept a late tender, they must treat that tender in the same way as all other tenders. The full details of the decision to accept the late tender must be recorded.

5.3.43 If the late tender is rejected, it should be returned unopened to the tenderer and a record of posting kept on file for two years. The tenderer should be informed in writing of the date and time the tender was received.

#### **Assessing Tenders**

5.3.44 The Contract Monitoring Officer will ensure the tenders are assessed in accordance with the advice provided by the Head of Financial Services or Strategic Procurement Manager.

5.3.45 Before assessing the tenders, the Contract Monitoring Officer needs to check that each part of them meets the requirements of the specification. The responsible officer also needs to make sure that there are no mistakes and that nothing is missing

5.3.46 If there are substantial omissions of data or documentation that make it impossible to assess the tender, this should be fully recorded and the tender rejected.

5.3.47 The accuracy of the figures in each tender must be checked. If mistakes are found that do not affect the overall price of the goods or services, the tenderer must be contacted and asked to confirm the correct figures in writing.

5.3.48 A record of all mistakes must be kept and attached to the tender documents together with any corrections agreed with the tenderer.

5.3.49 The correct tenders can then be assessed in accordance with the assessment criteria that have previously been agreed in accordance with these formal tendering procedures.

5.3.50 The assessment criteria used for the tender evaluation must be the same in all respects as the criteria advised to prospective suppliers at the beginning of the process.

5.3.51 Assessment details are strictly confidential and must not be passed on to anyone else. During the course of the assessment, tender documentation must be kept secure and confidentiality preserved. If, in a major tendering exercise, the documentation is going to be copied or divided to aid the assessment process, a record should be maintained to identify to whom such documents have been issued and the date returned.

5.3.52 The Contract Monitoring Officer shall retain a complete set of documents in a secure place in case any parts of the documentation go missing.

5.3.53 Once the assessment has been completed the responsible officer should produce a report showing:

- a) The result of the assessment of each tender.
- b) A comparison of assessment results.
- c) The recommendation on which tenderer should be offered the contract.

#### **Accepting and Rejecting Tenders**

5.3.54 The Contract Monitoring Officer should accept the tender that is:

- a) The lowest tender that meets the evaluation criteria.  
Or
- b) The tender that will be of most economic benefit to the Council. Where this is not the lowest tender, the Contract Monitoring Officer should explain in writing giving objective reasons why that tender is preferred and seek approval from the Head of Financial Services or Strategic Procurement Manager and the Assistant Chief Executive Legal and Democratic to proceed to appoint. A note should be placed on file to show that the Head of Financial Services or Strategic Procurement Manager and Assistant Chief Executive Legal and Democratic has reviewed the evaluation process and agreed with the outcome.

5.3.55 The Contract Monitoring Officer should always consider whether their recommendation for awarding the contract should be put before a Cabinet Member, the Cabinet or Council for formal approval **before** contacting the successful tenderer. The Scheme of Delegation (Part 12 of the Constitution) sets out the Council's procedures for making decisions. If in doubt, seek advice and approval from the Head of Financial Services or Strategic Procurement Manager and the Assistant Chief Executive Legal and Democratic. Tenderers should be told at the outset if Cabinet or Council approval will be needed.

5.3.56 The officer should write to inform the successful tenderers of the decision as soon as possible **after all necessary approvals have been received.**

5.3.57 Care should be taken when issuing letters informing the tenderer that they have been successful as an unqualified acceptance of the tender may create a binding contract before the formal documentation has been completed and signed by the appropriate authorised signatories.

5.3.58 Unsuccessful tenderers should be informed after the successful tenderer has been told. If unsuccessful tenderers ask why their tender was not successful then general feedback should be given on the areas of their tender that scored poorly. The Contract Monitoring Officer should not become involved in detailed arguments or discussions in order to justify their decision. If the tenderer requires more detailed information the officer should advise them to put their request in writing and seek appropriate advice before responding in writing.

#### **Negotiating**

5.3.59 The Contract Monitoring Officer must comply with the following conditions when negotiating on price with tenderers:

- a) Guidance must be sought from the Head of Financial Services or Strategic Procurement Manager who will consult with the Assistant Chief Executive Legal and Democratic as appropriate before advising on the appropriate course of action.
- b) The Contract Monitoring Officer must be accompanied by another officer during negotiations with tenderers and a full written record of all discussions should be made and signed by both officers. The results of the negotiation process must be shared with the Head of Financial Services or Strategic Procurement Manager.
- c) All negotiations must be carried out at the Council's offices.
- d) Officers must not discuss one tenderer's detailed prices, conditions or terms with another tenderer.
- e) Officers must respect the confidentiality of information provided by tenderers.
- f) If negotiations lead to a material change in the description of the work, goods or services or other terms, the officer must invite everyone who has provided a tender to re-tender on the basis of the revised contract. If this is the case, the whole process should start again.

5.3.60 If there is an in-house tender for a contract, negotiations must not take place without permission from the Head of Financial Services or Strategic Procurement Manager as outlined in 5.3.59 a) above.

#### **Awarding a Contract**

5.3.61 Before awarding any contract, the Contract Monitoring Officer must first obtain the approval of their Director or their authorised representative with confirmation of:

- a) The competency of the proposed contractor and the adequacy of any necessary insurance.
- b) The prices quoted by the proposed contractor.
- c) The consistency of the proposed action with the objectives and requirements of the Council's Contract Procedure Rules.
- d) The financial stability of the proposed contractor.
- e) A satisfactory credit check if the Council has not dealt with that contractor for more than two years for contracts in excess of £50,000. A credit check should be carried out on all short listed tenderers for contracts in excess of the European procurement limit for supplies and services (currently £140,000). Advice on credit checks should be sought from Audit Services.

5.3.62 Once this approval has been granted, the officer needs to complete the contractual arrangements. The documents should clearly set out the name of the supplier, what the contract is for, and the terms and conditions of the contract. They should also show that there is suitable insurance to protect the Council's interests. Advice on insurance matters is available from the Council's Insurance and Risk Manager. Where an official order is used and where it makes reference to the Council's General Terms and Conditions for Services, Supplies and Works those terms will apply to the contract. If in any doubt with the contract documentation, advice should be sought from the Assistant Chief Executive Legal and Democratic.

5.3.63 All contracts must be signed by the Assistant Chief Executive Legal and Democratic. The Assistant Chief Executive Legal and Democratic will only sign contracts if the Director has given written authority for him to do so and written assurance that the Council's Contract Procedure Rules have been complied with in all respects. A Director must also sign all contracts where European procurement rules apply.

5.3.64 Officers are responsible for seeking advice from Legal & Democratic Services if they are not clear about the form of contract to be used or changes are needed to the standard form of contract used by the Council.

5.3.65 The Contract Monitoring Officer must inform the Head of Financial Services or Strategic Procurement Manager of the contract and must record the details of all contracts in the Contracts Register.

5.3.66 Officers must keep written records of each contract, including all the quotes and letters they have received and notes of telephone calls and meetings about selecting suppliers. These records must be made available to internal or external audit as required by them.

#### **Publication of Contract Details**

5.3.67 Officers must not give tenderers or suppliers any information about the bids or affairs of any other tenderer or contractor unless the law requires it. All information relating to tendering and contracting procedures is confidential.

5.3.68 The only information officers should make public is the name of the successful tenderer. However, this information must not be released until the contract has been awarded and signed.

5.3.69 If information is published on the amounts of the other bids received, the names of the unsuccessful tenderers must not be disclosed. Officers should ensure that all tenderers are aware that this information will or may be published when they are invited to tender and that the Council will need to meet its obligations under the Freedom of Information Act.

## **EUROPEAN PROCUREMENT RULES**

### **6.1 Introduction**

6.1.1 Whilst European procurement rules prevail, officers are expected to follow the principles set out in the Council's Contract Procedure Rules.

6.1.2 The European procurement rules are complex with significant penalties if the legislative requirements are not strictly adhered to. All officers are therefore responsible for seeking advice and guidance at all stages of the process from the Head of Financial Services or Strategic Procurement Manager and the Assistant Chief Executive Legal and Democratic.

### **6.2 European Limits**

6.2.1 The following table sets out the public sector thresholds for 1st January, 2008 to 31st December, 2009:

	<b>Supplies</b>	<b>Services</b>	<b>Works</b>
Public Sector Contracting Authorities	£139,893	£139,893	£3,497,313

Indicative Notices	£509,317	£509,317	£3,497,313
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- 6.2.2 The figures are revised every two years on 1st January and officers should check with the Assistant Chief Executive Legal and Democratic for the latest values.
- 6.2.3 If a contract for supplying goods or services will be worth more than the limits set out in the table above, the contract is likely to be governed by EC Directives and English Regulations.
- 6.2.4 The value limits apply to individual contracts and groups of contracts with similar characteristics that are to be agreed in the same year. Contracts with similar characteristics have to be added together to see whether they have reached the value limits. This is to prevent organisations packaging similar contracts into small units to avoid the rules.
- 6.2.5 Individual contract values are calculated as follows:
- a) If the contract is part of a series or is renewable, its value will be:
    - The value given in the previous financial year (over a 12-month period).
    - Or
    - The estimated value over the next 12 months from the date the goods, work or service is first provided.
  - b) If the contract is for a fixed term of less than four years, the value will be the total value of the contract.
  - c) If the contract has no end date or is for a fixed term of more than four years, the value will be the monthly value of the contract multiplied by 48.
- 6.2.6 If more than one of the above applies, the method that gives the highest value must be used. Again this is to prevent organisations by-passing the rules by choosing a calculation that puts a contract or group of contracts below the value limit.
- 6.2.7 Once the value of each contract has been calculated, it must be added to the value of other contracts with similar characteristics. If the value of a contract or group of contracts with similar characteristics is greater than the value limit, European procurement rules must be followed. To ensure that the aggregation rules are properly applied, Contract Monitoring Officers should liaise with the Strategic Procurement Manager for all contracts in excess of £50,000.
- 6.2.8 **Before going any further with a European procurement process, officers must discuss the next steps with the Head of Financial Services or Strategic Procurement Manager and the Assistant Chief Executive Legal and Democratic.**

### 6.3 Awarding Contracts Subject to European Procurement Rules

- 6.3.1 Before issuing an award notification, or if contact is made by an unsuccessful tenderer at any time during the standstill period, contact the Head of Financial Services or Strategic Procurement Manager or your external procurement consultants for advice.
- 6.3.2 To ensure compliance with European procurement rules there must be a **minimum** standstill period of 10 calendar days between advising all tenderers of the award decision and the actual

award of the contract. This 10-day standstill period incorporates other specific deadlines that can result in the standstill period being extended.

- 6.3.3 The standstill period is to allow unsuccessful tenderers an opportunity to challenge any award decision. Where a legal challenge is made within the 10-day standstill period, the contract cannot be awarded until the outcome of the application to court is known. **It is imperative that any correspondence amounting to an acceptance letter is not issued during this period.**
- 6.3.4 The written notification to the unsuccessful tenderers which triggers the standstill period **must** contain:
- a) The award criteria.
  - b) The tenderer's score (where appropriate).
  - c) The winning tenderer's score (where appropriate).
  - d) The name of the winning tenderer.
- 6.3.5 The European procurement rules require tender results to be published in the Official Journal within 48 days of the date a contract is awarded. This must be done in consultation with the Assistant Chief Executive Legal and Democratic.
- 6.3.6 The Head of Financial Services or Strategic Procurement Manager and the Assistant Chief Executive Legal and Democratic must be consulted on all EU procurements.

#### **FRAMEWORK CONTRACTING**

- 7.1.1 Framework contracting involves selecting a contractor from a list of contractors on an approved "Framework" for given works, goods or services. The contractors are included on the Framework following a tendering exercise to establish capability, quality and value. The tendering procedures will have had to comply with any relevant English or European law.
- 7.1.2 Purchasers can enter into subsequent 'call-off' contracts from a Framework. Framework contracting is becoming increasingly prevalent in an attempt to avoid bureaucracy and achieve best values via economies of scale.
- 7.1.3 Frameworks can be externally formed (e.g. by Government) or internally formed (e.g. by the Council). The number of approved contractors on a Framework can vary but the minimum number should be three. Frameworks should not be confused with internal Approved Contractor Registers.
- 7.1.4 When an external Framework is formed general terms and conditions are agreed between the Framework contractors and the Framework organiser. These pre-agreed terms and conditions will form a major part of any purchasers' 'call-off' contract and contractors are not obliged to agree to any amendments to them.
- 7.1.5 From the 1st January 2006, **EU Procurement Directive 2004/18/EC** has governed the process under which contracts under Frameworks are to be awarded and in the interests of competition has placed a maximum duration of 4 years on any Framework (unless special justification can be made for a longer period).

7.1.6 Officers must take the following steps to ensure compliance with EU Procurement Directive 2004/18/EC when using a Framework contract created since the 1st January 2006:

- a) All the contractors on a Framework that are capable of meeting the purchaser's specification must be allowed to submit a bid against that specification.
- b) The reasons for selecting a smaller number of contractors on a Framework must be clearly evidenced.
- c) Award of contract must be on the basis of the criteria for the Framework as set out in the Framework agreement itself, that is, within the original tender documentation setting up the Framework.

7.1.7 The Head of Financial Services or Strategic Procurement Manager and the Assistant Chief Executive Legal and Democratic must be consulted on all Framework contract procurements.

#### **OTHER PROCUREMENT PROCEDURES**

8.1 There are a number of other procurement procedures that may be available in particular circumstances:

- a) Design contests, particularly in the fields of planning, architecture, civil engineering and information technology.
- b) Public housing schemes where the size and complexity of schemes necessitate the close collaboration between the Council and Contractors.
- c) Concession contracts where contractors derive income from the completed work, for example a toll bridge.

8.2 The Head of Financial Services or Strategic Procurement Manager and Assistant Chief Executive Legal and Democratic must be consulted regarding any proposals to follow any such procedures.

#### **CONTRACTS UNDER SEAL**

9.1 All contracts for building, engineering (excluding highway maintenance), property repairs and property maintenance works with an estimated value in excess of the European procurement limit for supplies and services (currently £140,000) shall be sent to the Assistant Chief Executive Legal and Democratic for execution under the Council's seal.

#### **EXEMPTIONS FROM THE COUNCIL'S CONTRACT PROCEDURE RULES**

10.1 Exemptions from the Council's Contract Procedure Rules are only allowed in exceptional circumstances such as there being insufficient suppliers for the goods, works or services being procured. Permission must be obtained for any exemption from the Head of Financial Services or Strategic Procurement Manager **and** Assistant Chief Executive Legal and Democratic. Major contracts may be subject to the European procurement rules and the Assistant Chief Executive Legal and Democratic cannot provide an exemption from those requirements.

10.2 A written application for an exemption from the Council's Contract Procedure Rules must be made to the Assistant Chief Executive Legal and Democratic setting out the reasons for the

application. The Assistant Chief Executive Legal and Democratic must respond within 21 days. If agreed by the Assistant Chief Executive Legal and Democratic, the exemption must be approved in accordance with the Council's Constitution.

- 10.3 Tenders need not be invited in accordance with the provisions of section 5 of the Council's Contract Procedure Rules if an urgent decision is required, for example for the protection of life or property or to maintain the functioning of a public service. Wherever possible though, at least two quotations must be obtained and the provisions within the Council's Financial Procedure Rules for making urgent decisions must be followed.

FINAL DRAFT FOR COUNCIL

# Section 7

## Financial Procedure Rules

### INTRODUCTION

- 1.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Director of Resources.
- 1.2 Authority is delegated to the Head of Financial Services to act on behalf of the Director of Resources in all respects in his/her absence or if requested by the Director to do so.

### Background

- 1.3 The Financial Procedure Rules control the way the Council manages its finances and safeguards its assets. They form part of the Council's Constitution and are to be read in conjunction with other sections of the Constitution in particular:
  - a) Part 3 – The Functions Scheme .
  - b) .Part 4 – Section 3 - The Budget and Policy Framework Rules.
  - c) Part 4 – Section 6 – the Contract Procedure Rules.
- 1.4 The Financial Procedure Rules apply to every Member and officer of the Council and anyone acting on its behalf except where separate arrangements are made under the scheme for the Local Management of Schools.
- 1.5 The Council encourages innovation providing this is within the framework laid down by the Financial Procedure Rules and that the necessary risk management arrangements and approvals are in place.
- 1.6 Every report to Members shall contain a statement setting out the financial implications of the recommendation(s) proposed that has been approved by the Director of Resources.

### General Responsibilities

- 1.7 Members and officers have a general responsibility for taking reasonable action to provide for the security of assets under their control and for ensuring that the use of these resources is legal, properly authorised, provides value for money and achieves best value.
- 1.8 Members, officers and others acting on behalf of the Council are required to have proper regard to the advice and guidance issued by the Director of Resources on the Financial Procedure Rules.

### Cabinet Responsibilities

- 1.9 Cabinet is responsible for overseeing all aspects of the Council's finances. Day to day responsibility for the Council's finances rests with Directors and their managers as set out in these Financial Procedure Rules.

- 1.10 The Cabinet should maintain a written record where decision-making has been delegated other than as delegated in the Functions Scheme (Part 3).
- 1.11 Each Cabinet Member shall oversee compliance with the Council's Financial Procedure Rules for those functions within their terms of reference. Each Director is responsible for ensuring those functions within their terms of reference operate within the Council's Financial Procedure Rules. Each Director is also responsible for providing Cabinet Members with evidenced assurance that this is the case.

#### **Director of Resources' Responsibilities**

- 1.12 The Director of Resources has been appointed under Section 151 of the Local Government Act 1972 as the officer with responsibility for the proper administration of the Council's financial affairs.
- 1.13 Reference in these Financial Procedure Rules to the Director of Resources shall be taken to include any officer nominated by the Director of Resources to act on his/her behalf.
- 1.14 The Director of Resources shall be entitled to attend a meeting of any body on which Members are represented where matters affecting the financial affairs of the Council are being discussed.
- 1.15 The Director of Resources, under the general direction of Cabinet, is responsible for determining the basis for all accounting procedures and financial records for the Council and for exercising a check over all financial matters.
- 1.16 The Director of Resources is responsible for maintaining a continuous review of the Financial Procedure Rules and advising the Council of any additions or changes necessary.
- 1.17 The Director of Resources is responsible for reporting, where appropriate, breaches of the Financial Procedure Rules or any other element of the Constitution that relates to the proper administration of the Council's financial affairs to the Council and / or Cabinet.
- 1.18 The Director of Resources is responsible for issuing advice and guidance to underpin the Financial Procedure Rules.

#### **Joint Management Team Responsibilities**

- 1.19 Members of the Joint Management Team should maintain a written record where decision-making has been delegated.
- 1.20 Members of the Joint Management Team are responsible for ensuring that all employees are aware of the content of the Financial Procedure Rules and other internal regulatory documents and that they are complied with.
- 1.21 Members of the Joint Management Team are responsible for consulting with the Director of Resources on any matter within their area of responsibility that is liable to materially affect the finances of the Council before any provisional or other commitment is incurred or before reporting the matter to a Cabinet Member.
- 1.22 Members of the Joint Management Team are responsible for supplying the Director of Resources with all information necessary for the proper administration of the Council's affairs.

- 1.23 Members of the Joint Management Team shall allow the Director of Resources and his/her authorised representatives access to all documents and records on demand.
- 1.24 Members of the Joint Management Team shall observe the following division of duties in the allocation of financial responsibilities to employees:
- a) The duty to provide information regarding money due to or from the Council, including calculating, checking and recording, shall be separated from the duty of collecting or disbursing such money.
  - b) The duty of examining and checking the accounts of each transaction shall be separated from the duty of making those transactions.
- 1.25 Members of the Joint Management Team are responsible for ensuring those functions within their terms of reference operate within the Council's Financial Procedure Rules.
- 1.26 Members of the Joint Management Team are responsible for providing Cabinet Members with evidenced assurance that the Council's Financial Procedure Rules are being complied with.

#### **PREVENTING FINANCIAL IRREGULARITIES**

- 2.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Director of Resources.
- 2.2 The Council shall not tolerate fraud or corruption of any form or degree in the administration of its responsibilities whether from inside or outside the Council.
- 2.3 The Council's expectation of propriety and accountability is that Members and staff at all levels shall lead by example in ensuring adherence to financial and legal requirements, rules, procedures and practices.
- 2.4 The Council also expects that individuals and organisations (e.g. suppliers, contractors, service providers) that it comes into contact with, shall act towards the Council with integrity and without thought or actions involving fraud or corruption.
- 2.5 The key controls regarding the prevention of financial irregularities are that:
- (a) The culture and tone of the Council is one of honesty and opposition to fraud and corruption.
  - (b) All Members and staff act with integrity, and lead by example.
  - (c) All individuals and organisations associated in any way with the Council shall act with integrity.
  - (d) Managers with employee management responsibilities are required to deal swiftly and firmly with those who defraud the Council or seek to do so or who are corrupt.

#### **Responsibilities of the Director of Resources**

- 2.6 The Director of Resources is responsible for:
- (a) Maintaining adequate and effective audit arrangements for the Council.

- (b) Ensuring that financial irregularities are reported to the Head of Paid Service, Cabinet and the Audit and Corporate Governance Committee.
- (c) Determining, in conjunction with the Chief Internal Auditor, the scope of any internal enquiries or investigations, subject to consultation with the relevant member of the Joint Management Team as appropriate.
- (d) Deciding, in consultation with the relevant member of the Joint Management Team as appropriate, whether any matter under investigation should be referred for police investigation and take recovery action as appropriate on such matters.
- (e) Keeping the Head of Paid Service and Monitoring Officer informed if a suspected irregularity occurs involving staff who are the responsibility of the Director of Resources.
- (f) Ensuring, in conjunction with the relevant member of the Joint Management Team, that the Council's disciplinary procedures are followed where the outcome of an audit or other investigation indicates fraud or irregularity.
- (g) Ensuring that any case of fraud or loss or financial irregularity or bribery or corruption discovered or suspected to exist which involves the Council's interest shall be dealt with in accordance with the Council's Anti-Fraud and Anti-Corruption policy.
- (h) Appointing senior officers to be the Council's Money Laundering Reporting Officer and deputy to the Council's Money Laundering Reporting Officer.

#### **Responsibilities of Directors, Heads of Service and Officers**

2.7 Directors, Heads of Service and officers are responsible for:

- (a) Ensuring that all suspected irregularities are reported to the Director of Resources and Chief Internal Auditor.
- (b) Instigating the Council's disciplinary procedures where the outcome of an audit investigation indicates improper behaviour.
- (c) Being aware of the Council's policies for the prevention of money laundering and other financial irregularities.

#### **Responsibilities of the Money Laundering Reporting Officer**

2.8 The Director of Resources shall appoint a Money Laundering Reporting Officer (MLRO). This officer shall ensure that all staff likely to receive payments from the public, businesses or professions are aware of the Authority's responsibilities under the Proceeds of Crime Act 2002, the Money Laundering Regulations 2003 and any other relevant acts and regulations, such as the anti-terrorism acts.

2.9 The MLRO, or the Deputy MLRO in the MLRO's absence, shall receive reports from staff about suspicious payments of any value for any purpose and payments in cash in excess of £10,000 or €15,000.

- 2.10 The MLRO shall report any instance of suspected money laundering to the Serious Organised Crime Agency.

## **ASSET MANAGEMENT**

### **Introduction**

- 3.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Asset Management and Property Services.
- 3.2 The Asset Management section of the Council's Financial Procedure Rules provides a framework of principles, minimum requirements, levels of authority and delegations to ensure that Herefordshire Council property is managed effectively to achieve maximum value for money.

### **Overarching principles**

- 3.3 A set of overarching principles govern the operation of this section of the Council's Financial Procedure Rules. These are:
- (a) All property owned or leased by Herefordshire Council is held corporately (including Herefordshire Council-owned schools).
  - (b) The Director of Resources is responsible for ensuring that the occupation of all Herefordshire Council property by Directorates is in accordance with best management practice and in the interests of the Council as a whole.
  - (c) Directorates have discretion to manage the property they occupy in order to promote effective service delivery. However, this discretion operates subject to the corporate responsibilities of the Director of Resources who has the authority to intervene in property matters to protect Herefordshire Council's overall interests.
  - (d) Resolution of disputes on property matters is through the Head of Paid Services.
  - (e) All property transactions should be referred to the Director of Resources who shall seek the comments of all interested parties, including relevant Cabinet Members, Directorates and local Members, before the decision is taken to proceed. All decisions must be taken in accordance with the delegations set out in this section of the Council's Financial Procedure Rules and the decision making procedures set out in the Council's Constitution.

### **Acquisitions**

- 3.4 Land and property requirements are to be appropriately identified and appraised and all acquisitions are to have the necessary prior authority and funding, including an assessment of the impact on revenue of funding from borrowing.
- 3.5 Following formal approval in accordance with the Council's decision-making procedures, all acquisitions (freehold and leasehold) shall be actioned by the Director of Resources. Cabinet Members, the Head of Financial Services, the Assistant Chief Executive Legal and Democratic, Directors and local Members shall be kept informed as outlined in paragraph 3.3 (e) above and the delegations set out in paragraphs 3.6 to 3.12 below.

### **Non-Highways Acquisitions**

- 3.6 For all non-highways acquisitions, the relevant Directorate shall provide the Director of Resources with:
- (a) A definition of the service requirement giving rise to the proposed acquisition.
  - (b) A full financial appraisal of options (including the 'do nothing' option) for meeting service delivery requirements (developed as appropriate with support from the Corporate Asset Strategy Group) for all proposals likely to cost more than £140,000.
  - (c) An evaluation of the potential (if any) for joint use.
- 3.7 Property acquisitions shall be dealt with in accordance with the appropriate provisions of this section of the Council's Financial Procedure Rules and decision making procedures set out in the Council's Scheme of Delegation.
- 3.8 The use of compulsory powers for acquisitions must be agreed by Cabinet.

#### **Highways Acquisitions**

- 3.9 The Director for Environment shall, in the case of all acquisitions for highway purposes, seek local Member views as part of the consultation process for highways and traffic schemes.
- 3.10 The Cabinet Member for Highways & Transportation and the Director for Environment (or officer authorised by him/her) shall approve highway scheme designs and budgets (including land acquisition costs) after considering the views of the Corporate Asset Strategy Group (CASG).
- 3.11 The Director of Resources may action acquisitions for highway purposes provided the scheme is in an approved programme or the property concerned has as a consequence been blighted.
- 3.12 The Director of Resources shall ensure that acquisitions for highways purposes that are part of a scheme that is not in an approved programme is referred for formal decision in accordance with the Council's Constitution and Financial Procedure Rules.

#### **Management and Use**

- 3.13 Property is to be used efficiently, effectively and economically with due regard to legislative requirements. When any property is no longer required for operational purposes it is to be formally declared surplus, at which point its management reverts to the Director of Resources. The budgetary implications of this are to be identified and reported to the Cabinet Member responsible for Resources.
- 3.14 The occupation and use of property by a Directorate is subject to the Director of Resources responsibility for approving all material changes to property, including change of use, appropriations, granting/taking of interests, alterations or additions. Such changes must be reported to the Head of Financial Services for correct accounting treatment and apportionment of charges.

#### **Premises Management**

- 3.15 The Director of Resources has the authority to undertake reviews of the property portfolio, or parts of it, to determine if it is optimised in terms of its utilisation, cost and value and within this to challenge the retention or use of existing properties occupied by Directorates.

#### **Building works**

- 3.16 Major capital works for properties (schemes likely to cost in excess of £140,000) should be subject to a formal project appraisal and should be consistent with existing financial approval and procurement processes.

#### **Health & Safety**

- 3.17 Employees are required to ensure that, in respect of all property matters, all obligations under health and safety legislation and Herefordshire Council's health and safety policies are met.

#### **Disposals**

- 3.18 Land and property which is surplus to operational need is either to be reallocated to meet alternative needs or disposed of in line with statutory requirements and/or Herefordshire Council policy.

- 3.19 Directorates shall notify the Director of Resources of:

- (a) Any property (or part) that is:
- Vacant.
  - Held against a future operational need.
  - Not used for the principal purpose for which it is held.
  - Likely to be surplus to requirements (with estimated time-scale).
- (b) Any operational issues associated with such property (e.g. longer-term requirements).
- (c) Any statutory/process issues relevant to its disposal (e.g. prescribed consultation processes, reference to the Secretary of State, etc.).
- (d) Any other issues which need to be considered prior to disposal.

- 3.20 The Director of Resources may identify any property (or part) that is considered, or could be made, surplus to operational requirements.

#### **Treatment of Capital Receipts**

- 3.21 Capital receipts from disposals are deemed to be a corporate capital resource available for allocation in line with corporate priorities.

- 3.22 All receipts are agreed through the Capital Strategy & Monitoring Group (CSMG) with no assumption on application to particular schemes.

- 3.23 Use of capital receipts are subject to the following rules:

- (a) Overspending on schemes dependent on receipts must be contained within the budget allocated to the directorate concerned.
- (b) Capital schemes dependent on receipts are included in the Capital Programme only after full vetting and valuation by CSMG and ultimate approval by Cabinet or Council as appropriate.
- (c) All dependencies, assumptions and risks to be clearly identified by the project sponsor leading to prudent valuation adopted in project sign-off.
- (d) Scheme assumptions about the quantum, timing and phasing of receipts to be explicit and receipts cannot generally be “counted” until the sale is complete.
- (e) Monitoring shall be undertaken by CSMG with Asset Management & Property Services using a traffic light system to assess the level of risk around the receipts.

3.24 The process for planning for the realisation of capital receipts shall take a medium term approach (3 years minimum) to allow:

- (a) Asset Management & Property Services to be able to work on projects in good time prior to consideration by CSMG. Larger, complex schemes can need 12-24 months lead-in.
- (b) Asset Management & Property Services to agree the strategy for disposal including timescale, planning, marketing, viewing arrangements, temporary occupation, minimising holding costs, surplus declarations etc. as core components of project justification to CSMG.
- (c) Directorates must deliver vacant possession when required by project plan.
- (d) Risk analysis to be included as part of project plan.

#### **Urgent Decisions**

3.25 In exceptional circumstances, where an urgent decision is required on property matters, this shall be taken by the Director of Resources in accordance with the provisions of this section of the Council’s Financial Procedure Rules and only after consultation with the Cabinet Member responsible for Resources, the Head of Financial Services and the Assistant Chief Executive Legal and Democratic. If the matter is outside the delegations set out in paragraph 3.30 below then the matter can only be authorised by the Cabinet Member responsible for Resources in accordance with the procedures for the taking of urgent decisions set out in the Council’s Constitution.

3.26 Any decisions made under the ‘Urgent Decision’ arrangements shall be reported to the relevant Director, Cabinet Members and Local Members.

#### **Financial Procedure Rules**

3.27 All of the protocols set out in the Council’s Financial Procedure Rules and the Functions Scheme and officer Schemes of Delegation must be adhered to. No transaction should be approved unless specific budgetary provision is identified, except where the purchase is approved under the authority given in paragraph 3.25 above.

### Delegation to Officers

- 3.28 Subject to the consultation and approval provisions set out in this section of the Council's Financial Procedure Rules, the Director of Resources is authorised to:
- (a) Determine and settle the acquisition or disposal of any land or property, or an interest in land or property.
  - (b) Determine and settle the terms of a lease (taken or granted) for any land or property.
- 3.29 As provided by arrangements made in the Constitution for the discharge of executive functions, the Chief Executive may exercise any power delegated under this section of the Council's Financial Procedure Rules to the Director of Resources. The Director of Resources may delegate his/her powers in writing to other officers.

### Supporting Mechanisms

- 3.30 Whilst having no Constitutional or decision-making status, the management of assets and property shall be exercised through a variety of mechanisms which amplify and support this section of the Council's Financial Procedure Rules. The key mechanisms and their purpose are summarised below:
- (a) The **Corporate Asset Strategy Group** chaired by the Director of Resources provides a forum to discuss and agree the strategic direction for asset management and key property related initiatives. It provides a mechanism to assess whether this protocol is working in practice and to identify and resolve issues with regard to corporate and service responsibilities.
  - (b) The **Capital Strategy and Monitoring Group (CSMG)** considers capital projects and significant changes to capital projects and ensures that proper planning and processes have been followed and risk assessments undertaken in line with the Council's Constitution, the project appraisal handbook and associated financial procedures. It makes recommendations to the Cabinet for schemes to be included in Herefordshire Council's capital programme.
  - (c) The **Asset Management and Property Services Annual Service Delivery Plan**, prepared in accordance with Herefordshire Council's planning guidelines, identifies the main priorities of the Asset Management & Property Services division and includes as an annex a schedule of properties for disposal as agreed by Cabinet in the Asset Management Plan.
  - (d) The **Strategic Asset Review Group** assesses the corporate need for land and property to support service delivery. It assists Services and Directorates to achieve a sustainable property asset base which is both sufficient and suitable for service delivery. It considers the opportunities for co-location and shared working with partners in the public sector.
  - (e) The **Medium Term Financial Management Strategy** sets out Herefordshire Council's spending priorities and/or financial allocations over the medium term. All capital schemes are subject to the appraisal and decision making processes around the Capital Programme and the Medium Term Financial Management Strategy.

### Information to the Council and Scrutiny

- 3.31 Property transactions are subject to the normal processes of publication and scrutiny.

**AUDIT**

- 4.1 Further advice on this section of the Financial Procedure Rules can be obtained from the Director of Resources or Chief Internal Auditor.

**Responsibilities of the Director of Resources**

- 4.2 The Director of Resources has delegated responsibility for maintaining an adequate and effective internal audit service.
- 4.3 Where an appropriate response to audit recommendations has not been made within the agreed period, the Director of Resources shall refer the matter to the Head of Paid Service and/or the Audit and Corporate Governance Committee.
- 4.4 The Director of Resources is responsible for ensuring that the Chief Internal Auditor submits an annual report to the Audit and Corporate Governance Committee detailing internal audit activity for the previous year and reporting significant findings and areas of concern.
- 4.5 The Director of Resources is responsible for producing an annual Statement on Internal Control for inclusion with the annual Statement of Accounts based on assurances provided by the Chief Internal Auditor.
- 4.6 The Director of Resources is responsible for ensuring that Audit Services complies with the Chartered Institute of Public Accountancy's Code of Practice for Internal Audit.
- 4.7 The Director of Resources is responsible for maintaining strategic and annual audit plans that take account of the relative risks of the activities involved. He/she shall liaise with the Joint Management Team on the audit strategy and plan. In addition to the statutory requirement, this takes into account the need to seek added value, effective use of resources, improved performance and cost-effective controls.
- 4.8 The Director of Resources is to investigate promptly any apparent, suspected or reported irregularity or fraud he/she becomes aware of. He/she shall report his/her findings to the Head of Paid Service to discuss and agree appropriate legal proceedings and disciplinary action, consulting with the relevant member(s) of the Joint Management Team as appropriate.

**Responsibilities of Directors and Heads of Service**

- 4.9 Officers are responsible for ensuring that internal and external auditors have:
- (a) Access at reasonable times to premises or land used by the Council.
  - (b) Access at reasonable times to any employee or employees.
  - (c) Access to all assets, records, documents, correspondence and control systems relating to any matter or business of the Council.
  - (d) Any information and explanation considered necessary concerning any matter under examination.

- 4.10 Officers are responsible for requiring any employee of the Council to account for cash, stores or any other Council property under their control and produce such items for inspection if required by Audit Services.
- 4.11 Officers are responsible for considering and responding within two weeks to recommendations in audit reports.
- 4.12 Officers are responsible for ensuring that any agreed actions arising from audit recommendations are carried out in a timely and efficient manner.
- 4.13 Officers are responsible for ensuring that new systems for maintaining financial records, or records of assets, or changes to such systems are discussed and agreed with the Chief Finance Officer prior to implementation.
- 4.14 Officers are responsible for notifying the Director of Resources or Chief Internal Auditor immediately in writing/electronic medium of any suspected or alleged fraud, theft, irregularity, improper use or misappropriation of Council property or resources. Pending investigation, all necessary steps should be taken to prevent further loss and secure records and documents against removal, destruction or alterations.
- 4.15 Officers are responsible for ensuring that all paperwork and systems are up to date, kept securely and are made available for inspection by internal or external audit.
- 4.16 Officers are responsible for ensuring all fundamental systems as defined by the Chief Internal Auditor and other financial systems are reconciled on a monthly basis and that records are up to date and available for internal or external audit inspection when required.

#### **Responsibilities of the Head of Financial Services**

- 4.17 The Head of Financial Services is responsible for drawing up the timetable and issuing guidance for final accounts purposes and to advise employees and the external auditors accordingly.

#### **Responsibilities of the Chief Internal Auditor**

- 4.18 The Chief Internal Auditor shall provide the Leader, Chair of Audit & Corporate Governance Committee and relevant Cabinet Member(s) with a copy of audit review reports with an unsound, unsatisfactory or marginal audit opinion. The Council's procedures for maintaining confidentiality shall apply.
- 4.19 The Chief Internal Auditor shall provide the Leader, Chair of Audit & Corporate Governance Committee and relevant Cabinet Member(s) with written confirmation of audit review reports with a satisfactory or good audit opinion.
- 4.20 The Chief Internal Auditor is responsible for providing the Audit & Corporate Governance Committee with a regular assurance report that highlights any areas of concern regarding the effectiveness or level of compliance with agreed systems of internal control.

#### **IMPREST ACCOUNTS**

- 5.1 Further advice on this section of the Financial Procedure Rules can be obtained from the Head of Financial Services.

#### **Responsibilities of the Head of Financial Services**

- 5.2 To consider requests from Heads of Service and Head Teachers to provide a cash or bank imprest account to meet minor expenditure on behalf of the Council.
- 5.3 To prescribe rules for operating imprest accounts.
- 5.4 To maintain a record of all advances made and reconcile to the Council's main financial system.

#### **Responsibility of the Head of Benefit and Exchequer Services**

- 5.5 To reimburse imprest holders as often as necessary to restore the imprest balance.

#### **Responsibilities of Heads of Service and Head Teachers**

- 5.6 To ensure that all officers operating an imprest account comply with the following procedures:
  - (a) Obtain and retain vouchers to support each payment from the imprest account including official VAT receipts where appropriate.
  - (b) Make adequate arrangements in their office for the safe custody of the account including vouchers and any other supporting documentation.
  - (c) Produce upon demand by the Director of Resources cash and all vouchers to the total value of the imprest account.
  - (d) Record transactions promptly.
  - (e) Reconcile and balance the account at least monthly with reconciliation sheets to be signed and retained by the imprest holder.
  - (f) Provide the Head of Financial Services with a certificate of the value of the account held at 31st March by 31st May each year.
  - (g) Ensure that the imprest is never used to cash personal cheques or to make personal loans.
  - (h) Ensure that the only payments into the account are the reimbursement payments and any notes/coinage relating to purchases made by a cash advance from the imprest account.
  - (i) Ensure income due to the Council is collected and banked as provided in Section 6 of the Council's Financial Procedure Rules and not through an imprest account.
  - (j) On leaving the Council's employment or otherwise ceasing to be entitled to hold an imprest advance, account to the Head of Service or Head Teacher for the amount advanced to them.
  - (k) Do not allow any bank imprest account to become overdrawn.
  - (l) Ensure that payments are limited to minor items of permitted expenditure with a maximum transaction value set by the Director of Resources from time to time (set at £50 in February 2008).

- (m) Submit a claim for reimbursement at least monthly.
- (n) Notify the Head of Financial Services of any new signatories.

## INCOME

- 6.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Benefit & Exchequer Services.
- 6.2 The Director of Resources has overall responsibility for the Council's income and collection functions and has sub-delegated this to the Head of Benefit and Exchequer Services who is required to ensure the effective collection and recording of all monies due to the Council.
- 6.3 The Director of Resources shall agree arrangements for the collection of all income and approve procedures and systems. In order to achieve this, the following controls must be followed:
- (a) All income due to the Council is identified, charged correctly and billed promptly.
  - (b) All money received by an employee on behalf of the Council is paid without delay to the Director of Resources or to a nominated officer or into the Council's specified bank account and is properly recorded.
  - (c) All receipts given for money should be on an official receipt form.
  - (d) All income is collected from the correct person, at the right time using the correct procedures and appropriate stationery and effective recovery action to pursue outstanding sums is taken within defined timescales.
  - (e) A formal approval process for write-offs of uncollectable debts using the criteria detailed below.
  - (f) Personal cheques shall not be cashed out of money held on behalf of the Council.
  - (g) All income received shall be receipted immediately.
  - (h) Officers shall bank all cash received immediately; its use for either personal or official purposes is strictly forbidden.
  - (i) All paying in records shall be retained securely in line with the Council's policies on the retention of documents.
- 6.4 The Director of Resources has determined the following authorisations for writing off uncollectable debt:
- Under £150 – individual Service Managers.
  - Between £150 and £500 – Revenues Manager.
  - Between £500 and £1,000 – Head of Benefit and Exchequer Services.
  - Between £1,000 and £20,000 – Director of Resources.

- 6.5 For write offs of amounts exceeding £20,000 the Director of Resources shall seek agreement from the relevant Cabinet Member and Cabinet Member responsible for Resources.
- 6.6 The Director of Resources shall report details of amounts over £1,000 written off to Cabinet twice a year for information purposes.
- 6.7 Write off of amounts above £1,000 relating to other Directorates require the recommendation of the relevant Director.

## PAYMENTS

- 7.1 Further information on this section of the Council's Financial Procedure Rules can be obtained from the Head of Benefit and Exchequer Services.
- 7.2 The Director of Resources has overall responsibility for making payments on behalf of the Council and has sub-delegated this to the Head of Benefit and Exchequer Services.
- 7.3 Individual Directors shall ensure that payments are authorised by appropriate officers who can certify that goods and services have been received and that price, quantity and quality are in accordance with the initial order, where appropriate.
- 7.4 Directors shall provide the Director of Resources with a list of authorised officers showing their signing levels with specimen signatures. This list should be reviewed at intervals to ensure is up to date and accurate and any changes being reported promptly.
- 7.5 Unless specifically authorised otherwise by the Director of Resources:
- (a) Directors must authorise all payments in excess of £250,000 (excluding VAT).
  - (b) Heads of Service may authorise payments up to £250,000 (excluding VAT).
  - (c) Managers who report to Heads of Service may authorise payments up to £100,000 (excluding VAT).
  - (d) Other officers as authorised by the Director up to £5,000 (excluding VAT).
- 7.6 Once certified, all accounts paid through the centralised payment system must be passed to the payments section who shall ensure that the required payment is made to the correct person by the agreed method of payment and that all expenditure including VAT is accurately recorded against the correct budget.
- 7.7 Requests for payment shall be rejected by the Payments Manager unless certified by an officer using their full signature who has the appropriate level of authority.
- 7.8 All accounts should be paid promptly, normally within 30 days unless in dispute, having due regard to the Late Payment of Commercial Debts (Interest) Act 1998 and to maximise performance. All accounts received must be date stamped with the day of receipt.
- 7.9 The Director of Resources shall ensure that all appropriate payment documentation is retained for the required period of time in accordance with the 'Guidelines on the Destruction of Financial records'.

**SALARIES, WAGES, PENSIONS, TRAVEL AND SUBSISTENCE**

- 8.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Benefit & Exchequer Services.
- 8.2 The Director of Resources is responsible for making payments to employees, former employees and Members on behalf of the Council and has sub-delegated this responsibility to the Head of the Benefit & Exchequer Services.
- 8.3 Directors shall provide the Director of Resources with a list of officers authorised to sign claims and other payroll documents showing their signing limits with specimen signatures. This list should be updated and reported promptly to reflect staff changes.
- 8.4 Directors and Heads of Service shall ensure that:
- (a) Appointments are made in accordance with Council policies and approved staffing list and grades and that there is adequate budget provision for the length of the appointment.
  - (b) Information on starters, leavers, absences and variations to remuneration (other than annual increments and pay awards) is notified to Human Resources within the timescales set out in corporate Human Resources policies.
- 8.5 Directors are responsible for ensuring a record of annual leave entitlement due and the actual leave taken by each employee is maintained for their Directorate in a form recommended by the Head of Human Resources.
- 8.6 All claims for payment of allowances, subsistence, travelling and expenses must be submitted within one month of the period they relate to on the approved form, duly certified in a form approved by the Director of Resources with all required supporting evidence including VAT receipts for fuel and other expenses where appropriate. Any exceptions shall require individual certification by both the Director and the Head of Service.
- 8.7 The certification of claims by or on behalf of a Director or Head of Service shall be taken to mean that the certifying officer is satisfied that the journeys and the expenses incurred were necessary and authorised as being in line with the Council's policies on travel and subsistence claims.
- 8.8 The Director of Resources shall ensure that all appropriate payroll documents are retained for the required period of time in accordance with the 'Guidelines on the Destruction of Financial records'.

**REVENUE BUDGET MANAGEMENT**

- 9.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services.
- 9.2 The Cabinet shall recommend an annual budget to Council that includes the following:
- (a) Annual capital and revenue budget.
  - (b) Proposed contingencies, general reserves and specific reserves.
  - (c) Statutory Council tax calculations;

- (d) Treasury management policy and borrowing limits.
  - (e) The Chief Finance Officer's statutory declaration on budget setting.
  - (f) Virement limits.
  - (g) Scale of fees and charges.
- 9.3 Budget management ensures that resources allocated by Members are used for their intended purposes and that these resources are properly accounted for. Budgetary control is a continual process enabling the Council to review and adjust its budget targets during the financial year. It also provides the mechanism to call to account managers responsible for defined elements of the budget.
- 9.4 By identifying and explaining variances against budgetary targets, the Council can identify changes in trends and resource requirements at the earliest opportunity. The Council itself operates within an annual cash limit, approved in setting the overall budget. To ensure that the Council in total does not overspend, each service is required to manage its own expenditure within the cash limited budget allocated to it.
- 9.5 Directors are expected to exercise their discretion in managing their budgets responsibly and prudently. For example, they should not support recurring expenditure from one-off sources of savings or additional income, or create future commitments including the full-year effect of decisions made part way through the year, for which they have not identified future resources. Directors must plan to fund such commitments from within their own budget.
- 9.6 The structure and format of the revenue budget should be sufficient to permit effective financial management. The structure and format of the revenue budget shapes how the rules around virement operate, the operation of cash limits and sets the level at which funds may be reallocated within budgets.
- 9.7 The key controls for the budget format are that it:
- (a) Complies with all legal requirements.
  - (b) Complies with CIPFA's "Best Value Accounting – Code of Practice".
  - (c) Reflects management accountability for service delivery.
- 9.8 The Director of Resources shall advise the Cabinet on the format of the budget that is approved by the full Council.

#### **CAPITAL BUDGET MANAGEMENT**

- 10.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services.
- 10.2 The Cabinet shall, following the submission of proposals by the Joint Management Team, recommend to Council:
- (a) A capital programme for each financial year.

- (b) A future indication of a capital programme over a three-year period.
  - (c) The recommended funding method for each capital project (including the use of Prudential Borrowing, capital receipts, revenue or other financing methods).
- 10.3 All capital spending proposals including ICT should be subject to approval through the Council's capital planning processes.
- 10.4 Following the approval of a capital programme, and subject to any conditions specified in that programme, or specified by the relevant Cabinet Member, the relevant Director shall take all appropriate action to carry into effect the approved schemes, within the budget and timescale agreed in the capital programme. Any material variation in cost or timescale shall be reported to the Cabinet.
- 10.5 Any report for a project or policy of a capital nature shall include details of:
- (a) The estimated cost of the proposal.
  - (b) Any phasing of the capital expenditure.
  - (c) The proposed method of financing, whether by loan, revenue or otherwise.
  - (d) The effect on the revenue estimates in the first and subsequent years.
  - (e) The additional staff and grades required both initially and ultimately.
  - (f) An assessment and measurement of the need for the scheme and the benefits it will produce.
  - (g) A technical and financial appraisal of the alternative approaches to meeting the need.
- 10.6 In-year decisions on new capital spending requirements not in the approved budget should be dealt with via the Council's Functions Scheme.

## **BUDGETARY CONTROL**

- 11.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services.
- General**
- 11.2 Directors shall be responsible for budgetary control of the estimates relevant to their Directorate and, after consultation with the Director of Resources, shall keep the relevant Cabinet Member informed of any significant variations.
- 11.3 The Director of Resources shall provide Directors, budget holders and Cabinet Members with monthly financial management information reports.
- 11.4 Inclusion within an approved revenue budget provides authority for expenditure on those approved items, subject to any limitation expressed in the Constitution, the budget or by the relevant Cabinet Member.

- 11.5 Any new proposal or variation which would materially affect the finances of the Council shall require approval by the Cabinet.
- 11.6 Each Director shall be responsible for monitoring the revenue and any capital budget relevant to his/her Directorate to ensure that such budgets are properly spent and not exceeded.
- 11.7 If it appears to a Director that his/her overall cash limited budget may be exceeded, he/she shall report the details as soon as practicable to the Chief Executive, the Director of Resources and to the Cabinet Member. The relevant Cabinet Member shall then report on the matter to the Cabinet.
- 11.8 The Council may permit Directorates to carry forward managed under spends into the following financial year provided that all other budget targets have been met. The first call on any underspendings shall be to offset any Directorate overspendings.
- 11.9 Managed underspendings carried forward shall be part of the Directorate budget plan for the next financial year and must be used to fund one-off expenditure only. Carrying forward underspendings in order to ensure external funding is received is also allowed.
- 11.10 Windfall reductions in spend and any unbudgeted income shall be ring-fenced and transferred into the Council's General Reserves at the end of the financial year.
- 11.11 Action plans must be put in place by each Directorate at an early stage in the financial year in order to manage potential overspendings (e.g. due to additional spending or below target income). Where appropriate the additional spending or below target income should be met by virements from other elements of the Directorate budgets. All Directors are required to manage expenditure within the agreed budget for their areas of responsibility. Compliance with this requirement will be dependent upon the earliest possible implementation of such action plans and rigorous supervision to achieve the required outcome.
- 11.12 Underspendings where any savings should not accrue to the Council (e.g. schools standards fund, schools sickness absence scheme) can be carried forward.
- 11.13 The Director of Resources shall furnish each Director with periodic statements of income and expenditure under each head of approved estimate along with other relevant information.
- 11.14 It is the duty of Directors to ensure that responsibility for budgetary control is allocated to appropriate officers in their Directorates.
- 11.15 Directors shall monitor spend and income against budgets monthly and ensure, so far as practicable, that expenditure in excess of their net approved budgets is not incurred without prior approval. If actual income is expected to be below budget, this must also be actively managed.
- 11.16 Directors are required to put in place recovery plans for any overspend in excess of their net approved budget in consultation with the Director of Resources.
- 11.17 A budget shall normally be the planned income and expenditure for a service area or cost centre. However, budgetary control may take place at a more detailed level if this is required.
- 11.18 The key controls for managing and controlling the revenue budget are:

- (a) Budget Managers should be responsible only for income and expenditure that they can influence.
- (b) There is a nominated Budget Manager for each cost centre heading.
- (c) Budget Managers accept accountability for their budgets and the level of service to be delivered and understand their financial responsibilities.
- (d) Budget Managers follow an approved certification process for all expenditure.
- (e) Income and expenditure are properly recorded and accounted for.
- (f) Performance levels/levels of service are monitored in conjunction with the budget and necessary action is taken to align service outputs and budget.
- (g) The gross expenditure budget position is monitored and controlled.

11.19 The Director of Resources shall establish an appropriate framework of budgetary control that ensures that:

- (a) Budgetary control is exercised within annual cash limits unless the full Council agrees otherwise.
- (b) Each Director has available timely information on receipts and payments on each budget which is sufficiently detailed to enable managers to fulfil their budgetary responsibilities.
- (c) Expenditure is committed only against an approved budget head.
- (d) All officers responsible for committing expenditure comply with relevant guidance and the Financial Procedure Rules.
- (e) Each cost centre has a single named manager, determined by the relevant Director. As a general principle budget responsibility should be aligned as closely as possible to the decision-making processes that commits expenditure.
- (f) Significant variances from approved budgets are investigated and reported by budget managers regularly.

11.20 The Head of Financial Services shall provide financial management training courses that all budget managers must attend in order to obtain a 'licence to practice' as a Budget Manager in Herefordshire Council. Refresher training must also be undertaken every two years or the licence to practice shall be removed.

### **Virement**

11.21 The Council operates a scheme of virement intended to enable budget holders to manage budgets with a degree of flexibility within the overall policy framework determined by the Council and therefore optimise the use of resources.

11.22 Directors have authority to vire expenditure between individual budget heads in accordance with the virement policy.

11.23 Key controls for the scheme of virement are:

- (a) That it is administered by the Director of Resources within guidelines set by Council. Any variation from this scheme requires the approval of Council.
- (b) That the overall budget is agreed by Cabinet and approved by Council. Directors and budget holders are therefore authorised to incur expenditure in accordance with those estimates. The rules below cover virement, that is switching resources between budget heads. For the purposes of these Rules a budget head is considered to be a line in the Council's budget book which, as a minimum, is at an equivalent level to the standard service sub-division as defined by CIPFA. The scheme applies equally to a reduction in income as to an increase in expenditure.

11.24 All virements below £140,000 must be approved by the Head of Financial Services. All virements above £140,000 must be approved by the Director of Resources. All virements of above £140,000 shall be reported in the budget monitoring report provided to Cabinet.

11.25 The prior approval of the Cabinet is required to any virement of £25,000 or more where it is proposed to:

- (a) Vire between budgets of different portfolio Cabinet Members.
- (b) Vire between budgets managed by different Corporate Directors.

11.26 Virement which is likely to impact on the level of service activity of another Director should be implemented only after consultation with the relevant Director.

## **FINANCIAL PLANNING**

12.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services.

12.2 The Head of Financial Services shall prepare and review annually a three-year financial plan and strategy to provide an estimate of resources available to the Council and identify budget pressures.

12.3 Proposed budgets over periods of one year or longer shall be prepared by Directors, in consultation with the Director of Resources, for submission through the Cabinet to the Council.

12.4 Directors shall evaluate the financial implications of any new policy option, initiative or major project in conjunction with the Director of Resources and Head of Financial Services prior to a report to the Cabinet and/or Council.

## **BORROWING APPROVALS**

13.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services.

13.2 The Director of Resources shall report to Cabinet, on an annual basis, with recommendations to Council to determine the limits for the borrowing of monies.

## **EMERGENCIES**

PART 4

FINANCIAL RULES

- 14.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services.
- 14.2 Nothing in these standing orders shall prevent expenditure required to meet immediate needs caused by a sudden emergency to which Section 138 of the Local Government Act 1972 applies, provided that such expenditure shall be reported as soon as possible to the appropriate Cabinet Member and the Cabinet.

### **BANKING ARRANGEMENTS & CORPORATE CREDIT CARDS**

- 15.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services.
- 15.2 All arrangements with the Council's bank concerning the Council's bank accounts and for the ordering and issue of cheques shall be made by, or under arrangements approved by, the Director of Resources. The Director of Resources shall be authorised to open and operate such banking accounts, as he or she may consider necessary. This authority shall include the power to give the necessary directions to the bank as to signatures for withdrawals. The Director of Resources shall report periodically to the Cabinet or Audit & Corporate Governance Committee as to the opening or closing of such accounts.
- 15.3 All cheques and cheque stationery shall be ordered only on the authority of the Director of Resources who shall be satisfied that proper arrangements are in place for their safe custody. Where the signature is printed on the cheque by a Council system, the signature shall be that of the Director of Resources.
- 15.4 The Director of Resources shall be responsible for authorising the issue of corporate credit cards and determining spending limits. Cardholders are required to comply with the guidance issued by the Director of Resources regulating the use of corporate credit cards. This guidance will include the requirement for cardholders to provide the Payments Manager with a receipt and coding slip for each item purchased using a credit card within 14 days of the monthly card statement being received.

### **INSURANCE AND RISK MANAGEMENT**

- 16.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services or the Risk & Insurance Manager.
- 16.2 All organisations, whether they are in the private or public sector, face risks to people, property and continued operations. Risk is defined as the chance or possibility of loss, damage or injury caused by an unwanted or uncertain action or event. Risk management is the planned and systematic approach to the identification, evaluation and control of risk.
- 16.3 Insurance has been the traditional means of protecting against loss, but this cannot be seen as the complete answer. By reducing or even preventing the incidence of losses (whether they result from crime or accident), the Council shall benefit from reduced costs of providing insurance cover and shall also avoid the disruption and wasted time caused by losses and insurance claims.
- 16.4 It is the overall responsibility of the Cabinet to approve the authority's Risk Management Strategy and to promote a culture of risk management awareness through the Council. Monitoring of and reporting on the effectiveness of the Strategy is an essential part of the process.

- 16.5 The key controls for risk management and insurance are:
- (a) Robust systems are in place to identify, assess, prevent or contain significant operational risks on an integrated basis and these systems are promoted throughout the organisation.
  - (b) Acceptable levels of retained risk are identified and evaluated and arrangements are in place for their funding, either by internal provision or external insurance as appropriate.
  - (c) Managers know that they are responsible for managing relevant risks and are provided with appropriate and timely information on claims experience and risk management initiatives relating to their areas of responsibility.
  - (d) Procedures are in place to investigate and process claims within required timescales.
  - (e) A monitoring process is in place to review regularly the effectiveness of risk reduction strategies and the operation of these controls. The risk management process should be conducted on a continuing basis.
- 16.6 The Director of Resources shall effect all insurance cover and negotiate all claims in consultation with the relevant Director and Assistant Chief Executive Legal and Democratic where appropriate.
- 16.7 Directors shall give prompt notification to the Director of Resources of all new risks, properties, vehicles and other assets that are required to be insured or any alterations affecting existing insurances.
- 16.8 Directors shall promptly notify the Director of Resources in writing of any actual or potential loss, liability or damage or any event likely to lead to an insurance claim by or against the Council.
- 16.9 The Head of Financial Services shall oversee and ensure the preparation of the Council's Risk Management and promote the Strategy throughout the Authority.

#### **LOANS, LEASING AND INVESTMENTS**

- 17.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services.
- 17.2 The Director of Resources shall borrow as necessary to finance the approved capital programme and deal with all matters in connection with the raising or repayment of loans and is authorised to borrow for meeting expenses pending the receipt of revenues.
- 17.3 All investments and all borrowing shall be made in the name of the Council or the appropriate trust when the Council is acting as trustee and the security shall be lodged with the Director of Resources, Assistant Chief Executive Legal and Democratic or the Council's banker as deemed most appropriate by the Director of Resources.
- 17.4 Directors shall not enter into financial leasing arrangements except with the consent of the Director of Resources.

- 17.5 The Director of Resources shall arrange the borrowing and investment activities of the Council in such a manner as to comply with the CIPFA Code of Practice on Treasury Management and the Authority's Treasury Policy Statement.
- 17.6 The Director of Resources shall prepare an Annual Treasury Strategy for the forthcoming financial year for approval by Council prior to the start of that financial year including the determination of statutory financing limits in accordance with Section 45 of the Local Government and Housing Act 1989 and report annually to Cabinet on the implementation and effectiveness of the Treasury Strategy.
- 17.7 The Council has the discretion to provide loan facilities to staff and members that help individuals fulfil their duties. These include car loan facilities, corporate loan facilities and bicycle loan facilities. From time to time government initiatives may bring forward other proposals that shall be investigated for suitability.
- 17.8 Each loan facility shall be supported by a written policy developed by the Head of Financial Services and agreed by Joint Management Team. Variations to the facilities is delegated to the Head of Financial Services in consultation with the Director of Resources.

#### **TRUST FUNDS**

- 18.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services.
- 18.2 The Director of Resources shall:
- (a) Arrange for all trust funds to be held wherever possible in the name of the Authority. All officers acting as trustees by virtue of their official position shall deposit securities, etc relating to the trust with the Director of Resources unless the deed otherwise provides.
  - (b) Arrange where funds are held on behalf of third parties for their secure administration approved by the Director of Resources and to maintain written records of all transactions.
  - (c) Ensure that trust funds are operated within any relevant legislation and the specific requirement for each trust.

#### **19. INVENTORIES AND STOCKS AND STORES**

- 19.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Chief Internal Auditor.
- 19.2 The Director of Resources shall:
- (a) Advise on the form, layout and content of inventory records to be maintained by the Council.
  - (b) Advise on the arrangements for the care and custody of stocks and stores in Directorates.
- 19.3 Directors shall:

- (a) Maintain inventories in a form approved by the Director of Resources to adequately record and describe all furniture, fittings and equipment, plant and machinery under their control.
- (b) Carry out an annual check of all items on the inventory in order to verify location, review condition and to take action in relation to surpluses or deficiencies, annotating the inventory accordingly.
- (c) Ensure attractive and portable items, such as computers, cameras and video recorders are identified with security markings as belonging to the Council and appropriately controlled and secured.
- (d) Make sure that property is only used in the course of the Council's business unless the Director concerned has given permission otherwise.
- (e) Directors have discretion to write off redundant equipment up to the value of £5,000, but must seek Cabinet Member approval for write-offs in excess of £5,000. Directors shall seek independent quotations where it is not immediately obvious what the market value of the redundant item is.
- (f) Make arrangements for the care, custody and recording of stocks and stores in Directorates.
- (g) Ensure that assets are identified, their location recorded and that they are appropriately marked and insured.
- (h) Ensure stocks are maintained at reasonable levels and subject to a regular independent physical check. All discrepancies should be investigated and pursued to a satisfactory conclusion.
- (i) Write-off discrepancies of up to £5,000 and seek advice from Internal Audit on discrepancies above this limit.
- (j) Authorise write-off and disposal of redundant stocks and equipment by competitive quotations or auction unless, following consultation with the Director of Resources, it is decided otherwise in a particular case.
- (k) Seek approval from the Director of Resources and Cabinet Member to the write-off of redundant stocks and stores valued in excess of £5,000.
- (l) Record the reasons for the chosen method of disposing of redundant stocks and equipment if not by competitive quotation or auction.

#### **ORDERS FOR GOODS, WORKS AND SERVICES**

- 20.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services or the Strategic Procurement Manager.
- 20.2 Orders shall not be issued for goods, work or services unless the cost is covered by an approved budget.
- 20.3 All orders given on behalf of the Council shall be in a written or electronic form approved by the Director of Resources. All orders are to be authorised by officers nominated by the appropriate Director who shall be responsible for official orders issued from his or her

Directorate. Orders given verbally shall be confirmed by paper or electronic order as appropriate as soon as possible.

- 20.4 All works, goods or services supplied to the Council are to be subject to formal prior authorisation, in writing and/or electronic medium, as to need and budget cover. Written or electronic orders are to be issued for all work, goods or services to be supplied to the Council unless a written contract is required. An order or contract is not required for public utility services, periodical payments such as rent or rates, for petty cash purchases or for such other expenditure as the Director of Resources may approve. All orders and contracts are to be managed in compliance with the Council's Contract Procedure Rules and Financial Procedure Rules.
- 20.5 Each order shall conform to the directions of the Council with respect to central purchasing and the standardisation of supplies and materials and with respect to Contract Procedure Rules.
- 20.6 Written orders shall be marked with invoice details when relevant accounts are passed for payment. When an electronic procurement system is in use an appropriate entry shall be made in that system when a payment is authorised.
- 20.7 The key controls for ordering and paying for work, goods and services are:
- (a) All works, goods and services are ordered only by appropriate persons and recorded.
  - (b) All works, goods and services shall be ordered in accordance with the Council's Procurement Strategy and Contract Procedure Rules unless they are purchased from internal sources within the Council.
  - (c) Works, goods and services received are checked to ensure they are in accordance with the order.
  - (d) Payments are authorised by officers who can certify that goods have been received to price, quantity and quality.
  - (e) All payments are made to the correct person, for the correct amount and are properly recorded, regardless of the payment method.
  - (f) All appropriate payment documents are retained and stored for the defined period in accordance with the Council's 'Guidelines on the Destruction of Financial Records'.
  - (g) All expenditure including VAT, is accurately recorded against the right budget and any exceptions corrected.
  - (h) That processes are in place to maintain the security and integrity of data for transacting business electronically.

## **WORKING FOR THIRD PARTIES**

- 21.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services and Assistant Chief Executive Legal and Democratic.

### **General**

- 21.2 Current legislation enables the Council to provide a range of services to certain other bodies. Such work may enable the unit to maintain economies of scale and existing expertise. Arrangements must be in place to ensure that any risk associated with this work is minimised.
- 21.3 All proposals to work for a third party shall be properly costed in accordance with guidance provided by the Director of Resources.
- 21.4 All decisions to work for a third party shall be made in accordance with the Council's formal decision making processes as set out in the Scheme of Delegation.
- 21.5 All contracts for providing work for a third party shall be drawn up using guidance provided by the Assistant Chief Executive Legal and Democratic.

### **Responsibilities of Directors, Heads of Service and Officers**

21.6 Officers shall ensure that:

- (a) Legal advice is obtained from the Assistant Chief Executive Legal and Democratic on the implications of providing the proposed service to the proposed third party.
- (b) Financial advice is obtained from the Head of Financial Services on the cost of providing the service.
- (c) Formal approval in line with the Council's Functions Scheme is obtained before any negotiations to work for third parties are concluded.
- (d) A register of all contracts entered into with third parties is maintained in accordance with procedures specified by the Assistant Chief Executive Legal and Democratic.
- (e) Appropriate identity checks on the third party are carried out in accordance with the Council's anti money laundering policy and guidance.
- (f) Appropriate insurance arrangements are in place for the third party work.
- (g) The Council is not put at any risk of bad debts as a result of any third party work (see 21.2 above).
- (h) The Council is not subsidising any contracts for the provision of third party work.
- (i) Wherever possible, payment is received in advance of the delivery of the service under a third party contract.
- (j) The Directorate has the appropriate expertise to undertake the contract.
- (k) The contract does not adversely impact on the services provided for the Council.
- (l) All contracts are properly documented.
- (m) The Director of Resources is provided with the information he/she needs to make an appropriate note to the annual statement of accounts in respect of the Council's work for third parties.

## Section 8

# The Planning Rules

### COUNCILLOR INVOLVEMENT IN PLANNING APPLICATIONS

#### Initial Submission of Applications

- 1 All members will be informed by e-mail on the submission of a new planning application
- 2 All applications will proceed and will be determined under delegated powers unless they fall within the category of applications automatically to be referred to Committee or are called in as provided for in these rules.
- 3 In addition:
  - a the case officer will telephone the ward member (and/or where necessary arrange a meeting) to update the ward member on the processing of the application and any comments received.
  - b as part of this initial conversation the case officer will also identify to the ward Member(s) whether an application triggers the need for a Section 106 Agreement in accordance with the Council's adopted Planning Obligations Supplementary Planning Document.
  - c in the case of applications requiring a Section 106 agreement the case officer will have a subsequent conversation/meeting with the ward member to ensure that local mitigation measures are appropriately incorporated. As part of this process officers and members will be guided by Circular 5/05, the Council's adopted Supplementary Planning Guidance and the evolving schedule of local needs co-ordinated by the Planning Obligations Manager.
- 4 The ward member for the purpose of this rule is the member or members in whose ward the application is located.

#### Determination of Application at Committee

- 5 Councillors at Planning Committee will determine those matters which under the Functions Scheme are to be determined by the Committee including those matters called in under the planning call-in procedure set out in these Rules.
- 6 At Committee the ward member will have an automatic right to start and close the member debate on the application concerned. There is no time limit on the time allowed for ward members to speak in such circumstances and in multi-member wards each, any or every ward member may speak at the start and close of the debate. In the case of the ward member not being a member of the appropriate Committee he or she would be invited to address the Committee for that item. In the case of the ward member being a member of the appropriate Committee he or she will not vote on that item, and act as the ward member as set out above. To this extent all members have the opportunity of expressing their own views, and those of their constituents as they see fit, outside the regulatory controls of the Committee concerned. The ward member would initially address the Committee immediately after the public speaking.

**Post Decision**

- 7 Ward members would be advised where appropriate by either the case officer, the enforcement team, or the Planning Obligations Manager of the following events:-
- a any evolving inconsistencies between a planning permission and development taking place;
  - b any appeal against the refusal of planning permission;
  - c the receipt/apportionment of Section 106 Agreement monies; and
  - d any proposed variations to the Section 106 Agreement.

**Redirect of Delegated Planning Decisions****The Redirection Arrangements**

- 8 Many planning applications are delegated to the Chief Executive and determined by planning officers acting under the Chief Executive's Scheme of Delegation in accordance with the Functions Scheme (Part 3).
- 9 Ward Councillor(s) may choose to ask that sensitive or controversial applications be redirected for a decision by the Planning Committee. Ward councillor(s) for the purpose of this redirection procedure are the ward Councillor or any one of the Ward Councillors for a multi member ward.
- 10 Redirection need to be made as soon as possible after the date a valid application is submitted to avoid unnecessary delays in determining applications.
- 11 Redirections should be made within 3 weeks of the application being notified to the relevant ward members. Relevant Ward members for this purpose are those in whose ward the development is located or whose ward is directly affected by the application.
- 12 A redirection will generally be justified in the following circumstances:
- a The application raises unusual or sensitive planning issues which would benefit from the consideration of the Committee.
  - b The application has attracted an unusually high level of public interest. This might be reflected in the number of letters or e-mails or a petition received in connection with the application.
  - c There has been a recent and significant change of planning policy (either at national or local level) which would result in a different recommendation being made in respect of an application than would previously have been the case.

**Conditional Referrals**

- 13 In some cases, Councillors may be content that the application be redirected only if planning officers are intending to grant or refuse planning permission. In that case a Councillor can ask that the matter only be redirected in accordance with this procedure if it is either the intention of the planning officer to grant or refuse the application

**Other Circumstances**

- 14 Any other reasons for requesting a redirection other than those set out above will be considered on its individual merits and circumstances.

**Referrals requested after the 3 week period**

- 15 Any of the circumstances set out above could justify a late redirection provided the reasons for the lateness of the request are explained when the request is made. In these circumstances, a judgement will be based on the issues raised, and the stage reached in the processing of the application.

#### **Exceptions to referral**

- 16 A redirection should not be made in the following circumstances:
- a In order to “resolve” a disagreement between an applicant and the objector(s) to an application.
  - b Where the applicant considers that there is more likelihood of a grant of planning permission if the application is referred to the Committee for a decision.
  - c Where the objectors to an application consider that there is more likelihood of a refusal of permission if the application is referred to Committee for a decision.

#### **Procedure**

- 17 A Councillor requesting the redirection of an application should always provide sound planning reason(s) for doing so based on the circumstances and material planning considerations of the proposal.
- 18 Any such request should be made in writing to the case officer and the Development Control Manager.
- 19 All requests for redirections will be discussed by the Head of Planning and Transportation and/or the Development Control Manager with the Chairman of Planning Committee and a decision will be made on the basis of guidance set out in these Rules and the circumstances and material planning consideration of the case. In the Chairman’s absence, the Vice Chairman will undertake this role.
- 20 There will be circumstances in which an application is amended in order to respond to issues raised in the normal processing of the application by the case officer, statutory consultees or local residents. In the event that the issue(s) which caused the application to be redirected to the Committee by the Ward Member (and supported by the appropriate officers and the Chairman of the Committee) are resolved the Ward Member will be at liberty to withdraw his or her request for a Committee determination. Thereafter the decision will revert to a delegated decision.

#### **Further Information Reports**

- 21 The law requires that decisions should be taken in accordance with the development plan unless material considerations indicate otherwise (S38A Planning and Compensation Act 2004).
- 22 In the circumstances where the Planning Committee are minded to determine an application contrary to the officer recommendation and the Head of Planning and Transportation or the Development Control Manager considers that either major policy issues are at stake or if the decision will be difficult to defend at appeal or may be subject to a judicial review, the Head of Planning and Transportation will advise the committee before it takes a decision on the item.
- 23 The Planning Committee shall defer the decision on that item to the next meeting of the Planning Committee
- 24 The Head of Planning and Transportation shall present a further report to the next meeting of the Planning Committee:-
- a Updating Members on any additional information received;
  - b Reporting on any discussions that have taken place with the applicants/objectors since the initial meeting; and

- c Setting out the legal, procedure and likely financial implications of proceeding with the initial resolution.
  - d Any Monitoring Officer advice
- 25 If the Planning Committee makes a decision contrary to the officers' recommendation (whether for approval or refusal) a detailed minute of the Committee's reasons should be made and a copy placed on the application file. In this context Members should be prepared to explain in full their reason for not agreeing with the officers' recommendation. In so doing, Members should observe the 'Wednesbury principle' which requires all relevant information (i.e. material considerations) to be taken into account and all irrelevant information (i.e. non-material matters) to be ignored.
- 26 Planning officers should also be given an opportunity at the meeting to explain the implication of the contrary decision in order to consolidate any information already provided in the Further Information Report.

### **Delegations to Officers**

- 27 If the Head of Planning and Transportation is unavailable or unable to fulfil any of his/her functions in these Rules, he/she may nominate a substitute to exercise those functions on his/her behalf.

### **Public Speaking at Planning Committee**

- 28 In the case of the Planning Committee the public will be permitted to speak at meetings when the following criteria are met:
- a The application on which he/she wishes to speak is for decision at the Planning Committee
  - b The person wishing to speak has already submitted written representations within the time allowed for comment
  - c Once an item is on an agenda for Planning Committee all those who have submitted representations will be notified and any person wishing to speak must then register that intention with the Monitoring Officer at least 48 hours before the meeting of the Planning Committee
  - d If consideration of the application is deferred at the meeting, only those who registered to speak at the meeting will be permitted to do so when the deferred item is considered at a subsequent or later meeting
  - e At the meeting a maximum of 3 minutes (at the Chairman's discretion) will be allocated to each speaker from a parish council, objectors and supporters and only 9 minutes will be allowed for public speaking
  - f Speakers may not distribute any written or other material of any kind at the meeting
  - g Speakers comments must be restricted to the application under consideration and must relate to planning issues
  - h On completion of public speaking, Councillors will proceed to determine the application
  - i The Chairman will in exceptional circumstances allow additional speakers and/or time for public speaking for major applications and may hold special meetings at local venues if appropriate.

## Section 9

# Employment Rules

### DEFINITIONS

1 In these rules the following words have the following meanings:

The 1989 Act	The Local Government and Housing Act 1989
The 2000 Act	The Local Government Act 2000
The Council	Herefordshire Council
s.151 Officer	The officer having responsibility for the purposes of section 151 of the Local Government Act 1972.
Designated Independent Person	Such person as may be agreed between the Council and a Chief Officer against whom misconduct has been alleged which, in the opinion of the Council, requires investigation and in default of such agreement, may be appointed by the Secretary of State.
Disciplinary Action	In relation to a member of staff of the Council, any action occasioned by alleged misconduct which, if proved, would according to the usual practice of the Council, be recorded on the member of staff's personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Council has undertaken to renew such a contract.
Employee	Person appointed to or holding a paid

	office of the authority or employed by the authority.
The Head of Paid Service	The officer designated under section 4(1) of the Local Government and Housing Act 1989. In Herefordshire Council the Chief Executive is designated as the Head of Paid Service.
Monitoring Officer	The officer designated under section 5(1) of the Local Government and Housing Act 1989
Proper Officer	Monitoring Officer or in the case of any appointment or other action to be taken in accordance with these rules by the Monitoring Officer where that action is respect of the Monitoring Officer, the Proper Officer shall mean the Head of Paid Service

#### **EMPLOYMENT AND DISMISSAL OF SENIOR OFFICERS**

- 2 Subject to paragraphs 3, 4 and 5, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the Head of Paid Service or his nominees.
- 3 Paragraph 2 shall not apply to the appointment or dismissal of, or disciplinary action against employees within the description of paragraph 3 of Part II of Schedule 1 of the Local Authorities (Standing Orders) (England) Regulations 2001 (SI 3384 of 2001), which may be summarised as:
- a. Head of Paid Service;
  - b. A statutory Chief Officer
  - c. Senior Officers (at Herefordshire Council this means any Deputy Chief Executive, Assistant Chief Executive or Director who reports directly to the Head of Paid Service
- 4 Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment or dismissal of an officer designated as the Head of the authority's Paid Service, the Council must approve that appointment before an offer of appointment is made to him or, as the case may be, must approve that dismissal before notice of dismissal is given.

- 5 Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the appointment or dismissal of any officer referred to in paragraph 3 other than in relation to political assistants, at least one member of the Cabinet must be a member of that committee or sub-committee.
- 6 In paragraphs 7 “appointor” means, in relation to the appointment of a person as an officer of the Council, the Council or where a committee, sub-committee or officer is discharging the function of appointment on behalf of the Council, that committee, sub-committee or officer, as the case may be.
- 7 An offer of an appointment as an officer referred to in paragraph 3 other than in relation to political assistants, must not be made by the appointor until:
- a. The appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;
  - b. The proper officer has notified every member of the Cabinet of:
    - i. the name of the person to whom the appointor wishes to make the offer;
    - ii. any other particulars relevant to the appointment which the appointor had notified to the proper officer; and
    - iii. the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the proper officer; and
    - iv. the Leader has, within the period specified in the notice notified the appointor that neither s/he nor any other member of the Cabinet has any objection to the making of the offer;
  - c. the proper officer has notified the appointor that no objection was received by him/her within that period from the Leader; or
  - d. the appointor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.
- 8 In paragraphs 9, “dismissor” means, in relation to the dismissal of an officer of the Council, the Council or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the Council, that committee, sub-committee or other officer, as the case may be.
- 9 Notice of the dismissal of an officer referred to in paragraph 3 other than in relation to political assistants, must not be given by the dismissor until:
- a. the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;
  - b. the proper officer has notified every member of the Cabinet of:

- i. the name of the person who the dismissor wishes to dismiss;
  - ii. any other particulars relevant to the dismissal which the dismissor has notified to the proper officer; and
  - iii. the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the proper officer; and either:
    - c. the Leader has, within the period specified in the notice notified the dismissor that neither s/he nor any other member of the Cabinet has any objection to the dismissal;
    - d. the proper officer has notified the dismissor that no objection was received by him/her within that period from the Leader; or
    - e. the dismissor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.
- 10 The Employment Panel shall be the appropriate body for the purposes of the functions set out in paragraphs 4 to 9 of these rules.

#### **EMPLOYMENT APPEALS PANEL**

- 11 Nothing in paragraphs 2 to 10 above shall prevent a Councillor from serving on the Employment Appeals Panel for the purposes of fulfilling the functions specified in the Functions Scheme (Part 3 Section 6)

#### **APPOINTMENT OF OFFICERS**

- 12 All jobs will be open to competition and appointments will be made on merit except as provided for in the Council's employment policies and its recruitment and selection procedures and all appointments will be made in accordance with those policies and procedures.
- 13 Where the Council propose to appoint an officer to any post the Head of Paid Service or his nominee will:
- a. draw up a statement specifying:
    - b. the duties of the Officer concerned; and
    - c. any qualifications or qualities to be sought in the person to be appointed;
    - d. make arrangements for the post to be advertised in such a way that is likely to bring it to the attention and attract the maximum interest of persons who are qualified to apply for it; and
    - e. make arrangements for a copy of the statement mentioned in paragraph 13 (a) to be sent to any person on request.

- 14 The Head of Paid Service or his nominee shall make arrangements for the long listing, short listing and interview of applicants.
- 15 Where the appointment is to a post specified in paragraph 3 above, the Head of Paid Service or his nominee will carry out all steps related to the appointment in consultation with the Leader of the Council or his nominee.
- 16 Where the appointment is to the post of Head of Paid Service, the Leader of the Council will nominate an officer to carry out all the steps related to the appointment in consultation with the Leader of the Council or his nominee.
- 17 The short-listing and interview of candidates will be carried out by the Employment Panel.
- 18 Every appointment of any Officer specified in paragraph 3 above shall be made by the Employment Panel, save that the appointment of a Head of Paid Service must be approved by Council Meeting.
- 19 The Employment Panel shall be advised by the Head of Paid Service or in the event of the appointment of the Head of Paid Service by the officer nominated for that purpose by the Leader of the Council.
- 20 The Leader of the Council (in relation to the appointment of the Head of Paid Service) and the Head of Paid Service in consultation with the Leader in relation to those officers to be appointed by the Employment Panel may appoint external search, selection of recruitment consultants to assist or advise the Employment Panel.

#### **DISCIPLINARY ACTION – HEAD OF PAID SERVICE, S.151 OFFICER AND MONITORING OFFICER**

- 21 No disciplinary action in respect of the Head of Paid Service, the Monitoring Officer, or the s. 151 Officer, except action described in paragraph 22 below, may be taken by the Council or by any committee, sub-committee, or any other person acting on his behalf, other than in accordance with a recommendation in a report made by a Designated Independent Person
- 22 The action mentioned in the paragraph 21 above is suspension of the officer for the purpose of investigating the allegation occasioning the action; or otherwise as permitted by law and any such suspension shall be on full pay and terminate no later than the expiry of two months beginning on the day on which the suspension takes effect unless extended by the Designated Independent Person.
- 23 The Employment Panel shall appoint the Designated Independent Person in accordance with the relevant regulations. The Proper Officer shall appoint the members of the Employment Panel for the purpose of appointing a Designated Independent Person.
- 24 For these purposes, the Employment Panel will be advised by the Proper Officer.

### **THE EMPLOYMENT PANEL**

- 25 The Head of Paid Service or in the case of the appointment of the Head of Paid Service, the officer nominated for the purpose of carrying out the functions specified in these rules, shall appoint the Employment Panel in consultation with the Group Leaders. The composition of the Employment Panel shall, as near as possible, reflect the rules on proportionality between the groups on the Council and must include at least one member of the Cabinet.

### **TERMS AND CONDITIONS OF EMPLOYMENT**

- 26 The Employment Panel shall be responsible for determining the terms and conditions of employment of the officers specified in paragraphs 21 - 24 above.

### **VOTING ON APPOINTMENTS**

- 27 Where three or more candidates are interviewed for a post and there is not a majority of votes cast at the relevant meeting of the Employment Panel in favour of one candidate, the candidate receiving the least number of votes shall be disregarded and a fresh vote taken and so on until one candidate receives a majority of the votes.

FINAL DRAFT FOR COUNCIL APPROVAL

# PART 5

## THE CODES

### Contents

- 1 Councillor Code of Conduct
- 2 Use of Council Resources by Councillors
- 3 Use of ICT (to follow)
- 4 Confidential Reporting Code
- 5 Member/Officer Relations Code
- 6 Overview and Scrutiny Committee Chairman's Code
- 7 Scrutiny Committee Chairman's Code
- 8 Committee Chairman's Code
- 9 Code on Gifts and Hospitality
- 10 Councillor Call for Action
- 11 Petitions Code
- 12 Audit and Governance Code
- 13 Employee Code of Conduct
- 14 Planning Code



# Part 5 - The Codes

## Section 1

### Members Code of Conduct

#### **PREAMBLE TO THE MEMBERS' CODE OF CONDUCT**

**The Ten General Principles of Public Life as contained in the Relevant Authorities (General Principles) Order 2001 define the standards that Members should uphold and serve as a reminder of the purpose of the Code of Conduct. These are:**

**Selflessness** – members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

**Honesty and integrity** – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.

**Objectivity** – members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

**Accountability** – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

**Openness** – members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

**Personal judgement** – members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

**Respect for others** – members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

**Duty to uphold the law** – members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

**Stewardship** – members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.

**Leadership** – members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

(Relevant Authorities (General Principles) Order 2001 (S.I.2001/1401))

**This section contains the national code of conduct which must be followed by all Councillors, Independent Lay Members and any co-opted members of the Council.**

## Part 1

### General Provisions

#### 1 Introduction and Interpretation

- (1) This Code applies to **you** as a member of this authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State and attached as a preamble to this Code.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code:

“meeting” means any meeting of:

- (a) the authority ;
- (b) the executive of the authority;
- (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees or area committees;

“member” includes a co-opted member and an appointed member

#### 2 Scope

- (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:
  - (a) conduct the business of your authority (which in this Code, includes the business of the office to which you are elected or appointed) ; or
  - (b) act, claim to act or give the impression you are acting as a representative of your authority;

and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2) (c), 5 and 6 (a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your authority:

- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
- (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject

### 3 General Obligations

(1) You must treat others with respect.

(2) You must not:

- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2006);
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or likely to be –
  - (i) a complainant,
  - (ii) a witness, or
  - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct or;
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

4 You must not:

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –
  - (i) you have the consent of a person authorised to give it;
  - (ii) you are required by law to do so;
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - (iv) the disclosure is:
    - (aa) reasonable and in the public interest; and
    - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

5 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

- 6 You:
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
  - (b) must, when using or authorising the use by others of the resources of your authority:
    - (i) act in accordance with your authority's reasonable requirements;
    - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 7 (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by:
- (a) your authority's chief finance officer; or
  - (b) your authority's monitoring officer
- where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by our authority.

## Part 2

### Interests

- 8 Personal Interests
- (1) You have a personal interest in any business of your authority where either :
- (a) it relates to or is likely to affect:
    - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
    - (ii) any body:
      - (aa) exercising functions of a public nature;
      - (bb) directed to charitable purposes; or
      - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
    - (iii) any employment or business carried on by you;

- (iv) any person or body who employs or has appointed you;
  - (v) any person or body, other than a relevant authority, who had made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties.
  - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
  - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
  - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of a least £25;
  - (ix) any land in your authority's area in which you have a beneficial interest;
  - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant:
  - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your wellbeing or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as they case may be, affected by the decision.
- (2) In sub-paragraph (1) (b), a relevant person is:-
- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

## 9 Disclosure of personal interests

- (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is

considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration or when the interest becomes apparent.

- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii) you need not disclose the nature of existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interest, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting
- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulation made by the Secretary of State under Section 22 of the Local Government Act 2000.

#### 10 Prejudicial interest generally

- (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business:-
  - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
  - (c) relates to the functions of your authority in respect of:-
    - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
    - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent

governor of a school, unless it relates particularly to the school which the child attends;

- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992

#### 11 Prejudicial interests arising in relation to overview and scrutiny committees

You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or a sub-committee of such a committee) where:

- (a) that business relates to a decision (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

#### 12 Effect of prejudicial interests on participation

##### (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority:-

- (a) you must withdraw from the room or chamber where a meeting considering the business is being held:
  - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
  - (ii) in any other case, whenever it become apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

- (b) you must not exercise executive functions in relation to that business; and
  - (c) you must not seek improperly to influence a decision about that business
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory rights or otherwise.

**Part 3****Registration of Members' Interests**

## 13 Registration of members' interests

(1) Subject to paragraph 14, you must, within 28 days of:-

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a) by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer

## 14 Sensitive information

- (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

## Section 2

# Use of Council Resources by Members

### Introduction

- 1 The Herefordshire Council Member Code of Conduct provides that, when using Council resources, you must ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate the functions of the Council or of any office to which you have been elected or appointed.
- 2 A breach of this Protocol is a breach of the Code and carries penalties up to and including disqualification from office.
- 3 If you are in any doubt about the application of this Protocol, you should seek advice from the Assistant Chief Executive Legal and Democratic.

### Council Resources

- 4 These include: the use of Council premises; ICT equipment such as computers and software; telephone and fax; photocopiers; stationery; postage; Council transport; secretarial and clerical support; and allowances and expenses

### Permitted Use

- 5 Except as set out in Section 5 of this Protocol, you may use Council resources only on Council business. If you represent the Council on outside bodies you may use Council resources to assist you in this role, and this Protocol applies to such use.
- 6 You may use Council resources for political purposes where that use will facilitate the functions of the Council or any office you hold at the Council. This will include e-mailing colleagues in your and other political groups registered with the Council (this will include the Independent Group), setting up political group meetings and conducting discussions on policy with political colleagues locally, regionally or nationally.

### Prohibited Use

- 7 You may not use Council resources:
  - i. For the publication of material which, in whole or in part, appears designed to affect public support for a political party. This includes campaigning leaflets and correspondence.
  - ii. For mass mailings, even if these are related to Council business.
  - iii. During an election period to promote yourself or others as candidates to the electorate.

### ICT Equipment

- 8 You may make modest personal use of Council-installed computers but you must not permit others (for example, family members) to do so.

**Use of the herefordshire.gov.uk Address**

- 9 The Council is statutorily prohibited from publishing material designed to affect public support for a political party. You must therefore not use your Council e-mail address ([name@herefordshire.gov.uk](mailto:name@herefordshire.gov.uk)) for this purpose nor, on a matter of controversy, to promote a point of view which is associated with a political party.
- 10 E-mails from your official address will be seen to be associated with the Council and may get preferential treatment, or may be thought by the public to be seeking such treatment. You should not therefore use the address for placing orders and similar activity as a private individual.
- 11 You will be provided with a personal e-mail address to allow modest personal use of ICT equipment as permitted in Section 5.

USE OF ICT CODE – TO FOLLOW



## Section 4

# Confidential Reporting Policy (Whistle Blowing)

### Introduction

- 1 Employees are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 2 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect employees and others that we deal with who have serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is recognised that many cases will have to proceed on a confidential basis.
- 3 This policy document makes it clear that staff can do so without fear of victimisation, subsequent discrimination or advantage. *This Confidential Reporting Policy is intended to encourage and enable employees to raise serious concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside.*
- 4 The Code applies to all employees and those contractors working for the Council on Council premises, for example, agency staff, builders, and drivers. It also covers suppliers and those providing services under a contract with the Council in their own premises.
- 5 These procedures are in addition to the Council's complaints procedures and other statutory reporting procedures applying to some departments. Employees are responsible for making service users aware of the existence of these procedures.
- 6 This policy has been discussed with the relevant trade unions and professional organisations and has their support.

### Aims and Scope of this Policy

- 7 This policy aims to:
  - (a) Encourage employees to feel confident in raising serious concerns and to question and act upon concerns about practice.
  - (b) Provide avenues for employees to raise those concerns and receive feedback on any action taken.
  - (c) Ensure that employees receive a response to their concerns and that they are aware of how to pursue them if they are not satisfied.
  - (d) Reassure employees that they will be protected from possible reprisals or victimisation if employees have a reasonable belief that they have made any disclosure in good faith.

- 8 There are existing procedures in place to enable employees to lodge a grievance relating to their own employment. This policy is intended to cover major concerns that fall outside the scope of other procedures. These include:
- (a) conduct which is an offence or a breach of law
  - (b) disclosures related to miscarriages of justice
  - (c) health and safety risks, including risks to the public as well as other employees
  - (d) damages to the environment
  - (e) the unauthorised use of public funds
  - (f) possible fraud and corruption
  - (g) sexual or physical abuse of clients, or
  - (h) other unethical conduct.
- 9 Any serious concerns that employees have about any aspect of service provision or the conduct of officers or members of the Council or others acting on behalf of the Council can be reported under this Policy.

This may be about something that:

- (a) makes employees feel uncomfortable in terms of known standards, their experience or the standards they believe the Council subscribe to; or
- (b) is against the Council's Standing Orders and policies; or
- (c) falls below established standards of practice; or
- (d) amounts to improper conduct.

### **Safeguards**

- 10 The Council recognises that the decision to report a concern can be a difficult one to make. If what employees are saying is true, employees should have nothing to fear because they will be doing their duty to their employer and those for whom they are providing a service.
- 11 The Council will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect staff when they raise a concern in good faith. The Public Interest Disclosure Act 1998 provides additional protection for staff who use this Policy.
- 12 All concerns will be treated in confidence and every effort will be made not to reveal an employee's identity if they so wish. At the appropriate time, however, they may need to come forward as a witness.
- 13 This policy encourages employees to put their name to an allegation whenever possible but concerns expressed anonymously are much less powerful and will be considered at the discretion of the Council.

- 14 If employees make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against them. If, however, they make an allegation maliciously or for personal gain, disciplinary action may be taken against them.

### **How to Raise a Concern**

- 15 As a first step, employees should normally raise concerns with their immediate manager or that manager's manager. This depends, however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if they believe that your management is involved, they should approach:
- The Chief Executive – Tel. No. 01432 260044.
  - The Assistant Chief Executive Legal and Democratic – Tel. No. 01432 260200.
  - The Director of Resources – Tel. No. 01432 260235.
- 16 Concerns may be raised orally or in writing.
- 17 The earlier employees express the concern the easier it is to take action.
- 18 Although employees are not expected to prove beyond doubt the truth of an allegation, they will need to demonstrate to the person contacted that there are reasonable grounds for concern.
- 19 Advice and guidance on how matters of concern may be pursued can be obtained from the Assistant Chief Executive Legal and Democratic who is also the Monitoring Officer for the Council and has a legal responsibility to ensure that the Council acts properly at all times.
- 20 Employees may wish to consider discussing the concerns with a colleague first and they may find it easier to raise the matter if there are two (or more) staff who have had the same experience or concerns.
- 21 Employees may invite their trade union or a friend to be present during any meetings or interviews in connection with the concerns raised.

### **How The Council Will Respond**

- 22 The Council will respond to these concerns but do not forget that testing concerns is not the same as either accepting or rejecting them.
- 23 Where appropriate, the matters raised may:
- (a) be investigated by management, internal audit, or through the disciplinary process;
  - (b) be referred to the Police;
  - (c) be referred to the external auditor;
  - (d) form the subject of an independent inquiry.
- 24 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so,

what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.

- 25 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.
- 26 Within **ten** working days of a concern being raised, the responsible person contacted will write to the complainant:
- (a) Acknowledging that the concern has been received,
  - (b) Indicating how we propose to deal with the matter,
  - (c) Giving an estimate of how long it will take to provide a final response,
  - (d) Telling the complainant whether any initial enquiries have been made,
  - (e) Supplying the complainant with information on staff support mechanisms, and
  - (f) Telling the complainant whether further investigations will take place and, if not, why not.
- 27 The amount of contact between the officers considering the issues and the complainant will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will need further information from the complainant.
- 28 Where any meeting is arranged, off-site an employee so wishes, they can be accompanied by a union or professional association representative or a friend.
- 29 The Council will take steps to minimise any difficulties which employees may experience as a result of raising a concern. For instance, if they are required to give evidence in criminal or disciplinary proceedings the Council will arrange for them to receive advice about the procedure.

### **The Responsible Officer**

- 30 The Assistant Chief Executive Legal and Democratic has overall responsibility for the maintenance and operation of this policy. This officer maintains a record of concerns raised and the outcomes (but in a form which does not endanger confidentiality) and will report as necessary to the Council.

### **How The Matter Can Be Taken Further**

- 31 This policy is intended to provide employees with an avenue within the Council to raise concerns. The Council hopes employees will be satisfied with any action taken. If they are not, and if they feel it is right to take the matter outside the Council, the following are possible contact points:
- (a) The Ombudsman.
  - (b) The District Auditor.

- (c) Their Trade Union.
  - (d) The Local Citizens Advice Bureau.
  - (e) Relevant professional bodies or regulatory organisations.
  - (f) A relevant voluntary organisation.
  - (g) The Police.
- 32 If employees do take the matter outside the Council, they should ensure that they do not disclose confidential information. Check with the contact point about that.

(Based on the LGMB Model/Procedure 1998 and the requirements of the Public Interest Disclosure Act 1998)



# Section 5

## Councillor/Officer Relations

### Introduction

- 1 The purpose of this protocol is to guide Members and employees of the Council in their relations with one another.
- 2 Given the variety and complexity of such relations this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise.
- 3 This protocol also seeks to reflect the principles of the codes of conduct for Members and employees. These codes aim to enhance and maintain the integrity of local government and therefore demand very high standards of personal conduct from both employees and Members.
- 4 The protocol reflects good practice. It aims to provide an open and honest working relationship between Members and employees which ensures the delivery of the Council's statutory and other proper functions in a transparent and accountable way.

### Principles

- 5 The provisions of the Model Code of Conduct for Members apply to all Members. A breach of those provisions can be the basis of a complaint to the Monitoring Officer and the Standards Committee. The Employees' Code of Conduct is part of the terms of conditions of their employment. Employees are accountable to their Line Manager; they will seek to assist any Member, but they must not be asked by Members to go beyond the bounds of the authority they have been given by their Line Manager.
- 6 Any dispute over any provision of this protocol in relation to employees should be referred in the first instance to the responsible Head of Service or the Chief Executive. If agreement cannot be reached the Chief Executive will seek to resolve the issue in conjunction with the Leader of the Council and/or the Leader of the appropriate party group. Issues relating to employee conduct will be dealt with under disciplinary procedures. Any unresolved dispute relating to a Member's conduct under this protocol will be determined by the Standards Committee.
- 7 This protocol should be read in conjunction with the the Planning Code and the Protocol on Hospitality and any other policies of the Council, for example the Whistleblowing Policy (Public Interest Disclosure) and the Harassment and Bullying Policy.

### Members' Code of Conduct

- 8 The Relevant Authorities (General Principles) Order 2001 specify the principles governing the conduct of Members. These are set out in the schedule to this protocol. However, particular attention is drawn to principle No. 7 set out in the Preamble to the Members Code of Conduct.
- 9 The Members' Code of Conduct as shown in **Appendix 12** specifies the obligations on Members. Particularly salient parts of this Code are contained in paragraphs 3 and 7.

**Employees' Code of Conduct**

- 10 The Employee Code of Conduct is broadly in line with the Local Government Management's Board Code of Conduct for local government employees. Any variations reflect the conditions and circumstances of Herefordshire Council.

**Standards**

- 11 Employees are expected to give the highest possible standard of service to the public and where it is part of their duties to provide appropriate advice to other employees and Members with impartiality and courtesy.

**Disclosure of Information**

- 12 The law requires that certain types of information must be made available to Members, Auditors, Government Departments, service users and the public.
- 13 Under the Local Government Act 1972 the public have a right to see certain information. In most circumstances these rights are related to Committee Reports and background documents.
- 14 Employees must not use any confidential information obtained in the course of their employment for personal gain or benefit, pass it to others who might use it in such a way.
- 15 Only employees authorised by a Head of Service to do so may talk to the press or otherwise make public statements on behalf of their Service or Directorate. Generally an employee contacted by the press should refer the matter to the Communications Unit who will deal with it as appropriate.
- 16 The Local Authorities Executive Arrangements (Access to Information) (England) Regulations 2000 provide additional rights of access to documents for Members of Overview and Scrutiny Committees

**Political Neutrality/Activities**

- 17 Employees serve the Council as a whole. It follows that they must serve all Members, not just the Members of any controlling group, and must ensure that the individual rights of all Members are respected.
- 18 Some senior employees will be expected, within the terms of this Protocol, to advise political groups. These employees have a duty to advise minority groups as well as the majority group.
- 19 Some employees, normally those in more senior positions, are in politically restricted posts. They are prevented by law from taking part in certain political activities outside their work. Employees who are in this position are told of this in writing and of the rules about claiming exemption. Any employee who is in doubt about their position should contact their Head of Service.

**Relationships**

- 20 Some employees are required to give advice to Members as part of their job. Mutual respect between employees and Members is essential to good local government, but

close personal familiarity between employees and individual Members can damage the relationship and prove embarrassing to other employees and should, therefore, be avoided.

### **Advice to Party Groups**

- 21 No officer may be a Member of his or her employer local authority. Also, senior officers, except those specially exempted, may not be a member of any other local authority or an MP. Nor can they speak or publish written work for the public with the apparent intention of affecting public support for a political party.
- 22 Because political groups are a feature of modern local government and have a role in the successful running of the Council, officers may on occasion be asked to provide support and assistance to political groups.
- 23 This support can take many forms, ranging from a briefing meeting with a Group Leaders or spokesperson, to a presentation to a full party group meeting. It is an important principle that such support is available to all political or party groups. Officers must not be involved in advising any political group of the Council or attend any meeting without the express consent of their Director or the Chief Executive.
- 24 Certain points must however be clearly understood by all those participating in this type of process, Members and officers alike. In particular:
  - (a) officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business.  
The observance of this distinction will be assisted if officers are not expected to be present at meetings, or parts of meetings, when matters of party business are to be discussed;
  - (b) party group meetings form part of the preliminaries to Council decision making but are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such;
  - (c) similarly, where officers provide information and advice to a political or party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee when the matter in question is considered; and
  - (d) Members often seek officers' assistance in drafting resolutions or amendments which they wish to move at a meeting. It is proper for an officer to advise on the wording of such a proposal to ensure it is accurate, practical and lawful but there can be no inference that the officer supports the substance or merits of the proposition.
- 25 Special care needs to be exercised whenever officers are involved in providing information and advice to a political or party group meeting which includes persons who are not members of the Council. Such persons will not be bound by the code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a members only meeting.

- 26 Officers must respect the confidentiality of any political or party group discussions at which they are present and should not relay the content of any such discussion to another party group. Although there is no reason why other such groups should not be aware that a Group has sought and received officer advice, or be inhibited from requesting officer support themselves no political point should be made of that fact. Any difficulty or uncertainty should be raised with the Chief Executive who will discuss them with the relevant Group Leaders.

### **Members' Access to Information, Council Documents and Employee Advice**

- 27 Members will need in the discharge of their duties to access information from employees. This will usually be most efficiently achieved through the Heads of Service or Directors who are able to provide an overview or direct the Member to the most appropriate employee. For individual cases Members may approach case officers, but junior staff are entitled to refer the Member to the responsible Service Manager or Head of Service.
- 28 Members who wish to obtain information from employees should request it as early as possible, recognising that employees may require reasonable time to collate or research the information. Members must state any deadline for the provision of this information. This also applies where a Member wishes to obtain information to supplement a report after the agenda for a meeting has been issued.
- 29 Employees will make every reasonable effort to provide Members with accurate factual information and professional advice in a timely manner, unless this would exceed the officer's authority or there are lawful reasons to prevent disclosure of the information.
- 30 Members have the same statutory right as any member of the public to inspect any Council document which contains material relating to any business which is to be transacted at a Council or Committee meeting or a meeting of Cabinet and any relevant background papers. This right applies irrespective of whether or not the Member is a Member of the committee concerned or acting as a substitute. This right does not, however, apply to documents relating to items containing information which is exempt from publication. Correspondence held by the Monitoring Officer in relation to his or her duties is similarly exempt unless released by him or her in the interest of furthering any enquiry.
- 31 The common law right of Members is much broader and based on the principle that any Member has a *prima facie* right to inspect Council documents so far as access to the documents is reasonably necessary to enable the Member properly to perform duties as Member of the Council. This principle is commonly referred to as the 'need to know' principle and will be determined in the first instance by the particular Head of Service whose service holds the document in question. Any disputes may be referred to the Monitoring Officer whose decision shall be final. Written reasons will be provided on request.
- 32 A member who asks to inspect documents which contain personal information about third parties will normally be expected to justify that request in specific terms.
- 33 A Member of one party group will not have a 'need to know' and does not have a right to inspect any document which forms part of the internal workings of another party group and is in the possession of the Council or of an individual employee.
- 34 A member of a Scrutiny Committee is entitled to a copy of any document which:

- (a) is in the possession or under the control of the Cabinet; and
  - (b) contains material relating to: -
    - (i) any business that has been transacted at a private meeting or a public meeting of a decision making body of the Council;
    - (ii) any decision that has been made by an individual Member of that Cabinet in accordance with Cabinet arrangements; or
    - (iii) any key decision that has been made by an officer of the Council in accordance with Executive arrangements.
- 35 No Member of a Committee is entitled to a copy of a document or part of a document which contains exempt information or confidential information unless that information is relevant to an action or decision that he or she is reviewing or scrutinising; or which is relevant to any review contained in any programme of work of such a committee or sub-committee.
- 36 More detailed advice regarding Members' rights to inspect Council documents may be obtained from the Monitoring Officer (Assistant Chief Executive (Legal and Democratic)).
- 37 Any Council information is provided to a Member on the basis that it must only be used by the Member in connection with the proper performance of the Member's duties as a Member of the Council. This forms part of the Council's Data Protection requirements. This obligation of confidentiality is part of the Members Code of Conduct (paragraph 3).

#### **Relationships between Officers and Cabinet Members, Chairs of Committees, and the Leader**

- 38 It is important to the efficient discharge of the Council's functions that there should be a good working relationship between Members of the Cabinet, Officers, Heads of Service and Directors and between the Chair of a committee and officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the employee's ability to deal impartially with other Members and other party groups.
- 39 Officers and Heads of Service frequently write reports having undertaken background research and professional and technical appraisals of proposals.
- 40 These reports are then presented by the Cabinet member with Portfolio, with the assistance of officers where necessary.
- 41 Members must accept that in some situations officers will be under a duty to submit an opinion or advice in a report on a particular matter. In those situations the officer will always be fully responsible for those elements of a report submitted in the Member's name.
- 42 The principles set out in paragraph 8.3 and 8.4 below apply to such elements of the report.
- 43 Where an officer wishes to consult a Cabinet Member or Chair as part of the preparation of a report to a decision-making body under the Council's constitution, the following principles will apply. The Cabinet Member or Chair may ask the report author:

- (1) To include particular options;
  - (2) To clarify the report by expanding, simplifying or re-phrasing any part of the report or including other particular information;
  - (3) To check or correct any error or omission of any matter or fact including statements of summaries of policy or budget;
  - (4) To check any estimate of costs or savings.
- 44 The Cabinet Member or Chair may not ask officers:
- (1) To exclude any option contained in the draft report;
  - (2) To exclude or alter the substance of any statement in the draft report of any officers' professional opinion.
  - (3) To alter the substance of any recommendation that compromises the officer's integrity or would result in illegality;
  - (4) To exclude any report, comments or representations arising from consultations, publicity or supply of information to the community.
- 45 Certain statutory functions are undertaken by officers. Their reports on such matters are then their own full responsibility.

### **Local Members**

- 46 You will be kept fully informed about significant issues which affect your ward or bodies on which you represent the Council. Officers will be alert to advise members at the earliest possible stage of relevant development proposals. Over and above this general responsibility the Assistant Chief Executive (Legal and Democratic) will:
- (a) notify a Member that a report on any such local matter is being tabled or discussed, as soon as the decision is taken to place that item on the agenda of a Committee;
  - (b) ensure that this report is sent to the Member as soon as it is published.
- 47 You will be invited to any public meeting organised by the Council to consider an issue affecting your ward. You will be notified of any consultative exercise proposed for your ward, or on an issue affecting your ward, at the outset of the exercise.
- 48 You will, wherever practicable, also be notified of any visits by the Chairman or Vice-Chairman of the Council or Committee Chairmen or Cabinet Members to Council sites or establishments in your ward, except where these are purely courtesy visits.
- 49 You will be notified of all decisions taken by the Cabinet or by Cabinet Members affecting your ward.

### **Scrutiny Arrangements**

- 50 Cabinet arrangements raise particular issues for local authority employees because: -

- (a) The advice which officers have given to the Cabinet, its Members or to any group may be subject to scrutiny and examined by a Scrutiny Committee.
- (b) Officers may have written reports for presentation by a Cabinet Member with Portfolio or provided advice to the Cabinet. Where such a decision is subject to Scrutiny by an Overview and Scrutiny Committee, or when a decision is called-in, an officer may provide information or advice to an Overview and Scrutiny Committee. Members must recognise that there is an inherent tension between these two roles. As circumstances change or more information comes to light, advice may reflect the difference.
- (c) Overview and Scrutiny Committees and their members will need active assistance from officers if they are to perform their role of scrutinising the Cabinet effectively. These factors will require understanding by Members of the role that officers have to perform.

### **Overview and Scrutiny**

- 51 The scrutiny role of the Council is performed by Overview and Scrutiny Committees and the Audit and Corporate Governance Committee. Employees may need to attend an Overview and Scrutiny Committee to give evidence and assist it in its scrutiny.
- 52 Where an employee is required to attend before a Scrutiny Committee, to report to it or provide evidence for it, it is the employee's duty to do so, or to explain why he or she is unable or unwilling to do so. If after considering that explanation the Committee insists on the information being provided the employee must do so.
- 53 Where a Scrutiny Committee has resolved to undertake a review it is the duty of Senior Officers to co-operate fully with the review or to arrange for the Head of Service or Director to act in their place. This duty extends beyond merely answering the Committee's questions and involves a requirement to assist the Committee in addressing the right questions and seeking the information which may be required to help them in their work.
- 54 Officers below Service Manager level should not present such reports or provide assistance.

### **Publicity**

- 55 The Council abides by the provisions of the Department of the Environment, Transport and the Regions Local Authority Publicity Code (April 2001).
- 56 Information on Council services will be produced in collaboration with the Communications Unit and will be impartial reflecting Council approved policy.
- 57 All news releases will be written and issued by the Communications Unit following consultation with the Head of Service and the Cabinet Member concerned.
- 58 Publicity will not be party political and will report on and reflect Council policy.
- 59 Media requests for political comments will be referred to the political group Leaders.
- 60 The Council will make public information available on the website as resources allow.

**The Role of the Head of Paid Service (Chief Executive)**

- 61 The Chief Executive has a specific statutory function in relation to employees, appointments, discipline, terms and conditions of employment and collective bargaining. Members must recognise and respect those responsibilities and duties.

## Section 6

# Overview and Scrutiny Committee Chairman's Code

### Summary of Role

- 1 To chair the Overview and Scrutiny Committee and ensure and co-ordinate the effective conduct of business;
- 2 To ensure he/she is sufficiently and effectively briefed on the Corporate Strategy and Finance Programme Area;
- 3 To ensure and co-ordinate effective scrutiny of the Council's policies, plans and activities and to lead in the preparation of the Council's overview and scrutiny work programme;
- 4 To undertake, in addition, all the duties specified in the Functions Scheme.

### Key Responsibilities

- 5 To lead on the scrutiny of policy and strategic issues and executive recommendations affecting the Corporate Strategy and Finance Programme Area;
- 6 To lead on the decisions, responses or recommendations, post scrutiny, to the Council, the Cabinet or relevant officers;
- 7 To lead on the scrutiny of budget plans, policy or strategy;
- 8 To lead in the provision of advice to the Cabinet on major issues or policies before final recommendations are made (by the Cabinet) and to co-ordinate and regulate reports to the Cabinet by the Scrutiny Committees;
- 9 To co-ordinate the exercise of the call-in powers under Sections 21 (3) (a) and (b) of the Local Government Act 2000 and in accordance with the Scrutiny Procedure Rules in Part 4 of this Constitution;
- 10 To lead on the review of policy, strategy and budget decisions and any consequent proposals for changes or amendments to policies or practices to the Council or the Cabinet, as appropriate, in pursuit of the achievement of best value;
- 11 To lead on the scrutiny of external reports on performance;
- 12 To lead on identifying cross-cutting strategy issues and ensuring a corporate approach to scrutiny in such areas;
- 13 To lead in identifying the annual Best Value Review Programme and in reporting to the Cabinet and Council on those reviews;
- 14 To ensure the effective and orderly operation of the Overview and Scrutiny Committee;
- 15 To lead in ensuring that appropriate information, training and guidance is available to members of Scrutiny Committees in scrutinising the particular service or corporate area;

- 16 To meet regularly with relevant officers to ensure the receipt of appropriate "independent" advice to inform effective scrutiny and the functioning of the committee;
- 17 To ensure regular contact with non-executive councillors, community representatives and local stakeholders to inform effective scrutiny of policies, strategies, budgets and performance;
- 18 To contribute effectively to the Council's scrutiny process by ensuring the questioning of the relevant Cabinet Members on the development of policy and strategies and performance against such strategies and policies, whether at the committee, the Council or by other means.

# Section 7

## Scrutiny Committee Chairman's Code

### Summary of Role

- 1 To chair the particular Scrutiny Committee to which he/she is appointed and ensure and co-ordinate the effective conduct of business;
- 2 To ensure he/she is sufficiently and effectively briefed on the service and relevant corporate areas, and issues pertaining to those areas;
- 3 To ensure effective consideration and scrutiny by the committee of recommendations, proposals and decisions of the Cabinet and officers, or any other reports on the performance of the service or relevant programme area;
- 4 To undertake, in addition, all the duties specified in the Functions Scheme.

### Key Responsibilities

- 5 To lead on the scrutiny of policy and strategic issues and executive recommendations affecting the Programme Area(s);
- 6 In liaison with the Overview and Scrutiny Committee to make responses or recommendations, post scrutiny, to the Council, the Cabinet or relevant officers;
- 7 To lead on the scrutiny of external reports on the performance of the monitored Programme Area;
- 8 To ensure the effective and orderly operation of the particular Scrutiny Committee;
- 9 To meet regularly with relevant officers to ensure the receipt of appropriate "independent" advice to inform effective scrutiny and the functioning of the Scrutiny Committee;
- 10 To ensure regular contact with non-executive Councillors, community representatives and local stakeholders to inform effective scrutiny of policies, strategies, budgets and performance;
- 11 To contribute effectively to the Council's scrutiny process by ensuring the questioning of the relevant Cabinet Member on the development of policy and strategies and performance against such strategies and policies, whether at the Scrutiny Committee, the Council or by other means.



## Section 8

# Committee Chairman's Code

### Summary of Role

- 1 To chair one of the Committees appointed by the Council (other than a Scrutiny Committee);
- 2 To ensure he/she is sufficiently and effectively briefed on the issues within the Committee's terms of reference;
- 3 To ensure and co-ordinate effective conduct of the Committee's business;
- 4 To undertake, in addition, all the duties specified in the Functions Scheme.

### Key Responsibilities

- 5 To ensure the Committee operates effectively and has regard to the advice of the relevant officers in respect of the Committee's powers and remit;
- 6 To ensure that when fulfilling any of its quasi-judicial responsibilities the Committee follows approved procedures adhering to the rules of natural justice, the provisions of the European Convention on Human Rights and all other legal requirements having regard to the advice of the relevant officers;
- 7 To lead on recommendations to the Council, the Cabinet or relevant officers in respect of the Committee's business and operation;
- 8 To lead in ensuring that appropriate information, training and guidance is available to Members in respect of the Committee's responsibilities;
- 9 To ensure the effective and orderly operation of the Committee;
- 10 To meet regularly with relevant officers to ensure the receipt of appropriate advice to inform effective functioning of the Committee;
- 11 To liaise with Members of the Council not on the Committee about the Committee's operation and effectively represent the work of the Committee to the community and take account of the views of community representatives and other local stakeholders with regard to the Committee's operation.



## Section 9

# Code on Gifts and Hospitality

- 1 This Code covers any gift, favour or hospitality that is offered or given to you in your capacity as a Member whether you accept it or not. It is not intended to cover the ordinary social relationships which people enjoy with friends, provided that the friend is not applying to the Council for anything, seeking to do business with the Council, or involved in a business relationship with the Council.
- 2 As a Member you must declare in writing to the Assistant Chief Executive – Legal and Democratic within 28 days of being offered or receiving any gift or hospitality. Your declaration will be recorded in a register which will set out the date of declaration, the date on which you received the hospitality, your name, the nature of the gift or hospitality, and if a gift, what was done with it. The register will be countersigned by the Assistant Chief Executive - Legal and Democratic.
- 3 The Members' Code of Conduct at Appendix 12, Part 2 (1) (a) relates to offers (whether accepted or declined) of gifts over £25. Where an offer is made to a group of Members which in total is the equivalent of £25 or more in respect of each Member, a representative of the Members involved will declare that to the Assistant Chief Executive Legal and Democratic and it will be recorded in the Hospitality Register.
- 4 Members need to be aware that the receipt of a gift or other form of hospitality might be a prejudicial interest and the rules in relation to prejudicial interests in the Code of Conduct would apply.



# Section 10

## The Councillor Call For Action (Ccfa) – Guidance and Procedure

### Introduction

- 1 The CCfA, in brief, allows any member of the Authority to refer a “Local Government” matter to a Scrutiny Committee and require them to consider the matter.
- 2 The purpose of CCfA is to help councillors resolve issues of local concern on behalf of their residents
- 3 The CCfA is also an opportunity to look at the range of solutions open to Members to solve problems.
- 4 The best practice guidance produced on behalf of the Government states that CCfA will be a means of “last resort” in a broad sense with issues being referred to a Scrutiny Committee only after other avenues have been exhausted.
- 5 Other avenues available to Councillors to resolve matters to be addressed first include:
  - (a) That relevant complaints procedures have been complied with
  - (b) That the local service manager has been approached
  - (c) That the relevant Cabinet Member has been approached
  - (d) That any relevant partnership bodies or local groups have been approached
- 6 It is also important that the Councillor considers whether any of the following approaches would be more appropriate:
  - (a) Formal letters written on behalf of constituents
  - (b) Public meetings
  - (c) Petitions and deputations
  - (d) Motions on the agenda at Full Council
  - (e) Communication with local MPs
  - (f) Communication with councillors in other authorities
  - (g) Web or e-mail based campaigns

### Issues Statutorily Excluded from CCfA

- 7 The following matters are specifically excluded from CCfA:
  - (a) Any matter relating to a planning decision

- (b) Any matter relating to a licensing decision
- (c) Any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment
- (d) Any matter which is vexatious, discriminatory or not reasonable to included in the agenda for or to be discussed at, a meeting of the overview and scrutiny committee.

8 Except where the function in question:-

- (a) Has not been discharged at all;
- (b) Is systematically not being discharged in a way that it should be;

Irrespective of whether the function is subject to the right of review or appeal in law.

### **What the CCfA Can Provide**

- 9 (a) Recognition that an issue is significant enough for time, attention and resources to be spent in trying to resolve it;
- (b) A public forum for discussion of the issues;
- (c) An opportunity to discuss the issues in a neutral environment;
- (d) An opportunity to discuss a problem with the explicit and sole aim of solving it;
- (e) A high-profile process owned by the ward councillor.

### **Resolution of an Issue**

- 10 The concept of resolution is arguably at the centre of CCfA – ensuring that CCfA actually helps councillors to resolve intractable issues. The purpose of CCfA is to provide resolution where other techniques might not be able to do so.
- 11 To assist in establishing what would represent resolution it will be expected that:
  - (a) The Councillor bringing the CCfA will be clear at the outset as to what the expected outcomes are.
  - (b) The Committee discussion will focus on these expected outcomes
  - (c) The Committee will challenge the expected outcomes at the outset if it is felt that these outcomes are unreasonable, however, where this is the case there is a clear expectation that discussion will take place with the Councillor to modify and reach an accord on expectations with the Councillor having the final say.

### **Conventions**

- 12 A convention that where a matter has previously been the subject of a call in (within the last 6 months and there have been no material changes in circumstances) as is currently the case with Notices of Motion) that the person lodging the CCfA will be asked to

withdraw it. If they still wish to pursue the matter a report will be made to the next meeting of the relevant Scrutiny Committee recommending rejection of the CCfA without further action.

- 13 It will be a convention (that where the relevant Councillor has clearly not complied with the expectation that other means to resolve matters will be addressed first (as outlined above) the person lodging the CCfA will be asked to withdraw it until they have explored those other means. If they still wish to pursue the matter a report will be made to the next scheduled meeting of the relevant Scrutiny Committee recommending rejection of the CCfA without further action until those steps have been explored.
- 14 It will be a convention that where a CCfA is lodged as an issue and has been concluded no further CCfA will be raised on an issue on substantially the same point.

### Crime and Disorder Matters

- 15 Under the Police and Justice Act 2006 a broadly similar CCfA procedure can be followed in relation to "crime and disorder" functions. Such matters must be considered by a committee designated by the Council as its crime and disorder committee.

### Procedure

- 16 The guidance states that some processes and procedures are necessary to ensure that CCFA is targeted and relevant and that it occupies a central role in improving services but that these should not be too prescriptive. The procedure for dealing with CCFAs is set out below:

<b>1</b>	If a Councillor wishes to initiate a CCfA they must complete the attached form providing full details of the issue concerned, including an explanation of what the issue is, why it is being raised as a CCfA and the steps that have been taken to resolve the issue and submit it to Democratic Services.
<b>2</b>	Democratic Services will acknowledge receipt of the CCfA to the Member who submitted it within one working day.
<b>3</b>	If necessary, the Monitoring Officer will be asked to confirm within 3 days that the CCFA does not fall within any of the statutory exempt criteria (see 2 above, or any matter which is vexatious, discriminatory or not reasonable to included in the agenda for or to be discussed at, a meeting of the overview and scrutiny committee).
<b>4</b>	If the submitted CCfA falls into one of the statutory exemption criteria then it will not progress beyond this point and Democratic Services will inform the Member of this outcome. In doing so guidance will be given to the Member on whether there any other ways in which they might pursue the matter.
<b>5</b>	If the matter has previously been the subject of a call in or similar CCfA (see Section 5 above)
<b>6</b>	If the CCfA is not covered by one of the statutory exemption criteria or one of the conventions  (i) Democratic Services will inform the Chairman of the relevant Scrutiny Committee, Chairman of Overview and Monitoring Committee, relevant Cabinet Member, Monitoring Officer, Chief Executive, Deputy Chief

	<p>Executive relevant Director (&amp;Head of Service as appropriate) and any relevant Partner agencies</p> <p>(ii) All those listed above will be asked to confirm within 5 working days that they agree that the CCfA form fully reflects the position and that there are not, for example, any initiatives in hand to resolve the subject in issue and asked if they have any other observations on the CCFA (including in particular the proposed outcomes and critical deadlines)</p> <p>(iii) Inform Communications.</p>
<b>7</b>	<p>If the relevant Councillor lodging the CCfA has clearly not complied with the expectation that other means to resolve matters will be addressed first they will be asked to withdraw it. If they still wish to pursue the matter a report will be made to the next scheduled meeting of the relevant Scrutiny Committee explaining the position and recommending rejection of the CCfA without further action until those other steps have been explored.</p>
<b>8</b>	<p>Once the Chairman of the relevant scrutiny committee, following discussion with officers, is satisfied that there are grounds for the CCfA to proceed the Chairman of the relevant Scrutiny Committee and officers will then meet the Councillor raising the CCfA. This will be within 15 working days of the submission of the CCfA.</p> <p>If it is considered that any of the desired outcomes are considered unreasonable negotiations may take place.</p> <p>At this meeting the Chairman of the relevant Scrutiny Committee and officers will consult and negotiate with the Member who submitted the CCfA on the required information and witnesses for a Scrutiny Committee meeting and agree timescales, venue and publicity requirements.</p>
<b>9</b>	<p>The Committee will meet to consider the CCfA either as part of a scheduled meeting or at a special meeting as agreed by the Chairman. The expectation will be that the meeting will be held in public unless there are statutory grounds in accordance with the access to information rules in Part 4.</p>
<b>10</b>	<p>The Committee could determine no action be taken in response to the CCFA, make recommendations; or agree that the issue is complex and requires further investigation and review.</p>
<b>11</b>	<p>The Councillor who raised the CCfA, relevant Cabinet Members, officers and Partner organisations will formally be notified of the outcome of the Scrutiny Committee's consideration within 5 working days of the meeting and invited to respond as appropriate.</p>
<b>12</b>	<p>A response to any recommendations made by the Scrutiny Committee will be reported to the next scheduled meeting or within <b>two months</b> whichever is the shorter.</p>

### Councillor Call for Action Request Form

<b>1</b>	<p><b>Description of CCfA</b></p> <p>Please describe as fully as possible what the issue is with specific examples where possible</p>
<b>2</b>	<p><b>Reason for raising the CCfA</b></p> <p>Please explain what has prompted you to raise the CCFA, e.g. concerns by residents, etc</p>
<b>3</b>	<p><b>Who does it affect?</b></p> <p>Please describe if it is local to your area or a wider issue. How many residents are affected?</p>
<b>4</b>	<p><b>What has been done to try to resolve the issue?</b></p> <p>Please describe what avenues to resolve the issue have already been tried and the outcomes. (Please be certain to include discussion at council meetings or forums, formal approaches to Cabinet Members, officers and partner organisations giving dates where possible.)</p>
<b>5</b>	<p><b>What outcomes are you seeking?</b></p>
<b>6</b>	<p><b>What if any are the critical deadlines?</b></p>
<b>7</b>	<p><b>Any other information?</b></p>

Signature Councillor: \_\_\_\_\_ Date: \_\_\_\_\_

Received by Democratic Services      Date: \_\_\_\_\_



# Section 11

## Petitions Code

- 1 The Council recognises that in some cases important issues may arise locally which may prompt a strong expression of public opinion. In cases such as this it is useful that the public have a means to raise the Council's awareness of these issues directly.

### Lodging a Petition

- 2 If the petitioners wish to present a petition to Council, it must be lodged not less than 7 clear working days before the Council meeting and will then do so by handing a copy to the Chairman of Council at that meeting, or may alternatively arrange for the Ward member or other Councillor to do so on their behalf.
- 3 If the petitioners do not wish to do so, petitions can be lodged at any time and will still be actioned in accordance with this code. Petitions may be delivered to:
  - The local Ward Member.
  - A Cabinet Member.
  - The Monitoring Officer.
  - The Chairman of the Planning Committee or Licensing Sub-Committee.
  - The Chief Executive or a Director.
- 4 Petitions received will be forwarded to the Monitoring Officer who will then check that the petition is valid and enter it in the Register of Petitions.

### Valid Petitions

- 5 Petitions should not concern personal or confidential matters, but rather should include issues of concern to a suitably wide part of the electorate, accordingly, they should contain at least (15 signatures) of people registered to vote in the Council area and it must contain a correspondence address of at least one person, the lead petitioner.
- 6 A petition must also be reasonable in nature and not be illegal, scurrilous, improper or vexatious. It must not be a repeat of any petition already lodged with the Council in the last 12 months.

### The Process

- 7 If the petition relates to a particular planning application or licensing issue it will be passed to the Chairman of the Planning Committee or the Licensing Committee to be included with the papers relating to that issue.
- 8 The Monitoring Officer will pass all other petitions to the relevant Cabinet Member or Committee for consideration, as well as notifying the Chairman of the Council in cases where a copy of the petition has or will be handed to him at the Council meeting.

- 9 The person or Committee to who the petition has been passed will then decide upon the most appropriate form of responding. In formulating the response they will be entitled to commission such reports from particular officers as they see fit, whether verbal or written, formal or informal.
- 10 Where it is appropriate, the person on the committee to whom the petition has been passed may forward a copy to the appropriate scrutiny committee chairman with a view to consideration of whether or not a review is appropriate or any action to be taken as part of their work programme.
- 11 Once the response is decided upon in relation to petitions handed to the Chairman of the Council, he will, at the next Council meeting, announce to the Council the response to the petition.
- 12 All other petitioners will receive a response from either the person who received it under paragraph 3 above, or from the Chief Executive.

## Section 12

# Audit and Corporate Governance Code

### Composition

- 1 The Committee will consist of seven non-executive councillors and may include an independent person who is not a councillor. This person, if appointed, must be appointed chairman of the Committee in accordance with Standing Order 4.3.3.

### Purpose

- 2 The Council appoints the Audit & Governance Committee to ensure the effective and fully compliant governance of the Council and in particular to ensure that all aspects of the financial affairs of the Council are properly and efficiently conducted. The main purpose of this Committee is therefore to review and approve the Council's annual governance statement and annual statements of account. In so doing, the Committee shall scrutinise the effectiveness of, and management compliance with, the systems identified in the annual governance statement framework and monitor the progress made by management in implementing improvements to elements of that framework identified by external or internal audit review.

### Key Terms

- 3 The **annual governance statement framework** identifies the individual systems and sources of evidence used to support the preparation of the **annual governance statement**.
- 4 The key systems identified in the framework include risk management, procurement, the whistle blowing policy, the control environment and associated counter fraud and corruption arrangements, and the complaints process.
- 5 The key sources of evidence identified in the framework include the annual governance letter, external audit reports and the Chief Internal Auditor's audit assurance reports.
- 6 The **annual governance statement** is prepared in advance of the annual statements of account; it provides a commentary from management on compliance with the Council's code of governance and identifies areas for further improvement.

### Scope of the Audit & Governance Committee

- 7 The functions, powers and duties of the Audit & Governance Committee are set out in its Terms of Reference. The Committee is able to call senior officers and appropriate members to account on issues within the Committee's remit as defined by its Terms of Reference.

- 8 The Committee is not responsible for reviewing specialist external inspection reports on service performance (for example, the annual OFSTED inspection) unless issues have been identified that directly relate to matters within the Committee's remit (for example, risk management of service related issues).
- 9 The Committee will not receive detailed information on investigations relating to individuals. The general governance principles and control issues may be discussed, in confidential session if applicable, at an appropriate time, to protect the identity of individuals and so as not to prejudice any potential action by the Council.

### **Terms of Reference**

- 10 The Committee's terms of reference shall be maintained in line with the Chartered Institute of Public Finance & Accountancy's (CIPFA's) latest best practice guidance for Audit Committees. The key statements made by CIPFA are highlighted in bold in the Committee's Terms of Reference.
- 11 **To consider the effectiveness of the Council's risk management arrangements, the control environment and associated counter fraud and corruption arrangements** by:
- a Reviewing and approving the annual governance statement framework once a year.
  - b Approving the Council's counter fraud and corruption policies and reviewing them on a biennial basis.
  - c Reviewing and approving the Council's whistle blowing policy on a biennial basis.
  - d Being part of the consultation process when the Council's complaints policy is being reviewed.
  - e Monitoring the effective operation and development of the systems identified in the annual governance statement framework, calling for special reports where necessary and bringing to notice any inconsistency, short comings, gaps or duplications in these systems.
- 12 **Seek assurance that action is taken on risk related issues identified by auditors and inspectors** by:
- a Monitoring acceptance by management of audit recommendations and progress in implementing agreed action plans.

- b Reviewing audit recommendations not accepted by management and making an appropriate recommendation to Cabinet if it is considered that the course of action proposed by management presents a risk in terms of the effectiveness of or compliance with the Council's control environment.
- c Monitoring progress upon the further improvements identified in the annual governance statement.
- d Monitoring progress in respect of resolutions and recommendations made by the Committee.

**13 Satisfy themselves that the Council's assurance statements, including the annual governance statement, properly reflect the risk environment and any actions required to improve it by:**

- a Reviewing and approving the annual governance statement framework annually.
- b Receiving and commenting upon the Chief Internal Auditor's annual report on the Council's risk environment.

**14 Approve internal audit's strategy and plan and oversee performance by:**

- a Reviewing and approving the internal audit strategy, internal audit charter and annual internal audit plan once a year, commenting on the adequacy of internal audit resources to ensure key systems are examined in line with the assessed level of risk. Exceptionally, the Committee may identify specific lines of enquiry for internal audit work in line with paragraph 5.1.11 (vi).
- b Reviewing performance against the internal audit plan through the interim and final audit assurance reports prepared by the Chief Internal Auditor for each of the Committee's meetings.
- c Noting the external auditor's opinion on the quality and effectiveness of the internal audit function.
- d Commenting on the scope for further improvement in internal audit performance and / or cost effectiveness where it is appropriate to do so.

**15 Review summary internal audit reports and the main issues arising, and seek assurance action is taken where necessary by:**

- a Noting the Chief Internal Auditor's summary of key findings for audit reviews that have resulted in an unsound or unsatisfactory audit opinion being issued which will

be included in his / her interim audit assurance reports and commenting on the management response to those issues as appropriate.

- b The Chief Internal Auditor providing the Chairman of the Audit and Governance Committee with a copy of audit review reports with an unsound, unsatisfactory or marginal audit opinion.
- c The Chief Internal Auditor providing the Chairman of the Audit and Governance Committee with written confirmation of audit review reports with a satisfactory or good audit opinion.

**16 Receive the annual report of the Head of Internal Audit by:**

- a Reviewing the Chief Internal Auditor's annual report to support the Annual Governance Statement.
- b Reviewing the interim and final audit assurance reports prepared for the Committee by the Chief Internal Auditor.
- c Receiving assurance on the opinion given on the overall adequacy and effectiveness of the Council's control environment.

**17 Consider the reports of external audit and inspection agencies and take appropriate action where relevant to the committee remit by:**

- a Reviewing and commenting on external audit and inspection reports.
- b Reviewing and commenting on the management response to external audit and inspection recommendations.
- c Monitoring progress in implementing the management response to external audit and inspection recommendations.

**18 Ensure there are effective relationships between external and internal audit, inspection agencies and other relevant bodies by:**

- a Reviewing and agreeing the external auditor's annual audit plan, including the annual audit fee.
- b Receiving regular update reports on progress from the external auditor.
- c Meeting privately with the external auditor once a year, if required.

- d Monitoring the effectiveness of relationships between the external and internal auditors to ensure that the combined value of the two audit processes is maximised.

**19 Ensure the organisation actively promotes the value of the audit process by:**

- a Providing effective and objective scrutiny of the Council's governance arrangements, that are relevant to the committee's remit.
- b Reviewing and commenting on any issue referred to it by the Chief Executive, a Director, or Cabinet Member or by any Herefordshire Council body.
- c Reviewing and making recommendations on any proposed amendments to the Council's code of corporate governance, financial procedure rules, contract and procurement procedure rules, scheme of delegation, budget policy, procedure rules or governance arrangements.

**20 Review the financial statements, external auditor's opinion and reports to members, and oversee management action in response to the issues raised by external audit by:**

- a Receiving biannual forecasts of revenue and capital outturn, satisfying itself that appropriate and timely measures are in place to ensure compliance with paragraph 11 of the Council's Financial Procedure Rules.
- b Reviewing and approving the annual statement of accounts, commenting where appropriate on any issues that need to be brought to the attention of the Council.
- c Reviewing and approving the annual letter of representation.
- d Receiving the external auditor's annual governance letter and commenting on the management response to any recommendations made.

**21 Other matters** not covered by CIPFA's latest best practice guidance for audit committees:

- a The Committee's meetings shall follow the principles of scrutiny i.e. no party whip shall be applied and a constructive, evidence based approach will be used.
- b The Committee shall ensure that its members receive adequate training on the areas covered by the Terms of Reference.

- c The Committee's members will ensure that any sensitive or confidential information obtained as a result of membership of the Committee is treated as such.
- d The Committee shall receive assurance from the Chief Internal Auditor that officers are complying with the Council's procurement policy and processes in all respects.
- e The Committee shall comment on the scope, depth and value for money of external audit.
- f In consultation with the Section 151 Officer, the Committee shall call for reviews/reports where the committee has identified significant gaps in the Council's internal control and governance processes, and develop the scope of these reviews with the Chief Internal Auditor.
- g The Committee shall review its effectiveness and Terms of Reference on an annual basis.
- h The Committee shall monitor progress in developing joint internal audit arrangements on matters of mutual or shared interest with the Primary Care Trust.
- i The Committee will contribute to the Council's programme of improvement in the standards of accuracy, clarity, comprehensiveness and conciseness in the Council's financial and associated documentation.

# Section 13

## Code of Conduct for Employees

### 1 POLICY

- 1.1 The public is entitled to expect the highest standards of conduct from every employee who work for the council.
- 1.2 This Code of Conduct provides a minimum set of standards of conduct expected of employees at work and the link between that work and their private lives. The code takes into account the requirements of the law and regulations. It is produced in the light of the challenges that employees working in today's local government environment face and is intended to lay down guidelines which help maintain and improve standards of service as well as protecting employees from misunderstanding or criticism.

### 2 SCOPE

- 2.1 The Code applies to all employees of Herefordshire Council, including schools.

### 3 DEFINITIONS

- 3.1 The meaning of some key words and phrases, for the purposes of this policy, are explained below:

**Manager.** Either the manager, supervisor or team leader with line management responsibility for the employee, or an alternative manager where circumstances set out in the policy have been met.

### 4 RESPONSIBILITIES

**Managers are responsible** for ensuring that employees understand the standards of behaviour that are expected of them, maintaining those standards within their teams, and complying with the requirements of council policies and procedures, should action need to be taken. These standards should be made clear during the induction process and as part of the ongoing communication with employees, including 1:1s, supervision meetings, the Staff Review and Development process (SRD) and performance management meetings in schools.

**Employees are responsible** for familiarising themselves with the main standards of conduct, for asking their managers if they are unclear about what is expected of them, and for their own subsequent behaviour and actions.

## **5 CODE OF CONDUCT**

### **5.1 STANDARDS**

- 5.1.1 Employees are expected to give the highest possible standard of service to the public and, where it is part of their duties, to provide appropriate advice to councillors and fellow employees with impartiality and courtesy.
- 5.1.2 Employees are expected, through council procedures, and without fear of recrimination, to bring to the attention of their line manager any breaches of the Code of Conduct.
- 5.1.3 Where an employee believes that he or she has information which may suggest that some form of irregularity is taking place that information must be passed to their manager or Director. They should follow the Whistleblowing Policy and Procedure as appropriate.

### **5.2 DISCLOSURE OF INFORMATION**

- 5.2.1 The law requires that certain types of information must be available to Members, auditors, Government departments, service users and the public. Under the Local Government Act 1972 the public have a right to see certain information. In most circumstances these rights are related to Committee Reports and background documents. The council itself may decide to be open about other types of information. Managers must make employees aware of which information the council is prepared to disclose and which is confidential.
- 5.2.2 Employees must not use any information obtained in the course of their employment for personal gain or benefit, nor may they pass it on to others who might use it in such a way. Any particular information received by employees from a councillor, which is personal to that councillor and does not belong to the council, must not be divulged by an employee or other Members without the prior approval of that councillor, except where such disclosure is required or sanctioned by law.
- 5.2.3 Only employees authorised by their Line Manager or Head of Service to do so, may talk to the Press or otherwise make public statements on behalf of their Service or Directorate. Generally, an employee contacted by the Press should refer the matter to Communications who will deal with it as appropriate.

### **5.3 POLITICAL NEUTRALITY**

- 5.3.1 Local government employees serve the council as a whole and not individual Members or groups. They must respect the rights of all and must ensure that the individual rights of all Members are respected. An employee's personal or political views must not interfere with their work.
- 5.3.2 Some senior employees will be expected, within the Council's guidelines, to advise political groups. These employees have a duty to advise minority groups as well as the majority group.
- 5.3.3 The legislation controlling the direct activities of local government employees in politics, either national or local, must be adhered to. Generally the law restricts the political activities outside their work of the Chief Executive, Directors, Heads of Service, employees above a certain salary ceiling and those in posts considered to be

regularly involved in providing advice to Members. Contracts of employment for employees in posts covered by the relevant legislation contain a restriction clause.

- 5.3.4 If there is any doubt whether or not a political activity is permitted, the Assistant Chief Executive - Legal and Democratic Services must be consulted by the employee or Manager concerned.
- 5.3.5 Every employee, whether or not politically restricted, must follow every lawful expressed policy of the council and must not allow their own personal or political opinions to interfere with their work.

## **RELATIONSHIPS**

### **The local community and service users**

- 5.3.6 Employees must always remember their responsibility to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the council.

### **Councillors**

- 5.3.7 Employees are responsible to the council through its senior managers. All employees are there to carry out the council's work and the role of some employees specifically includes giving advice to councillors and senior managers. Mutual respect between employees and individual councillors is essential to good local government. However, close personal familiarity between employees and individual councillors can damage the relationship and should be avoided so as not to bring the authority, or the individuals concerned into disrepute

### **Colleagues**

- 5.3.8 Employees should treat colleagues with courtesy and respect at all times.

### **Contractors**

- 5.3.9 All relationships of a business nature with external contractors, or potential contractors, must be made known to the Director, who will record the fact in a register kept for this purpose. Orders and contracts must be awarded on merit and in accordance with the Council's Financial and Contract Procedure Rules.

### **Close Personal Relationships**

- 5.3.10 Particular difficulties may be encountered with any of the above groups if the relationship is of a close personal nature. In such circumstances the 'Close Personal Relationships Policy and Procedure' applies.

## **5.4 APPOINTMENT AND OTHER EMPLOYMENT MATTERS**

- 5.4.1 Employees involved in appointments must ensure that these are made on the basis of merit as set out in the job description, person specification and other job literature. It would be unlawful for an employee to make an appointment, which was based on anything other than the ability of the candidate to undertake the duties of the post. To avoid any possible accusation of bias, an employee must not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with them.

5.4.2 Similarly, suitable arrangements should be made when an employee may be in a position to be involved in decisions relating to discipline, promotion or pay for another employee with whom they have a close personal relationship.

5.4.3 More detailed information is contained in the Close Personal Relationships Policy and Procedure.

## 5.5 INFORMATION AND COMMUNICATIONS TECHNOLOGY

5.5.1 To ensure the security of the council's Information and Communications Technology (ICT) protect the council's equipment from contamination and protect against claims of copyright infringement there is an absolute prohibition on the use of private software packages and "pirate" copies of software on any council computer equipment and the copying of council software by private concerns or vice versa.

5.5.2 Further information about this and other ICT policies can be found on the intranet <http://intranet/intranet/content/32742.asp>

You can obtain more advice and guidance by either contacting the information security team by email [infosec@herefordshire.gov.uk](mailto:infosec@herefordshire.gov.uk) or by phone 01432260160

## 5.6 OUTSIDE COMMITMENTS AND BUSINESS INTERESTS

5.6.1 To avoid confusion about conflicts of interest between the council's activities and other gainful employment by employees, the following standards apply:

5.6.2 An employee must not put themselves in a position where their personal or private interests conflict with their employment by the council. The council will not prevent an employee from undertaking additional employment but it must not, in the view of the council, conflict with the council's interests or in any way weaken public confidence in the council. All employees on grade HC7 or above are required to obtain consent in writing from their Director in advance, on each occasion, if they wish to engage in any other business, or take up any other additional work. Similarly, Directors will require the prior consent of the Chief Executive should they wish to engage in such activity.

5.6.3 It is essential that there is no confusion or conflict of interest between an employee's private concerns and those of the council. The following standards aim to ensure clarity in the procurement of goods, materials or services for private use:

5.6.3.1 When procuring goods, materials or services for private use, either for themselves or for anyone else, the employee must ensure that the supplier is clear that it is a personal transaction and entirely separate from any business the supplier has, or hopes to have, with the council.

5.6.3.2 In no circumstances whatsoever may goods or materials for private use be delivered to council premises or sites, nor may non-work services be carried out during working hours, or on council premises or sites.

5.6.3.3 All paperwork, invoices, accounts and other correspondence relating to private matters must be sent to the employee's home address. The employee must make it clear to members of the public and suppliers that sending private invoices, accounts or correspondence etc. to council addresses etc. is expressly prohibited. This same principle applies to the private use of the council's mailing system.

5.6.4 Similarly it is essential that there is no confusion or conflict of interest regarding the use of council vehicles and equipment, including vehicles and equipment contracted to the council, so the following standards apply:

5.6.4.1 Council vehicles and equipment must not be used privately and therefore when not in official use must be kept at council depots or offices. However, the use of vehicles or equipment by employees may be allowed where it has been decided by the appropriate Manager that the needs of a service required it.

5.6.4.2 To prevent any issue arising, there is a prohibition on loaning or hiring out of council-owned equipment other than in the following circumstances. The exceptions include where equipment is hired along with the use of council accommodation (such as the council chamber or committee rooms), where plant is loaned to the council's sub-contractors for use on council business, in the case of schemes such as the salary sacrifice cycle scheme, or exceptionally where equipment is loaned. Such a loan must be subject to prior approval from their Director and the voluntary organisation's insurance cover being deemed adequate by the council.

## 5.7 **PERSONAL INTERESTS**

5.7.1 Employees must declare to their Director any financial or non-financial interest that could bring them into conflict with the council's interest. This could include involvement with an Organisation receiving Grant Aid from the Council, Membership of an NHS Trust Board, involvement with an Organisation or Pressure Group which may seek to influence their Authority's policies. Membership of a Trade Union is exempted from this requirement. A separate Code on the Disclosure of Financial Interest is attached as Annex 1.

5.7.2 An employee must declare to their Director membership of any organisation which is not open to the public without formal membership with a commitment of allegiance and with secrecy about rules or membership conduct.

5.7.3 Employees who have an interest, financial or non-financial, should not involve themselves in any decision on allocation of Council services or resources from which they, their friends or family might benefit, and should ensure that the matter is referred immediately to their Line Manager or Head of Service.

## 5.8 **EQUALITY**

5.8.1 Employees must ensure that they comply with the council's equality policies and procedures in addition to the requirements of the law. All members of the local community, customers, and other employees have a right to be treated with fairness and equity.

5.8.2 If there is any doubt as to what is required the relevant Director must be consulted.

## 5.9 **PROCUREMENT**

5.9.1 Every employee involved in procurement and dealing with contractors must be clear on the separation of client and contractor roles within the council. Senior employees who have both a client and a contractor responsibility must be aware of the need for accountability and openness.

5.9.2 Employees in contractor or client units must demonstrate fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

- 5.9.3 Employees who are privy to confidential information on tenders or costs for either internal or external contractors must not disclose that information for any unauthorised purpose.
- 5.9.4 Employees must ensure that no special favour is shown to current or recent former employees, or their partners, close relatives or associates in awarding contracts to businesses run by them, or employing them in a senior or managerial capacity.
- 5.9.5 An employee contemplating a management buy-out of an organisation in a procurement relationship with the council must, as soon as they have formed a definite intent, inform the Assistant Chief Executive - Legal and Democratic and withdraw from the procurement process.

## 5.10 **CORRUPTION**

- 5.10.1 It is a serious criminal offence for an employee to corruptly give or receive any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or detriment to any person in their official capacity. If such an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

## 5.11 **USE OF PUBLIC FUNDS**

- 5.11.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They must strive to ensure value for money to the local community and to avoid legal challenge to the council.
- 5.11.2 If an employee is concerned about whether particular funds are being properly applied, he or she must raise the matter with their Director in the first instance.

## 5.12 **HOSPITALITY**

- 5.12.1 Employees must treat with extreme caution any offer, gift, favour or hospitality made to them. If there is a genuine need as a legitimate part of an employee's job to accept offers of hospitality this may be allowed. The decision whether to accept is one of common sense, however, any employee who is in doubt about the legitimacy of any offer of hospitality must ask his/her Director for advice.
- 5.12.2 When considering whether or not to accept hospitality employees must be sensitive to the timing of decisions for letting contracts for which the provider may be bidding and must never accept hospitality from a contractor during, or just prior to, a tendering period.
- 5.12.3 Acceptance by employees of hospitality at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal.
- 5.12.4 Employees must make a declaration of a gift if they are made a beneficiary of a will as a result of their employment.
- 5.12.5 Any offer, gift, favour or hospitality as described in the above paragraphs should only be accepted where the employee is satisfied that any purchasing, planning or other Council decisions are not compromised. Employees should not place themselves in

a position where their own integrity and the integrity of the Council may be called into question.

- 5.12.6 When hospitality has to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the Council.
- 5.12.7 Employees must not accept significant personal gifts from contractors and outside suppliers. Insignificant tokens such as pens or diaries may be accepted.
- 5.12.8 When an employee accepts any gift, favour or hospitality made to them personally or on behalf of the Council they should complete the form in Annex 2. Once signed by the Director it should be sent to the Assistant Chief Executive – Legal and Democratic who maintains a register that is open to inspection by the council's Internal Audit who may present such information to the appropriate Committees of the Council. If an employee believes that an improper motive exists concerning a gift or hospitality, the employee should report this immediately to the Director, who will in conjunction with the Chief Executive, decide an appropriate action e.g. withdrawal of business and/or referral to the police. The Director of Resources and Assistant Chief Executive – Legal and Democratic must be informed.
- 5.12.9 An employee may only make offers of hospitality where the arrangements can be justified as being in the interests of the council. Consideration must be given to the nature and scale of the hospitality and the circumstances in which it is being offered. All offers of hospitality must be agreed in advance by the relevant Director and recorded on the declaration of gifts and hospitality form. Any decision to offer hospitality must have regard to the council's financial position and appropriate use of public funds.

### 5.13 **SPONSORSHIP**

- 5.13.1 Where an outside organisation wishes to sponsor a council activity whether by invitation, tender, negotiation or voluntarily, the standards concerning acceptance of gifts and hospitality apply. Particular care must be taken when dealing with contractors or potential contractors
- 5.13.2 If the council wishes to sponsor an event or service neither the employee concerned, nor any partner, spouse or relative must benefit from such sponsorship in a direct way without their being full disclosure to the relevant Director or Chief Executive of any such interest. Similarly where the council through sponsorship, grant aid, financial or other measures gives support in the community, the employee must ensure that impartial advice is given and there is no conflict of interest.

### 5.14 **TRAVEL AND SUBSISTENCE**

- 5.14.1 Employees must put in claims for travelling and subsistence only incurred in carrying out their duties on behalf of the Council.
- 5.14.2 The Council will not pay any claim for alcohol on any occasion.
- 5.14.3 Further information is contained in the 'Travelling and Subsistence Policy and Procedure'.

### 5.15 **WELLBEING AND SAFETY**

5.15.1 Every employee is responsible for taking reasonable care for their own health and safety, that of their colleagues, service users and any other third parties. They must also conduct themselves in a manner which maintains public confidence in their integrity and the services provided by the council.

5.15.2 An employee must not be under the influence of alcohol at any time while at work, on-call or standby, and whilst being paid to do so. Employees are not allowed to drink during working hours, including meal breaks and whilst on standby other than at special events authorised in advance by the appropriate Director or Chief Executive. Permission must be sought from the appropriate Director by an employee who is representing the council, while entertaining clients with social drinking, whether this is during or outside of normal working hours.

## **6 NOTES**

6.1 This Code of Conduct supersedes neither the council's disciplinary and grievance procedures, nor the provisions of the Local Government Conditions of Service, as supplemented and amended by decisions of Herefordshire Council.

6.2 Copies of the policies and procedures referred to in this document are available from the intranet, your manager, or the human resources (HR) team.

6.3 If you need further assistance with this document please refer to your manager or Human Resources Officer.

## **7 COMPLIANCE**

7.1 Failure to follow this procedure may impact on good employee relations and the reputation of the council as a good employer. In addition, it may result in the council breaching employment legislation and incurring financial penalties.

7.2 Managers who fail to manage in accordance with this policy will be investigated and this may lead to formal action under the Managing Performance or Disciplinary Policy and Procedure.

## **8 IMPACT ON THE COUNCIL'S KEY PRIORITIES**

8.1 The policy provides clear statements about manager and employee responsibilities to ensure that the conduct of all council employees is of a high standard. This underpins service provision and enables the council to effectively meet its key priorities.

## **9 TRAINING AND AWARENESS REQUIREMENTS**

9.1 Managers and employees will be informed about this policy and procedure via communication channels such as team talk and first press.

9.2 HR Officers will liaise with directorate management teams to establish and agree support arrangements to assist managers to carry out their responsibilities in para 4.

## **10 MONITORING**

10.1 The Joint Management Team is responsible for ensuring the implementation and review of this policy and procedure.

- 10.2 The Assistant Chief Executive - HR will be notified of any cases where it is concluded that the policy was breached. The notification will indicate whether there are any changes or improvements required to the policies, procedure, training, support or any other aspect of the council's approach to dignity at work matters.
- 10.3 HR will monitor the effectiveness of the policy through information received via feedback from managers and employees through, for example, management team meetings and the Employee Opinion Survey and exit interviews, as well as the numbers of employees using this procedure.

## **11 REVIEW**

- 11.1 This document will be reviewed after three years unless circumstances demand a review before then.

**ANNEX 1****DISCLOSURE OF FINANCIAL INTEREST**

1. The Code of Conduct for Employees requires employees to declare all private and business relationships with contractors to their Director as well as financial or non-financial interests that they consider could bring about conflict with the Council's interests.
2. Section 117 of the Local Government Act 1972 also requires employees to notify the Council in writing if they have a direct or indirect financial interest in any contract with the Council or under consideration by the Council. As with members, the financial interests of a person with whom an employee is living will also count for these purposes.
3. This document gives additional guidance about the declaration of pecuniary interests. The interest relates to any contract that has been or is proposed to be entered into by the Council or any Committee.
4. All employees must notify their Director and the Assistant Chief Executive – Legal and Democratic in writing that they have a pecuniary interest in such a contract, and abstain from any consideration or discussion of the contract. The Assistant Chief Executive – Legal and Democratic is required to keep a register of these matters which is available for inspection by any member of the Council.
5. This interest can either be direct (i.e. he/she is a party to the contract) or indirect. The latter is defined as including being a partner of or employed by a person with whom the contract made or is proposed to be made or has a pecuniary interest. In the case of persons living together the interest of one shall be deemed to be also an interest of the other.
6. The failure to disclose a pecuniary interest and, where necessary, to abstain from taking part in the Council's consideration of a matter in which an employee has such an interest is likely to constitute maladministration as well as being a criminal offence.
7. An interest will not cease to be pecuniary because the Council's decision is not to the financial advantage of the employee. "Pecuniary" can mean loss as well as gain. If the Council's decision can have any financial effect at all upon the employee then the interest should be declared, unless it arises simply in the employee's capacity as a council tax payer or as a general consumer of the Council's services.

ANNEX 2

**HEREFORDSHIRE COUNCIL  
DECLARATION OF GIFTS AND HOSPITALITY**

Name of officer: .....

Post: .....

**Details of Gift/Hospitality Offered**

Employees should only accept offers of hospitality if there is a genuine need to impart information or to represent the authority in the community. Offers to attend social or sporting functions should be accepted only when these are part of the life of the community or where the authority should be seen to be represented. No cash gifts should be accepted. No gifts should be accepted where you believe it would conflict with your duties to the Council.

.....  
.....  
.....  
.....

**Reason for Gift/Hospitality to be Offered**

.....  
.....  
.....  
.....

**Was the Gift/Hospitality Accepted?**

Please write Yes or No in the Box?

What was the approximate value of the Gift/Hospitality whether accepted or not?

Signed: .....

Print Name: .....

Date: .....

Authorised: (Director) .....

Date: .....

**NB: Please seek consent of your Director before accepting a gift or hospitality.**

**Please return completed form to:**

**Assistant Chief Executive Legal and Democratic) Brockington H11**



# Section 14

## The Planning Code

This Code supplements the Code of Conduct for Members adopted by the Council under Section 51 of the Local Government Act 2000. . Where the provisions of this Code conflict with or are inconsistent with the Code of Conduct for Members, the latter shall prevail. Members should ensure that they are familiar with both Codes and take advice from the Monitoring Officer where necessary to ensure compliance.

The obligations and responsibilities of this Code apply to all Members of the Planning Committee and in similar ways to all other Members.

The Council's planning policies are adopted in the public interest for the benefit of the whole community rather than for any particular individual or interest group. Decisions are required to be taken in accordance with the current development plan and having regard to all material considerations. Each planning application is considered on its merits. However, planning decisions by their very nature are often contentious, with strong contrary views being expressed. Any decision can be the subject of detailed scrutiny or challenge. Failure to follow the requirements of this Code may result in sanctions under the general Code of Conduct for Members, or may be regarded by the Local Government Ombudsman as incompatible with good administration.

This code covers the conduct of both Councillors and Officers. It relates to the whole of the planning process, including policy formulation and development control, and all Councillors and Officers who come into contact with it. The code is designed to promote greater mutual support and understanding between Members and Officers to the benefit of all involved in the planning process. It is also designed to give the public greater confidence that Herefordshire Council discharges its planning responsibilities fairly and openly.

This code is set out in the form of a series of headings with a brief outline of the issues involved, followed by practical advice.

This code consists of 3 principal parts. The first relates to Members of the Committee. The second relates to all other Members of the Council and the third relates to Council officers

### **PART 1 - THE ROLE OF COUNCILLORS WHO ARE MEMBERS OF THE COMMITTEE**

- 1 In making decisions on planning applications, **You will**:
  - **act fairly and openly and without prejudice**
  - **approach each application with an open mind**
  - **carefully weigh up all the material planning considerations**
  - **avoid inappropriate contact with interested parties**
  - **ensure that valid reasons for decisions are clearly stated.**
  
- 2 **You will** be free to vote on planning applications as you consider appropriate (that is, without a Party 'whip'), deciding them in the light of all the relevant information, evidence and arguments. In accordance with the requirements of the Town and Country Planning Act, **you will** base your decisions on the provisions of the relevant Development Plan and all material planning considerations.

- 3 **You may not** give instructions to Officers nor may you place pressure on Officers in order to secure a particular recommendation on an application.
- 4 **You will not** use your position improperly to confer or secure for yourself, or for any other person, an advantage or disadvantage.

### Discussions with Applicants

- 5 Local authorities are encouraged by the Audit Commission, the Local Government Association and the National Planning Forum to enter into pre-application discussions with potential applicants. In addition, negotiations and discussions are likely to continue after an application has been submitted. Such discussions can often be interpreted by the public, and especially by objectors, as prejudicing the planning decision-making process. To avoid this, application discussions should take place within the guidelines below.
- 6 **Pre-application meetings** with prospective applicants are encouraged, but, to avoid misunderstandings, they require a degree of formality. They **will normally only involve Officers**, except where the Head of Planning and Transportation, in consultation with the Chairman of the Planning Committee, has agreed that a pre-application meeting shall include Members along with an appropriate senior Planning Officer.
- 7 It will be made clear at pre-application meetings that:
  - Officers' initial views and advice are given on a without prejudice basis which will be consistent with the provisions of the current Development Plan and other adopted Council policy
  - no decisions may be made or advice given which would bind or otherwise compromise the Planning Committee of the Council (or the Head of Planning and Transportation if delegated to make the decision)
- 8 Where pre-application meetings involve a Member, a note of the discussion will be taken by the Planning Officer and will be made available for public inspection, subject to the usual rules about access to information, if and when an application is submitted. At least one appropriate Planning Officer will be present at all such meetings.
- 9 **You may, following discussion with the appropriate planning officer, and in consultation with the Chairman of the Planning Committee, take part in organised post-submission meetings with applicants or other parties.** A note of any discussions will be taken and will be made available for public inspection, subject to the usual rules about access to information. At least one Planning Officer will be present at all such meetings.

### Lobbying

- 10 Lobbying or seeking to influence a decision is a normal and perfectly proper part of the political process. However, it can lead to impartiality being called into question and the need to declare publicly that an approach of this nature has taken place. Problems could arise if Councillors indicate or give the impression of support or opposition to a development proposal or particular planning application, or declare their voting intention to anyone, before a decision is to be taken. To do so without all the relevant information and views would be unfair and would prejudice the impartiality of the decision making process. It may also mean that a Councillor is open to an accusation of predetermination or bias (which can give rise to a judicial

review of a planning committee's decision); or it may limit the Councillor's ability to take part in further proceedings (see especially paragraphs 29 and 37 below).

- 11 Lobbying can take place by way of an approach to you, by telephone, or on a chance meeting, or by way of a request to see all or some of the Members of the Planning Committee. It is an essential part of the democratic process that members of the public should be able to make their views known to you. However, to avoid compromising your position before you have received all the relevant information, evidence and arguments, **you will:**
- **avoid discussing with an applicant or any other person your thoughts about the merits of a planning application or proposed development**
  - **not make it known in advance of the consideration of the application by Committee whether you support or oppose a proposal unless you accept that this will mean that you may not take part in the decision (see paragraph 12 below)**
  - **restrict your response to giving procedural advice, and make it clear that that is all you are prepared and allowed to do**
  - **direct lobbyists or objectors to the case officer, and**
  - **advise the Head of Planning and Transportation as soon as possible of the existence of any substantial or abnormal lobbying activity.**
- 12 **If you express publicly a final view on an application** prior to the meeting of the Planning Committee, **you will create a prejudicial interest, and your further participation will be limited as set out in paragraph 29 below.** Public expression of a view would include, for example, making a statement to the press of your firm attitude to an application, or in any document to be made publicly available, at a meeting of the Council or a Town or Parish Council (or one of their Committees), or in any situation where the view expressed might reasonably be expected to gain wider circulation.

### Site Inspections

- 13 Site Inspections by a Committee can be helpful in reaching a decision on issues where site circumstances are clearly fundamental to the decision. This is true particularly when the issues concern, for example, visual impact, the character of an historic building or the effect of development on local amenity. However, site inspections are costly, cause delay to decisions and are an unsuitable place for holding a reasoned debate.

The criteria for holding site inspections are:

- the character or appearance of the development itself is a fundamental planning consideration;
- a judgement is required on visual impact;
- the setting and surroundings are fundamental to the determination or to the conditions being considered, and cannot reasonably be made without visiting the site in question.

The Chairman of the Planning Committee and the Head of Planning and Transportation will determine which applications will be the subject of a prior site inspection. This does not prevent any member of the Committee requesting a site

inspection of a site at the Committee meeting when it has not already been visited by this procedure.

- 14 Site Inspections should not be held when inspection of the site is irrelevant to the material conditions. Any Member of the Committee may request a site inspection, but reasons based on the above criteria must be stated, and will be minuted.
- 15 **The purpose of the site visit is fact finding.** Officers will be able to point out relevant features of the site and surroundings. You will be able to see the physical features of the site and ask questions through the Chairman or the officers to seek clarification. Neither the applicant/agent or third parties will be allowed to participate in the site inspection. The input of these parties is made at the Committee meeting itself. At the discretion of the Chairman of the Planning Committee the appropriate Parish or Town Council may be invited to observe the inspection. In these circumstances the Parish or Town Council may not contribute to the opportunity to ask questions of officers on site.
- 16 **No discussion of the merits of the case must be permitted and all questions from you will be put through the Chairman.**
- 17 The visiting party will stay together as a group.
- 18 As a member of the Planning Committee when on site visits you should not make any comments that could create an impression that you had already formed a view on the merits of the application. No decision on the application should be made until the meeting of the Planning Committee at which the application is to be considered, when they will have before them all necessary information to be able to make an informed decision, including a record of the site inspection.
- 19 Conduct of Visits
  - Visits will be conducted in a formal manner.
  - The Chairman or Vice-Chairman will open the meeting, and remind members of its purpose and conduct.
  - Officers will highlight issues **relevant to site inspection**. If issues are raised which necessitate consultation with the applicant or his agent, this should be done after the close of the meeting and the outcome reported to the subsequent committee.
  - Local Ward Members will be invited to site inspections in their wards and asked to highlight local issues relevant to the site inspection.
  - The Chairman or Vice-Chairman will close the meeting.
- 20 General Matters
  - There will be **no** debate about the merits of the application and no decision will be made.
  - No formal notes will be made.
  - **No** hospitality will be accepted.

- 21 **If you find it necessary to visit a site alone (perhaps because it was not possible for you to attend a Committee visit), you should view the site only from public vantage points, seek to avoid any discussion with interested parties, and, if there is such discussion, make it clear that no decision on the application will be taken until it has been discussed at Committee.**

#### **Material Submitted to Committee**

- 22 If you receive material from or on behalf of an applicant or third party in connection with an application before a Committee you should establish from the Planning Officers whether the material has been received by them. If it has not, you should make it available as soon as possible to the Head of Planning and Transportation.
- 23 Documents in connection with an application should all be dealt with in the officer's report to Committee. Any additional information received after the preparation of that report up to 17.00 hrs on the day before the Committee meeting will also be brought to the attention of the Committee if it raises new and relevant material planning matters. A printed Committee update will be available for Members at the start of each Planning Committee. Papers received after that time will normally be discounted, since time will not be available to check their accuracy or to give consideration to their implications.

#### **Declaration of Interests at Committee**

- 24 **You should declare any interests in applications coming before the Planning Committee at the start of the meeting.** In order to be able to do that, you should seek early advice from officers, including the Monitoring Officer, if you are in any doubt whatsoever. However, if for some reason it is not possible for an interest to be declared by yourself at the outset of a meeting, or if it becomes clear at a later stage during the meeting that you have an interest in an item under discussion, then you must declare that interest at the first opportunity.
- 25 When declaring an interest, you must specify the nature of the interest, and whether it is personal or prejudicial. The minutes of the meeting must record what type of declaration was made.
- A **personal interest** exists where a decision on the matter at hand could reasonably be regarded as affecting your well being or financial position of a relevant person (you, your employer, family or close friends) to a greater extent than other people in the area affected by the decision. If it does you must **say** you have a personal interest but can **stay** and take part and vote in the meeting.
  - A **prejudicial interest** exists where a member of the public (who has knowledge of the relevant facts) would reasonably regard your personal interest as being so significant that it is likely to prejudice your judgement of the public interest.
- 26 **If you declare a prejudicial interest,** then under paragraph 12(2) of the Members' Code of Conduct (Appendix 12 of the Constitution), you may attend a Planning Committee meeting but only for the purposes of making representations, **provided** that the public are also allowed to attend the meeting for the same purpose. You must declare the nature of your interest at the start of the meeting. If you have such an interest you should notify the Assistant Chief Executive Legal and Democratic before the meeting that you wish to speak.
- 27 The procedure in Committee will be as follows. The Planning Officer will present the report. If you want to make representations, you take your place in the space

allocated to public participation. You may make representations for no longer than three minutes (the time allocated to public participants at planning committee). Thereafter, you may take no further part in the debate or decision-making of the planning committee, and must immediately leave the meeting. You may not stay in the meeting or listen to any other public participation in respect of the application.

- 28 Withdrawal from the meeting involves physically leaving the meeting room. Moving to the public gallery is not sufficient. The Chairman of the Committee should suspend the proceedings of the Committee briefly while you leave the Committee room.
- 29 Where you have a dispensation granted by any appropriate person or body allowing you to speak and/or vote on a matter in respect of which a prejudicial interest has been declared, that dispensation applies also to this Code.

### **Cabinet Members**

- 30 There will be occasions when a Cabinet Member will wish to express comments on a particular application. This may include where the Council is the applicant. In those circumstances where the Cabinet Member is clearly so committed to a particular development that it would not be possible to demonstrate an ability to take account of counter-argument before a final decision is reached then **he or she may speak at the Planning Committee meeting to argue for the development but must then withdraw from the meeting while the application is discussed and determined.**
- 31 Where the Cabinet Member also has a ward representation role, he or she may also speak as local member.

### **Planning Committee Members who serve on Parish and Town Councils**

- 32 Some Councillors will be Members of Parish or Town Councils as well as Herefordshire Councillors. This situation can present problems where the Parish or Town Council is consulted on planning applications. The comments of the Parish Council should concentrate on local issues, but this is often the stage when Herefordshire Councillors come under pressure to indicate their support for or objection to a particular proposal. Of particular concern is the potential for a conflict of interest arising when a Member of both Councils votes on an application at a Parish or Town meeting before the Planning Committee meeting. A Councillor in this position could end up voting in the opposite way when all the relevant information is made available in the Planning Officer's report.
- 33 In order to avoid this potential conflict, **it is better that you do not serve on Parish or Town Council's planning committees.** If you cannot avoid that, you should not vote or say anything, which would create the impression that you have already made up your minds before to the Herefordshire Council planning meeting. In this way you will avoid being part of the formal process of submitting representations on planning applications to the Council, and so demonstrate your impartiality.
- 34 If this is unavoidable then you should indicate to the meeting **and request the Clerk to record in the minutes** that you vote based on the limited information available to the Parish/Town Council, and that your view change; and that if the matter comes before a planning committee of the Council you will approach it with an open mind, having regard to any Council policies, the Planning Officer's report, representations from the applicant and/or objectors and the views of other Councillors on the Committee. Those Members who have indicated a definitive view on an application

or have voted without the matter being recorded as above should then proceed on the basis that they have a prejudicial interest.

### **Voting at Committee**

- 35 **You should vote on an application before a Committee only if you have been present for the whole of the presentation of and discussion on the application.**

### **Non Members of Planning Committee Attending Meetings**

- 36 All Council Members may attend meetings of the Council's Planning Committee even if they are not a member of the Committee (unless you have a prejudicial interest). **You may speak but not vote on items under the procedures laid down in the Constitution unless under paragraphs 29 and 30 above.** When you attend the Planning Committee, you should not sit in the public gallery, but in the place reserved in the Committee room for Members of the Council who are not Members of the Planning Committee. When you speak at the meeting, either the Chairman of the Committee in calling upon you to speak or you in speaking should make it clear upon what basis you are taking part in the meeting, and that you have no right to vote on the application concerned. The rules on declaring interests set out at paragraphs 27-30 of this Code apply at all times.

### **Decisions Contrary to Officer Recommendations or to Development Plan Policies**

- 37 From time to time, there will be occasions when you or the Planning Committee disagree with the professional advice on an application given by the Head of Planning and Transportation.
- 38 The law requires that decisions should be taken in accordance with the development plans unless material consideration indicate otherwise (S38A Planning and Compensation Act 2004)
- 39 The Planning Committee is the only mechanism for considering non-delegated applications.
- 40 On this basis, and to build in the checks and balances suggested by the Audit Commission the following protocol will be followed:

In the circumstances where the Planning Committee resolves to determine an application contrary to the officer recommendation (and the Head of Planning and Transportation or the Development Control Manager considers that either major policy issues are at stake or if the decision will be difficult to defend if challenged) a further report will be submitted to the next meeting of that Committee:-

- a) Updating Members on any additional information received;
  - b) Reporting on any discussions that have taken place with the applicants/objectors since the initial meeting; and
  - c) Setting out the legal, procedure and likely financial implications of proceeding with the initial resolution.
- 41 If the Planning Committee makes a decision contrary to the officers' recommendation (whether for approval or refusal) a detailed minute of the Committee's reasons should be made and a copy placed on the application file. In this context Members should

be prepared to explain in full their reason for not agreeing with the officers'. In so doing, Members should observe the 'Wednesbury principle' which requires all relevant information (i.e. material considerations) to be taken into account and all irrelevant information (i.e. non-material matters) to be ignored.

- 42 Planning officers should also be given an opportunity at the meeting to explain the implication of the contrary decision in order to consolidate any information already provided in the Further Information Report.

### **Applications in which a Member of the Council has an interest**

- 43 All applications which are submitted by or on behalf of you as a Member of the Council in your private capacity or by a close relative or your partner (a "relevant person" as defined in paragraph 8(2) of the Code of Conduct for Members) must be drawn to the attention of the Head of Planning and Transportation by yourself in writing, and if you have a material interest in the outcome of your relative's application or if the application is submitted by your partner, it will be reported to the Planning Committee for a decision, rather than being dealt with in accordance with the Scheme of Delegation to Officers.
- 44 **You must take no part in the determination of the application. You must declare a prejudicial interest however you may make representations in accordance with paragraph 29 before leaving the meeting and you must not seek to influence any decision made. You may also appoint an agent who can speak subject to Standing Order 5.11 (Public Speaking at meetings of Planning Committees and Area Planning Sub-Committees) on your behalf.**
- 45 If an application is submitted by a relative or partner (as defined in paragraph 8 of the Code of Conduct for Members), the applicant may speak at committee meetings (subject to Standing order 5.11 (Public Speaking at Meetings of Planning Committees and Area Planning Sub-Committees) or appoint an agent to speak on his or her behalf.
- 46 The Chairman of the Planning Committee which will determine the planning application in which you have an interest will appoint another Member of the Council to provide procedural and other advice and information to the applicant, and to the Town or Parish Council concerned.

### **Hospitality**

- 47 As a Member of the Council **you are discouraged from receiving hospitality from people with an interest in a planning proposal.** If receipt of hospitality is unavoidable, you will ensure that it is of the minimum level and, if it exceeds the level to which the Code of Conduct for Members applies (£25), you must declare its receipt as soon as possible, in the Hospitality Register kept by the Assistant Chief Executive Legal and Democratic.

### **Training**

- 48 As a member of the Planning Committee you are required to undergo training in planning procedures normally take place within three months of appointment to the Committee and at appropriate intervals thereafter. A record will be kept by the Assistant Chief Executive Legal and Democratic of the training you undertake. Consistent failure to undertake this training will result in disqualification from being a member of the Planning Committee.

## **PART 2 - THE ROLE OF COUNCILLORS WHO ARE NOT MEMBERS OF THE COMMITTEE**

- 49 In general Councillors who are not members of the Committee and who are not members for wards affected by an application will be expected to abide by the same principles as those members who are members of the Planning Committee. In particular members who are not members of the Planning Committee will:
- act fairly and openly
  - approach each application with an open mind
  - avoid inappropriate contact with interested parties
  - advise the Head of Planning and Transportation as soon as possible of the existence of any substantial or abnormal lobbying activity
  - take no part in the processing of applications in which they have a personal or prejudicial interest
  - not give instructions to officers nor place pressure on officers in order to secure a particular recommendation on an application
- 50 Non-committee members who are members for wards affected by an application are able to adopt a role which represents their own views on a planning application (as the ward member) to the Planning Committee or that of their constituents. In this capacity the ward members will be invited to attend any Planning Committee site inspections that takes place in their ward.
- 51 Non-committee members should not lobby Planning Committee members in order to secure the outcome on a planning application that either they or their constituents seek. The ward member, the appropriate Town or Parish Council and local residents will have the opportunity to present their views to the Planning Committee in accordance with the Council's adopted standards on Public Speaking at the Planning Committee.
- 52 All Council Members may attend meetings of the Council's Planning Committee even if they are not a member of the Committee (unless you have a prejudicial interest). **You may speak but not vote on items under the procedures laid down in the Constitution unless under paragraphs 29 and 30 above.** When you attend the Planning Committee, you should not sit in the public gallery, but in the place reserved in the Committee room for Members of the Council who are not Members of the Planning Committee. When you speak at the meeting, either the Chairman of the Committee in calling upon you to speak or you in speaking should make it clear upon what basis you are taking part in the meeting, and that you have no right to vote on the application concerned. The rules on declaring interests set out at paragraphs 27-30 of this Code apply at all times.

## **PART 3 - THE ROLE OF OFFICERS**

- 53 In making delegated decisions on applications, officers will:
- act fairly and openly
  - approach each application with an open mind
  - carefully weigh up all the material planning considerations
  - avoid inappropriate contact with interested parties

- ensure that reasons for decisions are clearly stated
- 54 In reporting to Committee officers will:
- provide professional and impartial advice
  - make sure that all information necessary for a decision to be made is given
  - set the application in the context of the Development Plan and all other material considerations
  - include the substance of objections and the views of people who have been consulted
  - provide a clear and accurate written analysis of the issues
  - give a clear recommendation
- 55 Record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. Particular care is to be taken with delegated decisions, which should be as well documented and recorded as those taken by members. These principles apply equally to enforcement and development plan matters.
- 56 Any material planning information which is received after the written report has been prepared and before the cut-off time specified in paragraph 26 above will be presented orally to the Planning Committee by officers.
- 57 The Head of Planning and Transportation, in discussion with the Chairman of the Planning Committee, may withdraw any item from the agenda of the Planning Committee after the preparation of the report but before discussion by the Planning Committee if the circumstances of the consideration of an application change within that period.
- 58 Officers are responsible for carrying out the decisions of the Planning Committee, whether or not those decisions are in line with officer recommendations.

### **Discussions About Planning Applications**

- 59 All officers taking part in pre-application or post-submission discussions with applicants, supporters or objectors should make it clear that decisions on planning applications are taken either:
- by the elected Members in Committee, or
  - in specific circumstances by the Head of Planning and Transportation or by an officer to whom he or she has the power to delegate.
- 60 A written note will be made of all such meetings and may be distributed. The meeting note and any follow-up correspondence must be placed on the planning application file, in case an application is made following initial discussions.

### **Disclosures of Interest**

- 61 Officers must play no part in the processing of any application in circumstances where there is, or would be perceived to be, a conflict between their personal or financial interests, those of their families or friends, and their professional duty. They must openly declare the existence of any such conflict in writing to the Head of

Planning and Transportation. Any interest the Head of Planning and Transportation has in an application must be declared to the Assistant Chief Executive (Legal and Democratic).

### **Applications Submitted by Officers**

- 62 All applications submitted from officers holding politically restricted posts as defined in the Local Government and Housing Act 1989 or employed in the Planning and Transportation Service must be reported to the Planning Committee for a decision, rather than being dealt with in accordance with the Scheme of Delegation to officers. If the officer concerned is present at the meeting of the Planning Committee at which such an application is determined, he or she must leave the room during consideration of the application.

### **Hospitality**

- 63 Officers are discouraged from receiving hospitality from people with an interest in a planning proposal. If receipt of hospitality is unavoidable, officers will ensure that it is of the minimum level. If it exceeds £25 they must declare it as soon as possible in the Hospitality Register which is retained by the Assistant Chief Executive Legal and Democratic.

### **Action on Decisions Taken Contrary to Professional Advice**

- 64 In cases where an officer recommendation for approval has been overturned by Committee and an appeal is lodged:
- officers will give full support to Members and any external witnesses in preparing evidence for any public inquiry, short of giving evidence themselves.
  - officers will give evidence themselves only in exceptional circumstances, where their Code of Professional Conduct is not breached
  - where a hearing is to be held, with no cross-examination, officers may give evidence themselves, but this will normally be only if the officer concerned has not been involved in formulating the original recommendation
  - officers must give full support to Member decisions which are appealed using the written representations procedures

### **General**

- 65 The operation of this Code will be monitored by the Standards Committee and revised if necessary following a change in the Council's Rules of Procedure or Constitution.

### **References**

66. This Code of Conduct has been prepared in the wider context of national best practice on this matter. Of particular relevance are:
- Local Government Association
  - Probity in Planning May 2009
  - Standards Board for England
  - Code of Conduct Guide for Members May 2007
  - Association of Council Secretaries and Solicitors
  - Model Members' Planning Code of Good Practice 2007





<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>13 NOVEMBER 2009</b>
<b>TITLE OF REPORT:</b>	<b>LOCAL GOVERNMENT OMBUDSMAN REPORT</b>
<b>PORTFOLIO AREA:</b>	<b>ENVIRONMENT &amp; STRATEGIC HOUSING</b>

**CLASSIFICATION:** Open

## Wards Affected

County-wide

## Purpose

To consider a report and its recommendations from the Local Government Ombudsman.

## Background

Mr Ash and Mrs Birch (not real names) complained that the Council in respect of planning application DCNE2006/0934/F, as follows:-

- a) Failed to require the submission of plans accurately showing the position of the house proposed next to their property,
- b) Failed to ensure compliance with the approved plans after construction began, and

## Ombudsman Conclusions

The Ombudsman concluded as follows:-

- a) There was a lack of completeness and precision in the case officer report
- b) The Council failed to have regard to inform the objectors of subsequent requests for amendments
- c) A request for an amendment was based on an incorrect plan and was not approved in writing.

The Ombudsman has therefore found maladministration causing injustice.

## Ombudsman Recommendations

The Ombudsman recommends the Council:

- (i) Pay Mr Ash and Mrs Birch the sum of £1250 for their outrage, lost opportunity and

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Further information on the subject of this report is available from  
Andrew Ashcroft, Head of Planning and Transportation on (01432) 383098

uncertainty;

- (ii) Make them a formal apology for the mistakes identified; and
- (iii) Review its procedures and staff training on amendments to planning applications and planning permissions in the light of the issues highlighted in the complaint

## **Comments**

The Ombudsman does conclude that the decision to grant planning permission was not fundamentally flawed. However the criticisms with regard to the inaccuracies in the application and the committee report and the post decision decisions with regard to amendments are acknowledged and accepted.

Measures have already been put in place to ensure that there is greater accuracy in terms of submitted plans and the content of committee reports. The ongoing review of Planning Services through its Business Improvement Plan will also aim to secure improved training on the issues raised

Council is advised to accept the recommendations. .

## **Appendices**

Appendix 1 – Ombudsman report dated 29 July 2009.

## **Background Papers**

None identified.

# Report

on an investigation into  
complaint no 08 004 420 against  
Herefordshire Council

*29* July 2009

# Investigation into Complaint No 08 004 420 Against Herefordshire Council

<b>Table of Contents</b>	<b>Page</b>
<b>Report Summary</b>	<b>1</b>
<b>Introduction</b>	<b>3</b>
<b>Legal and Administrative Background</b>	<b>3</b>
<b>Investigation</b>	<b>5</b>
Background	5
Events in 2006	5
Events in 2007	7
Events from 2008	8
The Council's comments	9
<b>Conclusions</b>	<b>11</b>
<b>Findings</b>	<b>13</b>
<b>Appendix 1: Location plan</b>	
<b>Appendix 2: Extract from the Council's Development Control Manual</b>	

## Key to names used

Mr Ash	Complainant
Mrs Birch	Complainant
Officer A	Planning Officer
Officer B	Team Leader
Officer C	Head of Policy

## **Report Summary**

### **Planning Applications**

Mr Ash and Mrs Birch complain that the Council failed to require the submission of plans that accurately showed the position of a new house next to their listed property, when it determined the planning application for the development. They also say the Council failed to ensure the compliance of the developer with the approved plans after construction began and it has allowed the new dwelling to be built closer to their home, with windows that have caused them a loss of privacy. They consider that the Council gave inadequate consideration to their complaint about the development. They say they are now overlooked where this was not the case before, by a new house that is out of scale and keeping with its surroundings.

### **Finding**

Maladministration causing injustice

### **Recommended remedy**

I recommend that the Council:

- a) Pay Mr Ash and Mrs Birch the sum of £1250 for their outrage, lost opportunity and uncertainty.
- b) Make them a formal apology for the mistakes identified.
- c) Review its procedures and staff training on amendments to planning applications and planning permissions in the light of the issues highlighted in the complaint.

1.

## Introduction

1. Mr Ash and Mrs Birch complain that the Council failed to require the submission of plans that accurately showed the proposed position of a new dwelling within a building plot (Site A) adjacent to their property, when it determined the planning application for the development, reference no DCNE2006/0934/F (see Appendix 1).
2. They also say the Council failed to ensure the compliance of the developer with the approved plans after construction began and it allowed the new dwelling to be built closer to their home than as specified, with west facing windows, at ground and first floor level that have caused them a loss of privacy. They further consider that the Council gave inadequate consideration to their complaint about the development and the regard for their amenity.
3. They say that they are now overlooked, where this was not so before, by a new house that is out of scale with its surroundings and of a design and appearance that does not reflect the character of nearby properties, including their home.
4. An officer of the Commission has visited the complainants, inspected the Council's files and interviewed the officers who dealt with the planning application referred to and their formal complaint.
5. The names used in this report are not the real ones of the people involved, to protect confidentiality<sup>1</sup>.

## Legal and Administrative Background

6. Government guidance in Circular 15/92 specifies that an amendment requested to a planning permission should be the subject of a fresh planning application if it is considered to warrant re-notification. The Circular highlights factors that need to be taken into account, including: if objections or reservations had been raised at an earlier stage that were substantial and justified further publicity; if the proposed changes were significant; if earlier views covered the matters now under consideration; and if the changes proposed would be likely to be of concern to parties not previously notified.
7. The Courts have affirmed that officers may deal with working amendments to a planning permission where the variations are not considered material and that it is appropriate for officers to decide whether a proposed amendment is minor or material. But it has been held that interested parties should be informed of requested changes that may directly affect them.

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<sup>1</sup> Local Government Act 1974, s 30(3)

8. In *Breckland District Council v Secretary of State* 1992, the Court ruled that third parties had a right to be informed of and consulted on any amendment that materially affected them. In *British Telecommunications v Gloucester City Council* 2001, the High Court ruled that it was appropriate for local planning authorities to take a pragmatic approach when considering amendments to a planning application. The question was whether the change was so substantial that, in the interests of fairness, a fresh application should be lodged.
9. In *Welsh Aggregates v Secretary of State* 1983, it was held that what constituted a substantial alteration was a matter within the discretion of the planning authority or a Planning Inspector. A Court would not ordinarily interfere unless the discretion was exercised manifestly unreasonably (c.f. *Wessex Regional Health Authority v Salisbury District Council* 1984). In that instance, the District Council had acted reasonably in approving certain minor changes and in requiring planning applications for more substantive alterations. The question of re-consultation on the minor amendments had not arisen because of the definition of what constituted a minor amendment. The decision to treat some of the changes as minor had been taken by an experienced, qualified planning officer who exercised his professional judgment.
10. The Council's development control manual sets out best practice for dealing with amendments requested to an application or following the grant of planning permission. Factors that should guide officers in deciding whether a new application is required include: whether the basic form, appearance, shape or position of the scheme remains unaltered, namely is the scheme essentially the same as submitted/approved; if the change re-introduces something previously found unacceptable and negotiated away; and whether changes would materially alter the height or appearance of a development or make the position worse for neighbours, by bringing it closer to a boundary or by having windows facing the boundary. The best practice cautions against the acceptance of cumulative amendments as minor and warns that neighbours who may have inspected original plans will be expecting the development to be as shown on the plans. The best practice notes that if an amendment is sought to a planning permission, such that re-notification to the Parish Council or neighbours is considered necessary, then the change should probably not be accepted as minor. The full guidance is set out at Appendix 2.
11. Listed buildings are buildings of special architectural or historic interest that have been included on a statutory register by the Department for Culture, Media and Sport because of their heritage significance. Grade I listed buildings are those of exceptional interest. Grade II<sup>2</sup> listed buildings are particularly important buildings of more than special interest. Grade II listed buildings are of special interest, which warrants every effort to preserve them. Councils must have regard to the

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2 Planning (Listed Buildings and Conservation Areas) Act 1990

impact of proposed development on the setting and character of listed buildings, when determining planning applications, and ensure that new development is carefully sited and designed. Councils may designate groups of buildings of special architectural or historic interest and related open spaces as Conservation Areas. Proposals for new development in Conservation Areas must preserve or enhance their character<sup>3</sup>.

## Investigation

### Background

12. Mr Ash and Mrs Birch live in a Grade II listed thatched house. Site A was former garden land. Their property and Site A lie within a conservation area and an Area of Outstanding Natural Beauty (AONB). The new house is two storey, detached, modern in style and located immediately to the east of Mr Ash and Mrs Birch's home, in the centre of Site A. The ground level of Site A is 1.5 metres higher than the nearby road. The east side of Mr Ash and Mrs Birch's property is at a similar level to the new development, but the remainder of their land slopes downwards to the south and west. A field access lies between Site A and Mr Ash and Mrs Birch's property.

### Events in 2006

13. Planning application reference no DCNE2006/0934/F was submitted on 24 March 2006 for a new house and garage on Site A. On 31 March 2006, the Council notified Mr Ash and Mrs Birch of the application and invited their comments.
14. On 4 April 2006, Officer A, the case officer, visited Site A. He noted that the application site sloped gently towards Mr Ash and Mrs Birch's property, beyond a drive and within the village conservation area and AONB. The land was fairly well screened by mature trees and had been in use mainly as garden and lawn. A site notice was posted the same day.
15. On 6 April 2006, Mr Ash and Mrs Birch objected to the scale, height, appearance and proximity of the new dwelling, its fit within the immediate area and the location of a drive close to their access. They said the proposed new house was of an inappropriate modern design, sandwiched between two older properties; and it would be elevated, dominating and close to their property that was at a lower level. They considered that there would be an adverse impact on the view from their upstairs bedroom windows, with proposed screening inadequate to hide a dwelling of the size proposed. They were not opposed to a smaller, more

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<sup>3</sup> Planning Policy Guidance Note 15 (PPG15): Planning and the Historic Environment

sympathetic development at the same level as their property, with a drive further away and a design more in keeping.

16. On 7 April 2006, the application was advertised in the press. On 17 April 2006, the Council received a response from the Parish Council. Around this time, an undated file note said the authority's conservation officer had concerns about the scale of the dwelling.
17. On 21 April 2006, Officer A wrote to the applicant's agent following his site visit and consultation responses. The Council's conservation officer considered that the plot was of a sufficient proportion to accommodate a single dwelling without an unduly detrimental effect on the conservation area. The style of architecture was suitable for the village. But he was concerned about the scale of the development and recommended that its mass be reduced, to make it more in keeping. The Parish Council and neighbouring residents had also commented that the site was prominent. Officer A added that it appeared that there had been a misunderstanding about proposed finished site levels. He asked the agent to conduct a site survey, showing existing and proposed site levels, and submit amended plans within 21 days.
18. On 4 May 2006, the Council received amended plans showing a reduction in the gable facing Mr Ash and Mrs Birch's property, from 8.0 metres to 7.3 metres, a reduction in the ridge height of approximately 300mm and a lowering of the ground level by 300mm, through intended additional excavation. On 12 May 2006, the Council notified Mr Ash and Mrs Birch of the revised plans.
19. On 24 May 2006, Mr Ash and Mrs Birch reiterated their objections, after viewing the revised plans. The modern design of the new house was out of keeping and inappropriate given its setting next to their listed property. The drive remained too close. The development, while lower, was still far too high and over dominating. Existing screening was only partial along the boundary with their property and limited mainly to the summer months. They questioned the suitability of an 'executive' style house in the conservation area and AONB and the Council's regard for views from the nearby church tower. This had been an issue raised by the Parish Council when it had commented on their planning application to extend their property. Mr Ash and Mrs Birch queried the consistency of the Council's approach and requested that serious consideration be given to the proposal as it would have a tremendous impact on them because of its overpowering size. Finally, they said that if the Council agreed to a large, modern, infill scheme alongside their listed property, this would amount to victimisation and an insult.
20. Following comments of 26 May 2006 from the conservation officer that the development was now acceptable, Officer A prepared a report recommending approval to the revised design. The report was agreed by Officer B and submitted for consideration by the Council's Northern Area Sub-Committee.

21. On 14 June 2006, the Sub-Committee approved the application after Mr Ash and Mrs Birch spoke in support of their objection. Officer A's report noted the setting of the site within the conservation area and AONB and adjacent to their listed building. The report referred to their objection and cited an assessed separation distance of 20 metres between their property and the two storey element of the new house, with an absence of windows in the west elevation, to mitigate any loss of privacy. The conservation officer had no objection and considered the development acceptable within the conservation area and village.
22. Mr Ash and Mrs Birch consider that the case report overstated the separation distance that would result, with the true distance of the main two-storey west elevation from their home being 18 metres. They told my investigator that the distance of the ground floor utility room of the new house from their home is 16 metres and this distance would be reduced to 14 metres if they went ahead with an approved extension to the side of their property next to Site A. They also said the report wrongly advised the Committee that there would be no windows in the west elevation of the new dwelling when the submitted plans showed a ground floor west-facing window serving the utility room. This advice had then been further compromised when officers agreed, subsequent to the grant of planning permission, to an additional upper floor window in the main two-storey elevation facing their home.
23. Also on 14 June 2006, the Sub-Committee approved an application of April 2006 by Mr Ash and Mrs Birch for a single storey side and rear extension of their property on the east flank immediately adjacent to Site A.
24. After issuing conditional planning permission for the development on Site A, an exchange of correspondence took place in July 2006 between Mr Ash and Mrs Birch and the Council about proposals for landscaping and the new drive. The Council said the position of the access had been mentioned in the case report and their oral address. Its location had been approved by the Committee, with a design that accorded with the advice of highways officers.

#### **Events in 2007**

25. On 13 February 2007, the applicant's architect wrote to the Council about requested alterations to the approved development. The proposed alterations were stated as minor and included: the enlargement of the window of bedroom one to the north elevation; the reversal of the front door and window; a new upper window serving the master bedroom, intended to be west-facing, but referred to in the architect's letter and shown on the floor plan in the accompanying drawing 5341-1-5 as sited in the east elevation, the enlargement of the chimney breast; a preferred position for a satellite dish; the replacement of the proposed utility room rear door with a stable door; and a slight enlargement of the garage. The architect invited the Council's response.

26. Between March and August 2007, an exchange of correspondence took place between the Council and the architect about the discharge of planning conditions and amendments to the approved development. Also during this period, on 2 April 2007, the Council approved the construction of a conservatory at the rear of the new house under reference NE07/0588/F. On 8 August 2007, the architect commented on the matters he considered outstanding. He sought the discharge of the remaining conditions as the start of development was imminent.
27. Construction began in late 2007. Mr Ash and Mrs Birch told my investigator that it was when work reached an advanced level that they realised that the design of the new house was different from that seen at the outset. It seemed closer, with a window in the ground floor of the utility room and an upper window in the west facing two storey elevation where none had been shown in the original plans.

### Events from 2008

28. Following a telephone conversation on 30 January 2008 with Mr Ash and Mrs Birch about the development and the handling of the planning application, Officer B wrote to them on 1 February 2008. He accepted that the Committee report had been misleading in the reference made to 'no windows in the west elevation' and whether this actually related to the two storey element of the new dwelling. But he added that Members would have seen the submitted plans and noted a window in the west elevation of the single storey element.
29. He also noted that the stated separation distance of 20 metres between the new dwelling and their property was disputed. The applicants' plans had not shown their property. But Officer A had estimated from the plans that their home was about 11 metres from the centre of a hedge on the boundary, with the new dwelling 11 metres from the hedge, within the site. He did not consider the difference in the quoted distance material to the decision to grant planning permission. He also did not consider that the difference in site levels was significant or that the ground floor window in the single storey element could have been a ground for refusal.
30. On 20 February 2008, Mr Ash and Mrs Birch put a formal complaint that the Committee report of 14 June 2006 had wrongly stated that the two storey element of the new dwelling would be 20 metres from their east elevation with no windows in the west elevation. Their measurements showed a separation distance of 18 metres, with a distance of 16 metres from the ground floor window in the single storey element. If they went ahead with their approved extension, this would result in the new dwelling being 14 metres away from their house.
31. On 28 February 2008, the Head of Planning Services stood by the decision to approve the development. The discrepancies in the measured separation distances had not been material to the outcome of the application. He did not believe the Committee would have reached a different decision with corrected

information and could not add to previous comments on the acceptability of the ground floor, west elevation window.

32. On 5 March 2008, Mr Ash and Mrs Birch complained further and said the Council had let them down given the area's status as a conservation area and AONB. On 13 March 2008, the Director of Environment replied to the complaint at Stage 2. He recognised their concerns, but the Council had followed its unitary development plan (UDP) and had dealt with the application on its merits. On 29 March 2008, they said they did not consider that the Director had properly formed his own judgement on the complaint and asked to go to the Council's Stage 3.
33. On 8 April 2008, the Council acknowledged their Stage 3 review request. On 30 April 2008, Mr Ash and Mrs Birch commented on a draft report for the Stage 3 complaints panel. On 9 May 2008, the complaints panel, comprising two party group leaders and the chief executive, noted the discrepancies in the case report, but did not consider that these had a material influence on the decision to grant planning permission. The panel did not uphold the complaint.

#### **The Council's comments**

34. In its initial written comments, the Council said the application for the new house had been considered against the relevant local plan policies and with regard to the setting of the site next to Mr Ash and Mrs Birch's listed property, in the context of the village conservation area and the AONB. The revised plans had overcome the concerns identified by the conservation officer about the scale of the new house and its relationship to adjoining properties.
35. The Council did not have set standards for side to side distances between properties. These could be as little as 1 metre, for maintenance and access. The Council normally expected back to back distances between residential properties of around 21 metres, with back to side distances of around 16 metres, but these were working guidelines. Each scheme was assessed on its individual merits, taking account of national planning guidance that encouraged higher densities.
36. Officers had seen no reason not to accept the insertion of the additional west facing first floor bedroom window as a post-decision minor amendment, as requested by the applicant's architect. The site plan had shown a separation distance from this part of the house to the boundary of over 16 metres. The window could have been inserted when the house was occupied, without the need for planning permission, under permitted development rights.
37. The Council did not consider that there would have been any grounds to take formal enforcement action, having regard to the position of the new house and its distance relative to the site boundary and Mr Ash and Mrs Birch's property, if it

had refused to agree to the additional window as a minor amendment and the developer had simply gone ahead with its installation.

38. At interview, Officer A acknowledged that his case report had misstated the separation distance of the development from Mr Ash and Mrs Birch's property. But he had been aware of the setting of their property and its proximity when he had visited Site A. He had not felt it necessary to view the site from their land. He had been satisfied that the revised plans had overcome the original concerns about the scheme as first submitted. He had seen no reason not to treat the requested post-decision changes as minor amendments. They had not materially altered the appearance of the development or its impact on the surrounding area and nearby properties. The requested changes had been countersigned and approved by a team leader other than Officer B, due to a restructuring. He and the other team leader had exercised their judgement when deciding that the amendments did not require a fresh application.
39. Officer B could not recall his detailed involvement with the application. But he said he would have checked the case report and been at the Sub-Committee when the application was heard. He did not recall any significant Member interest and there had not been a request for a Committee site visit. The post-decision changes had been agreed as minor amendments by another team leader. Officer B said he had become involved again after Mr Ash and Mrs Birch complained about the building work on site. He agreed there were discrepancies in the separation distances quoted in the case report. But he had not seen the discrepancies as materially different from the actual situation 'on the ground'.
40. Officer B added that a post-decision amendment needed to be significant to warrant re-notification. Such an assessment would normally trigger a request for a fresh application. He did not consider that the additional first floor window could have been resisted on grounds of loss of privacy given the separation distance of the window from Mr Ash and Mrs Birch's property. The finished design of the new house was slightly different with, for example, the intended front porch having not been built. But the Council had no power to require the developer to build a particular feature even if shown in the approved plans.
41. Officer C had been development control manager at the time of the application for the new house. He recalled that Members had shown little interest in the proposal and felt that Mr Ash may, in part, have become upset because the Council had insisted on changes to his application to extend his property. That application had been recommended for refusal and was withdrawn and re-submitted to take better account of the view from the Parish Church. When the planning application for the new house had been determined, the Council had removed permitted development rights for outbuildings and the extension of the new house, but it had not been considered necessary to limit the insertion of extra windows in the new dwelling.

42. Officer C added that if the extra upper floor window had been shown in the submitted plans at the outset, he would have recommended approval to the new house with that design, given the distance of over 20 metres of the elevation in which the window was situated from the site boundary and the permitted development rights that would have applied once the new house was occupied. The Council's procedure required that if a requested change to an approved development was considered to warrant re-notification, then a fresh application needed to be submitted. Officer C further commented that he had undertaken informal notification in marginal cases, but this had been at his discretion. In retrospect, the Council could have asked Mr Ash and Mrs Birch for their views before it had agreed to the extra upper floor window as a minor amendment, but this might have unduly raised their expectations.
43. In a further written response, the Council has confirmed that drawing 5341-1-5, as submitted by the applicant's architect in February 2007 and as copied to my investigator, was inaccurate and wrongly referred to a proposed new window in the master bedroom east elevation instead of in the intended west elevation. My investigator also noted that the ground and first floor plans appeared to have been transposed, with the north point wrongly oriented, facing south. The Council has added that despite the mislabelling of the plans, it had been apparent from them where the window was proposed and its orientation, it was not unusual for plans to be mislabelled in terms of compass points and what was important was the orientation of the proposed (sic) compared to its neighbours.
44. The Council has further commented, in response to an enquiry by my investigator on precisely when the extra window was approved, that there had been no formal written acceptance of the additional window as a minor amendment. The Council added that subsequent letters from Planning Services had dealt with conditions but there appeared to have been an oversight in responding formally to the amendment requested.

## Conclusions

45. The Council met its statutory obligations in the publicity given to the application for the new house at Site A. Mr Ash and Mrs Birch were notified and exercised their right to submit an objection. The Council took appropriate action when it re-notified them after the applicant submitted amended plans prior to the determination of the application. They restated their objection that was then considered by the case officer and taken into account by Members when the Council's Sub-Committee heard the application.
46. The case officer's report referred to their objection and Members were aware of their concerns about the proximity of the new house and its scale and appearance, from their written submissions and oral address. The report assessed the impact of the development on the conservation area, the AONB, their privacy and the listed property and noted district local plan policies on

settlement boundaries, residential standards, the AONB, areas of great landscape value and new development in conservation areas; and the policies in the UDP on settlement boundaries, the AONB, the setting of settlements and new development within conservation areas. The report also referred to the village design statement and national planning guidance on housing.

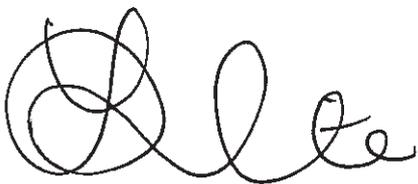
47. I see no reason to question the Council's conclusion that the proposed new house could co-exist with existing development without creating an undue adverse effect on local amenity. The assessment of the acceptability of the proposed development was a matter for the judgment of the authority's officers and Members, having taken account of the Council's policies and national planning guidance.
48. But the Council has previously accepted that there were discrepancies in the report in the reference made to the separation distance of the development and in the description of the design of the west elevation and lack of reference to the window in the single storey element. I have noted the Council's further measurement of the separation distances, as shown in Appendix 1. The authority says its re-measurements generally support the original assessment of the case officer. These show a distance of 22.4 metres, from the plot boundary, of the elevation of the new house in which the additional upper floor window is situated, and distances of 19.2 metres and 20.7 metres of the furthest west elevation of the main two storey part of the new dwelling from Mr Ash and Mrs Birch's property.
49. But there is a disputed record of what the Council knew about the position and setting of the development when it determined the application. And Mr Ash and Mrs Birch remain of the view that the Council had a mistaken understanding of the position of their property relative to the development. There was a lack of completeness and precision in the case report about the separation distances that would result and the report failed to mention the proposed ground floor window in the utility room. This was maladministration.
50. These discrepancies undermined Mr Ash and Mrs Birch's confidence as to whether their situation had been properly considered by the Council. I do not consider that the grant of planning permission was fundamentally flawed by significant, material inaccuracies in the report or in the understanding of the case officer of the proposed development, given the factors he took into account and the information available to him from his site visit about the setting of the site and nearby properties. But Mr Ash and Mrs Birch have been caused justifiable outrage by the lack of clarity over the description of the development.
51. I have no reason to question the consideration given by the Council to site levels. It was aware that the ground level was higher relative to the surrounding land and attached a condition requiring the submission and approval, before the commencement of development, of details showing the levels of the existing site, proposed slab levels and a datum point outside the site.

52. But the Council then failed to have proper regard to Mr Ash and Mrs Birch's situation when it received the developer's request for amendments to the planning permission, including the extra first-floor window. Officers had already been alerted to their considerable concern about the impact of the development from their original written objections and oral address to the Committee.
53. I have noted the Council's view that the window could have been inserted at a later date, under permitted development rights and that, if it had been included in the original submitted plans or applied for separately, it would have been acceptable in planning terms, given the separation distance from Mr Ash and Mrs Birch's property. But they were potentially adversely affected by its upper floor position, facing towards their home and garden. The window significantly altered the form and appearance of the new house when seen from their property. The failure to inform them of the proposal for the additional window, having regard to the grounds of their original objection and the authority's own guidance as set out in Appendix 2, and given the reliance on the absence of windows in the west-facing elevation in approving the application, was maladministration.
54. The failure to notify Mr Ash and Mrs Birch of the requested extra window meant they lost the opportunity to influence the Council's decision making on a change to the design of the new house that went to the heart of their objection and concern about the impact of the development on their amenity. It must now be conjecture whether there would have been a different outcome if they had been notified and they had put a fresh objection. But they have been left with uncertainty as to whether the Council might have reached a different decision on the requested amendment
55. It is also a matter of considerable concern that, at a late stage, and following the Council's written response to my enquiries and the comments of officers at interview, it became evident that a plan provided by the applicant and relied on by the authority when it considered the request for the additional window was fundamentally incorrect, as outlined in paragraph 43. The Council has also now said that the extra window was never formally agreed in writing. This was further maladministration that has additionally undermined the complainants' confidence in the Council's consideration of their situation.

## Findings

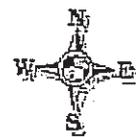
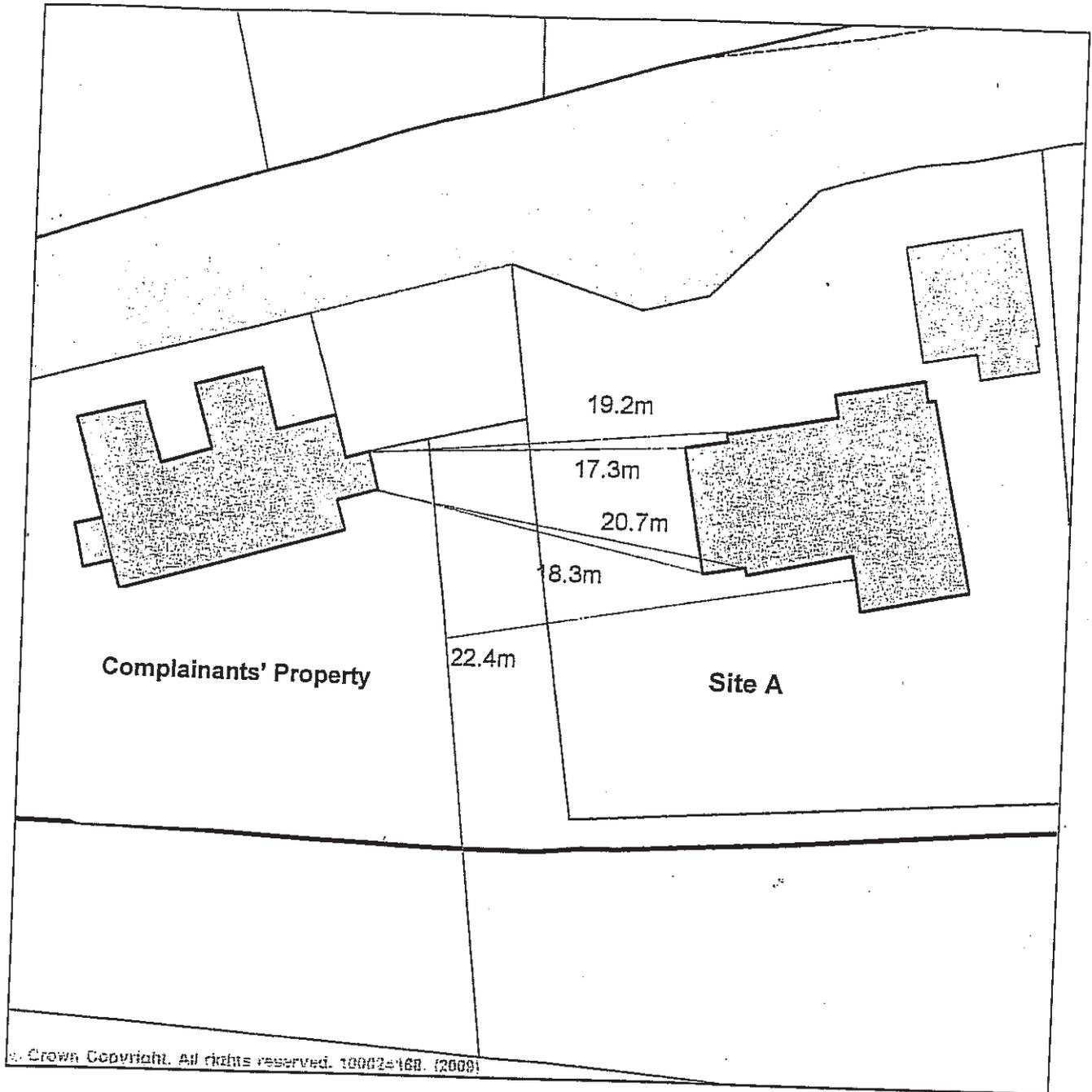
56. For the reasons given in paragraphs 48-49, 52-53 & 55, I find maladministration that has caused Mr Ash and Mrs Birch injustice as set out in paragraphs 50 & 54.
57. I therefore recommend that the Council:
- a) Pay Mr Ash and Mrs Birch the sum of £1250 for their outrage, lost opportunity and uncertainty.
  - b) Make them a formal apology for the mistakes identified.

c) Review its procedures and staff training on amendments to planning applications and planning permissions in the light of the issues highlighted in the complaint.



**J R White  
Local Government Ombudsman  
The Oaks No 2  
Westwood Way  
Westwood Business Park  
Coventry  
CV4 8JB**

**29 July 2009**



Map Scale 1:332.8

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AMENDMENTS TO PLANNING APPLICATIONS

There are two instances in which amendments may be proposed: -

- During the consideration of an application and usually to overcome an identified problem, and
- Following the grant of planning permission.

As a general principle there is no statutory recognition of the concept of minor amendments. There is no right for a developer to have changes dealt with as amendments and it is legitimate to require all changes to be the subject of a new application. However to be helpful and to assist workload our practice is to accept minor changes to proposals as these will have no impact on the original scheme and can be dealt with quickly. Each case should be considered on its own merits.

Is a new application required?

The following guidelines are Best Practice.

- A proposal can be accepted as an amendment if the basic form, appearance, shape or position of the scheme remains unaltered. Ask the question – “Is this essentially the same development as submitted/approved?”
- Always consider the requested amendment against the previous proposal. Does it seek to introduce something that was previously negotiated away to meet previous objections?
- Changes that would make the position worse for neighbours should not be accepted as amendments. In particular if the change would bring the development closer to the boundary, having windows which face the boundary or raise the height of the development should not be accepted as amendments. Remember the neighbours may have inspected the original plans and will be expecting development of a certain form. If the amendment is such that you would need to renotify the neighbour then it should be the subject of a new application.
- With regard to an increase in the size of a building be careful. The recommended approach is that only very minor increases in size should be accepted as amendments.
- Any increases in the height of a building or if the change alters the appearance of the building to a material degree then an application should be requested
- Be aware of the effect of cumulative amendments. It is important to ensure that the development remains essentially as originally approved.
- Be careful with changes in layout and the position of buildings. Anything other than very minor revisions should not be accepted.
- Do not accept as amendments proposals that would take the development into a different category of fee.

### How to deal with a minor amendment

- If an application is amended during its processing then the Parish Council and neighbours should be re-notified unless the amendment is trivial. The response period can be reduced down to 14 days or less if considered appropriate.
- If an amendment is sought following the decision then anything that requires re-notification to the Parish Council or neighbours probably should not be accepted as an amendment.
- When an amendment is accepted the decision must be made under the Scheme of Delegation with the letter signed by an authorised signatory. The standard letter on the MVM system should be used. For the purposes of clarification it is recommended that amendments being accepted be specifically listed in any letter. As a rule it is better to send separate letters when dealing with amendments and the discharge of conditions.

### Conclusion

The acceptance of amendments can be helpful to both applicants and ourselves. However do not feel pressurised into accepting amendments for anything other than minor revisions. The applicant already has a permission that can be implemented. Remember the Ombudsman is watching!





<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>13 NOVEMBER 2009</b>
<b>TITLE OF REPORT:</b>	<b>REPORT OF THE MEETINGS OF CABINET HELD ON 30 JULY, 10 SEPTEMBER, 24 SEPTEMBER (RECONVENED ON 1 OCTOBER) AND 29 OCTOBER 2009</b>
<b>MEMBERSHIP:</b>	<b>Councillors RJ Phillips (Leader of the Council), JP French (Deputy Leader), LO Barnett, AJM Blackshaw, H Bramer, JA Hyde, JG Jarvis, DB Wilcox and PD Price.</b>

**CLASSIFICATION:** Open

### **Wards Affected**

County-wide

### **Purpose**

This report submitted to Council covers the proceedings of the meetings held on 30 July, 10 September, 24 September (reconvened on 1 October) and 29 October 2009.

### **Recommendation**

**THAT: the Cabinet report be noted.**

### **Key Considerations**

#### **1 Decisions Reserved to Council Under Part 4 of the Constitution**

1.1 None

#### **2 Notices of Motion**

2.1 No motions to Council were considered by Cabinet during the reporting period covered by this report.

#### **3 Key Decisions by Individual Executive Members which were not Included in the Forward Plan**

##### **3.1 Children's Centres Phase 3 North Hereford City**

3.1.1 Following consideration of various options, the Cabinet Member for Children's Services approved Broadlands Primary School site as the base for Phase 3 North

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Further information on the subject of this report is available from  
Siân Clark, Democratic Services Manager on (01432) 260222

Hereford Children's Centre and agreed that a module building be used to provide flexibility to enable the service to respond quickly and efficiently should changes to the service be required in subsequent years.

#### **4 CORPORATE STRATEGY AND FINANCE (Chairman of Cabinet – Councillor RJ Phillips)**

##### **Report on Decisions Taken**

- 4.1.1 There were no decisions by Cabinet relating to this portfolio during the reporting period.

#### **5 CHILDREN'S SERVICES (Cabinet Member: Councillor JA Hyde)**

##### **Report on Decisions Taken**

##### **5.1 Connexions: New Management and Delivery Arrangements**

- 5.1.1 Cabinet was requested to consider a proposal that the Herefordshire elements of the Connexions service were brought into the Herefordshire Council in April 2010 and integrated within the reorganised Children's and Young People's Directorate. This proposal was in response to central government legislation regarding the Machinery of Government requirements. Cabinet was advised of the strategic plan to incorporate the Connexions service and to align staff to frontline working within locality teams in Children's Services. It was confirmed that young people had been consulted at various stages of the process. Cabinet approved the transfer and new delivery arrangements for the Connexions Service from the Herefordshire and Worcestershire Connexions Company to Herefordshire Council.

#### **6 CORPORATE AND CUSTOMER SERVICES AND HUMAN RESOURCES (Cabinet Member - Councillor JP French)**

##### **Report on Decisions Taken**

##### **6.1 Shared Services Review**

- 6.1.1 Members received and noted a progress report on the Shared Services Review, which had been undertaken by a Joint Programme Board comprising of the Council, NHS Herefordshire and Herefordshire Hospitals NHS Trust.

##### **6.2 Integrated Corporate Performance Report**

- 6.2.1 Cabinet considered a report which outlined the Council's performance for the period April to June 2009/10 against the Council's key indicators and associated projects and programmes in its Annual Operating Statement 2009/10. Members were advised that the report was the first of a new type intended to drive improvement in the delivery of the Council's priorities as it provided a clear overview of the performance of key indicators and what was being done to tackle areas of actual or potential under-performance. Cabinet was advised that some 60 indicators were now being tracked and that they were grouped by reference to the themes of the Herefordshire Community Strategy and whether their prime focus was on citizens, services, partnerships or meeting the Council's statutory duties. Cabinet noted the performance to the end of June 2009 and the measures being taken to address

areas of under-performance.

### 6.3 Comprehensive Equality Policy and Disability Equality Scheme

6.3.1 In considering a report on the Council's Comprehensive Equality Policy, the development of a Single Equality Policy covering the Council, NHS Herefordshire and the Hospitals Trust, and the development of a joint Disability Equality Scheme across those services, Cabinet agreed the following:

- (i) acknowledging the progress and work that has been achieved through the Comprehensive Equality Policy
- (ii) the development of a single equality policy for the Council;
- (iii) acknowledging the progress to date in developing the Disability Equality Scheme and the timescale for publication.

Members noted that the NHS organisations were in the process of agreeing the same single equality policy. .

### 6.4 Risk Management and Assurance

6.4.1 Cabinet agreed to defer a report regarding the revised joint Risk Management and Assurance Policy and Guidance documents to the next Cabinet meeting which will take place on 26 November 2009.

## **7 ECONOMIC DEVELOPMENT AND COMMUNITY SERVICES (Cabinet Member - Councillor AJM Blackshaw)**

### **Report on Decisions Taken**

#### 7.1 Response to Scrutiny Review of Tourism

7.1.1 Cabinet considered the proposed Executive response to the Community Services Scrutiny Committee's review of Tourism. Whilst noting the content of the report the Cabinet deferred any agreement on the recommendations outlined in Appendix 1 of the report to a future Cabinet meeting as there had been a transfer of responsibilities between the directorates relating to the tourism function since the review was carried out in April 2008.

#### 7.2 Call-in of Cabinet Decision on the ESG Retail Quarter Development Agreement

7.2.1 The Cabinet agreed the proposed responses to the recommendations of the Community Services Scrutiny Committee.

#### 7.3 Proposals to be submitted to the LGA Selector under the Sustainable Communities Act 2007

7.3.1 Cabinet noted the proposals which had been submitted by local people and organisations under the Sustainable Communities Act 2007 and approved the recommendations of the representative panel to submit 14 to the LGA Selector. The approved submission included items relating to; transport, housing, planning, education, shops and local services, and the environment. Whilst supporting all elements recommended, the Cabinet considered the following issues of main priority; local social housing for local people; broadband; farm visits for school

children; and twin tracking the rail line between Hereford and Ledbury.

#### 7.4 ESG Retail Quarter Development Agreement

- 7.4.1 Cabinet approved the confidential minutes of the ESG Retail Quarter Development Agreement.

### **8 ENVIRONMENT AND STRATEGIC HOUSING (Cabinet Member: Councillor JG Jarvis)**

#### **Report on Decisions Taken**

#### 8.1 Regional Spatial Strategy Phase Three – Consultation

- 8.1.1 Cabinet approved the response to the consultation questions posed in the Regional Spatial Strategy – Options for Phase Three Revision document which was attached as appendices to the report.

#### 8.2 Response to Audit Commission and Environment Scrutiny Committee Reports on the Planning Service

- 8.2.1 Cabinet considered two reports which had been produced on the Planning Service, both of which made detailed recommendations on service delivery, one by the Audit Commission, the other the report of the Planning Services Scrutiny Review Group. There was a high degree of consistency between the findings and recommendations of both review reports and Cabinet approved the responses as set out in Appendices 1 and 2 of the report. Cabinet additionally noted that the responses would be incorporated into a single action plan for service improvement.

#### 8.3 Joint Municipal Waste Management Strategy for Herefordshire and Worcestershire

- 8.3.1 Cabinet was requested to consider endorsing the review of the Joint Municipal Waste Management Strategy, a 30 year strategy which had been first published in November 2004 and which would continue until 2034. Cabinet endorsed the review of the Joint Municipal Waste Management Strategy and agreed the adoption of the revised strategy for Herefordshire and Worcestershire.

### **9 HIGHWAYS AND TRANSPORTATION (Cabinet Member - Councillor DB Wilcox)**

#### 9.1 Response to Environment and Scrutiny Committee Report on its Review of On Street Parking

- 9.1.1 Cabinet considered a report in response to the Environment and Scrutiny Committee Review of On Street Parking and agreed in principle the responses as set out in Appendix 1 attached to the report subject to recommendation 9(a) in the Appendix being amended to include an increase to the current cycle racks in High Town, Hereford. Members noted that the increase would be on the periphery of High Town. Cabinet also agreed that public consultation be undertaken on any proposed material changes to the car parking policies prior to any final decision being taken on the review of On Street Parking and that the final decision be delegated to the Chief Executive in consultation with the Cabinet Member for Highways and Transportation.

**10 ICT, Education and Achievement  
(Cabinet Member – Councillor PD Price)**

**Report on Decisions Taken**

**10.1 Schools' Task Group Update**

10.1.1 Cabinet considered a report which outlined the progress made by the Schools' Task Group (STG) on the development of a draft public consultation document which would seek views from schools, stakeholders and the wider public on the next steps in the planning of educational provision in the county. The initial draft consultation document had been shared with head teachers and chairs of school governing bodies over the summer with responses received and considered for inclusion in the final draft. Cabinet emphasised the importance of Councillors engaging with their communities and parish councils on this issue and in encouraging views to be fed back to the Directorate. Cabinet approved the process and timescale for consultation on Schools' Task Group Interim Report for Public Consultation and noted the process followed and progress made by the Schools Task Group in preparing the paper for consultation.

**10.1.2 Data Quality 6 Month Progress Report**

10.1.3 Cabinet considered and noted the progress being made against the data quality action plan. In noting the progress, Members were pleased to note that major tasks had been completed and significant milestones had been passed.

**11 RESOURCES  
(Cabinet Member - Councillor H Bramer)**

**Report on Decisions Taken**

**11.1 Treasury Management Activities 2008/09**

11.1.1 Cabinet considered and noted the Council's Treasury Management activities for the period 1 April 2008 to 31 March 2009 and the outturn of Prudential Indicators for the year 2008/09. Members were advised that whilst the authority had not initially been affected by the banking crisis the impact was now being felt with the lack of investment criteria. Cabinet congratulated staff on the treasury management performance during what had been a particularly challenging economic year.

**11.2 Budget Monitoring Report**

11.2.1 Cabinet received a report outlining July 2009's budget monitoring information and which provided an indication of estimated outturn. Additionally the report detailed the numbers and amounts written off for individual debts exceeding £1,000 for the period 1 April 2008 to 31 March 2009. Cabinet noted the report and that the forecast outturn for 2009/10 would be agreed with Directors based on service and financial performance in the report. Cabinet endorsed the continuing efforts of Directors to ensure service targets were met within approved budgets.

**11.3 Livestock Market**

11.3.1 Cabinet reconvened on 1 October to discuss the Livestock Market item which had been adjourned from 24 September due to the need to consider recent guidance

received from the Office of Fair Trading and the subsequent advice from the Monitoring Officer in relation to the guidance.

11.3.2 Following consideration of advice from the Monitoring Officer in relation to the recommendations under discussion the Cabinet approved the allocation of funding for the construction of the new livestock market and associated transport improvements; and delegated authority to the Director of Regeneration to proceed with the procurement and appointment of a contractor to develop the new livestock market.

## **12 SOCIAL CARE ADULTS (Cabinet Member Councillor LO Barnett)**

### **Report on Decisions Taken**

12.1 There were no decisions by Cabinet relating to this portfolio during the reporting period.

**COUNCILLOR RJ PHILLIPS  
LEADER OF THE COUNCIL**

### **Background Papers**

Agenda papers for Cabinet meetings held on 30 July, 10 September, 24 September (reconvened on 1 October) and 29 October 2009



<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>13 NOVEMBER 2009</b>
<b>TITLE OF REPORT:</b>	<b>REPORT OF THE PLANNING COMMITTEE MEETINGS HELD ON 7 AUGUST AND 23 OCTOBER 2009</b>
<b>MEMBERSHIP:</b>	TW Hunt (Chairman), RV Stockton (Vice-Chairman), ACR Chappell, PGH Cutter, Mrs H Davies, GFM Dawe, DW Greenow, Mrs KS Guthrie, JW Hope, B Hunt, G Lucas, RI Matthews, Mrs PM Morgan, Mrs JE Pemberton, AP Taylor, DC Taylor, WJ Walling, PJ Watts and JD Woodward.

**CLASSIFICATION:** This is an open report.

## Wards Affected

County-wide

## Purpose

To note the report which is for information.

## PLANNING APPLICATIONS

1. The Committee has continued to explore alternative venues for meetings which may be more suitable for a single Planning Committee; and the Town Hall Assembly Room was used for the August meeting. Neither Town Hall or Shirehall were available for the October meeting and faced with a large agenda, it was decided to split the meeting into morning and afternoon sessions. This enabled some 73 members of the public to attend at Brockington and it proved to be the longest Planning Committee on record, lasting to nearly 5:00 pm.
2. Some significant and complex applications have been considered which have a County-wide impact as well as an impact on local communities. The Yazor Brook Flood Alleviation Scheme will have a significant impact on reducing flooding in the Edgar Street Grid and adjoining areas in Hereford. Interest also centred on the application regarding alterations to Grange Court Leominster which will bring this important historic building back into public use and help to secure its future. Following deferral at a previous meeting the applicants discussed the proposals in

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Further information on the subject of this report is available from  
Pete Martens (01432) 260248

greater detail with the local ward members and the public and received local support for the scheme. Approval was also given to facilities for the growing and harvesting of fruit together with accommodation for seasonal workers Brierley Court Farm near Leominster. The company is under new ownership and management and the application which was deferred at a previous meeting has been significantly revised to reduce the area used for polytunnels and associated accommodation on a much more reduced and well landscaped area of land. The applications were determined as follows:-

- (a) **DCNC2009/0435/CD & DCNC2009/0436/L - Proposed removal of existing minor extensions, internal alterations and new extension to form offices and community rooms for rent at Grange Court, Pinsley Road, Leominster – approved as recommended.**
- (b) **DCSE0009/1139/CD - alterations and an extension over two floors to provide council information, library and meeting facilities at Ross-on-Wye Library, Cantilupe Road, Ross-on-Wye – approved as recommended.**
- (c) **DCCE0009/0950/F - proposed amendment of 39 previously approved residential dwellings and their associated parking to 51 residential dwellings to plots 99-137 & 505-517 creating an additional 12 dwellings and their associated parking at land off Bullingham Lane, Hereford - approved as recommended.**
- (d) **DCCW0009/0958/F - construction of new secondary school buildings including landscaping and other associated works and demolition of existing school buildings at Hereford Academy (formerly Wyebridge Sports College), Stanberrow Road, Hereford - approved as recommended.**
- (e) **DCCE0009/1595/F DCCE/091717/F - construction of a flood relief culvert from the Yazor Brook at Credenhill to the River Wye, including an off-take weir adjacent to Credenhill community centre and an energy dissipation chamber and outfall to the River Wye on land at Old Weir Farm - approved as recommended.**
- (f) **DCCE0009/1942/CD DCCE/092343/CD - new single storey health centre. section of existing site boundary wall to be removed and the rest lowered. at Stonebow Unit, County Hospital, Union Walk, Hereford – consideration was deferred at the request of the applicants who are investigating alternative locations on the hospital site.**
- (g) **DCNC2009/0167/F - application (part retrospective) to erect fixed (non rotating) Spanish polytunnels over arable (soft fruit) crops grown on table tops at Brierley Court Farm, Brierley, Leominster - approved as recommended.**
- (h) **DCNC2009/0167/F - application (part retrospective) to erect fixed (non rotating) Spanish polytunnels over arable (soft fruit) crops grown on table tops at Brierley Court Farm, Brierley, Leominster - approved as recommended.**
- (i) **DCNC2009/0166/F - retrospective application to retain private package sewage treatment plant on land at Brierley Court Farm, Brierley,**

**Leominster, Herefordshire** - approved as recommended.

- (j) **DCCW0009/1990/CD DCCW/092151/CD - amendment to planning condition 2 of CW2000/1575/F, to allow parking for Christmas park & ride service at Hereford Racecourse, Roman Road, Holmer, Hereford** - approved as recommended.
- (k) **DCCW0009/1950/CD DCCW/092345/CD - replacement bmx track and re-instatement of existing track to parkland at land to the rear of 102-140 Westfaling Street, Hereford** - approved as recommended.
- (l) **DCNE0009/1841/F - proposed erection of 15 metre wind turbine and associated works at Leadon Court, Fromes Hill, Ledbury** - approved as recommended.
- (m) **DCCW0009/1683/F DCDC/091945/G - removal of condition 7 of planning permission dccw2004/0209/f, proposed dwelling at 2 Lower Orchards, Burghill** - approved as recommended.
- (n) **DCNC2009/0748/F - change of use of land from agriculture to a one family traveller site, including stationing of one mobile home, two touring caravans and day/washroom - part retrospective at The Paddocks, Normans Lane, Stoke Prior** – refused contrary to recommendation.
- (o) **DCSE0009/1676/F DCDS/091843/F - proposed dormitory accommodation with dining and recreational unit in association with continued use of land as a children's nursery school and kids club, together with approved leisure, recreational, educational and cultural use (diversification of existing use) at Cats Nursery School, Leys Hill, Walford** - - approved as recommended.

## **AREA PLANNING SUB-COMMITTEES**

3. Information reports have been received from the three Area Planning Sub-Committees which have dealt with the following matters:

### **(a) Northern Area Planning Sub-Committee meeting held on 1st July, 29th July 26th August and 23rd September, 2009**

- applications approved as recommended – 12
- applications deferred for further information or a site inspection – 4
- applications minded to refuse contrary to recommendation – 2
- number of public speakers – 2 parish councillors; 6 objectors and 9 supporters
- appeals - 16 appeals received, 4 allowed, 5 dismissed and 2 withdrawn.

**(b) Central Area Planning Sub-Committee meetings held on 22nd July, 19th August and 16th September and 14th October, 2009**

- applications approved as recommended - 12
- applications refused as recommended - 1
- applications deferred for further information or a site inspection – 5
- applications minded to approve contrary to recommendation -1 (not referred to Planning Committee)
- applications minded to refuse approve contrary to recommendation - 6 (1 referred to Planning Committee)
- number of public speakers – 4 parish councillors; 12 objectors and 11 supporters
- appeals - 5 appeals received and 1 withdrawn.

**(c) Southern Area Planning Sub-Committee meetings held on 8th July, 5th August 2nd September and 30th September, 2009**

- applications approved as recommended - 18
- applications refused as recommended - 0
- applications minded to approve - 0
- applications minded to refuse contrary to recommendation - 1
- applications deferred for further information/site inspection – 3
- number of public speakers – 1 parish councillor, 6 objectors and 14 supporters
- appeals – 4 appeals received, three allowed and two withdrawn.

**ARCHAEOLOGY AND DEVELOPMENT SUPPLEMENTARY PLANNING DOCUMENT**

4. The Committee has recommended amendments to the Cabinet Member (Environment and Strategic Housing) regarding the draft SPD on Archaeology and Development, and that it is adopted as part of the Council's Local Development Framework. The document forms part of the Council's Local Development Framework and sets out the Council's policy and approach to dealing with archaeology and development. It provides additional information and guidance in support of policies and proposals in the Herefordshire Unitary Development Plan. When adopted it will be a material consideration in the determination of planning applications through:

- providing certainty to landowners, prospective developers and other interested parties;
- ensuring a uniform application of policy;
- ensuring that the process is fair and transparent; and
- facilitating a speedier response from the Council to development proposals.

## REGIONAL SPATIAL STRATEGY : INSPECTORS' PANEL REPORT – SEPTEMBER 2009

5. The Examination in Public (EIP) into Phase 2 of the Regional Spatial Strategy (RSS) took place during April to June 2009, and the Panel of Inspectors involved published their "Panel Report" on 28th September. The Panel Report will now go forward to the Secretary of State who is not bound to accept the recommendations but will do so in all likelihood. He will then publish final amendments to the RSS by the end of 2009 with the intention of completing the formal process during 2010. Once this process is complete, the local planning authorities in the West Midlands Region will be obliged to ensure that their planning policies (in emerging Local Development Frameworks) are in compliance with the new RSS. The main features of the Report are:
- Herefordshire's housing target for the period 2006 to 2026 has gone up from 16,600 to 18,000;
  - within that overall target the Hereford City (and immediate environs) allocation has gone up only 200, from 8,300 to 8,500 – this is not significant over a 20 year period;
  - the allocation to the rest of the County (including the Market Towns) has increased more significantly, from 8,300 to 9,500 – this is intended to increase supply in rural areas to improve affordability;
  - the approach to employment allocations has been revised – whilst the five year "reservoir" of 37 hectares has been maintained unchanged, the gross figure over the 20 year period has been recommended for an increase from 111 hectares to 148 hectares – but this figure takes no account of "recycling" of employment land where employment sites are redeveloped for employment use;
  - the retail allocation has stayed unchanged at 40,000 sq metres of retail floorspace to 2021 with a further 20,000 for 2021 to 2026;
  - a revised housing "trajectory" has reduced the number of dwellings per year to be constructed in the period to 2011 but progressively increases it after then (this will have important consequences as we move into the "Delivery" phase);
  - all the above figures are now "Targets" and are not to be regarded as either minimum or maximum figures;
  - whilst no specific policy is introduced in respect of the Outer Distributor Road the supporting text makes it clear that one will almost certainly be required;
  - any relief road proposed for Leominster is regarded as a local matter and not included in the RSS because it is not strategic enough in the Regional context;
  - the practical difficulties of dual tracking the railway line between Hereford and Malvern are such that it was not considered practical to make a policy commitment to this;

- amongst the general policies there is a requirement for local planning authorities to do Strategic Flood Risk Assessments and Water Cycle Studies (both of which Herefordshire has been doing anyway);
- there is also the introduction of a “Merton” style rule to require developments above a certain threshold to ensure that at least 10% of the energy needs come from renewable sources; and
- the consequences, under the Habitats Regulations, for water quality and quantity in the Rivers Lugg and Wye were not fully resolved and further work will have to be done at County level to ensure that the new development does not have an adverse effect on the biodiversity of these rivers – this is mainly an issue of ensuring adequate water supply and treatment. There will, however, be restrictions in the “Pilleth Water Resource Zone” which affects part of the County

## **LOCAL DEVELOPMENT FRAMEWORK : UPDATE REPORT OCTOBER 2009**

6. The 2004 reforms to the planning system requires that each Local Planning Authority needs to replace its Development Plans with a Local Development Framework. In the case of Herefordshire that means replacing the Unitary Development Plan with the Development Plan Documents set out in the Local Development Scheme. There will be three such documents at the centre of the Local Development Framework: the Core Strategy which sets out the overarching development strategy for the County; and two documents to set out detailed allocations - the Hereford Area Plan and the Market Towns and Rural Areas Plan. The Core Strategy is due to be the subject of a final round of public consultation early in the New Year.
7. The Core Strategy has to look forward to the year 2026 and has, at its heart, the vision and objectives with that in mind; in addition to the Regional Spatial Strategy the Core Strategy must also sit comfortably with the Council’s Sustainable Community Strategy for which the Herefordshire Partnership Board has responsibility. Thus the new planning system requires that the Core Strategy:
  - complies with the regional policies (as set out in the Regional Spatial Strategy);
  - is backed up with evidence for the choices it makes;
  - has had the full involvement of the local communities it is intended to serve; and
  - meets other legal tests such as a the need for a Sustainability Assessment and a Habitat Regulations Assessment;
8. The policies in Herefordshire’s Core Strategy will need to cover such issues as the distribution of new housing, employment and commercial development, policies to cover the location of “social infrastructure” such as schools and health facilities, and deal with such generic matters as transportation, minerals, waste and climate change. In order to take these issues forward the Council has published a series of evidence studies and background papers on the website. The evidence base will soon be substantially complete. Notable recent additions to the reports on the website include the Multi Modal Model (Transportation Study), the Water Cycle Study and the Strategic Housing Land Availability Study.

9. The stage has now been reached to undertake the final public engagement in the process – this will be the “Placeshaping” Consultation which will help the Council to refine its policy choices. The Placeshaping Consultation documents will be the subject of Member Briefings in the next few weeks and will be reported to Cabinet on 26th November to seek formal approval for public consultations in January, February and March 2010. Once the Placeshaping Consultation Results have been analysed the Council will then prepare the Core Strategy itself, initially to publish as a document for submission to the Secretary of State. This is expected to happen towards the end of 2010...

**TW HUNT  
CHAIRMAN  
PLANNING COMMITTEE**

**BACKGROUND PAPERS** Agendas for the meetings of the Planning Committee held on 7th August and 23rd October, 2009.





<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>13 NOVEMBER 2009</b>
<b>TITLE OF REPORT:</b>	<b>REPORT OF THE STANDARDS COMMITTEE MEETING HELD ON 02 OCTOBER 2009</b>
<b>MEMBERSHIP:</b>	Robert Rogers (Independent Member) (Chairman); Jake Bharier (Independent Member); Isabel Fox (Independent Member); Richard Gething (Town and Parish Council Representative); John Hardwick (Town and Parish Council Representative); David Stevens (Independent Member); John Stone (Local Authority Representative); Beris Williams (Local Authority Representative)

**CLASSIFICATION:** This is an open report.

## Wards Affected

County-wide

## Purpose

To note the report.

## The New Constitution

1. Charlie Adan, the Interim Assistant Chief Executive, Legal and Democratic, briefed us on the background to the new constitution to be tabled at this meeting of Council. We emphasised the need for the text to be clear and easy to use.

## Experience of Local Filter Cases, And Determinations So Far

2. We reviewed progress on complaints about local authority, town and parish councillors since the introduction of the local filter on 08 May 2008. In 2008, our Assessment Sub-Committee considered eighteen complaints; so far in 2009, it has dealt with forty-eight. Although many of the latter relate to a single council, dealing with complaints is a major area of work.
3. The committee discussed the subject of confidentiality at the various stages of handling complaints. 'Standards for England' guidance was not clear and there were situations that were not clearly covered. The Monitoring Officer agreed to prepare a brief for the committee to discuss at a further meeting.

## Modern.gov

4. We considered a report from the Monitoring Officer outlining the benefits of a

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Further information on the subject of this report is available from  
Alec Dubberley on (01432) 260088

computer upgrade to the authority's committee software. When implemented, the new system will automate much of the work involved in the administration of the assessment and review process; for example, Council officers will be automatically reminded of deadlines by email.

## **Background Papers**

- Agenda for the Standards Committee Meeting held on 02 October 2009.

**ROBERT ROGERS**  
**CHAIRMAN**  
**STANDARDS COMMITTEE**

<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>13 NOVEMBER 2009</b>
<b>TITLE OF REPORT:</b>	<b>REPORT OF THE STRATEGIC MONITORING COMMITTEE</b>
<b>MEMBERSHIP:</b>	<b>Councillors: PJ Edwards (Chairman), PA Andrews, WLS Bowen, ME Cooper, AE Gray, KG Grumbley, TM James, RI Matthews, PM Morgan, AT Oliver and PJ Watts</b>

**CLASSIFICATION:** Open

### **Wards Affected**

County-wide

### **Purpose**

To note the report.

### **EVALUATION OF THE EXTRA CARE FACILITY KNOWN AS THE ROSE GARDENS, LEDBURY ROAD, HEREFORD**

1. The Rose Gardens Extra Care scheme, Ledbury Road Hereford was commissioned for development as part of the Council's strategic approach to investing in services for older people and opened in September 2008. Extra Care Housing is a type of specialised housing that provides independence and choice to adults with varying care needs and enables them to remain in their own home. Services are provided in a purpose built housing environment with care and support delivered to meet the individual resident's needs. This type of housing provides 24-hour support, meals, domestic help, leisure and recreation facilities and a safe environment to its residents.
2. The completed scheme comprises 91 units of accommodation with a range of complementary services and facilities. In addition to substantial grant funding from the Department of Health, significant private sector funding was attracted towards the scheme. This enabled a subsidy to be applied to the scheme that meant 75 of the developed flats were available either at affordable rent or through shared ownership tenure options thereby creating an accessible mixed community.
3. The scheme provides a significant important alternative to residential care models and is expected to deliver significant savings over time to Adult Social Care in terms of alternative care/residential care costs. Additional benefits are also expected in terms of reduced interventions from Primary Care Trust funded services and the general well being of the scheme occupants.

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Further information on the subject of this report is available from  
Tim Brown Committee Manager Scrutiny (01432) 260239

4. The Committee had requested a report on the scheme reviewing the scheme's value for money and whether there were any lessons to be learned for future schemes.
5. The Committee's principal concern was that there was a clear need for extra care provision within the County. However, at some £17 million in construction costs, the cost of the scheme at Rose Gardens, which was recognised as a good quality scheme, was prohibitive. It was concerned that the state of the public finances is such that similar schemes were unlikely to be affordable in future. The Committee was informed that the Scheme had been one of the earliest to be developed and reflected the best model at the time, but as the sector expanded across the Country it was possible that other models would emerge
6. The Committee has welcomed the success of the Rose Garden extra care scheme but in view of the overall cost of the scheme and the uncertainty over the availability of public funding in future it has recommended that officers investigate alternative models for future cost effective delivery of these much needed developments.
7. The Committee has also requested officers that the appropriate level of parking provision for this type of development be revisited through the Local Development Framework process.

#### **INTEGRATED CORPORATE PERFORMANCE REPORT**

8. The Committee considered performance for the period April-June 2009/10 against the Council's key indicators and associated projects and programmes in its Annual Operating Statement 2009-10.
9. This was the Committee's first consideration of the new style of performance report and in addition to commenting on format it has requested that the report on performance against targets in the LAA, which are not all detailed in the new report, should be appended to the report.
10. It also made a number of observations on performance which have been formally submitted to the Leader of the Council. Following the decision that the Committee will in future receive performance reports after Cabinet, it has urged that Cabinet give the earliest possible consideration to the integrated corporate performance reports.

#### **FINAL REVENUE AND CAPITAL OUTTURN**

11. The Committee has considered the budget monitoring position to the end of July 2009 and an indication of the estimated outturn. It has noted that the overall position on the revenue budget showed a projected overspend of £1.34 million representing 1% of the Council's net revenue budget.
12. The report included details of proposed recovery plans and the Committee has endorsed continuing efforts of all Directors to ensure service targets are met within the approved budget.
13. The Committee has also recommended that officers consider the need for arrangements to provide for the transfer of budget from children's services to adult services as people with learning disabilities move from the responsibility of Children's Services to the responsibility of Adults Services; that the planned review of all expensive out of county placements as part of the adult social care recovery plan should include a review of the value for money of residential college placements out of County; and has registered concern about the costs of interim posts across the authority, the implications for continuity of service provision and their value for money.

## SCRUTINY WORK PROGRAMMES

14. Members of the Scrutiny Committees and the Executive have participated in a facilitated scrutiny event to develop an enhanced external focus to the scrutiny committee work programmes reflecting the concerns of residents and communities of Herefordshire. After considering the challenges facing the County and key issues identified from public consultation and surveys Members have identified the following top five priorities for scrutiny: Housing related issues, Youth, Communication, Safeguarding and Transport issues. Further work will now take place to refine the focus of scrutiny work on these topics.

## ISSUES CONSIDERED BY THE INDIVIDUAL SCRUTINY COMMITTEES

15. The work of the Committees is analysed below in accordance with the following roles for scrutiny based on a University of Birmingham categorisation. Each Committee has also considered and rolled forward its work programme.

<b>Holding the Executive to Account</b>	<b>Developing Policy</b>
Questioning members of the Executive	Pre-Decision Scrutiny – commenting on decisions about to be made
Call-ins – Scrutinising decisions before they take effect	Policy Reviews and Development
Scrutinising decisions after they are made	External Scrutiny
Management of Performance	Health Scrutiny
Ensuring Corporate Priorities are Met	
Budget Scrutiny	
Community and Area Scrutiny	

	Holding the Executive to Account	Developing Policy
<b>Adult Social Care and Strategic Housing</b> 27 July 2009 2 October 2009 30 October 2009	Presentation by the Cabinet Member (Environment and Strategic Housing) Affordable housing – Delivery Programme 2009/2011 Safeguarding Board, Adult Social Care Improvement Programme Implementation of Frameworks and Common Assessment Framework Contract for Learning Disability Services with Midland Heart	The Home and Communities Agency Review of the Support to Carers in Herefordshire

	<p>Provider Services Review</p> <p>Presentation by the Cabinet Member (Social Care Adults)</p> <p>Delivery of Major Adaptations using Disabled Facilities Grants</p> <p>Revenue Budget Monitoring 2009/10</p> <p>Adult Social Care and Strategic Housing Performance Outturn</p>	
<p><b>Children's Services</b></p> <p>28 September 2009</p>	<p>14-19 Machinery of Government: Changes to Connexions, Learning and Skills Council Transfer</p> <p>Capital Budget Monitoring</p> <p>Revenue Budget Monitoring</p> <p>Performance Digest</p>	<p>School Task Group Report</p> <p>Special Educational Needs/Banded Funding Review</p>
<p><b>Community Services</b></p> <p>5 October 2009</p>	<p>Revenue Budget Monitoring Report</p> <p>Performance Monitoring</p>	<p>Fighting the Economic Downturn</p> <p>Scrutiny Review of the Herefordshire Economic Development Strategy 2005-2025</p>
<p><b>Environment</b></p> <p>14 September 2009</p>	<p>Executive Response and Action Plan following the Scrutiny Review of the Planning Service</p> <p>Environment and Carbon Management Performance</p> <p>Capital Budget Monitoring</p> <p>Revenue Budget Monitoring</p> <p>Community Protection Team</p>	
<p><b>Health</b></p> <p>31 July 2009</p>	<p>Health and Social Care ICT Linkages</p> <p>Updates from Hereford Hospitals NHS Trust,</p>	

25 September 2009	West Midlands Ambulance Service NHS Trust and NHS Herefordshire Local Involvement Network	
<b>Strategic Monitoring Committee</b> 21 September 19 October 2009	Scrutiny Review of ICT Services – Executive Response - Progress Integrated Corporate Performance Report Evaluation of the Extra Care Facility – Rose Gardens, Hereford Budget Monitoring Report	

16. Issues of particular note are highlighted below.

- **Adult Social Care and Strategic Housing**

**Scrutiny Review of Support to Carers in Herefordshire**

The Committee has approved the findings of the scrutiny review of the support to carers in Herefordshire. Principal recommendations to the Executive include:

- That the Area Based Grant for Carers' Services Budget should be fully protected and as the future demographic trend is for an ageing population in the County, consideration must be given to augmenting future Carers' Services Budgets.
- Additional campaigns should be considered by Herefordshire Carers Support (HCS) in order to encourage carers to register with them, however minor their current role in order that reasonably accurate figures for carers in Herefordshire can be obtained.
- That Care Support Plans should be shared with and carefully explained to the carer.
- The effectiveness of arrangements to ensure that the voice of carers is heard in policy and planning should be reviewed.
- Clear communication is essential. Feedback should always be provided to carers and the cared for where appropriate, following any contact with external Service Providers and internal Provider Services.
- To ensure continuity a named senior lead officer in Herefordshire Public Services should be in post to ensure that the needs of young carers are met.

A copy of the full report is available on the Council's website.

## **Children's Services Scrutiny Committee**

- The Committee has conducted a spotlight review of Special Educational Needs (SEN)/Banded Funding. All mainstream schools receive delegated SEN Bands 1 & 2 funding into their budgets. The amount for each setting is determined through a formula. Following concerns about the use of the Free School Meal index as a basis for allocating levels 1 & 2 banded funding to schools the Committee formed a Working Group to examine the range of delegated funding options and how the SEN/Banded Funding system was meeting the needs of children and schools. A pack of documentary evidence was provided to the Group who discussed the issues with officers at a one-off meeting and referred a number of observations to the Herefordshire Schools Forum for consideration when the Forum undertakes its further review of SEN/Banded Funding.

## **Community Services Scrutiny Committee**

### **Scrutiny Review of the Herefordshire Economic Development Strategy 2005-25**

The Committee has approved the findings of the scrutiny review of the Herefordshire Economic Development Strategy 2005-25. Principal recommendations to the Executive include:

- Individual action plans should be produced on Hereford, the Market Towns and the Rural Areas linked to the Local Development Framework and engaging community groups.
- There should be greater emphasis in the Strategy on ICT and particularly actively seeking ways of improving broadband speeds and coverage across the County to support existing and attract new businesses; and create "hubs" in market towns for business use
- There should be greater emphasis in the Strategy on attracting new businesses and jobs into the County – reflecting the economic downturn.
- The Strategy should have a section on all existing businesses and their needs with specific reference to business support available.
- There is a need to integrate specific objectives into the sustainability theme on climate change e.g. measures to promote renewable energy schemes based on independent study of potential of renewable energy production in the County
- There is a need to reflect the significance transport plays in supporting business development with a focus on sustainable transport solutions.
- Annual monitoring should be developed to relate indicators to objectives.

A copy of the full report is available on the Council's website.

## **Environment Scrutiny Committee**

- The Committee receives regular environment and carbon performance reports as part of its Good Environmental Management (GEM) monitoring. As part of this ongoing work the Committee has requested that a report be presented to it setting out the Council's intended actions to achieve the stated carbon reduction targets.

### **Health Scrutiny Committee**

- The Committee has been giving particular attention to refocusing its work programme. The main focus over the next 18 months will be on promoting population health and the delivery of effective preventive interventions by the NHS, Council and all Community Partners in the County.

**PJ EDWARDS  
CHAIRMAN  
STRATEGIC MONITORING COMMITTEE**

### **Background Papers**

Agenda Papers of the Meeting of the Strategic Monitoring Committee held on 21 September and 19 October 2009





<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>13 NOVEMBER 2009</b>
<b>TITLE OF REPORT:</b>	<b>REPORT OF THE REGULATORY COMMITTEE MEETING HELD ON 10 AUGUST; 9 SEPTEMBER; 6 OCTOBER &amp; 3 NOVEMBER, 2009</b>
<b>MEMBERSHIP:</b>	<b>P. Jones CBE (Chairman), J.W. Hope MBE (Vice-Chairman) C.M. Bartrum, D.J Benjamin, P.G.H. Cutter, Mrs. S.P.A. Daniels, J.H.R. Goodwin, RC Hunt, PJ McCaull, A. Seldon and JD Woodward.</b>

**CLASSIFICATION:** This is an open report.

## Wards Affected

County-wide

## Purpose

To note the report which is for information.

### **HIGHWAYS ACT 1980 SECTIONS 118 & 119 – APPLICATIONS FOR PUBLIC PATH DIVERSION ORDERS**

1. The Committee has dealt with two applications for Public Path Diversion Orders for which there has been consultation with interested parties, the local parish councils and the local Ward Councillors:-
  - (a) the Interim Parks Countryside and Leisure Development Manager has been instructed to consider an Order under S.119 of the Highways Act 1980 to extinguish the full length of footpath BM 13 in the parish of Bodenham. The footpath is obstructed by a dwelling and the adjoining landowners are not prepared to allow it to be diverted onto their land. The footpath has been disused for a considerable length of time and there are suitable alternative routes nearby; and
  - (b) part of Footpath part of footpath SD1 in the parish of St. Devereux is to be diverted because it is obstructed by farm buildings.

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Further information on the subject of this report is available from  
Pete Martens (01432) 260248

## **CHARITABLE COLLECTION POLICY**

2. The Committee has approved a Charitable Collection Policy for Herefordshire. The Charities Act 2006 came into effect on 1 April 2009, replacing a variety of legislative arrangements for the regulation of charitable collections in public places. Although the Act does not stipulate that a Licensing Authority must have a policy for such collections, in order to demonstrate fairness and consistency it is considered to be good practice and appropriate to have a policy in place. Advice from the Local Government Ombudsman following his investigation of a complaint about a refused application was also that there should be a local policy in place to provide clear guidance for those involved in such activities. Charitable organisations have been consulted on the proposals. The Policy will provide considerable guidance and information for them and also help to regulate and control collections that are held each week, so that the public is not faced with an unacceptable number. The Policy has also formalised the previous informal practice and helped towards regularising collections using best practice.

## **HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENCE CONDITIONS - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

3. A comprehensive review is being undertaken of the Council's hackney carriage/private hire vehicle licence conditions with a view to streamline the present system to make it more user friendly for Officers and the trade in the light of operational experience and best practice. Extensive consultation has been carried out with the trade and interested parties and informal meetings have been held where appropriate. The results of this process will be reported back to the Committee with a view to the revised conditions being introduced early in the New Year.

## **REVIEW OF HACKNEY CARRIAGE FARES FOR 2009/2010**

4. An annual review of the hackney carriage fares has been undertaken. The trade had asked if there could be no change to the fare structure and the Committee and the Licensing Officers had no objection to this.

## **APPLICATIONS FOR HACKNEY CARRIAGE AND PRIVATE HIRE LICENCES – LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

5. Applications for the reinstatement, renewal or grant of Hackney Carriage/Private Hire driver's licences have been referred to the Committee in accordance with the Council's terms and conditions and the advice on the interpretation of spent convictions and medical requirements. Incidents involving the conduct of drivers have also been heard. Applications for the renewal or transfer of vehicle licenses have also been submitted to the Committee because the applicants were late in submitting their applications and were in breach of the Council's licensing conditions, or they wished to transfer a licence to a vehicle that does not comply with those conditions.
6. The applicants, licence holders and their representatives gave details of the grounds for their applications and provided the Committee with their personal circumstances. In the case of the applications for vehicle licences, the applicants explained the circumstances which had prevented them from renewing their licences within the Council's prescribed timescale or why they wanted to transfer their licenses.

7. The applications were dealt with as follows:
- a. two applicants were allowed to renew their vehicle licences outside the prescribed timeframe because of the difficulties they had encountered; they had obtained the necessary VOSA certification; or the fact that the Committee felt that the timeframe between expiry and the application for renewal was small enough to be acceptable;
  - b. an applicant was allowed to transfer his vehicle licence to another vehicle which did not comply with the condition about the replacement having at least 30,000 less recorded mileage. In this case the difference in mileage is considered by the Committee to be too small to warrant refusal.
  - c. applicants for the renewal of vehicle licences were asked to be more timely when renewing to enable sufficient time for their applications to be processed and for their vehicles to be inspected at the Council's testing centre
  - d. consideration of incidents regarding three drivers was deferred to enable the officers to give more consideration to the legal issues involved;
  - e. three applications for drivers licenses were granted because the Committee is satisfied that evidence has been given by the applicants that they are fit and proper persons to be licensed;

**P. JONES CBE  
CHAIRMAN  
REGULATORY COMMITTEE**

**BACKGROUND PAPERS** Agenda papers from the meetings of the Regulatory Committee held on 10th August, 9th September, 6th October and 3rd November, 2009.





<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>13 NOVEMBER 2009</b>
<b>TITLE OF REPORT:</b>	<b>REPORT OF THE AUDIT AND CORPORATE GOVERNANCE COMMITTEE MEETING HELD ON 28 SEPTEMBER 2009</b>
<b>MEMBERSHIP:</b>	<b>Councillors: ACR Chappell (Chairman), MJ Fishley, JHR Goodwin, , PJ McCaull, R Mills, RH Smith and AM Toon.</b>

**CLASSIFICATION:** This is an open report.

## Wards Affected

County-wide

## Purpose

To note the report which is for information.

### 1. ANNUAL GOVERNANCE LETTER

The Committee has considered the external auditor's Annual Governance Report for 2009. The Committee has agreed the proposed action plan as set out in the Annual Governance Report and has approved, subject to amendment, the draft Letter of Representation for signature by the Chairman of the Committee and the Director of Resources. The Director of Resources will be submitting a report to the Committee on creditor authorisation payments.

### 2. INTERNATIONAL FINANCIAL REPORTING STANDARDS

The Committee has received and noted a report on the project plan for implementing International Financial Reporting Standards.

### 3. AMEY SERVICE DELIVERY PARTNERSHIP COST CONTROL

The Committee has received and noted a report on the provisions in place for the control of costs in relation to the Service Delivery Partnership with Amey.

**4. MAJOR PROJECTS STATEMENT**

The Committee has considered and noted a position statement on major projects being undertaken by the authority.

**5. INTERNAL AUDIT JOINT WORKING PROTOCOL**

The Committee has received and noted a report on the Audit Protocol for joint working with CW Audit Services (Primary Care Trust Auditors).

**6. DATA QUALITY UPDATE**

The Committee has received an update on the progress being made against key elements of the rolled forward data quality action plan. In noting the report, the Committee agreed that a letter be sent on behalf of the Chairman to the data sharing partners to request an immediate response in respect of data quality sharing.

**ACR CHAPPELL  
CHAIRMAN  
AUDIT AND CORPORATE GOVERNANCE COMMITTEE**

**BACKGROUND PAPERS Agenda** for the meeting of the Audit and Corporate Governance Committee held on 28 September 2009.

## REPORT OF THE ANNUAL MEETING OF WEST MERCIA POLICE AUTHORITY HELD ON 14 JULY 2009

### *Chair and Vice Chair*

1. Mrs Sheila Blagg (Bromsgrove, Worcestershire) has been appointed Chairman of the Police Authority for the ensuing year.
2. Mr Robin Durham (Shrewsbury, Shropshire) and Mr Zad Padda (Evesham, Worcestershire) have been appointed as Vice Chairs.
3. The Authority recorded its appreciation of the outgoing Chair, Mr Paul Deneen who, in his four years office, had been exceptional, making a tireless contribution from which the whole Authority and West Mercia Police had benefited.

### *Membership*

4. Following the local government elections in Shropshire and Worcestershire in June 2009 the councillor members named below were appointed to the Police Authority:

Mrs Sheila Blagg	Worcestershire County Council
Mr Bob Bullock	Worcestershire County Council
Mr Brandon Clayton	Worcestershire County Council
Mr Miles Kenny	Shropshire Council
Mr Edward Sheldon	Worcestershire County Council
Mr Michael Wood	Shropshire Council

5. The Authority placed on record its appreciation of the councillor members who were not reappointed for their service and contribution:

Mr John Champion	Worcestershire County Council
Mr Robert Peachey	Worcestershire County Council
Mrs Margaret Winckler	Shropshire County Council

### *Annual Report 2008/09*

5. The Authority has agreed the Joint Annual Report for 2008/2009, a copy of which would be available on the Internet at [www.westmerciapoliceauthority.gov.uk](http://www.westmerciapoliceauthority.gov.uk).
6. During the year West Mercia Police had continued to maintain a high level of performance results and for the fifth year running had achieved an overall reduction in crime. Key to achieving these results was a focusing on the priority areas identified in the joint policing plan, which included an improvement in detection rates for serious sexual offences and completing local policing priorities on time.
7. Both the Force and the Police Authority had during the year actively engaged in local partnerships, recognising the importance placed on shared targets and

shared delivery across the West Mercia area. In addition, there had been continued and active participation in increased collaboration and joint working with neighbouring forces and authorities.

8. West Mercia Police had been engaged in a number of high profile major operations through the year and had successfully managed staffing levels, prioritising effort at these times. Its approach to tackling major crime had also been endorsed through independent assessment.

9. The Force faced an ongoing challenge of recognising and adapting to changing or emerging threats. This year in particular the Authority had been made aware of the ever growing area of internet crime and the challenges this presented for the High Tech Crime Unit (see separate report below).

10. With the introduction of a new target based on public confidence and the roll out of the Policing Pledge, the Police Authority had worked very closely with the Chief Constable in developing measures that would be used to track progress against these initiatives as well as agreeing other measures to allow effective ongoing monitoring of the policing plan targets.

11. Once again the Police Authority and Chief Constable are confident that West Mercia Police will meet all the challenges ahead and will continue to be seen as high performing, cost efficient and effective, delivering the high standard of policing services for the people of West Mercia.

### ***Significant Recent Court Cases***

12. Since the Authority's last meeting in May 2009 there have been some further significant court results, which are summarised below:

#### Herefordshire

Three people aged between 17 and 18 were sentenced to up to five years imprisonment for a reign of violence including two very serious woundings in Hereford. In addition a man was convicted for a string of violent offences, including an assault in a Hereford public house.

#### Shropshire Division

A travel company executive from Shrewsbury has been jailed for fraud and deception. In addition a prolific burglar has received a prison sentence and two men were also jailed for three and five years for supplying heroin in the Shrewsbury area. This followed the conclusion of Operation Rock, an eight month investigation into the supply of heroin in the town centre which saw a total of thirteen people arrested.

#### Telford and Wrekin Division

A Telford man was jailed for nearly seven years for offences including assaulting a police officer, grievous bodily harm and possessing a sawn off shot gun. Three men from the Manchester area have been jailed for the robbery of a bank in Dawley, Telford.

## Worcestershire

Two members of an armed gang who carried out a raid at Tesco Express in Droitwich were jailed for six years, whilst a Worcester man was given a four and a half year sentence for dealing in cocaine.

Members of a drugs gang were jailed for between nine months and five years for growing cannabis at two places, including one in Redditch. A Kidderminster man was given an indeterminate jail term in the interests of public protection for kidnap and other offences.

Following the discovery of a body at a waste depot in London it was ascertained that the body had originally been placed in a recycling bin in Redditch. Two people have received life sentences for murder.

### ***Stop and Search***

13. The Authority has reviewed the Stop and Search data for the period 1 April 2008 to 31 March 2009 where a total of 12,229 Stop Searches were recorded compared to 10,835 the previous year, equating to a 12.9% increase. The total number of complaints arising out of the use of this was very low at 21 (0.17%). Such complaints are reviewed monthly by the Professional Standards Department. The Police Authority also carries out a dip sample.

14. Stop searches are influenced by factors relating to local community tensions, the targeting of crime trends as well as abstractions to major enquiries. The benefit of the use of the powers was evidenced by a number of successes in relation to theft of metal, including street drain covers.

15. The very low number of complaints generated by the use of these powers (21 or 0.17% of all Stop Searches) lends weight to the assertion that the powers were properly targeted and implemented with sensitivity. Their usage would be monitored to ensure that this trend continued.

### ***Professional Standards***

16. During the period 1 April 2008 to 31 March 2009, West Mercia Police recorded 838 complaint cases containing 1328 allegations. In comparison to the same period last year there were 806 complaint cases recorded containing 1170 allegations, a 4% rise in complaint cases and a 13.5% rise in complaint allegations. Out of the complaints made 88% were not substantiated.

17. Comparison with other forces would be carried out to seek to identify good practice and it was also intended to look at private companies with a good reputation for integrity in order to learn lessons on improving confidence within the Force. The Independent Police Complaints Commission was also putting in place standard performance measures for the complaints system to establish uniformity across the police service.

### ***Commendations and Honours***

18. Chief Constable Commendations have recently been awarded to officers involved in a variety of cases including a robbery where two people died, the protection of three young children from abuse, family liaison following a drowning incident in France, an animal rights related extremism enquiry and the attempted murder of a baby. Mr Brian Williams was awarded an MBE in the Queen's Birthday Honours' List for his loyal service over more than fifty years as secretary of the Hereford Police Choir.

### ***Police Academy***

19. The Police Academy is a concept that has been used in the USA and involves identified sections of the community undertaking a voluntary course aimed at improving their knowledge and understanding of policing. It has recently been successfully introduced in West Mercia

20. The first programme was targeted at over 55s in Shropshire and involved a three hour session every Wednesday for ten weeks. Eighteen people completed the course and subjects covered included distraction burglary, forensics, local and response policing, firearms, the force helicopter, the force control room and there were guest speakers from the Crown Prosecution Service, Trading Standards and the Fire Service.

21. The programme was a great success and several participants were now performing voluntary roles with the Police as well as being vocally very positive community advocates.

22. Two further programmes were planned, aimed at the 18 – 24 age group (Shropshire) and the Muslim Community (Worcester).

### ***Summary of Force Communication Campaigns***

23. Recent campaigns organised by or involving West Mercia Police have included:

- Safe and Secure – home security advice
- National Tackling Drugs Week – aimed at increasing public confidence in and awareness of the work being done locally to tackle drug related issues.
- Get Involved Week – promoted the various volunteering opportunities available and other ways people can become involved in making a difference to their community.
- Rogue Trader Day – led by Trading Standards and included vehicle and trader stop checks, reassurance patrols and leaflet drops.
- PACT (Partners and Communities Together) and the Policing Pledge – leaflets containing details of the Policing Pledge and recent PACT priorities produced for each local policing team area.
- Mini Motors – leaflet being developed to raise awareness among parents on the law relating to mini motors.

24. Details of current campaigns can be found on the West Mercia Police website [www.westmercia.police.uk](http://www.westmercia.police.uk)

### ***Internet safety***

25. The Child Exploitation and Online Protection Centre (CEOP) has developed a specific programme entitled "Think U Know" aimed at developing awareness amongst school children. West Mercia Police was also developing a parents and carers package on Internet Safety which had been very well received. Presentations would be delivered across the force area during the next few months.

### ***Special Priority Payments***

26. The Police Reform Programme provides for a local scheme of Special Priority Payments targeted at front line and operational police officers in particular. The Scheme is wholly funded by the Home Office but requires annual ratification by the Police Authority.

27. The Scheme for 2009 rewards those officers who perform front line operational duties or are regularly required to work additional hours which place significant restrictions on their private life for which they do not receive additional compensation. The following types of post qualify:

- Category A: operational posts which are part of a published rostered shift pattern which covers a cyclical 24 hour, 7 day period.
- Category B: operational posts which are part of a published rostered shift pattern which regularly and frequently involves working a minimum of three hours between 00:00 and 07:00
- Category C: posts which are part of a formal on call rota, which regularly places significant restrictions on the Officer's private life, and for which he/she may not receive any additional compensation.

### ***Questions on Police Matters at Council Meetings***

28. The Authority is required to nominate a member to answer questions on the discharge of the functions of the Police Authority at meetings of the relevant councils and the following members were appointed for 2009/2010:

Herefordshire Council	Mr B Hunt
Shropshire County Council	Mr M Kenny
Telford and Wrekin Council	Mr K Sahota
Worcestershire County Council	Mrs S Blagg

Signed on behalf of the  
West Mercia Police Authority

Sheila Blagg  
Chairman

### *Further Information*

Any person wishing to seek further information on the subject matter of this report should contact David Brierley or Ian Payne on Shrewsbury (01743) 264690.

Further information on the West Mercia Police Authority can also be found on the Internet at [www.westmerciapoliceauthority.gov.uk](http://www.westmerciapoliceauthority.gov.uk).

### *List of Background Papers*

In the opinion of the proper officer (in this case the Chief Executive of the Police Authority) the following are the background papers relating to the subject matter of this report:

Agenda papers for the Annual Meeting of the West Mercia Police Authority held on 14 July 2009.

# **REPORT OF THE ANNUAL MEETING OF WEST MERCIA POLICE AUTHORITY HELD ON 20 OCTOBER 2009**

## ***Inspection of the Police Authority***

1. The Police Authority Inspection by the Audit Commission and Her Majesty's Inspectorate of Constabulary (HMIC) is scheduled to take place between March and June 2010. The inspection marks the first time police authorities will be jointly inspected across a whole range of activities by the Audit Commission and HMIC. Special emphasis will be placed on the way police authorities consider the views of the public.

## ***Delivering the Policing Pledge***

2. Her Majesty's Inspectorate of Constabulary (HMIC) has reviewed how well the 43 forces in England and Wales are delivering the standards they promised the public in the Policing Pledge, which sets out ten minimum standards that the police service promised to deliver. West Mercia received an overall grade of Good, one of only eight forces to receive a Good grading. The HMIC commented "*They have generally kept their Pledge with the public and listened to their concerns, acted on their concerns and kept them informed on the progress they have made.*"

## ***Police Use of Resources (PURE) Assessment***

3. The force has been awarded Level 3 in the 2008/09 Use of Resources Scores, which is in the top quartile of forces. Level 3 is defined as "exceeds minimum requirements – performs well". Three themes are covered in the Assessment:

- Managing Finances
- Governing the Business
- Managing Resources

## ***Capital Programme 2009/10***

4. The Police Authority has approved negotiation of a 21 year lease for a building in Wem to replace the existing police station, and to provide other facilities.

## ***Commendations and Honours***

5. Chief Constable Commendations have recently been awarded to officers involved in a variety of cases including an armed robbery, a person armed with a ceremonial sword posing a threat to the public, and two firearms incidents.

## ***Significant Recent Court Cases***

6. Since the Authority's last meeting in July 2009 there have been some further significant court results, which are summarised below:

### Herefordshire

A man was convicted for the attempted murder of his wife. Also, a man was found guilty of multiple counts of rape, grievous bodily harm, actual bodily harm, common assault and harassment on his wife. This verdict is seen as highly significant, given the particular difficulties involved when prosecuting rape cases within marriage.

### Worcestershire

A man was sentenced to serve at least 22 years for murder, with a 12-year sentence to run concurrently for arson after causing the death of one man and serious burns to members of his family.

A man was jailed for 13 years after a series of armed bank robberies, and attempted robberies, in Worcester and elsewhere in the UK.

In the first case of its kind in the country, a woman was sentenced to three months in a young offenders' institution for harassment after posting a death threat on Facebook.

A man was sentenced to two years in jail for the manslaughter of a colleague who died after an argument on a night out in Kidderminster. Also a man from Kidderminster was sentenced to six years in jail for causing death by dangerous driving.

### Shropshire Division

A man was convicted of two counts of rape, one of sexual assault and a charge of stealing his victim's purse when he attacked an 80-year-old woman at a cemetery in Oswestry. He has been warned to expect a lengthy custodial sentence. Also a 19 year old man has been charged in connection with another rape in Oswestry.

A Shropshire man has been jailed for five years after admitting 13 counts of obtaining money transfers by deception, fraud and money laundering offences and he has been served with a confiscation order of £345,576.

### Telford and Wrekin Division

A prolific burglar from Telford has received a custodial sentence of 3 years and 4 months, admitting burgling 23 homes in Telford.

A man has been found guilty of robbery and possessing an imitation firearm and sentenced to three years in prison for a hold up at a service station in Newport.

### ***Setting Priorities for the Policing Plan 2010/11***

7. Consultation evenings for partners, business and community representatives on the Proposed Policing Plan and Budget Consultation have been arranged as follows:

12 January 2010	Police HQ, Hindlip Hall, Worcester
13 January 2010	Shirehall, Shrewsbury, Shropshire
14 January 2010	Brockington Council Offices, Hereford
18 January 2010	Civic Offices, Telford

### ***Annual Crime Statistics***

8. The annual crime statistics indicated that total crime nationally was down by 5% against last year. The Force has concentrated efforts on serious harm impact crime and this has resulted in an 11% drop in burglaries in West Mercia.

### ***Community Engagement Fortnight***

9. A series of successful events had been held in September, including visits to Police Headquarters by over 1600 schoolchildren and an event in aid of Help the Heroes which had raised over £40,000.

### ***Local Policing Summaries***

10. Local Policing Summaries will shortly be made available to every household in West Mercia and can be viewed in selected libraries and leisure centres. The Summaries contain information on local policing teams and how to contact them. They also contain information on crime in each area, key contact numbers, how the public can get involved and who the local Police Authority members are, along with interesting facts and figures relevant to the area.

Signed on behalf of the  
West Mercia Police Authority

Sheila Blagg  
Chairman

### ***Further Information***

Any person wishing to seek further information on the subject matter of this report should contact David Brierley or Ian Payne on Shrewsbury (01743) 264690.

Further information on the West Mercia Police Authority can also be found on the Internet at [www.westmerciapoliceauthority.gov.uk](http://www.westmerciapoliceauthority.gov.uk).

### ***Questions on the functions of the Police Authority***

The Authority has nominated the following members to answer questions on the discharge of the functions of the Police Authority at meetings of the relevant councils:

Herefordshire Council	Mr B Hunt
Shropshire Council	Mr M Kenny
Telford and Wrekin Council	Mr K Sahota
Worcestershire County Council	Mrs S Blagg

### ***List of Background Papers***

In the opinion of the proper officer (in this case the Chief Executive of the Police Authority) the following are the background papers relating to the subject matter of this report:

Agenda papers for the meeting of the West Mercia Police Authority held on 20 October 2009.

**REPORT OF THE HEREFORD & WORCESTER FIRE AND RESCUE  
AUTHORITY TO THE CONSTITUENT AUTHORITIES  
MEETING HELD ON 14 SEPTEMBER 2009.**

**1. ANNOUNCEMENTS**

The Authority noted the following appointments :

**Member Champions & Working Groups**

IRMP Steering Group	<b>Cllrs:</b> <b>Brig. P Jones CBE</b> <b>T Bean</b> <b>D Taylor</b> <b>S Clee</b> <b>R Udall</b> <b>M Drinkwater</b> <b>A Hardman</b> <b>D Prodger MBE</b>
Equality & Diversity Steering Group	<b>Cllr F. Oborski</b> <b>Cllr R Udall</b>
Asset Management Champion	<b>Cllr D Prodger MBE</b>
Equality & Diversity Champion	<b>Cllr R Udall</b>
Risk Champion	<b>Cllr P Watts</b>
Young Firefighters Association Executive Committee Chair	<b>Cllr L Hodgson</b>

**Fire Authority Representatives on Outside Bodies**

Local Government Association (LGA)	<b>Cllr Brig P Jones CBE</b> <b>Cllr T Bean</b> <b>Cllr D Taylor</b>
LGA Fire Services Forum	<b>Cllr Brig P Jones CBE</b>
West Midlands Regional Management Board	<b>Cllr Brig P Jones CBE</b> <b>Cllr T Bean</b> <b>Cllr D Taylor</b>
Director of Regional Control Centre Company	<b>Cllr Brig P Jones CBE</b>
Herefordshire Partnership Board	<b>Cllr Brig P Jones CBE</b>

The Meeting welcomed Cllr John Campion to his first Meeting of the Authority.

Members were informed of the Emergency Services Show which will take place on Tuesday 24th and Wednesday 25th November, at Stoneleigh Park, Coventry, where the Chief Fire Officer will launch the Combined Air Rescue Pump.

## **2. SERVICE REPORT**

### Incidents:

Total incident numbers for Q1 2009/10 showed a slight increase on the same period last year (2060 incidents compared with 2049) but still represented a significant improvement on the previous three years' figures.

### FLOODEX:

Hereford & Worcester Fire and Rescue Service co-ordinated the UK's response to the European Union's biggest ever emergency exercise which took place in September. The exercise involved responses from the UK, Poland, Holland, Sweden and Estonia. The event simulated the tidal surge that devastated the UK and Holland in 1953 resulting in over 2,000 fatalities.

### Equipment Update:

All existing Breathing Apparatus is currently planned for replacement with new equipment that will further improve firefighter safety. The Apparatus is to be standardised throughout four of the five services within the West Midlands region (Shropshire being tied into an existing contract.) Training for all staff is currently being rolled out and will be completed before the planned use of the new equipment from April 2010. All of the new equipment can be serviced at the Operational and Logistics Centre at Betony Road.

In addition, new work wear for firefighters and technicians which is now being ordered, is likely to be introduced later in 2010.

### Official Opening of the Urban Search and Rescue Training Facility at Droitwich:

Ms Jacqui Smith, MP for Redditch, visited Droitwich Fire Station on Friday July 10 to officially open the Urban Search and Rescue Training Facility (USAR). During her visit she was given the opportunity to meet members of Service personnel who have been involved in the development of USAR and its training facility, and she went on a tour of the site to meet the USAR team. Following a tour of the training facility Ms Smith unveiled a plaque officially opening the building.

## **3. AUDIT COMMITTEE REPORT**

The Audit Committee met on 26 June 2009, and the Committee Chairman, Cllr. Derek Prodger, MBE, reported that the Committee had considered and approved the Statement of Accounts 2008/09 and the Authority's Annual Governance Statement, which was published on 30 June.

#### **4. BUDGET COMMITTEE REPORT**

Mr. A Hardman, Chairman of the Budget Committee, informed the Authority of the proceedings and recommendations of the Budget Committee Meeting held on 30 July 2009 which noted the report on Revenue and Capital budgets for the first quarter of 2009/10 and considered the review of the Authority's Asset Management Plan together with proposals for the refurbishment of Kidderminster Fire Station, which were approved by the Authority.

#### **5. THE REGIONAL FIRE CONTROL PROJECT**

The Regional Fire Control Project has been further delayed, and the earliest cut-over date is now projected as March 2012. The Chief Fire Officer outlined the substantial risks that the delay represented for the Authority in relation to current control arrangements and recommended options to address these risks, including strategic collaboration with neighbouring Authorities, alternative possible locations and processes to enable procurement of a replacement Command & Control system.

#### **6. RISK IMPLICATIONS OF THE CURRENT ECONOMIC DOWNTURN ON THE FIRE AND RESCUE AUTHORITY**

The Authority received a report on the potential impacts of the current economic downturn on the Service, and the response to same. It was noted that that to date neither the Service nor the Police Authority had any statistical evidence of increased arson or other incidents which would be expected as a result of the downturn.

#### **7. THE LOCAL GOVERNMENT ASSOCIATION FRA EQUALITY & DIVERSITY CHARTER.**

Members signed up to support the five point Charter for Equality and Diversity for Fire and Rescue Authority Members produced by the LGA in its role in providing political leadership on the issue of Equality and Diversity.

**PAUL HAYDEN  
CHIEF FIRE OFFICER/CHIEF EXECUTIVE  
HEREFORD & WORCESTER FIRE AND RESCUE SERVICE  
28 SEPTEMBER 2009**

#### **FURTHER INFORMATION**

Any person wishing to seek further information on this report should contact: Corporate Support on 01905 368331. Further information on the Fire and Rescue Authority and the Fire and Rescue Service can also be found on the Internet at ([www.hwfire.org.uk](http://www.hwfire.org.uk)).

## **BACKGROUND PAPERS**

Agenda papers of the meeting of the Fire and Rescue Authority held on 14 September 2009.