

Standards Committee

Date: **Friday, 18th January, 2008**

Time: **4.30 p.m.**

Place: **The Council Chamber, Brockington, 35
Hafod Road, Hereford**

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

For any further information please contact:

Heather Donaldson, Democratic Services
Tel: 01432 261829; Email:
hdonaldson@herefordshire.gov.uk

**County of Herefordshire
District Council**

AGENDA

for the Meeting of the Standards Committee

To: Robert Rogers (Chairman) (Independent Member)

Councillors John Stone and Beris Williams
 David Stevens (Independent Member)
 Richard Gething (Parish and Town Council Representative)
 John Hardwick (Parish and Town Council Representative)

	Pages
1. APOLOGIES FOR ABSENCE To receive apologies for absence.	
2. DECLARATIONS OF INTEREST To receive any declarations of interest by Members in respect of items on the Agenda.	
3. MINUTES To approve and sign the minutes of the meeting held on 18 October 2007.	1 - 6
4. APPLICATIONS FOR DISPENSATIONS RECEIVED FROM PARISH AND TOWN COUNCILS To consider applications for dispensations received from parish and town councils. Wards: County Wide <i>[Note: At the time that this agenda went to print, no applications had been received. This item remains on the agenda, therefore, to consider any applications that might arrive in time for the meeting.]</i>	
5. INDEPENDENT REVIEW OF THE COUNCIL'S CONTRACTUAL AND FINANCIAL ARRANGEMENTS To consider the Independent Review of the Council's ICT Contractual and Financial arrangements, by Mr. Ian Crookall. Wards: County Wide	7 - 54
6. CONTRACTUAL AND FINANCIAL STANDING ORDERS To consider the proposed contractual and financial standing orders as a result of the recent review by Mr. Ian Crookall. Wards: County Wide	55 - 108

7. STANDARDS BOARD FOR ENGLAND BULLETIN 36	109 - 118
To consider the latest bulletin from the Standards Board for England.	
Wards: County Wide	
<i>[Note: You will also need to refer to Bulletin 36 whilst viewing the next two agenda items following this one.]</i>	
8. LOCAL ASSESSMENTS	119 - 122
To consider the checklist issued by the Standards Board for England set out at pages 4 and 5 of Bulletin 36 and to consider what further actions are needed.	
Wards: County Wide	
9. RESTRICTIONS ON POLITICAL ACTIVITIES BY LOCAL AUTHORITY OFFICERS REPORT	123 - 130
To consider the implications of Section 202 – 203 of the Local Government and Public Involvement Health Act 2007 regarding political restriction.	
Wards: County Wide	
10. CONSULTATION ON ORDERS AND REGULATIONS RELATING TO THE CONDUCT OF LOCAL AUTHORITY MEMBERS IN ENGLAND	131 - 186
To consider a response to the consultation on local assessment issued by the Communities and Local Government office.	
Wards: County Wide	
11. TRAINING ON THE NEW CODE AND AND LOCAL ASSESSMENTS	187 - 188
To consider training for committee members jointly with committee members from Worcestershire or Shropshire County Councils; and parish council members within Herefordshire.	
Wards: County Wide	
12. STANDARDS COMMITTEE ANNUAL REPORT 2007	189 - 192
To consider a draft Standards Committee Annual Report 2007, and to choose the cover design.	
Wards: County Wide	

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the following item will not be, or is likely not to be, open to the public and press at the time it is considered.

RECOMMENDATION: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below

13. DETERMINATIONS BY THE STANDARDS BOARD FOR ENGLAND

193 - 198

To update the Committee about determinations by the Standards Board for England concerning Herefordshire.

Wards: County Wide

COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

MINUTES of the meeting of Standards Committee held at the Council Chamber, Brockington, 35 Hafod Road, Hereford on Friday, 19th October, 2007 at 2.00 p.m.

Present: Robert Rogers (Independent Member)(Chairman)

Councillor Beris Williams

David Stevens (Independent Member)

Richard Gething (Parish and Town Council Representative)

John Hardwick (Parish and Town Council Representative)

11. APOLOGIES FOR ABSENCE

Apologies were received from Councillor John Stone.

12. DECLARATIONS OF INTEREST

The following declarations of interest were made:

Member	Item	Interest
Mr. Richard Gething	Agenda Item 4 - APPLICATIONS FOR DISPENSATIONS RECEIVED FROM TOWN AND PARISH COUNCILS (Specifically Bridstow Parish Council)	Declared a prejudicial interest and left the meeting for the duration of this item.
Mr. Robert Rogers	Agenda Item 11 – APPLICATION FOR A DISPENSATION RECEIVED FROM A PARISH COUNCIL	Declared a prejudicial interest and left the meeting for the duration of this item.

13. MINUTES

RESOLVED (unanimously): that the minutes of the meeting held on 06 July 2007 be approved as a correct record and signed by the Chairman.

14. APPLICATIONS FOR DISPENSATIONS RECEIVED FROM PARISH AND TOWN COUNCILS

The Committee considered a report outlining five applications for dispensations which had been received from Parish and Town Councils.

Members referred to the Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002, which enabled them to grant dispensations in circumstances when the number of councillors that would be prohibited from participating in the business of the Council (due to them having a prejudicial interest) would exceed 50%.

Bridstow Parish Council: Following the May 2007 elections, one new parish councillor required a dispensation in relation to the Parish Council's role as custodian trustee of Bridstow Village Hall.

Colwall Parish Council: All fifteen members of the Parish Council required a dispensation in relation to the Parish Council's role as trustee of the Walwyn Meadow Trust. The dispensation would enable them to discuss maintenance and improvements matters pertaining to the Trust land.

Yarkhill Parish Council: Following the May 2007 elections, one new Parish Councillor required a dispensation in relation to his role as a trustee of Yarkhill Village Hall.

Brilley Parish Council: Following the May 2007 elections, one new Parish Councillor required a dispensation in relation to his role as a member of Brilley and Michaelchurch Village Hall Committee.

Ross-on-Wye Town Council: All five members of the Ross-on-Wye Town Council Planning Committee had requested a dispensation for a one-year period, in relation to a planning application at The King's Head, Ross-on-Wye. The Town Council owned the building adjacent to the development, and also the access to the site. The application would enable the Committee to discuss the application as a statutory consultee.

The Standards Committee granted a dispensation solely in respect of the Town Council's Planning Committee, in accordance with the Town Council's request. It acknowledged, however, that the full Town Council might wish to discuss the planning matter as well. If this were the case, then all town councillors involved would need to make a written request for a dispensation at a later date, naming all those involved. Having regard to the fact that the next Standards Committee meeting was not until 18 January 2008, members agreed to deal with such a request, should it become necessary, via email before the meeting.

RESOLVED: (unanimously) that:

(i) **the request for a dispensation received from Mr Clive Beddows of Bridstow Parish Council, in relation to Bridstow Village Hall, be granted until 19 October 2011;**

(ii) **the request for dispensations received from:**

Mrs N. Carless	Mr. N. Bowring
Mr. J. Mills	Mr. J. Cooney
Mr. P. Browning	Mrs. E. Hayes
Mrs. H. Stace	Dr. T. Hunt
Mr. S. Hockett	Mr. W. Leaper
Mr. N. Abbotts	Mr. J. Morris
Mr B. Ashton	Mrs G. Prideau-Jackson
Mr J. Beard	

In relation to the Walwyn Meadow Trust, be granted until 19 October 2011;

(iii) **the request for a dispensation received from Mr Robert Aspey of Yarkhill Parish Council, in relation to Yarkhill Village Hall, be granted until 19 October 2011;**

- (iv) **the request for a dispensation received from Mr Keith White of Brilley Parish Council, in relation to Brilley and Michaelchurch Village Hall Committee, be granted until 19 October 2011; and**
- (v) **the request for a dispensation received from Councillors Ravenscroft, Coleman, Lane, Dr. Roberts, and Edwards, in relation to a planning application for the King's Head, Ross-on-Wye, be granted until 19 October 2008, and if the full town council submits a further written request for a dispensation in relation to the same matter before the Standards Committee's next meeting on 18 January 2008, the Standards Committee will determine the request by email.**

15. THE COUNCIL'S PROTOCOLS AND CODES OF CONDUCT

The Head of Legal and Democratic Services, Mr. A. McLaughlin, presented a report in respect of the Council's various protocols and codes of conduct, which were the Standards Committee's responsibility. The documents required revision following the Council's adoption of the new Code of Conduct for Local Authorities on 27th July 2007. Members considered amendments to the following:

- The Code of Conduct for Members and Officers Dealing with Planning Matters;
- The Protocol on the Use of Council Resources;
- The Protocol for Member/Officer Relations.

Two of the documents – the Protocol on the Use of Council Resources, and the Protocol for Member/Officer Relations – were not affected by the Code, and the Committee agreed that any necessary minor amendments could be done by email after the meeting, and in time for Council on 02 November 2007.

Mr. McLaughlin explained in detail, the more significant changes that were required to the Planning Code of Conduct, to reflect the rights of councillors who have a personal and prejudicial interest, to represent their communities. The new Code enabled members to speak at planning meetings in the same way as any member of the public, and then they would be required to leave the meeting and not participate in the ensuing discussion or vote. Amendments to this would also be completed after the meeting and in time for Council.

Mr McLaughlin said that this change to the Code would have particular implications for members who were both local authority councillors, and town or parish councillors ("dual-hatted" members), because they would be considering planning applications at more than one stage in the process. They would need to be aware of the correct procedure to follow when representing their communities. Mr Richard Gething suggested that there was merit in including guidance on this in the Herefordshire Association of Local Councils (HALC) training, and Mr McLaughlin said that he would devise a short guidance leaflet in conjunction with HALC.

RESOLVED (unanimously) that:

- (i) **the Code of Conduct for Members and Officers Dealing with Planning Matters be revised to reflect the New Model Code of Conduct, adopted by the Council on 27th July 2007, and to reflect good practice in particular in respect of dual-hatted members;**

- (ii) **the Protocol on the Use of Council Resources, and the Protocol for Member/Officer Relations be revised in the light of the New Model Code of Conduct;**
- (iii) **all amendments be completed and agreed by the Committee by email after the meeting, and in time to make its recommendations to Council on 02 November, 2007; and**
- (iv) **the Head of Legal and Democratic Services, in conjunction with HALC, produces a guidance leaflet for parish and town councillors, on how the New Code will affect members involved in the Planning process, and HALC be requested to include any relevant details in its training programme.**

16. SPECIAL AUDIT INVESTIGATION AND FINANCIAL GOVERNANCE

The Head of Legal and Democratic Services presented the Director of Resources reports to the Corporate Management Board on a special audit investigation, and to Cabinet on financial governance in Information and Communication Technology (ICT) and Customer Services. He explained that the reports highlighted concerns about the Council's financial and contractual arrangements in the ICT Department, and that both the Corporate Management Board and Cabinet had recommended that an independent review be conducted. The Council had sought advice from the Local Government Association, and appointed Mr Ian Crookall, a former Chief Executive of Buckinghamshire County Council, to complete the review.

The Committee was of the opinion that there was nothing in the reports which fell within its remit, but that it was important to note the issues involved, and monitor some aspects highlighted in the reports, namely:

- Reputation (Paragraphs 42-46 of the report on Page 22 of the agenda);
- Financial and legal elements, and the Constitution (elements 6 and 7 on Page 26 of the agenda);
- Assuring that all Members receive complete advice from the Monitoring Officer and the Section 151 Officer (element 14 on Page 28).

RESOLVED (unanimously) that:

- (i) **the reports be noted;**
- (ii) **the Standards Committee continues to monitor the situation, and in particular, the aspects outlined above; and**
- (iii) **the Chairman writes to the Chief Executive (copied to the Chairman of the Audit and Corporate Governance Committee), outlining the Standards Committee's approach to the matter.**

17. TRAINING UPDATE

Mr Gething and Mr McLaughlin reported on joint training arrangements with HALC. The first session on the new Code of Conduct would take place on 01 November 2007, and more would be arranged for 2008, along with training on the local filter.

The Committee commented that it was important to provide repeat sessions for members who had not attended.

Mr McLaughlin reported that the Standards Board for England had released a training DVD entitled "The Code Uncovered", which used a fictional planning dispute to highlight changes to the Model Code of Conduct. Members agreed to watch it at the close of the meeting, and felt that it provided some helpful and clear examples of personal and prejudicial interests. The Head of Legal and Democratic Services said that he would look to incorporate it into future training sessions with the Council and HALC.

RESOLVED: (unanimously) that the report be noted.

18. SIXTH ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

The Committee discussed the Annual Assembly of Standards Committees, held in Birmingham on 15 and 16 October, 2007. The Standards Committee had been well represented, both in terms of attendance and participation. The Chairman, and the Head of Legal and Democratic Services had led seminars at the conference.

Members felt that it had been an invaluable experience, providing a great deal of information on the local filter and issues relating to the new Code of Conduct. It was clear that the local filter would raise questions about how the Committee would in the future, and members would need to decide how best to deal effectively with the extra stages in the investigation process that would become its responsibility, and to consider the implications for resources.

The Committee had shared its annual report, chairing checklist, and hearing guide with other authorities, and these had been met with approval and numerous requests to take the documents away and replicate them.

RESOLVED (unanimously) that the report be noted.

19. STANDARDS BOARD FOR ENGLAND - BULLETIN 35

Members noted the contents of Bulletin 35 from the Standards Board for England.

RESOLVED: (unanimously) that the report be noted.

20. DETERMINATIONS BY THE STANDARDS BOARD FOR ENGLAND

The Committee considered a report on the current investigations by the Standards Board for England in respect of complaints of alleged misconduct against certain Councillors during 2007.

RESOLVED: (unanimously) that the report be noted.

21. APPLICATION FOR A DISPENSATION RECEIVED FROM A PARISH COUNCIL

[Note: Members noted that the agenda item had been placed in the exempt section of the agenda in case any of the information should be excluded from the public under Section 100 (A) (4) of the Local Government Act 1972. On viewing the information, however, they decided that this was unnecessary, and consideration of the matter was conducted in public session.]

The Committee considered a report outlining an application for a dispensation which had been received from Stapleton Group Parish Council.

Members referred to the Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002, which enabled them to grant dispensations in circumstances when the number of councillors that would be prohibited from participating in the business of the Council (due to them having a prejudicial interest) would exceed 50%.

Three out of six members of Stapleton Group Parish Council had requested a dispensation for a one-year period, to enable them to discuss matters relating to an unadopted length of green lane in the parish. The Parish Council's quorum was three.

Two of the members had sought a dispensation on the basis that they had submitted public rights of way evidence forms to the Council in respect of the lane. The Committee noted that they had filled in the forms in their capacity as members of the public, however, and not as parish councillors. They agreed that this did not amount to a prejudicial interest, and so they were entitled to participate in any discussions about the matter.

The Committee considered that the third member might have a prejudicial interest on the basis there was an issue of land ownership to which the lane was a natural access. The likelihood of this being a prejudicial interest would diminish if there were other access points to the land, however. Members concluded that, even if the interest was prejudicial, a dispensation would still be unnecessary because there would still be sufficient parish councillors remaining in the meeting to be able to discuss the matter.

RESOLVED: (unanimously) that the request for a dispensation received from Stapleton Group Parish Council, in relation to an unadopted length of green lane in the parish, be not granted on the grounds that - on the basis of the information received - two members did not have a prejudicial interest, and so there were sufficient parish councillors to maintain a quorum.

The meeting ended at 3.47 p.m.

CHAIRMAN

INDEPENDENT REVIEW OF THE COUNCIL'S CONTRACTUAL AND FINANCIAL ARRANGEMENTS

Report By: Head of Legal and Democratic Services

Wards Affected

Countywide

Purpose

1. To consider the Independent Review into contractual and financial arrangements.

Financial Implications

2. None

Background

3. As members of the Committee are aware following concerns expressed by the Director of Resources in a Section 151 Report the Council commissioned an independent review in respect of a particular ICT Contract which was conducted by Mr Ian Crookall ex Chief Executive of Buckinghamshire County Council. A copy of the Review is attached which sets out recommendations which have been adopted by full council and an Action Plan has been prepared and this is the process being worked through by the Council

Recommendations

THAT the report be noted and any observations by the Committee

Appendices

- **Appendix 1 – Report by Mr Ian Crookall**
- **Appendix 2 – Action Plan**

Background Papers

None

**INDEPENDENT REVIEW OF
HEREFORDSHIRE COUNCIL'S ICT FINANCIAL AND
CONTRACTUAL GOVERNANCE ARRANGEMENTS**

Ian Crookall

9th November 2007

Preface

This report attempts to give an overview of events which have taken place from 2003 to date as the Council has updated its Information and Communication Technology (ICT). The areas I have been asked to cover are extensive;

1. The events cover a period of some 4 years.
2. Specialist areas such as technological procurement and the financing of major projects have been considered.
3. This report gives a broad overview describing and placing important events in context focussing on key issues but not neglecting important detail.
4. Where appropriate individual behaviour and conduct has been assessed and evaluated.

I have been working to a tight timescale to deliver an early report.

In particular, I have acted both as an external reviewer and through the eyes of someone with considerable experience in and knowledge of local government management and culture. I have attempted to ignore the benefits of hindsight and concentrated on viewing events as they were at the time through the experience of those involved.

I have not attempted to re-write or repeat previous reports. I have drawn on them and the notes which have been taken of my interviews with those closely involved. I have presented events and data in a slightly different way to try to make events clearer for those who read this report and undertaken some further research and analysis to understand some complex issues

My report is in four parts. The first part sets the scene and describes the events which have taken place. The second section addresses directly and specifically each of the issues which I have been asked to consider. The third section contains some suggestions as to the way forward for the Council, and the final section is an executive summary with a schedule which summarises my conclusions.

This report addresses disciplinary and personnel issues which are exempt business. I have addressed these issues, but I have included them in a supplementary report to preserve confidentiality in view of the Council's duty of care to past and present employees, and to protect the Council's legal position.

I am indebted to all those whom I have interviewed for their co-operation in what for them has been a very difficult time. I am also grateful and wish to place on record my appreciation to many officers of the Council who have sought out papers for me and who have assisted me to understand the issues.

I hope that the report will provide the means whereby Herefordshire Council can resolve issues of accountability and responsibility and be able to move the Council forward in the knowledge that the recommendations I make will provide a realistic foundation on which to avoid future difficulties of this nature.

I have been greatly assisted by the advice of Mr Martin Shefferd, a former Section 151 Officer, in respect of financial best practice. Needless to say the responsibility for the analysis and opinions set out in this report are mine.

Part 1 - Introduction, Context and History of Events

1. The issues which I have been asked to consider relate to a period of nearly four years. They relate to contractual, managerial and financial matters so I think it is helpful to give a brief overview of events.

2. In 2002/3 the Council recognised that its Information and Communications (ICT) infrastructure required significant improvement. There was a wide range of issues which caused concern and they can be summarised as follows:
 - a) Poor service delivery to the departments of the Council
 - b) Separate IT networks and sections within the Council
 - c) Poor security and back up arrangements with a high level of risk
 - d) A period of interim management and temporary contracts
 - e) Skills shortages amongst ICT staff
 - f) Low morale amongst staff
 - g) A lack of vision as to future role of ICT in delivering improved services
 - h) High cost of service when benchmarked with a view to making financial savings

3. In August 2003, following a recruitment process involving external consultants, a Head of ICT (later designated Head of Information, Technology and Customer Services) was appointed, accountable managerially to the Director of Policy & Community (now Director of Corporate & Customer services). The new appointee's experience had been with ICT companies and she had no previous experience in Local Government.

4. The Head of ICT embarked on a programme of change. The ICT management team was revamped, clients were more effectively engaged, programmes of training and staff development focussed on the ICT business needs were introduced, and disaster recovery and security of data were improved.

5. As part of this process, the ICT unit entered into eleven major contracts with external ICT suppliers and many individual contractors, some on a long-term

basis, were employed to implement new systems. The issues with which this report is concerned relate primarily to two major contracts which are:

- a) The contract for a back office system (BOP) for the ICT department at an approved cost of £464k
- b) A Council wide contract for a voice and data network system at an evaluated cost of £5.94 million known as the Community Network Upgrade (CNU).

FINANCIAL AND CONTRACTUAL ARRANGEMENTS

6. It may be helpful to set out briefly the main rules which the Council has adopted when entering into contractual commitments with financial consequences. It is the responsibility of Directors to operate within the approved budget and inform the Director of Resources if there are likely to be significant changes impacting on the Council's finances. In particular, any report for a capital project shall contain specific details about its cost and impact. All projects in excess of £250K must be reported to and approved by the relevant Cabinet Member and projects in excess of £500K must be approved by Cabinet.
7. The process for awarding contracts has two objectives, namely:
 - (a) to secure the best possible value for money; and
 - (b) to show that the procurement is demonstrably free from impropriety.
8. Each Director is authorised and required to manage their Directorate's contracting arrangements. The approved Contracting Code of Practice envisages a Tender Invitation Panel to conduct the tendering exercise; a Tender Opening Panel whose purpose is self-explanatory; and a Tender Evaluation Panel to bring appropriate expertise and experience to bear in deciding which tender to accept. The Code deals with such matters as not accepting the lowest tenderer and the need to maintain records, which is the responsibility of the Contracts Monitoring Officer in each Directorate. The Council aims to use a specific methodology (PRINCE 2) for managing projects.

9. The Code of Practice also provides for the appointment of a corporate Contracts Panel, on which each Directorate is represented and which is expected to report annually to the Directors on the operation of the Code of Practice and maintain a procedures exception register in which variations from the Code are reported. These requirements, supplemented by any further guidance, provide the framework for letting contracts.

THE BACK OFFICE PROJECT (BOP)

10. The Head of ICT proposed the acquisition of a system which would improve the management of the division. The project was designed to focus on better performance information such as the speed of response to Help Desk queries, improved knowledge of ICT assets like desktops, better procurement of goods, managing employee issues such as training, and being the Division's financial information system. This is known as the Back Office Project (BOP).
11. The project started in summer 2004. An external evaluator was appointed; a project definition and business case was prepared which envisaged expenditure of £500K to be funded by ICT Service efficiencies; an invitation to tender and statutory advertisements were issued; the Information Policy Group, (responsible for assessing and evaluating ICT proposals), was informed and agreed the proposal, although with some concerns; two compliant tenders were received; the Head of ICT registered previous employment with both potential contractors; and a process of assessment scoring and evaluation took place.
12. On 23rd December 2004, in a memorandum to the Cabinet Member for Human Resources and Corporate Support Services (now Cabinet Member, Corporate & Customer Services and Human Resources), the Chief Executive and the Director of Policy & Community recommended that a contract be awarded at a cost of £464K over five years. The Head of ICT referred to the fact that the system could displace existing Council-wide systems over time. She also repeated her earlier statement that she had been previously employed by the preferred contractor.

13. The Cabinet Member, following a discussion with the Director, approved the proposal and the contract was signed immediately. The system was due to begin implementation in 2005 and it appeared from contemporaneous reports that the project in ICT was likely to be used as a pilot with a view to assessing whether the extended use of the system could be applied more widely within the Council.
14. The system was reported as being successfully implemented in August 2005 with specific examples of improved performance being identified. A project report in December 2005 set out the areas of achievement and issues still to be addressed, identifying the cost at £860K plus hardware costs.
15. The BOP system managed the ICT Division's financial information and it was a critical requirement that there should be successful integration with the Council's main financial system managed by the then County Treasurer. The Audit Services Manager assessed the interface between the two systems in July 2005 and advised that the specifications and procedures were available to transfer data and recommended a number of steps to make sure that this was done.
16. There have been ongoing problems in seeking to ensure the compatibility of the two financial systems. These have been the issues:
- a) In October 2006 the Audit Services Manager reported that the BOP system was considered unsatisfactory because no budgets had been set, payment control was inadequate and the reconciliation between the central system and the BOP was poor.
 - b) Considerable resources, both in terms of external consultancy advice and from the accountancy staff within the Resources Directorate have been focused on achieving compatibility and accuracy for the two systems.
 - c) There is no accurate information of the exact cost involved in implementation but it is substantially more than the initial reported cost of the system (£464k).

17. However in August 2007 the interface is considered to be generally satisfactory, although a fresh assessment is planned.

THE AWARD OF THE CONTRACT FOR THE COMMUNITY NETWORK UPGRADE (CNU)

18. The Council recognised in 2003 that significant investment in its ICT infrastructure was needed. The aim was to upgrade the corporate electronic voice and data network, reduce risk by providing better business continuity and disaster recovery and improve corporate document management. These steps were designed to underpin better access to services by users, leading to improved customer satisfaction. A total cost of £7.65M over four years was identified and the Council made initial provisions in its budget for 2004/5.

19. The contracting process was commenced in the summer/autumn 2004 with a project team being established, led by Head of ICT. Legal and audit representatives were involved. A specialist ICT external evaluator was appointed to provide advice on procurement. Statutory notices were issued; expressions of interest were invited; a shortlist from which tenders were invited was created and an evaluation took place. Following discussions with the external evaluator and internal audit, three tenderers went forward for final evaluation. There was a detailed evaluation exercise scoring all three tenders and a contractor was recommended as the preferred contractor for further negotiation by both the internal evaluation team and by the external evaluator at an evaluated cost of £5.94M. The external evaluator expressed concerns about the clarity of the Council's intentions and this is referred to in more detail in the next section of this report.

20. A report was made to the then Chief Executive's Management Team on the 1st March 2005, with a schedule of funding requirements, a presentation was made to the Leader's Briefing on 3rd March 2005 and further financial data was presented to the County Treasurer on the 13th March 2005 by the Head of ICT. Two reports were approved at the Cabinet Meeting on the 24th March 2005, one seeking approval to the proposed direction for the new network and

the second by the County Treasurer seeking approval to a further £500K being provided for the ICT network. The contract was signed on 31st March 2005.

21. The project was started and a report in August 2005 reported that there had been:

- a) Significant planning.
- b) A challenging programme of change with clearly defined targets.
- c) Implementation was supported by the experience of the contractor.
- d) The system was substantially implemented.

22. However, one of the features of both the BOP and CNU projects is that there have been substantial costs incurred for consultancy advice and assistance. In some cases this has been by engaging individual contractors on long-term placements into the ICT division. They have been regarded as the equivalent to employees but are not on the payroll of the Council; they are remunerated as contractors. Some of the costs have been substantial and there are personnel issues arising from this form of engagement. Many of the costs of these contractors have not been allocated specifically to the implementation of either of the two main contracts so it has proved difficult to assess the cost of implementation of each contract. There is a current audit report in preparation on the use of contractors in these circumstances and the process by which they are engaged.

THE SCRUTINY OF ICT SERVICES

23. The Strategic Monitoring Committee commissioned a scrutiny review of ICT services. A wide range of staff, service users and external representatives were interviewed to contribute to this review. The Committee reported in November 2006. The Committee reported favourably on the network strategy and progress that had been made in reducing security incidents. The Council was pursuing ISO standards, disaster recovery had improved, staff were knowledgeable and competent and improvement in performance was occurring. In particular, benchmark data commissioned from independent consultants suggested value for money was being obtained. There were

however causes of concern about services to schools, the clarity of the costs and the level of service which ICT provided to other Directorates.

24. The financial data supporting the review demonstrated the considerable investment which had been made in ICT. Between 2004/5 and 2005/6 capital expenditure had increased from £10.79M to £13.45M and the expenditure on the ICT trading account had increased from £4.85M to £6.75M. This latter increase in expenditure may have been a contributory factor to the £849K deficit on the trading account.

THE HEAD OF INFORMATION, TECHNOLOGY & CUSTOMER SERVICES (ITCS)

25. The Head of ITCS was employed from the 26th August 2003 until the 31st July 2007. She was appointed following a recruitment exercise undertaken by an external recruitment consultant. The Head of ICT had considerable private sector experience in implementing ICT systems. She reported to the Director of Policy & Community.

26. The Head of ITCS led the process of addressing the Council's ICT weaknesses. She led the contracting processes in relation to both the BOP and CNU projects.

27. In June 2006, the Chief Executive decided to second the Head of ITCS into the role of Change Manager in relation to the Herefordshire Connects Programme. The Chief Executive set out the purpose of this secondment in a letter to the Head of ITCS in which he highlighted the purpose of and approach to be taken to developing the change management initiative. He copied that letter to the Director of Corporate & Customer Services indicating that the latter would continue to have managerial responsibility, although some aspects of the reporting lines were acknowledged to be ambiguous.

28. Shortly after the start of the secondment, as a result of external advice, the Chief Executive decided to remove her from the role of Change Manager,

reverting to her former role of Head of ITCS. I set out more details of this in the confidential section of my report.

THE SPECIAL REPORT BY THE DIRECTOR OF RESOURCES (SECTION 151 OFFICER)

29. The Cabinet received a special report by the Director of Resources in her capacity as Section 151 Officer on the 20th September 2007 in relation to financial governance issues in ICT and Customer Services which had given cause for concern for some time. The Section 151 Officer has specific responsibility to provide for the proper financial administration of the Council and has been given extensive powers by the Council to obtain documents and to investigate issues of concern.

30. The concerns can be summarised as follows:

- (a) the difficulty encountered in transferring a service based accountant within the ICT Division to the Resources Directorate in line with a senior management decision
- (b) an overspend on the ICT trading account for the year 2005/6 of £849K
- (c) the difficulty in establishing a correct financial position for the ICT Division for the year 2005/6
- (d) payments which had been treated as capital items which were revenue expenditure, necessitating adjustments to the Council's accounts before they could be approved by the external auditor
- (e) concerns about the BOP system and the use being made of external contractors where documentary evidence of compliance with Council procedures was missing or proving difficult to obtain
- (f) concerns about how the advice from the external evaluator had been applied in the CN contract evaluation.

31. The Director of Resources drew attention to the implications for the Council; it was likely to affect the Audit Commission's view about the Council's use of resources and had implications for the reputation of the Council. An Action

Plan attached to the report has been agreed by both the Corporate Management Board and the Cabinet.

32. The brief which has been given to me is set out in the Terms of Reference at Appendix A which were finalised by the Council's Monitoring Officer in consultation with me. I have taken the advice of the Monitoring Officer on the manner in which this report is presented, to take account of legal issues which may affect the council or individuals. In normal circumstances the Chief Executive would report on these matters directly to the Council. However, in view of the fact that these matters relate to the Corporate & Customer Services Directorate, of which his wife is the Director, the Chief Executive and the Leader considered that it was appropriate for an externally appointed person to provide advice to the Council. I was requested by the Chief Executive of the Local Government Association to undertake that role and the next section of my report sets out my findings and advice in relation to the matters which I have been asked to consider.

Part 2 Response to each Term of Reference of the Review

33. In this section of the report, I propose to address each of the Terms of Reference. Before doing so, it may be helpful to understand what happened if I describe some features of how the Council appears to work and which are significant in the events which have occurred. These features are:

- a) **Culture and Values** – Members and officers placed trust in each other and had confidence in what was being done – it led to a consensual style of working which limits the degree of challenge.
- b) **Procedures and Protocols** – The Council has an impressive range of procedures which are not followed by everyone, partly because they are not easily accessible or understandable. There appears to be little or no sanction for those who do not comply. This is reflected by the approach to performance management.
- c) **Organisation** – A high level of freedom and responsibility is given to Directors and this is reflected in central/corporate services being devolved and reactive rather than influential and pro-active, especially when issues which presented risks to the Council are concerned.
- d) **Communication** – These events have demonstrated that robust and open debate about important issues has not occurred leading to inappropriate channels of communication being adopted.

34. These factors can lead to a situation where poor performance in not following accepted standards was permitted because individual officers who may have had reservations did not challenge colleagues. These observations may help to create an understanding of some of the events which have occurred.

35. I propose to deal with each Term of Reference in turn.

36.(i) To examine the evidential base on which the conclusions set out in the Section 151 Officer's report are based to enable the Council to reach a conclusion as to what, if any, further action needs to be taken in relation to the report beyond the remedial steps contained in the reports

themselves, which steps have been endorsed by the Corporate Management Board and set out any additional remedial action, if any, or additional recommendations for consideration by the Corporate Management Board and/or the Cabinet.

37. I have examined the evidence on which the Section 151 Officer's report was based and there is clear and sufficient evidence to indicate significant problems in the financial and contractual management within ICT. Some of these related to organisational and managerial issues such as the transfer of the service based accountant, which had already been effected. At the time of the Section 151 report, significant steps had been taken to address these issues and the Director of Corporate & Customer Services had already facilitated the necessary changes. The most significant concern relates to contract management and budgeting, where there were serious shortcomings.

38. A special report from the Section 151 Officer is reserved for the most serious breaches of financial governance where the Section 151 Officer considers that remedial action will not be forthcoming without this step. In my discussions with the Section 151 Officer, she clearly believes that, in her professional opinion, the seriousness of the issues and the response she believed would be forthcoming from within the Council were such that it was the necessary and only step which she decided upon after the most careful consideration. There were significant risks relating to the confidential nature of a compromise agreement, and implications for the reputation of the Council.

39. I discussed with the Leader and the Chief Executive their response to the concerns which the Section 151 Officer had expressed. Both indicated to me that they were always open to addressing these issues without the need for the issue of a Section 151 special report. The Chief Executive reminded me that he had previously reorganised the senior management structure to raise the status and profile of the Section 151 Officer because of his desire and support for a more corporate approach to financial management

40. It was clear to me that there was a breakdown of communication in that the Section 151 Officer was not sufficiently assured that the necessary steps would be taken. If there had been a better working relationship between senior officers and members, an alternative approach could have achieved real progress in addressing concerns. The officers whom I have interviewed have stated that there are significant signs of improvement since early April 2007. This was a time when it was clearly possible to direct resources at addressing the financial issues in ICT by both the Director of Resources and the Director of Corporate & Customer Services.

41. I make these comments to set out the context in which a Section 151 Officer special report is issued.

42. The report contains an action plan including twenty-one recommendations. If they are fully implemented and bought into effect by the Council as a whole and acted on, then they will address and provide a robust platform for the future. In particular they will provide assurance to members for the future.

43. However I have identified a number of further steps which the Council may wish to consider. The Section 151 Officer's report has focussed on financial and contractual/procurement issues. However there are other important corporate resources, principally people, property and information, where in the past the focus has been on Directorate management of this resource. My view is that, like financial resources, these resources should be managed more corporately within a council wide strategy and to professional standards, whilst retaining service flexibility to meet local circumstances. These are my additional recommendations for you to consider:

Actions for Consideration	Rationale
1. Consider bringing all corporate resources, including ICT and HR, together within a single Directorate.	Enable the key resources of people, property, finance and information to be managed in a more integrated and consistent manner.
2. Establish a consistent strategic approach to the management and	Facilitate a more corporate approach to the use of these resources; also potential

Actions for Consideration	Rationale
deployment of corporate resources so that common standards are applied throughout the Council.	for efficiencies provided prompt access to advice for front line staff from dedicated staff aware of service needs.
3. Strengthen the role and improve the performance of the Information Policy Group by revitalising its membership with pro-active participants. (Consider making the chair a Director not the line manager of ICT).	IPG should act as the key forum for all ICT investment to ensure it is consistent with the Council's policies and rigorously appraised.
4. Enhance the Audit ICT capacity.	Given the Council's ICT programme, demands on specialist ICT audit skills could stretch existing resources.
5. Develop the role of the Audit and Corporate Governance Committee by further training for members and officers.	It is important that the members of this committee have the skills to appreciate and discharge their important responsibilities. This Committee is an essential part of the checks and balances on the member and officer functions; important markers and trends need to be picked up, especially when repeated concerns are reported.
6. Ensure that all corporate rules, standards and processes are embedded, owned and followed by members and officers throughout the organisation, having first made sure that they are workable.	They need to be widely communicated, accessible and regularly refreshed. Senior managers need to address non-compliance immediately.
7. Develop senior management team-building with the new Chief Executive giving priority to rebuilding the senior management teams.	To develop further open, trusting and corporate working and leadership.
8. Create a better resourced and more pro-active procurement function which might both anticipate important developments and encourage better compliance with the revised contract regulations.	The Council spends a significant proportion of its budget on external contracts and arrangements and these require specialist input from users and technical staff, and as a minimum to include finance and legal staff.

<p>9. To review whether the Service Level mechanisms are the appropriate way for managing corporate resources.</p>	<p>The ICT experience suggests that SLA's did not improve services or control cost. Having different mechanisms for ICT spending meant that there was lack of clarity and transparency in budgeting and in using resources.</p>
<p>10. The Council to revive and refresh the performance management process so that it is effective in highlighting issues to be addressed.</p>	<p>The financial/contracting problems in ICT were not highlighted in normal performance management processes</p>

44. Many of these proposals will require to be viewed in the light of the management approach which the new Chief Executive will bring to the Council

45. (ii) To examine both historically and currently the management capacity to exercise the necessary supervision of contracting processes and, if there is historic evidence which could provide a basis for disciplinary action, to set that out in the report for the Council to consider

46. The management of the Contractual Process need not be too complex. The existing Contract and Financial Standing Orders whilst complex, if implemented and developed, form a framework for Directors to use. There is a requirement to appoint a Contract Monitoring Officer for each Directorate, and they should report to the Director regularly on the contracts which are being let. Directors are also able to specify in what circumstances matters need to be referred to them for approval – for example a Director might wish to approve any contract above a certain figure. Directors can further manage the contracting process by their responsibility to appoint the Tender Invitation Panels and Tender Evaluation Panels.

47. The Contract Standing Orders also provide that there should be a Corporate Contracts Panel which maintains registers of contracts and details when exceptions are permitted e.g. when a tender is accepted other than the lowest or a contract is let without quotations or tenders in the special circumstances permitted. The duty of the Contracts Panel to report annually to the Corporate

Management Board is a means whereby the Board can obtain performance information on which it can act.

48. The evidence suggests that the Contracts Panel has not met for a long time, does not maintain its registers and it is unclear who are the Contract Monitoring Officers. If these arrangements had been in place and operative, they provide a vetting process involving others so that appropriate checks and balances are incorporated into the contracting process. However there is now an opportunity to refresh the system. The recently appointed Strategic Procurement and Efficiency Review Manager and the Head of Legal and Democratic Services, with the support of the Audit Services Manager, might implement a means of recording and monitoring all contractual arrangements, including those about to be entered into. This would enable the Council to identify those areas where high levels of risk are involved so that a project team of appropriate disciplines could be involved. It will also enable patterns of spending and opportunities for better value for money to be identified.

49. My terms of reference ask me to comment on whether there is historic evidence which could provide a basis for disciplinary action. I have considered these matters in the confidential part of my report as they refer to specific individuals. I do consider that there are issues where senior managers of the Council could have acted to exercise a greater degree of control over events. I suggest a course of action which might lead to a disciplinary investigation.

50.(iii) To examine the corporate support, advice and direction offered to Directors, in particular financial and audit support, and legal and contractual support received. To examine in particular the support offered in relation to those matters identified in terms (iv) and (v) below

51. The process for approving ICT projects required:

- a) A business case for a particular project to be presented to the IPG panel for approval. This is a corporate officer group with representatives from Directorates led by the Director of Corporate & Community Services.
- b) Budget approval being obtained by provision being agreed to that item by the Budget panels and then in the Council budget. Any Capital provision was approved by the Cabinet following an officer report about the annual capital programme
- c) Specific approval for projects by the Cabinet member, the Cabinet or a Director depending on the level of cost

52. Financial, legal and audit advice and support were always available to Directors on request. Legal staff issued statutory notices and assisted with contractual provisions; audit staff were consulted on who to include in the final list of tenderers; and audit and legal staff are recorded as being members of the project board for the CNU contract. However corporate support appeared to be dependant on being invited to give it and on being informed.

53. There are circumstances in which officers representing corporate/central services such as finance, personnel and legal have to make it clear to service colleagues that actions need to be undertaken in a particular way or not taken at all. For example, I would expect legal staff to require that the drafting and vetting of major contracts with high levels of expenditure should be undertaken by them; I would expect the County Treasurer's representative at evaluation meetings to state that when a critical financial information system is being installed, there was a requirement that accountancy and audit staff should be involved in its purchase and implementation. The adequacy of the financial content of reports is a subject on which the County Treasurer might insist on certain specific information being set out in order to satisfy himself that the Council's regulations had been complied with so that both he and members have a clear understanding of the spending profile.

54. In the case of both the County Treasurer and the County Secretary & Solicitor, they were not Directors, but were members of the CXMT; perhaps they and their staff did not consider that they had the status, influence or capacity to

express sufficiently and robustly some of the concerns which they clearly had at the time.

55. However there is clear evidence that in a number of matters key corporate areas, staff were excluded or prevented from exercising their role, in some cases by officers who did not feel empowered to respond to their legitimate requests.

56.(iv) To examine the strength the external moderation of contracts and in particular the contracts highlighted in the S151 Officers Special Investigation Report

57. For both contracts, the Head of ITCS employed experienced external moderators whose task was to provide validation of the procurement process and assist in the process of evaluating tenders. This was most important for an ICT acquisition where technical and performance evaluation was critical. I have focussed my assessment on the CNU contract where a specialist firm from Manchester was appointed in November 2004. They made a formal offer setting out their terms and what they would do.

58. The nominated external moderator assisted in setting up the process of evaluation and the method of scoring each proposal. The Council accepted many of his suggestions. As the list of suitable potential tenderers was refined the external moderator drew attention to four key features which he believed needed to figure in the negotiations which were to take place with the final three preferred tenderers. They related to preparing a financial model to test the proposed contract, a detailed implementation plan, a service level agreement about ongoing management and a careful check on the terms of the contract, especially in relation to exit strategies if the contract were to be ended for whatever reason.

59. By late February 2005, it was clear who the Council regarded as the preferred tenderer. The external moderator compared the services which each of the three final tenderers offered and agreed that further negotiations should be

entered into with the Council's preferred supplier. The moderator stated that the Council could take the preferred supplier forward under an accelerated negotiated procurement but re-emphasised the essential need for the negotiations to secure an agreement about the issues previously highlighted. The Council was recommended to be clear with the successful tenderer about its requirements for a managed service, the scope and boundaries of the service, (i.e. who does what), the services to be supplied, and how a managed service might operate. The main reason for these recommendations was to enable the Council to negotiate and clarify these issues whilst there was still a competitive environment i.e. the preferred tenderer did not know whether it would be successful.

60. A particular issue arose with the external moderator following a meeting on the 7th March 2005. He wrote a letter suggesting the postponement of the procurement exercise and that a meeting, including legal advisers, should take place to clarify precisely the Council's intentions and pointing out that the level of risk would not usually be considered acceptable. Some notes setting out concerns were attached to the letter.

61. This elicited a reply signed by an officer reporting to the Head of ITCS dealing specifically with the issues raised on a point by point basis, but containing a statement to the effect that the payment of invoices was being withheld pending the clarification of the matters which had been raised. A meeting held on 18th March 2005 led to the external moderator retracting the letter in full, although repeating his belief that key contractual clarifications were required.

62. I have reviewed the correspondence and the comments made by the auditor. My conclusion is that the external moderator made a professional contribution to the procurement process. This is evidenced in his advice. The fact that he expressed reservations in a manner which led to a critical and challenging response suggests that the firm was prepared to express its view clearly and robustly. The retraction of the letter related to client issues about budgetary and legal matters; but the external moderator repeated his view about the essential need to address the issues which he had previously raised and this remained

on the record for future reference. In my view it is unlikely that a professional firm would risk its reputation, even if the withholding of fees was raised. The issue which is most regrettable is that the concerns set out in the letter appear not to have been raised with or referred to either legal or financial staff within the Council. This would appear to be the obvious course of action, rather than a response which dismissed the concerns.

63. (v) To examine the formal decision making in relation to those contracts and the extent of the information made available to the relevant Cabinet Member.

64. There is concern that the reports which authorised the two acquisitions were inadequate. The Council requires reports about capital projects to contain:

- a) The estimated cost of the proposal.
- b) The phasing of capital expenditure.
- c) The proposed method of financing.
- d) The effect on the revenue estimates in subsequent years.
- e) Any additional staffing requirements.
- f) An assessment of the need for the scheme and its benefits.
- g) Alternative approaches to meeting the need.

65. The BOP was approved by the relevant Cabinet Member following a meeting with the Director of Policy & Community at which the proposal was described as having “greater functionality of more corporate value”. The meeting was informed by the memorandum, rather than a formal report, to the Cabinet Member, Chief Executive and Director outlining the benefits in terms of support for ICT services. The cost was stated to be £464k over a 5 year period based on use for ICT services only. The price was described as competitive since discounts were offered.

66. However, it was also clear from the tender that further potential implementation costs of up to £900k, or maybe less, was envisaged and as later events proved, the cost of implementation and reconciliation was substantial, and substantially exceeded the stated cost.

67. Because the cost of the project was substantial, in my view there is a greater onus on officers to provide justification for their proposals. I would expect a full report with a clear statement identifying how the project was to be financed, the potential cost in later years and the alternatives which might be available. This was missing. In my view the manner of obtaining approval was deficient.

68. The CNU was a substantial commitment involving expenditure in excess of £6m over a period of years. It is not clear from the documents exactly what the cost was. Initial provision had been made in the capital programme for 2004/5 and details of commitments for future years were outlined. By February 2005 the preferred supplier had been identified. A briefing of the Cabinet Member took place on 23rd February 2005, a Leader's Briefing note set out the issues for the 3rd March 2005, but without costings. Internal correspondence at the time identifies a revenue shortfall in 2005/6 and 2006/7 with a need for additional capital funds in later years. The Head of ITCS on 13th March 2005 gave a detailed breakdown of projected costs to the County Treasurer and on the 24th March 2005, two reports were presented to the Cabinet. One was a four page report and schedule from the Director of Policy & Community seeking approval as follows: "investment highlighted in the ongoing budget deliberations be considered for approval". This was, in practice, a commitment to entering into a contract for substantial expenditure. The second report was from the County Treasurer, seeking approval to allocate a further £500k in 2005/6 to the ongoing revenue costs required to support the investment in ICT.

69. I have reviewed the report to assess the adequacy of the information available to the Cabinet. The report itself contains no costings although there is a schedule attached to the report, setting out "Funding Requirements". I have endeavoured to place this schedule in context with the Council's previous allocations for ICT upgrades. I have not been able to reconcile the figures.

70. In summary, important information is omitted; at the very least, I would expect to see the overall contract price specified and alternative approaches more clearly spelt out, especially as there was a substantially lower tender. The reasons for

accepting a higher tender might have been spelt out, although they are recorded elsewhere. The nature of the recommendation could be much clearer in stating precisely that a contract for expenditure amounting to over £6million over several years was being authorised.

71. However it is clear that the number of discussions which had taken place, together with the accompanying report of the County Treasurer, would have reassured members that, even though the report was unclear, adequate financial provision had been made. Whilst the main responsibility for providing appropriate information falls upon professional officers, there is an onus on members to challenge officers about reports that do not provide all the necessary information to support the decision they are being asked to make. Key decisions are a matter public record and accountability. Members should be able to demonstrate that they have made a reasonable decision based on adequate information. I make some further recommendations about this later in my report; however members are not experts in technical fields such as this and I am satisfied that they relied on officer advice.

72. Therefore the report on which this commitment was entered into was not satisfactory.

73. (vi) To examine the wider support to the formal decision-making processes offered through Corporate Management Board (previously Chief Executive's Management Team) and the Information Policy Group (IPG).

74. I will deal firstly with the IPG. The group was chaired by the Director of Policy and Community and had representatives of Directorates on it. Its terms of reference were revised from time to time and its task was to assess projects and decide whether they should be undertaken, to identify risks and opportunities and to provide an oversight of proposed ICT developments, subject to the responsibility of the Head of ITCS for professional management of the service. The Chief Executive informed me that he relied on the IPG to assess and approve projects because of their specialist and technical nature.

75. The discussion on the BOP contract highlighted some of the problems faced by the group, namely late notification and inadequate information. There were clearly reservations about the project and the possible conflict with other Council wide systems, a concern which was justified by later events. However the group authorised the project to proceed.

76. The IPG was also a forum where information could be considered on ICT proposals. Members of the IPG group could report to their Directors on areas of concern, which they may have, about any developments. Given the critical nature of ICT systems which handled financial and personnel information, the representatives might have been able to alert their senior officers to concerns which they had about activity which could adversely affect corporate systems. Whether any members of the IPG did this is not clear but there is no evidence of any impact.

77. A group of this nature is important, provided it operates effectively. There is no problem about the need for such a group; the issue is how it operates and in particular how it evaluates and decides on proposals.

78. I have read the minutes and deliberations of the CXMT (now the CMB). It appears that the meetings addressed the usual range of corporate issues such as the revenue and capital budgets, the Corporate Assessment process, Performance Management systems and service impact as well as corporate issues such as ICT, property and Human Resource issues. The agenda and actions are about coordinating and informing. As a result of discussions, the Chief Executive or Board Members would work with elected members to raise matters for decision.

79. As a result of my interviews, it does appear that the CMB worked reasonably well from its formation in September 2005. It has recently changed its membership and a further change is soon to take place with the appointment of a new Chief Executive. At some point about six to eight months ago, it seems that CMB ceased to be effective and it has been described by some of its

members and observers as “fractured” or “dysfunctional”. There have been disagreements about “Herefordshire Connects” and it seems that some of these have not been resolved. It is clear to me that elected members have not been receiving consistent advice. This has led to the trust and confidence of some board members in their colleagues breaking down and inappropriate conversations taking place outside proper channels.

80. At present it would appear that Directors are concentrating on delivering the agenda in their own service area. This means that the broader implications for the council as a whole are not always recognised. That is not likely to lead to the consistent corporate leadership which is required of a Council in the 21st century. There is a pressing need for the Corporate Management Board to support the Cabinet and Council, to model the behaviour which sets the style and values for the Council and to lead the Paid Service. I make some specific suggestions about how the new Chief Executive might re-build the Corporate Management Board so that it can set the vision and priorities for the Council.

81. (vii) To advise on the merits of seeking to establish whether value for money has been obtained in respect of the contracts referred to and how this might best be achieved

82. I will deal with each of the contracts in turn. The BOP system is well respected and used by many Councils on an authority wide basis. It undoubtedly significantly improved the management information for the ICT division in a number of areas, such as procurement and the management of ICT staff.

83. However the BOP system duplicates other Council systems and required a great deal of effort to reconcile the differences. Its cost (probably around £1.4 million) is high for a small division. I do consider that the acquisition of this system was not a cost effective use of resources, mainly because it duplicated existing systems. It seems likely that there was a long term intention to utilise this system Council-wide, but this was never realized nor was the concept subjected to corporate analysis and agreement.

84. The CNU system is different. The benefits have been substantial and are well documented. Whilst there may have been some deficiencies in the process of acquisition, there appears to have been extensive evaluation utilising external moderation. It was neither the cheapest nor the most expensive option of the tenders which were evaluated. The supplier is a major and respected provider of ICT services in the public sector and during the scrutiny review of ICT in October 2006, an external evaluation by HEDRA made favourable comments about the progress which ICT has made, although there were still some challenges to be addressed.

85. However, the question that arises in relation to value for money focuses on the following issues:

- a) It is not clear whether the invitation to tender (and later the contract) was sufficiently explicit about the respective responsibilities of the Council and the contractor in view of the external moderator's comments – and thus were substantial extra costs levied?
- b) The level of external consultancy costs commissioned by ICT to assist in implementation.
- c) Unexpected events which have delayed implementation and caused delay and cost.
- d) The impact of changes in the financial profile as the contract is implemented.
- e) The fact that one tender was significantly lower than the successful tender.

86. It is not possible to say with any clarity whether the current provision represents value for money. However, there is a clear need to establish whether it is. The way forward for the Council is to carry out a benchmark exercise and to reference test the current provision. Such an exercise will specify what the Council is paying for and how much it costs compared to others. If this demonstrates poor performance or excessive cost, then the Council has the option to negotiate with the present contractor with a view to making changes in the contract, or if necessary, negotiating an exit strategy. This is an area where a fruitful dialogue with the Audit Commission, working with the Council to

support an exercise of this nature, would provide a basis for future negotiation and reassurance about the level of cost.

Part 3 – Next Steps

87. My terms of reference invite me to make any further recommendations. I have outlined earlier in this report features which I believe have contributed to the current situation. I would like in this section to draw the threads of this report together into a sensible set of actions for you to take.

88. I have already set out some important features of the way the Council has worked, namely:

- a) A high level of freedom given to directors in such matters as the use of support services and managing contracts.
- b) Trust and confidence by members and amongst senior colleagues that officers will perform to a high level.
- c) A culture of consensus to achieve results with which all can agree.
- d) A reactive approach and style amongst corporate services such as Finance, Legal and Personnel.
- e) A strong policy and procedural base but one which is not fully followed or understood.
- f) A performance management system which is not universally applied or insisted upon.
- g) A lack of discipline in respecting and abiding by the Council's values.

89. Some of these features have served you well in the past, but others have not assisted when a different style of working has been brought to the Council. For example, because performance management is not fully embedded and Directorates operate with considerable freedom, there is not always the full awareness that is desirable when important decisions are being taken which affect the Council as a whole. This was compounded by a willingness at both member and officer level to trust a senior manager to perform to the standards which they would follow themselves.

90. However, these events provide an opportunity for the Council to address and change its approach for the future. Firstly, it is imperative for the Council to deal

with any issues of poor performance and to change any procedures to eliminate weaknesses as quickly as possible. Ongoing investigations and slowness to resolve outstanding concerns will be debilitating and unhelpful to the vast majority of staff whose sole purpose is to provide efficient services to their users. There is little value in constantly raking over the coals with no sense of where it is leading to.

91. If the Council proceeds with a piecemeal approach to tackle the issues arising from this experience, the Council will not have learnt or benefited to the fullest extent. The Council has made considerable progress since its formation 10 years ago. That progress was being maintained until the setback caused by recent events; the people of Herefordshire and the staff of the Council deserve to have strong leadership in order to meet the needs of the community into the future.

92. Members of the Council will need to provide strong leadership, especially from the executive and group leaders. The newly appointed Chief Executive and the members of the Corporate Management Board will need time to re-form and set the direction and priorities for the Council in the future. There are a number of ways in which the Council can regain the momentum at both member and officer level; I have set them out in the body of the report and would summarise them as follows, namely:

- (a) To take the steps set out in the Section 151 Officer's report and the additional recommendations contained in this report within 6 months to address any deficiencies and to conclude any outstanding matters.
- (b) To give clear and unequivocal support to the new Chief Executive at member and senior officer level so that he can assess what needs to be done now and for the future and put in hand a coordinated programme to do it.
- (c) To rebuild the corporate management board so that it can reflect on how it came to be fractured and dysfunctional and decide how best to become an integrated team which provides the leadership for and earns the

respect of the officers of Herefordshire Council so that the values to which Herefordshire aspires are reflected in its actions.

- (d) To re-establish the trust and confidence between members and officers and officers and officers based on a different approach which encourages appropriate challenge, resolves issues with a way forward which is supported by all and creates the discipline to follow through and abide by decisions which are taken.
- (e) To review and change if appropriate, the Council's procedures and protocols with a 12 month programme so that they are realistic and understood by all officers of the Council and then embed them. If some procedures are no longer relevant then they can be abandoned.
- (f) To create a robust performance management culture, underpinned by agreed procedures of what staff are expected to do and if they do not do them there is a discipline which holds them to account.
- (g) To request the new Chief Executive to review the role of the corporate resource provision, namely, finance, people, property, ICT and Legal & Democratic Services to decide how professional requirements and standards should be met, how standards should be maintained throughout the Council and how flexibility and immediate access by Directorates and front line staff can be available so that early decisions can be made for the benefit of service delivery.

93. However there is one further proposal which I would make. You are also a newly elected Council with a recent change in political control. Because of the political nature of the Council, you have a past history of good cross-party co-operation. These are new and different times for councillors; new members have taken Cabinet office; opposition members have a new role in challenging the Executive; the role in policy formulation and performance management for members is more significant; members are expected to provide strong leadership and to know how well the Council is performing.

94. There is a need for members to reflect on whether they have the support and skills which they need for the new agenda; it may be appropriate to commission further work on member support and development from one of the Local Government Association bodies.
95. Finally, it is important for the Council to bear in mind that these difficulties represent a problem in one part of the Council. It is important to maintain a sense of proportion and not to allow events in one division of one Directorate, however serious, to be reflective of a situation throughout the Council. My perception is that the Council is performing well in most of its activities, although this is not consistent. A measured co-ordinated and thoughtful response, without over-reaction, is the appropriate way forward e.g. changing the rules without any buy in will merely replicate the situation of three years ago.
96. The work which was undertaken in modernising the voice and data networks was essential and recognised as such by the Council if it was to achieve its aspiration of being an efficient and responsive modern authority. That drive to modernise, to become more efficient and to change working practices to align with best practice nationally, is not an agenda which you should avoid. When problems arise such as those you have encountered, it is easy to back away from actions which carry inherent risk. The Council would be wise not to become overly cautious by setting up stifling procedures which will inhibit innovation, or reduce the flexibility of Heads of Service, middle managers or front line staff from being able to make quick and effective decisions in line with approved policy. The task is to be risk aware, not risk averse. That is about people skills, not manuals of procedures which gather dust on shelves.
97. I hope this report will provide a foundation on which you are able to build. It is easy to forget in the concerns and reverberations which have led to this report that the task is to make sure that users of services receive an excellent quality response at an economic cost. For that to happen it will be important to re-establish the respect and reputation for your leading managers by demonstrating that you are able to move out of these difficulties strengthened by the way you have addressed them.

Ian Crookall

9 November 2007

Part 4 Executive Summary

I was commissioned to review the financial/contractual governance arrangements within the ICT division, particularly in relation to the entering into of contracts for a major Council wide computer system and system for supporting ICT management.

The report deals with a specific area of service and I saw no evidence that some of the problems described were generic to the Council.

These are my principal findings:-

- There was poor financial governance in ICT
- There were major deficiencies in the contracting process
- There was poor management of both organisational and individual performance
- There was a lack of challenge in relation to major proposals
- There was extensive delegation to Directorates when tighter controls in some corporate areas were needed
- The Council's procedures and policies are not embedded

The result was that there were inadequate checks and balance in place when a different style and approach was introduced into the Council. This led to a breakdown in communications and strained personal relationships.

My recommendations are:-

- Procedures and practices should be developed, and most importantly, embedded throughout the Council
- The Council should consider organisational changes in relation to corporate services and the way they are delivered
- An exercise should be undertaken to establish whether the community network contract represents value for money
- Support for Members' roles should be developed by an external facilitator
- There is an urgent need for the CMB to become more effective and fit for purpose.
- The new Chief Executive should be supported and given time to re-build the management teams, re-establish trust and confidence and deliver on these recommendations.

In addition, in the confidential report I have made a recommendation that a disciplinary investigation should be instigated in relation to the performance issues raised within the confidential report.

For ease of reference I attach a schedule which deals with each term of reference summarises the key findings and contains actions for consideration.

The most important consideration is for the Council to address promptly the immediate issues arising from this report. Slowness in resolving outstanding concerns will be

debilitating and unhelpful. A piecemeal approach without a sense of direction to where it is leading will not be productive. Then as quickly as possible all the Council should work with the new Chief Executive to make the Council at Senior Management level fit for purpose in order to re-establish the momentum to maintain and improve services for the people of Herefordshire

Ian Crookall

9 November 2007

	Term of Reference	Summary Key Findings	Actions for Consideration
i.	<p>To examine the evidential base on which the conclusions set out in the Section 151 Officer's report are based to enable the Council to reach a conclusion as to what, if any, further action needs to be taken in relation to the report beyond the remedial steps contained in the reports themselves, which steps have been endorsed by the Corporate Management Board and set out any remedial action, if any, or additional recommendations for consideration by the Corporate Management Board and/or the Cabinet.</p>	<ul style="list-style-type: none"> • There were serious shortcomings in the financial and contractual management that then existed within ICT. • There are signs of significant improvements being made in respect of these shortcomings since actions to address them began in April 2007. • There was a breakdown in communication resulting in the Section 151 Officer not feeling sufficiently assured that the necessary steps would be taken. • Important corporate resources need to be corporately managed within a council wide strategy, and to professional standards, whilst retaining service flexibility to meet local circumstances. 	<ul style="list-style-type: none"> a) Consider bringing together the key resources of people, property, finance and information into a single directorate. b) Enhance the Audit specialist ICT capacity. c) Develop the role of Audit & Corporate Governance Committee through further member training. d) Commission a report (from one of the local government bodies) on how elected members' support and development needs can be more adequately met. e) Ensure all corporate rules, standards and processes are embedded, owned and followed by members and officers throughout the organisation, having first made sure they are workable. f) Create a better resourced and more proactive procurement function which might both anticipate important developments and encourage better compliance with the revised contract regulations. g) Review whether the service level mechanisms are the appropriate way for managing corporate resources. h) Revive and refresh the performance management process so that it is effective in highlighting issues to be

	Term of Reference	Summary Key Findings	Actions for Consideration
ii.	To examine both historically and currently the management capacity to exercise the necessary supervision of contracting processes and, if there is historic evidence which could provide a basis for disciplinary action, to set that out in the report for the Council to consider.	<ul style="list-style-type: none"> The existing contract standing orders, if implemented after amendment, provide a framework for Directors to use. There is evidence to suggest that the corporate checks and balances are not operational. There is evidence to suggest some errors (of omission rather than commission) took place. 	addressed. a) The Head of Legal & Democratic Services and the Strategic Procurement and Efficiency Review Manager review and refresh the system to ensure it is understood and adhered to, and a framework is in place to ensure appropriate disciplines are involved. b) The Head of Legal & Democratic Services, with the Interim Head of Human Resources institute a disciplinary investigation to address the performance issues to which reference is made in the confidential section of this report.
iii.	To examine the corporate support, advice and direction offered to the Directors, in particular financial and audit support, and legal and contractual support received. To examine in particular the support offered in relation to those matters identified in paragraphs (iv) and (v) below.	<ul style="list-style-type: none"> Corporate support appeared to be dependent on being invited to give it, and on being informed. Concerns were not always expressed sufficiently and robustly. 	a) Request the new Chief Executive to review the role of corporate resource provision to decide how professional standards and requirements should be met, how standards should be maintained throughout the Council, and how flexibility and immediate access by directorates and front line staff can be available so that early decisions can be made for the benefit of service delivery. b) Review and change, if appropriate, the Council's procedures and protocols

	Term of Reference	Summary Key Findings	Actions for Consideration
iv.	To examine the strength and independence of the external moderation of contracts and in particular the contracts highlighted in the S151 Officer's Special Investigation Report.	<p>CNU</p> <ul style="list-style-type: none"> • The external moderator for the CNU project made a professional contribution to the procurement process. • Advice in respect of the concerns raised by the external moderator did not appear to be sought from the relevant corporate support staff within the council. 	<p>within a 12 month programme so that they are realistic and understood by all officers of the Council, and then embed them. If some procedures are no longer relevant they can be abandoned.</p> <p>The value of external moderation is recognised and appropriate advice should be sought at all times.</p>
v.	To examine the formal decision making in relation to those contracts and the extent of the information made available to the relevant Cabinet Member.	<p>BOP</p> <ul style="list-style-type: none"> • The manner of obtaining approval was deficient. • Insufficient financial information was provided – in particular in respect of future financing and costs. • Insufficient assessment of alternative options was provided. 	See recommendation (ii) b above.

	Term of Reference	Summary Key Findings	Actions for Consideration
		<p>CNU</p> <ul style="list-style-type: none"> • The report on which this commitment was entered into was not satisfactory. • Insufficient information was provided about costs and funding requirements. • Insufficient information on tender options appraisals was provided in the report, although the reasons for rejecting the lowest tender are recorded elsewhere. • Members would have been reassured by the number of discussions that had taken place and the accompanying report by the County Treasurer that adequate financial provision had been made. 	<p>Key decisions are a matter of public record and accountability. Members should be able to demonstrate that they have made a reasonable decision based on adequate information and if this is not forthcoming, to be empowered to ask for it, even if this means delay.</p>

	Term of Reference	Summary Key Findings	Actions for Consideration
vi.	To examine the wider support to the formal decision-making processes offered through the Corporate Management Board -previously Chief Executive's Management Team (CMB) and the Information Policy Group (IPG).	<p>CMB</p> <ul style="list-style-type: none"> • Worked reasonably well from formation in September 2005. • During the past year it has ceased to be effective. • Members have not been receiving consistent advice. • Trust and confidence between some CMB members has broken down. • Inappropriate conversations are taking place outside proper channels. • Directors are concentrating on delivering the agenda in their own service areas. 	<p>a) Give clear and unequivocal support to the new Chief Executive at elected member and senior officer level, so that he can assess what needs to be done now and for the future, and put in hand a co-ordinated programme to do it.</p> <p>b) Develop senior management team-building with the new Chief Executive giving priority to rebuilding the senior management teams.</p> <p>c) Rebuild the CMB following reflection on how it came to be fractured and dysfunctional, and decide how best to become an integrated team which provides the leadership for and earns the respect of the officers of Herefordshire Council.</p> <p>d) Re-establish the trust and confidence between members and officers, and between officers and officers, based on a different approach which encourages appropriate challenge, resolves issues with a way forward that is supported by all, and creates the discipline to follow through and abide by decisions taken.</p> <p>e) Create a robust performance management culture underpinned by agreed procedures of what staff are expected to do; and if they do not do them there is a discipline which holds them to account.</p> <p>f) Ensure there is no over-reaction; that a sense of proportion is maintained and the Council becomes risk aware</p>

	Term of Reference	Summary Key Findings	Actions for Consideration
		<p>IPG</p> <ul style="list-style-type: none"> • The role of the group is necessary. • There is an issue about how it operates and in particular how it evaluates and decides on proposals. 	<ul style="list-style-type: none"> a) Ensure IPG is chaired by a service Director. b) Review the membership of the IPG. c) Have clear guidelines for the evaluation and decision-making processes within the group.
vii.	To advise on the merits of seeking to establish whether value for money has been obtained in respect of the contracts referred to and how this might best be achieved.	<p>Back Office Project</p> <ul style="list-style-type: none"> • Duplication with other council systems • Degree of effort required to reconcile with other key systems • High cost for size of service area covered • Inadequate degree of corporate analysis re extension of utilisation across the Council • The BOP was not a cost effective use of resources. 	To note the findings.

	Term of Reference	Summary Key Findings	Actions for Consideration
		<p>Community Network Upgrade</p> <ul style="list-style-type: none"> • Substantial and well documented benefits. • External evaluation acknowledges progress made. • Some questions arise in relation to value for money namely: the clarity of the ITT and contract regarding respective responsibilities, the selection of a tender other than the lowest, external consultancy costs incurred for implementation, unexpected events and changes to requirements and the impact of changes in the financial profile. 	<p>The Council should establish whether current provision represents value for money. This should be achieved, in liaison with the Audit Commission, through the completion of a further benchmarking exercise and reference testing current provision.</p>

FINANCIAL GOVERNANCE REPORT TERMS OF REFERENCE FOR REVIEW REPORT AND ADVICE

These Terms of Reference are drawn up by the Monitoring Officer of Herefordshire Council to enable the Council to secure independent advice in relation to matters raised in a report issued by the Director of Resources as Section 151 Officer dated 13th September, 2007 and a Special Investigation Report dated 3rd September, 2007 (copies of both documents enclosed herewith).

The Council seeks advice on the following matters to enable the Council to move forward and to identify any potential areas of concern:

- (i) To examine the evidential base (report enclosed) on which the conclusions set out in the Section 151 Officer 's report are based to enable the Council to reach a conclusion as to what, if any, further action needs to be taken in relation to the report beyond the remedial steps contained in the reports themselves, which steps have been endorsed by the Corporate Management Board and set out any additional remedial action, if any, or additional recommendations for consideration by the Corporate Management Board and/or the Cabinet.
- (ii) To examine both historically and currently the management capacity to exercise the necessary supervision of contracting processes and, if there is historic evidence which would provide a basis for potential disciplinary action to set that out in the report for the Council to consider.
- (iii) To examine the corporate support, advice and direction offered to Directors, in particular financial and audit support, and legal and contractual support received. To examine In particular the support offered in relation to those matters identified in paragraphs (iv) and (v) below.
- (iv) To examine the strength and independence of the external moderation of contracts and in particular the contracts highlighted in the S151 Officers Special Investigation Report.
- (v) To examine the formal decision making in relation to those contracts and the extent of the information made available to the relevant Cabinet Member.
- (vi) To examine the wider support to the formal decision-making processes offered through Corporate Management Board (previously Chief Executive's Management Team) and the Information Policy Group (IPG).

- (vii) To advise on the merits of seeking to establish whether value for money has been obtained in respect of the contracts referred to and how this might best be achieved.

To that end you are asked within the scope of these Terms of Reference

- (a) To examine relevant documentary evidence held by the Council.
- (b) To interview relevant members of staff and Members of the Council.
- (c) To contact outside parties who advised on the processes as may be appropriate.
- (d) In consultation with the Head of Legal and Democratic Services and within financial limits to be agreed by the Head of Legal and Democratic Services to engage specialist finance or ICT expertise if that is required.

To review and keep under review the terms of reference and if any amendments or additions are required to refer to Head of Legal and Democratic Services and the Leader of the Council

Alan McLaughlin,
Head of Legal and Democratic Services

APPENDIX 2

It is essential that a short period of time is allowed for reflection on the cultural issues identified during the investigation to enable a shared understanding of those issues and to establish collective support for the way forward. This is particularly so given the recent appointment of the new Chief Executive. However it is also vital that prompt action is taken to address the immediate issues arising from the investigation report. The following action plan has been developed taking both of these requirements into consideration.

	Action	Lead	By When
1.	The disciplinary investigation be instituted.	Head of Legal & Democratic Services/Interim Head of Human Resources	Immediate
2.	Member Development Policy Group be asked to give consideration to the suggested actions in respect of member training, support and development, and bring forward an action plan to Cabinet.	Head of Legal & Democratic Services	End February 2008
3.	Consideration be given to the suggested actions in respect of: <ul style="list-style-type: none"> • The structure for management and effective deployment of the key corporate resources. • The development and team building of the senior management teams of the council. 	The new Chief Executive	End February 2008
4.	Consideration be given to how best to re-establish trust and confidence between members and officers, and between officers and officers, based on an approach which encourages appropriate challenge, resolves issues with a way forward that is supported by all, and creates the discipline to follow through and abide by decisions taken.	The new Chief Executive	End January 2008
5.	Consideration be given to the suggested actions in respect of: <ul style="list-style-type: none"> • The need for additional specialist audit ICT resource • Proposals for strengthening the strategic procurement function • Proposals for appropriate financing models for corporate services and bring forward an action plan to CMB.	Director of Resources	End February 2008

APPENDIX 2

	Action	Lead	By When
6.	The relevant professional officers (Monitoring Officer, Section 151 Officer, Interim Head of Human Resources) be asked to lead reviews of the Council's procedures and protocols, and the corporate rules, standards and processes to ensure they are fit for purpose, proportionate and workable. Review programmes to be reported to CMB.	The new Chief Executive	End December 2007
7.	Consideration be given to the suggested actions in respect of refreshing and embedding an effective performance management culture, and an action plan brought forward to CMB.	Interim Head of Human Resources	End February 2008
8.	CMB be asked to review the membership/chairmanship of the Information Policy Group (IPG).	The new Chief Executive	December 2007
9.	The refreshed IPG be asked to consider the suggested actions in respect of group governance arrangements and to report back on action taken to CMB.	The new Chief Executive	End February 2008
10.	Consideration be given to the suggested action in respect of establishing value for money in relation to the community network, and an action plan taken to CMB.	Interim Head of Information, Technology and Customer Services.	End November 2007
11.	Clear guidelines be established and embedded in respect of close personal line management relationships.	Interim Head of Human Resources	End December 2007
12.	Consideration be given to the suggested actions in relation to officer training and development needs, and an action plan be brought to CMB.	Interim Head of Human Resources	End February 2008

CONTRACTUAL AND FINANCIAL STANDING ORDERS

Report By: Head of Legal and Democratic Services

Wards Affected

Countywide

Purpose

1. To consider the proposed contractual and financial standing orders as a result of the recent review by Mr Ian Crookall.

Financial Implications

2. None

Background

3. Members of the committee will be aware that following an Independent Review by Mr Ian Crookall, ex Chief Executive of Buckinghamshire County Council, in relation to contractual and financial matters, particularly within ICT Services, an action plan was agreed and part of that was to review the contractual and financial standing orders. This was also a matter subject of the Section 151 Officer's report to cabinet in September 2007.

4. The suggested amendments at Appendices 3, 4, and 5, to the constitution are set out. These have been in the main collated from Shropshire and Worcestershire County Council's own contractual and financial standing orders in order to avoid rehash and it is felt that it is workable.

5. Training will of course accompany these amendments for both officers and members of the authority to ensure that the process is embedded throughout the council. In addition an easy read guidance will be made available together with flowcharts of how the new processes will work.

6. Following the committee's observations the matter will be reported back to the Constitutional Review Working Group on the 23rd January 2008 incorporating any comments from the committee and also legal services.

Recommendations

THAT

the committee considers the suggested appendices 3, 4, and 5 and make comment with regard to clarification of definition or any matters contained within appendices 3, 4, and 5 which would replace the existing appendices 3, 4, and 5, within the constitution.

Appendix

Appendix 1 – Appendices 3. 4. and 5 of the Council’s Constitution.

Background Papers

None

BUDGET AND POLICY FRAMEWORK PROCEDURE RULES

1. THE BUDGET AND POLICY FRAMEWORK

1.1 The Council is responsible for the adoption of a Budget and Policy Framework. This is set out in Standing Order 4.1 as follows:

- Children and Young People’s Plan.
- Council’s Corporate Plan including the Best Value Performance Plan.
- Crime and Disorder Reduction Strategy.
- Cultural Strategy.
- Economic Development Strategy.
- Herefordshire Plan (Sustainable Community Strategy incorporating the Local Agenda 21 Strategy).
- Local Transport Plan.
- Unitary Development Plan / Local Development Framework.
- Youth Justice Plan.
- Medium-Term Financial Strategy including:
 - Annual capital and revenue budget;
 - Proposed contingencies, general reserves and specific reserves;
 - Statutory Council Tax calculations;
 - Treasury management policy and annual borrowing limits;
 - The Chief Finance Officer’s statutory declarations on budget setting;
 - Virement limits; and
 - Scale of fees and charges.

1.2 Council cannot delegate responsibility for determining the Budget and Policy Framework.

1.3 Once a Budget and Policy Framework is in place, it is Cabinet’s responsibility to implement it. The Cabinet can only determine matters affecting the Budget and Policy Framework where special urgency applies under rule 19 of the Cabinet Procedure Rules (Appendix 1 of the Constitution refers).

2. PROCESS FOR IMPLEMENTING THE BUDGET AND POLICY FRAMEWORK

2.1 Cabinet will publicise by including in the Forward Plan, by publishing at the Council’s offices and other methods (e.g. on its website and in the local press), 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. The Chairman of the Strategic Monitoring Committee and Chairmen of the Scrutiny Committees will also be notified.

- 2.2 Budget consultees will include Town and Parish Councils, the Local Strategic Partnership, the Schools Forum, Business Ratepayers, Council Taxpayers, the Trade Unions, Political Groups, Strategic Monitoring Committee, Scrutiny Committees and such other organisations and persons as are deemed appropriate.
- 2.3 Having consulted on their initial proposals for any plan, strategy or budget that forms part of the Budget and Policy Framework, the Cabinet will draw up firm proposals taking into account the responses to the consultation. If the Strategic Monitoring Committee or relevant Scrutiny Committee wishes to respond to the Cabinet in that consultation process, then it may do so. As the Strategic Monitoring Committee and Scrutiny Committees are responsible for setting their own work programmes, it is open to them to investigate, research or report in detail with policy recommendations before the end of the consultation period. The Cabinet will take any response from the Strategic Monitoring Committee or Scrutiny Committees into account in drawing up firm proposals for submission to the Council, and its report to Council will reflect the comments made by consultees and the Cabinet's response.
- 2.4 Once the Cabinet has approved the firm proposals, the relevant officer will refer them to the Council for decision.
- 2.5 The Council may not consider a proposal on a matter that forms part of the Budget and Policy Framework if the Cabinet has not considered it unless the Leader indicates that the Cabinet is in agreement with the proposal.
- 2.6 If Council decides to reject or amend the Cabinet's firm proposals, the Cabinet will delay implementation of the proposals pending a further report to Council requesting the matter be reconsidered.
- 2.7 If Council decides to reject or amend a proposal from Cabinet, immediately prior to the close of the meeting, the Chairman of the Council will adjourn the meeting until a date agreed by Council on the recommendation of the Leader of the Council. This shall be the date that Cabinet will report further to Council on the matter and Council must specify a period of at least five working days within which the Leader may:
 - a) Submit a revision of the draft budget, plan or strategy with the Cabinet's reasons for any amendments for the Council to consider;

Or

 - b) Inform the Council of any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for any such objections.
- 2.8 If the Chairman of the Council considers it is unlikely that the Council may agree the date for the Council meeting recommended by the Leader, he / she may agree an alternative date providing at least 10 working days elapse starting from the following day.
- 2.9 The Council must take into account Cabinet's reasons for revising any budget, plan or strategy or reasons for disagreeing with the Council's objections to its proposals before it amends or approves the Cabinet's revised draft budget, plan or strategy .

- 2.10 If a strategy, plan or budget allows for a policy intention to be developed and the financial implications reflected in the Council's Medium-Term Financial Management Strategy are in excess of £500,000, the relevant Director must report back to Cabinet for approval to detailed plans for implementing the policy and committing the financial resources.
- 2.11 The Cabinet has responsibility for managing the Council's financial affairs within the framework of the agreed Contract Procedure Rules and Financial Procedure Rules. Advice and guidance is provided by the Statutory Officers.
- 2.12 Cabinet is responsible for monitoring, reviewing and formulating the Council's budget with advice and guidance provided by the Director of Resources.
- 2.13 Each Cabinet Member shall be responsible for making sure that the Council's Contract Procedure Rules and Financial Procedure Rules are observed for those functions within their terms of reference.

3. DECISIONS OUTSIDE THE BUDGET AND POLICY FRAMEWORK

- 3.1 If the Cabinet, Committees, Sub-Committees, officers and joint arrangements discharging executive functions on behalf of the Council want to take a decision outside of the Budget and Policy Framework or think a decision they want to make might be outside it, they must refer to the Chief Executive or Monitoring Officer, and also the Chief Finance Officer if it relates to the budget, for advice.
- 3.2 If the Chief Executive or Monitoring Officer, and Chief Finance Officer if it is a budget matter, determine that the decision would be outside the Budget and Policy Framework, then the proposal must form a recommendation to Council, unless the decision is a matter of urgency in which case the provisions of section 4 of the Budget and Policy Framework Procedure Rules apply.

4. URGENT DECISIONS OUTSIDE THE BUDGET AND POLICY FRAMEWORK

- 4.1 Cabinet, Committees, Sub Committees, officers or joint arrangements discharging executive functions of the Council may take a decision that is contrary to or not wholly in accordance with the Council's Budget and Policy Framework Procedures if the decision is a matter of urgency. However, such a decision may only be taken if:
 - a) It is not practical to convene a quorate meeting of the Council; and
 - b) The Chairman of the Strategic Monitoring Committee or relevant Scrutiny Committee agrees that the decision is a matter of urgency.
- 4.2 The reason why it is not practical to convene a quorate meeting of the Council and the agreement of the Chairman of the Strategic Monitoring Committee or relevant Scrutiny Committee to the decision being taken as a matter of urgency should be noted on the record of the decision. In the absence of the Chairman of the Strategic Monitoring Committee or relevant Scrutiny Committee, the Chairman of the Council or, in his / her absence, the Vice Chairman of the Council will be sufficient.
- 4.3 Following the decision, the decision taker will provide a full report to a subsequent Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

5. VIREMENT

- 5.1 Arrangements for budget virement will be in accordance with the provisions of the Council's Financial Procedure Rules.

6. IN-YEAR CHANGE TO BUDGET OR POLICY FRAMEWORK

- 6.1 Any decisions that involve an in-year change to the Budget or Policy Framework must be approved or adopted by the full Council unless:

- a) It is an urgent decision in which case it will be dealt with as set out in section 4 of the Budget and Policy Framework Procedure Rules;

Or

- b) Council has previously defined the scope for in-year decisions that can be made by Cabinet.

7. CALL-IN OF DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK

- 7.1 Where the Strategic Monitoring Committee or a Scrutiny Committee is of the opinion that a Cabinet decision is contrary to or not wholly in accordance with the Budget and Policy Framework and that it therefore should be a recommendation to Council, then it shall seek advice from the Chief Executive, Monitoring Officer and Chief Finance Officer.

- 7.2 For executive functions that are a Cabinet responsibility, the Chief Executive, Monitoring Officer and Chief Finance Officer will either:

- a) Prepare a report for the Cabinet if they determine that the decision the Cabinet has taken is outside the Budget and Policy Framework; in these circumstances, the Cabinet must make a report to Council; or
- b) Prepare a report for the Strategic Monitoring Committee or Scrutiny Committee if they determine that the Cabinet's decision was not contrary to the Budget and Policy Framework.

- 7.3 If the decision referred to in 7.2 (a) has yet to be made then that decision will become a recommendation to Council.

FINANCIAL PROCEDURE RULES

1. 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) Parts 6–9 inclusive – the delegations to Cabinet, Committees and Sub- Committees.
 - b) Part 12 – the delegations to officers.
 - c) Appendix 3 – the Budget and Policy Framework Procedure Rules.
 - d) Appendix 5 – 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 follow the advice and guidance issued by the Director of Resources on the Financial Procedure Rules.

Cabinet Responsibilities

- 1.9 Cabinet is responsible for regulating and controlling the Council's finances and ensuring that sound financial management policies are in place and are adhered to.
- 1.10 The Cabinet should maintain a written record where decision-making has been delegated.
- 1.11 Each Cabinet Member shall be responsible for the observance of the Council's Financial Procedure Rules for those functions within their terms of reference.

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 mean 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.

Corporate Management Board Responsibilities

- 1.19 Members of the Corporate Management Board should maintain a written record where decision-making has been delegated.
- 1.20 Members of the Corporate Management Board 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 Corporate Management Board 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 Corporate Management Board 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 Corporate Management Board shall allow the Director of Resources and their authorised representatives access to all documents and records they keep on demand.
- 1.24 Members of the Corporate Management Board 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 dispersing such money.

- b) The duty of examining and checking the accounts of each transaction shall be separated from the duty of making those transactions.

2. 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 Corporate Management Board as appropriate.
 - (d) Deciding, in consultation with the relevant member of the Corporate Management Board 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 Corporate Management Board, 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 for property or goods.
- 2.10 The MLRO shall report any instance of suspected money laundering to the Serious Organised Crime Agency.

3. 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 (in consultation with the Cabinet Member for 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, with the authority to direct the use, disposal or acquisition of any land or property within the Council's budgetary framework and decision-making process.
- (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 (in consultation with the Cabinet Member for Resources) 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 Cabinet Member for Resources and then, if necessary, the Leader of the Council.
- (e) All property transactions should be referred to the Director of Resources who shall consult with the Cabinet Member for Resources and seek the comments of all interested parties, including other 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.

3.4 This section of the Council's Financial Procedure Rules is organised to reflect the lifecycle of property (acquisition – management in use – disposal) with additional requirements to support specific initiatives and exceptional circumstances.

Acquisitions

- 3.5 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.
- 3.6 All acquisitions (freehold and leasehold) must be authorised by the Director of Resources (following consultation with the Cabinet Member for Resources, the Head of Financial Services, the Head of Legal & Democratic Services, other relevant Cabinet Members, Directorates and local Members) either in accordance with the delegations set out in paragraphs 3.7 to 3.14 below or the decision making procedures set out in the Council's Constitution.

Non-Highways Acquisitions

- 3.7 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 the prevailing European procurement limit for supplies and services (currently £144,000).
 - (c) An evaluation of the potential (if any) for joint use.

- 3.8 The Cabinet Member for Resources shall be consulted on all proposed acquisitions and kept informed of their progress.
- 3.9 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.
- 3.10 The use of compulsory powers for acquisitions must be agreed by Cabinet.

Highways Acquisitions

- 3.11 The Director for Environment shall, in the case of all highway acquisitions, seek local Member views as part of the consultation process for highways and traffic schemes.
- 3.12 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).
- 3.13 The Director of Resources may make highways acquisitions in consultation with the Cabinet Member for Resources provided the scheme is in an approved programme or falls within blight policies.
- 3.14 The Director of Resources shall refer all other highways acquisitions (that is, land not incorporated in the highway) to the Cabinet Member for Resources, who shall determine if he/she or an officer shall give approval for the acquisition. Once the principle of acquisition of land is agreed, any decision whether or not to use compulsory powers shall be made by the Cabinet in accordance with the terms of this section of the Council's Financial Procedure Rules and the decision making procedures set out in the Constitution.

Management and Use

- 3.15 It is imperative that 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 for Resources.
- 3.16 The occupation and use of property by a Directorate is subject to the authority of the Director of Resources (in consultation with the Cabinet Member for Resources) to approve all material changes to property, including change of use, appropriations, granting/taking of interests, reversion to operational use, alterations or additions. Such changes must be reported to the Head of Financial Services for correct accounting treatment and apportionment of charges.

Premises Management

- 3.17 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

- 3.18 Major capital works for properties (schemes likely to cost in excess of the prevailing European procurement limit for supplies and services which is currently £144,000) should be subject to a formal project appraisal and should be consistent with existing financial approval and procurement processes.

Health & Safety

- 3.19 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

- 3.20 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.

- 3.21 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. established consultation processes, reference to the Secretary of State, etc.).
- (d) Any other issues which need to be considered prior to disposal.

- 3.22 The Director of Resources may identify any property (or part) that s/he considers is, or could be made, surplus to operational requirements.

- 3.23 The Director of Resources shall consult with the Cabinet Member for Resources on all disposals and inform him/her of the comments of local Members. The Cabinet Member for Resources shall determine whether s/he or an officer shall give approval for disposal in accordance with this section of the Council's Financial Procedure Rules and the decision making procedures set out in the Council's Constitution.

Treatment of Capital Receipts

- 3.24 Capital receipts from disposals are deemed to be a corporate capital resource available for allocation in line with corporate priorities.

- 3.25 All receipts are agreed through the Capital Strategy & Monitoring Group (CSMG) with no assumption on application to particular schemes.

- 3.26 Use of capital receipts are subject to the following rules:

- (a) Overspending on schemes dependent on receipts must be contained within the portfolio.

- (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 and Property Services using a traffic light system to assess the level of risk around the receipts.

3.27 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

- 3.28 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 for Resources, the Head of Financial Services and the Head of Legal and Democratic Services. If the matter is outside the delegations set out in paragraph 3.32 below then the matter can only be authorised by the Cabinet Member for Resources in accordance with the procedures for the taking of urgent decisions set out in the Council’s Constitution.
- 3.29 Any decisions made under the ‘Urgent Decision’ arrangements shall be reported to the relevant Director, Cabinet Members and Local Members.

Financial Procedure Rules

- 3.30 All of the protocols set out in the Council’s Financial Procedure Rules and 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 3.28 above.

Reporting

- 3.31 The Director of Resources shall prepare each month a schedule of acquisitions and disposals dealt with by the Cabinet Member for Resources or by themselves, and send this to Head of Legal & Democratic Services for publication.

Delegation to Officers

- 3.32 Subject to the consultation provisions set out in this section of the Council's Financial Procedure Rules, the Director of Resources is authorised to:
- Determine and settle the acquisition or disposal of any land or property, or an interest in land or property where the consideration (including any associated works) does not exceed the prevailing European procurement limit for supplies and services (currently £144,000) in any single transaction.
 - Determine and settle the terms of a lease (taken or granted) for any land or property, not exceeding a period of 20 years or where the consideration does not exceed the prevailing European procurement limit for supplies and services (currently £144,000) per annum in any single transaction.
- 3.33 As provided by arrangements made in the Constitution for the Leader to discharge 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; and the Director of Resources may delegate his/her powers in writing to other officers.

Supporting Mechanisms

- 3.34 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:
- **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.
 - **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.
 - **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 and Property Services division and includes as an annex a schedule of properties for disposal. This provides delegated authority to proceed with disposals in line with the provisions of this protocol.
 - **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.
 - **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

- 3.35 The Director of Resources shall prepare each month a schedule of property transactions dealt with by the Cabinet Member for Resources or themselves, and send this to Head of Legal & Democratic Services for publication.
- 3.36 Transactions proposed to be authorised by the Cabinet Member for Resources are subject to the normal processes of publication and scrutiny for Cabinet Member decisions.

4. 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 Corporate Management Board 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 Corporate Management Board 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 further 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 and 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.

5. IMPREST ACCOUNTS

- 5.1 Further advice on this section of the Financial Procedure Rules can be obtained from the Head of Benefit and Exchequer 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:
- (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) 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, an employee shall 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.
- 5.7 To 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 November 2007).
- 5.8 To submit a claim for reimbursement at least monthly.
- 5.9 To notify the Head of Financial Services of any new signatories.
- 6. 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 have been put in place:

- (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 (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 relating to other Directorates require the recommendation of the relevant Director.

7. PAYMENTS

7.1 Further information on this section of the Council's Financial Procedure Rules can be obtained from the Head of Benefit & 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 delegated 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 Payment of Commercial Debts (Interest) Act 1998 and to maximise performance measured by the Best Value Performance Indicator for this area. All accounts received must be date stamped on 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'.

8. 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 and Exchequer Service.
- 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 establishments and grades and that there is adequate budget provision for the length of the appointment.
 - (b) The following information is notified to Human Resources within the required timescales:
 - Starters and leavers.
 - Absence.
 - Variations to remuneration, other than annual increments and pay awards.

- 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'.

9. 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 +1% of 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 a full-year

effect of decisions made part way through a year, for which they have not identified future resources. Directors must plan to fund such commitments from within their own budgets.

- 9.6 The format of the revenue budget determines the level of detail to which budget management shall be exercised. The format 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 the accountabilities of 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.

10. 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 Cabinet Members, 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 time scale agreed in the capital programme. Any material variation in cost or time scale 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 Scheme of Delegation (sections 12.4 and 12.5 refer).

11. 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 It shall be the duty of every Cabinet Member to monitor the revenue and capital budget throughout each year and to ensure that those budgets are not exceeded.

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 overspends.

11.9 Managed underspends 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 any 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. Compliance with the mandatory +1% tolerance on in-year financial management (Part 12, section 12.7.36) 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 1% of their net budget.
- 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 £25,000 must be approved by the Head of Financial Services. All virements above £25,000 must be approved by the Director of Resources. All virements of above £25,000 shall be reported in the budget monitoring report provided to Cabinet.

11.25 The Director of Resources shall prepare a report to the Cabinet where virements in excess of £100,000 for capital or revenue are proposed.

11.26 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.

11.27 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.

12. 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.

13. 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

14. EMERGENCIES

- 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.

15. 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, including National Giro payment forms shall be ordered only on the authority of the Director of Resources who shall satisfy himself or herself 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.

16. 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 Head of Legal & Democratic Services 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.

17. 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, Head of Legal & Democratic Services 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 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 Corporate Management Board. Variations to the facilities shall be delegated to the Head of Financial Services on consultation with the Director of Resources.

18. 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) Seek Cabinet Member approval to the write-off of redundant equipment where individual items are valued in excess of £5,000.
- (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 or write-off 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 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.

20. 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 and Head of Legal & Democratic Services. 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 written 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 Record'.
 - (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.

21. WORKING FOR THIRD PARTIES

21.1.1 Further advice on this section of the Council's Financial Procedure Rules can be obtained from the Head of Financial Services and Head of Legal & Democratic Services.

General

21.1.2 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.

21.1.3 All proposals to work for a third party shall be properly costed in accordance with guidance provided by the Director of Resources.

21.1.4 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.

21.1.5 All contracts for providing work for a third party shall be drawn up using guidance provided by the Head of Legal & Democratic Services.

Responsibilities of Directors, Heads of Service and Officers

21.1.6 Officers shall ensure that:

- a) Legal advice is obtained from the Head of Legal & Democratic Services 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 section 12.4 of the Council's Scheme of Delegation 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 Head of Legal & Democratic Services.
- e) Appropriate insurance arrangements are in place for the third party work.
- f) The Council is not put at any risk of bad debts as a result of any third party work (see 21.1.2 above).
- g) The Council is not subsidising any contracts for the provision of third party work.
- h) Wherever possible, payment is received in advance of the delivery of the service under a third party contract.
- i) The Directorate has the appropriate expertise to undertake the contract.
- j) The contract does not adversely impact on the services provided for the Council.
- k) All contracts are properly documented.
- l) 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.

CONTRACT PROCEDURE RULES

1. 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. Responsibility is delegated to the Head of Financial Services for all contracting and procurement issues relating to works, goods and services. 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 Head of Legal & Democratic Services due to the significant legal issues involved in contracting and procurement activity. This separation of duties within the Council's contracting and procurement function is an important internal control.
- 1.5 It should be noted that the Council's Contract Procedure Rules should be read in conjunction with the Council's Standing Orders, Scheme of Delegation, 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).

2. STANDARDS OF CONDUCT

2.1 Declarations of Interest

2.1.1 Members and officers must ensure that they comply with the provisions of Standing Order 2.8 (Members) on the declaration of interests and Appendix 14 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 Head of Legal and Democratic Services 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 decision on the award of such a contract.

3. 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 Head of Legal & Democratic Services.

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 Head of Legal & Democratic Services.

3.3 Head of Service Responsibilities

3.3.1 The Head of Legal & Democratic Services 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.
- g) Maintaining a Contracts Register and keeping it up to date following notification of changes.

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. They are also responsible for supervising the Corporate Procurement Group's activities (see 3.5 below).

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 £50,000. 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 £50,000.

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/Strategic Procurement Manager **and** the Head of Legal and Democratic Services. 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 Head of Legal & Democratic Services for further information as the message should not state the reason for concern. The Contract Monitoring Officer should inform the Head of Legal & Democratic Services 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 Head of Legal & Democratic Services.

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 Head of Legal & Democratic Services 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 relevant Head of Financial Services to take forward in consultation with the Head of Legal & Democratic Services.
- b) Maintaining a register of current contracts.
- c) Monitoring compliance with the Council's Contract Procedure Rules and reporting exceptions to the Head of Financial Services and Head of Legal & Democratic Services for action.
- d) Preparing an annual report on the operation of and compliance with the Council's Contract Procedure Rules for the Head of Financial Services to take forward in consultation with the Head of Legal & Democratic Services.
- 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 Head of Legal & Democratic Services.
- 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:

APPENDIX 5

- a) Following the Council's Contract Procedure Rules and any codes of practice, guidance or instructions provided by the Head of Financial Services/Strategic Procurement Manager and the Head of Legal & Democratic Services.
- b) Following all relevant English and European procurement laws.
- c) Seeking advice from the Head of Financial Services/Strategic Procurement Manager and the Head of Legal & Democratic Services in the case of any uncertainty.
- d) Ensuring that any departure from these Contract Procedure Rules is agreed with the Head of Financial Services/Strategic Procurement Manager **and** the Head of Legal & Democratic Services.
- 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 Head of Legal & Democratic Services.
- 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 approved contracts are value for money.

4. 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 **Approved Contractor Registers cannot be used for contracts governed by the European procurement rules as such contracts must be advertised unless the Approved Contractor Register has been drawn up in compliance with 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.
- 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 or to buy one-off items. The process and criteria used for choosing prospective suppliers from a Government-backed or other registers must be agreed with the Head of Financial Services/Strategic Procurement Manager **and** the Head of Legal & Democratic Services.

4.2 Managing an Approved Contractor Register

- 4.2.1 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 Contract 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 Contract Register should be gathered using the same method for all suppliers seeking inclusion on the Register. Further advice on the methods that can be used to gather information from potential suppliers is given in section 5 of the Council's Contract Procedure Rules.
- 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) Other existing contractual commitments.
 - d) Specialist experience in the type of products and services being procured.
 - e) Financial situation.
 - f) Public and employer's liability insurance arrangements.
 - g) Health & safety arrangements.
 - h) Equalities policy.
 - i) Contractors' 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.
- 4.2.6 An Approved Contract 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 less 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.

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 that suggests they should no longer be on an Approved Contractor Register, the officer must seek advice from the Head of Financial Services/Strategic Procurement Manager who will, in consultation with the Head of Legal & Democratic Services, advise whether suspension or removal is appropriate.
- 4.3.2 If the Head of Financial Services/Strategic Procurement Manager determines after consultation with the Head of Legal & Democratic Services 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.

5. FORMAL QUOTATION AND TENDERING PROCEDURES

5.1 Introduction

- 5.1.1 West Mercia Supplies (WMS) or their supply partners 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.
- 5.1.5 Officers must also use Council approved strategic service delivery partners (such as Amey Wye Valley Limited and Owen Williams) where appropriate to do so.
- 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 less than £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** – formal tendering arrangements must be followed (see 5.3 below).
 - e) **Purchases in total valued in excess of relevant EU limit** – European procurement rules must be followed (see section 6 of the Council's Contract Procedure Rules).
- 5.1.8 Officers must consider all aspects of the contract that will eventually be entered into with a supplier (for example equipment acquisition costs **and** associated maintenance costs) over the entire life of the contract (often in excess of one year) in estimating the total value of a purchase and hence determining which of the procurement routes identified in 5.1.7 applies. Officers are strictly prohibited from circumventing the Council's Contract Procedure Rules by letting short term contracts and / or separating related items in order to avoid using the correct procurement route.
- 5.1.9 It is important to respect confidentiality in formal quotation and tendering processes. Officers must not therefore disclose any information they have about potential suppliers to others persons / suppliers potentially competing for the same contract.
- 5.1.10 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 a Council approved strategic service delivery partner) 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 tenders. 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 / Strategic Procurement Manager who will agree or otherwise any exception in consultation with the Head of Legal & Democratic Services. 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 below £50,000 (excluding VAT) 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 £144,00) except for those with WMS or a Council approved strategic service delivery partner. 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 an ordinary 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/Strategic Procurement Manager. The Head of Financial Services/Strategic Procurement Manager should then consult with the Head of Legal & Democratic Services. If agreement is reached, the Director shall give approval in writing.

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 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 and the Council's website.

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) Other existing contractual commitments.
- d) Specialist experience in the type of products and services you are looking for.
- e) Financial situation.
- f) Public and employer's liability insurance arrangements.
- g) Health & safety arrangements.
- h) Equalities policy.
- i) Contractors' reputation.

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 potential suppliers should be invited to tender. If there are only three potential 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 Legal & Democratic Services and his 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 Having arrived at a preferred tenderer list using the process described in the preceding paragraphs of 5.3, the officer needs to decide and record how the tenders will be assessed before inviting potential suppliers to tender.

5.3.18 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 Head of Legal & Democratic Services. 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.

5.3.19 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 Head of Legal & Democratic Services on which of the standard clauses to incorporate.

APPENDIX 5

- 5.3.20 Tenderers must be told that tenders sent by fax or e-mail will not be accepted because the information cannot be kept confidential.
- 5.3.21 Tenders can be returned by hand or by post to the Head of Legal & Democratic Services, 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.
- 5.3.22 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.
- 5.3.23 The invitation to tender **must** state that the Council does not bind itself to accepting the lowest or any tender.
- 5.3.24 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).
- 5.3.25 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.
- 5.3.26 The responsible officer must discuss and agree the tender assessment process with the Head of Financial Services/Strategic Procurement Manager who will consult the Head of Legal & Democratic Services as appropriate. This will include a decision on who is involved in the tender assessment process. It is expected that at least two officers are involved, one of whom may be the Strategic Procurement Manager of their nominated representative if the contract is high value or non-standard.
- 5.3.27 The tender assessment criteria might include:
- a) Price.
 - b) Technical standard.
 - c) Experience and skills.
 - d) Practical considerations.
 - e) Financial proposals.
 - f) Financial standing.
 - g) Contract management arrangements.
 - h) Quality management proposals.
 - i) Delivery proposals.
 - j) Employment practices.
 - k) Environmental considerations.
 - l) Diversity issues.

- 5.3.28 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.
- 5.3.29 During the period allowed for preparing tenders, all communications with tenderers must be recorded. 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

- 5.3.30 The original tender return date should be fixed and unchanged except in appropriate and necessary circumstances. The date cannot be extended to allow only some suppliers extra time or to allow for late tenders. The extension must apply to all. Any proposal to extend the closing date must be agreed by the Head of Legal & Democratic Services.
- 5.3.31 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.
- 5.3.32 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.
- 5.3.33 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.
- 5.3.34 A Legal & Democratic Services officer shall be responsible for opening the tenders for a contract in the company of at least one other officer, one of whom must be the responsible officer or Contract Monitoring Officer for the contract. 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.
- 5.3.35 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.
- 5.3.36 If fewer tenders are received than expected, do not contact tenderers to ask whether they have sent one in.
- 5.3.37 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

- 5.3.38 The Head of Legal & Democratic Services must make sure that the procedures for opening tenders are followed and that the correct records and documents are completed.
- 5.3.39 It is important that at least three officers are present throughout the tender opening and recording process. One must be a Legal & Democratic Services officer who will assume responsibility for the tender opening process. One of the others must be the responsible

officer or Contract Monitoring Officer. The third officer must be from Financial Services or Audit Services.

- 5.3.40 A time for opening the tenders must be agreed before the tenderers return them. The tenders should be opened as soon as possible after the deadline for returning them. If a delay becomes necessary, the responsible officer must agree to this and the reason must be recorded. **Never delay the time for opening tenders to allow for late tenders.**
- 5.3.41 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.
- 5.3.42 The details of each tender must be recorded on a tender return form. Each officer must check, sign and date the form.
- 5.3.43 The officers must sign each page of the tender document unless it is very long. In this case, they may only sign the pricing pages.
- 5.3.44 Once the tenders have been opened, they should be held in a secure place by the responsible officer or Contract Monitoring Officer.

Late Tenders

- 5.3.45 The Head of Legal & Democratic Services 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).
- 5.3.46 If the Head of Legal & Democratic Services 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 on file.
- 5.3.47 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

- 5.3.48 The responsible officer or Contract Monitoring Officer will ensure the tenders are assessed in accordance with the advice provided by the Head of Financial Services/Strategic Procurement Manager (5.3.26 refers).
- 5.3.49 Before assessing the tenders, the responsible 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
- 5.3.50 If there are substantial omissions of data or documentation that make it impossible to assess the tender, or if there is a fundamental mistake, this should be fully recorded and the tender rejected.
- 5.3.51 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. If there appears to be any other mistake then the tender should be rejected.

- 5.3.52 A record of all mistakes must be kept and attached to the tender documents together with any corrections agreed with the tenderer.
- 5.3.53 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.
- 5.3.54 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.
- 5.3.55 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.
- 5.3.56 The responsible officer shall retain a complete set of documents in a secure place in case any parts of the documentation go missing.
- 5.3.57 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

- 5.3.58 The officer should accept the tender that is in the Council's best interests. This will usually be:
- a) The lowest tender where the Council is the purchaser or the highest tender where the Council is the supplier.
- Or
- b) The tender that will be of most economic benefit to the Council. Where this is not the lowest tender, the officer should explain in writing giving objective reasons why that tender is preferred and seek approval from the Head of Legal & Democratic Services to proceed to appoint. A note should be placed on file.
- 5.3.59 The responsible 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. Sections 12.4 and 12.5 of the Scheme of Delegation (Part 12 of the Constitution) that set out the Council's procedures for making Executive Decisions and Administrative Decisions respectively refer. If in doubt, seek advice and approval from the Head of Financial Services/Strategic Procurement Manager and the Head of Legal & Democratic Services.
- 5.3.60 The officer should write to inform the successful tenderers of the decision as soon as possible **after all necessary approvals have been received.**

- 5.3.61 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 number of authorised signatories.
- 5.3.62 Acceptance letters, in response to a formal tender, can be used to enter into certain contracts without the need for any additional contract documentation, provided that the letter is signed by the required number of authorised persons appropriate to the value of the contract.
- 5.3.63 Where the tender and acceptance letter are not to form the formal contract documentation (e.g. when an industry standard contract is used or where the formal written contract is to follow), the acceptance letter must be headed "SUBJECT TO CONTRACT". This is to avoid the Council inadvertently entering into a contract before all terms and conditions have been agreed and incorporated and before both parties agree to be formally bound by the contract.
- 5.3.64 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. Officers 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

- 5.3.65 If it is in the Council's best interests, the officer may negotiate with tenderers for more favourable prices or terms. The following conditions apply to negotiating:
- a) Guidance must be sought from the Head of Financial Services / Strategic Procurement Manager who will consult with the Head of Legal & Democratic Services as appropriate before advising on the appropriate course of action.
 - b) Two officers must always be present at negotiations 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 / 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 not give anyone information about the criteria used for assessing the tenders or any other matter connected with the contract or tenders.
 - 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 of assessment should start again.
- 5.3.66 If there is an in-house tender for a contract, negotiations must not take place without permission from the Head of Financial Services / Strategic Procurement Manager as outlined in 5.3.65 a) above.

5.3.67 Where the Council is the supplier, the officer, subject to 5.3.65 a) above, may negotiate with the highest tenderer with a view to increasing any consideration payable to the Council.

Awarding a Contract

5.3.68 Before awarding any contract, the officer concerned must first obtain the approval of their Director or their authorised representative, providing the authorising officer 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 £144,000). Advice on credit checks should be sought from Audit Services.

5.3.69 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 Head of Legal & Democratic Services.

5.3.70 All contracts must be signed by the Head of Legal & Democratic Services. The Head of Legal & Democratic Services will only sign contracts if the Director has given written authority for him to do so. A Director must also sign all contracts where European procurement rules apply.

5.3.71 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.

5.3.72 The relevant Contract Monitoring Officer must be informed of the contract and must record the details of all contracts in the Directorate contract register. Where the value of such contracts exceeds £50,000 they shall be notified to the Head of Legal & Democratic Services.

5.3.73 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

5.3.74 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.

5.3.75 The only information officers should make public is the name of the successful tenderer and the value of their bid. However, this information must not be released until the contract has been awarded and signed.

5.3.76 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.

6. EUROPEAN PROCUREMENT RULES

6.1 Introduction

6.1.1 Officers are expected to follow the principles set out in the Council’s Contract Procedure Rules even in if the procurement process comes under the European procurement 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 / Strategic Procurement Manager and the Head of Legal & Democratic Services.

6.2 European Limits

6.2.1 The following table sets out the public sector thresholds for 1st January, 2006 to 31st December, 2007:

	Supplies	Services	Works
Other public sector contracting authorities	£144,371	£144,371	£3,611,319
Indicative Notices	£513,166	£513,166	£3,611,319

6.2.2 The figures are revised every two years on 1st January and officers should check with the Head of Legal & Democratic Services 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 may 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 / Strategic Procurement Manager and the Head of Legal & Democratic Services.**

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 / Strategic Procurement Manager or your external procurement consultants for advice.

6.3.2 To ensure compliance with the European Court of Justice judgement in the Alcatel case, 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 Head of Legal & Democratic Services.

- 6.3.6 The Head of Financial Services/Strategic Procurement Manager and the Head of Legal & Democratic Services must be consulted on all EU procurements.

7. 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/Strategic Procurement Manager and the Head of Legal & Democratic Services must be consulted on all Framework contract procurements.

8. 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 / Strategic Procurement Manager and Head of Legal & Democratic Services must be consulted regarding any proposals to follow any such procedures.

9. 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 £144,000) shall be sent to the Head of Legal & Democratic Services for execution under the Council's seal.

10. EXEMPTIONS FROM THE COUNCIL'S CONTRACT PROCEDURE RULES

- 10.1 Exemptions from the Council's Contract Procedure Rules are only allowed in exceptional circumstances. Permission must be obtained for any exemption from the Head of Legal & Democratic Services. Major contracts may be subject to the European procurement rules and the Head of Legal & Democratic Services 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 Head of Legal & Democratic Services setting out the reasons for the application. The Head of Legal & Democratic Services must respond within 21 days. If agreed by the Head of Legal & Democratic Services, the exemption must be approved as an Executive Decision as such decisions are not defined as an Administrative Decision (Sections 12.4 and 12.5 of Part 12 of the Council's Constitution – the Scheme of Delegation – refer).
- 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.

Contents

Page 2

Amendments to the *Local Government Act 2000*

New regulations – government consultation

Local assessment of complaints: pilot findings

Page 4

Checklist for local authorities in the run up to April 2008

Page 6

Local assessment information now available online

Case Review 2007

Satisfaction high for Annual Assembly

Page 7

Stronger action needed on ethical governance

New role for standards committees

Page 8

Updated advice on suspensions

Page 9

New Board members required

Page 10

Statistics

Contact

Enquiries line: 0845 078 8181

Minicom: 0161 817 5449

www.standardsboard.gov.uk

email: bulletin@standardsboard.gov.uk

Welcome to Issue 36 of the *Bulletin*.

2007 has been an eventful year for the Standards Board for England, with all the elements of the local standards framework starting to come together. We all have a lot to do in 2008 to ensure its successful implementation.

The *Local Government and Public Involvement in Health Act 2007* is now law and firmly places responsibility for the standards agenda where it belongs, at the heart of local government. Standards committees will have a vital role in ensuring that the Code of Conduct is lived out locally and upheld. We believe that this approach will reinforce the importance of high standards at a local level, helping to demonstrate accountability and developing greater local trust.

The Standards Board continues to develop its functions as a strategic regulator and is working hard to prepare local authorities for their new responsibilities in the ethical framework. We are producing detailed guidance that will be made available to all relevant authorities in the new year, to reflect the regulations issued under the *Local Government and Public Involvement in Health Act 2007*.

In this issue of the *Bulletin* we focus on the findings from the local assessment pilots, and provide a checklist for local authorities in the run-up to April 2008. We also clarify the position of suspended members in relation to conduct outside their official capacity, and look at the Audit Commission's survey on ethical governance.

We have enjoyed a very positive year, with a successful relocation to Manchester and the opportunity to meet many of you at our roadshows and our well-received Annual Assembly.

We look forward to continuing and developing our close relationships with local authorities in the context of the new standards framework from 2008.



David Prince
Chief Executive

Amendments to the *Local Government Act 2000*

The *Local Government and Public Involvement in Health Act 2007* was passed by Parliament on 30 October 2007 when it received royal assent.

The act includes important amendments to the *Local Government Act 2000*, including:

- 1) The introduction of a locally managed framework of compliance with the Code of Conduct and a new regulatory role for the Standards Board for England.

This will involve local standards committees making initial assessments of misconduct allegations, and most cases being handled locally. The Standards Board will provide supervision, support and guidance for local authorities. The Standards Board will also aim to ensure some degree of consistency in the application of the Code.

It is anticipated that the sections introducing the locally managed framework will commence on 1 April 2008.

- 2) The application of the Code to cover some conduct in a private capacity, where this has led to a criminal conviction.

This second amendment does not take effect immediately as the relevant parts of the act have not yet come into force and, in the meantime, conduct carried out in a member's private capacity cannot be subject to the Code.

Government consultation on new regulations and orders

Communities and Local Government (CLG) is expected to consult in December 2007 on proposals for the new regulations and orders that flow from the *Local Government and Public Involvement in Health Act 2007*.

The consultation is expected to include proposals for regulations on local assessment of complaints, joint standards committees and an increased range of sanctions for standards committees.

For a copy of the consultation document, or for more information, contact CLG on **020 7944 4400**.

Local assessment of complaints: pilot findings

During the summer, the Standards Board for England piloted the local assessment of complaints with a broad geographical range of authorities of all types, across England. A total of 38 standards committees participated in the pilot, each of which considered 12 real but anonymised cases, including two appeal cases.

The Standards Board collected a range of data and feedback from the pilot, developing an overview of how the local system might work in practice. Detailed analysis of the results and feedback supplied by 30 committees was undertaken. The results are based on 360 allegations considered by standards committees.

Standards committees were asked to record whether they decided to:

- Refer allegations to the Standards Board.
- Refer allegations to the monitoring officer for investigation or alternative action such as mediation or training.
- Not refer them at all.

The average referral rate for standards committees was just over six out of the ten cases (excepting the two appeals) at 66.5%, compared with the Standards Board's referral rate on the same cases of three out of ten, or 30%. However, local standards committees had the further option to consider alternative action such as mediation, training or an apology, which is not available to

the Standards Board, and referrals for alternative action are included in their average.

The average rate of referral for alternative measures was 7.3%. The average non-referral rate for standards committees was low at 33.5% compared with the Standards Board's non-referral rate of 70%.

The Standards Board had originally referred three of the ten allegations given to participating standards committees in the pilot for investigation. Standards committees participating in the pilot largely correlated with the Standards Board in their decisions to refer these allegations.

The majority of referrals by standards committees were made to monitoring officers at an average rate of 40%, ranging between 23% and 66.6%. The rate of referral to the Standards Board for investigation was low, at less than 10%.

Standards committees made decisions which diverged significantly from those of the Standards Board in only 11 of the 360 allegations. Therefore, participating standards committees took a different view from the Standards Board in less than 4% of cases.

Standards committees were asked to self-assess their collective decision-making for each complaint against the following categories:

- 1) Quick decisions.
- 2) Decisions requiring some deliberation.
- 3) Difficult decisions.
- 4) Not specified (where no decision was reached in the allocated time).

In nearly 40% of cases, standards committees considered that they were able to reach a quick decision, and only in 13% of cases were decisions considered slow and difficult with much deliberation.

Standards committees were also asked to record whether any of their decisions went to the vote. Nearly 14%, or 49 of the total of 360 allegations considered in the pilot, were voted on. A further 11% of the total complaints were undecided, in most cases because a decision was not reached in the time allocated. Therefore, 76% of the decisions taken in total by the participating standards committees were reached through consensus.

Finally, standards committees were also asked to consider a range of additional procedures and resources they considered necessary for managing the local system and making it work in their own authority.

The average number of members from participating authorities serving on their standards committees is nine, and ranges from five to 16. The average number of independent members is nearly four, ranging from two to seven. Some 93% of participating standards committees had an independent chair.

Almost half of participating standards committees considered themselves to be politically balanced in the strict legal sense, that is, in accordance with the political balance requirements of Sections 15-17 of the *Local Government and Housing Act 1989*.

The establishment of a sub-committee was considered to be necessary by 23 of 30 committees, while only a third, ten of 30, considered adding more independent members as necessary.

Of the 13 authorities which stated they would not increase the number of independent members on their standards committee, seven said they would need to increase resources, five were unsure, and only one felt they would not need to increase resources.

Checklist for local authorities in the run up to April 2008

This article offers a ‘checklist’ for local authorities of things to consider in the run-up to the implementation of the locally managed framework. Please note that, in some cases, it is subject to Communities and Local Government making appropriate regulations.

1) Size of standards committee

Standards committees must have a minimum of:

- Three members (two elected members and one independent member).
- 25% as independent lay members if the committee is more than three people.
- An independent chair (from April 2008).
- One parish or town council member if the authority has responsibilities for those councils.

Effective practice - the Standards Board recommends:

- At least six people as a minimum (three elected members and three independent members).
- Two, or possibly three, parish or town council members if the authority has responsibilities for those councils.
- Consideration of whether more members are required to ensure cover in the event of conflicts of interest, holidays or sickness.

2) Structure of standards committees

In addition to their role as champion and guardian of the authority’s ethical standards, standards committees will now have three separate but distinct roles in relation to complaints about member conduct:

- Receiving and assessing complaints.
- Reviewing local assessment decisions.
- Conducting hearings following investigation.

To avoid perceptions of bias or predetermination, members who carry out a local assessment decision should not be involved in a review of the same decision, should one be requested.

Effective practice – the Standards Board recommends:

- A structure of sub-committees or the standards committee acting as a pool of members to deal with the different roles.
- As a minimum, two separate sub-committees, one for taking initial assessment decisions and one for taking decisions on reviews.
- Subject to regulations, any sub-committee should also have an independent chair.
- A member who was involved in an initial assessment decision, or following referral of a complaint back to the standards committee from the monitoring officer or Standards Board for another assessment decision, can be a member of the committee that hears and determines the complaint. This is because an assessment decision only relates to whether a complaint discloses something that needs to be investigated. It does not require deliberation of whether the conduct did or did not take place and so no conflict of interest will arise in hearing and determining the complaint.

3) Training

Effective practice – the Standards Board recommends:

- Standards committees are fully trained on the Code of Conduct.

- Standards committees are offered other training to equip them with necessary skills, for example in conducting a hearing.
- Independent chairs and vice-chairs are trained in chairing meetings.
- Any newly-appointed standards committee members receive a comprehensive induction to the role and appropriate training.

4) Local assessment criteria

- Guidance will be available from the Standards Board on developing criteria and the types of issues to be considered when assessing complaints.
- Standards committees will need to develop their own criteria, that reflect local circumstances and priorities, and which are simple, clear, open and ensure fairness.
- Monitoring officers will be able to acquire additional factual information which is readily available about allegations before the assessment process begins. This could be from minutes or the register of interests, for example, if such information about a complaint would assist decision-making. It should not include interviews or investigation.
- A complainant has a right to appeal if a complaint is rejected, so standards committees will be able to invite complainants to submit further information in support of the complaint at the appeal stage in the process.

5) Role of the monitoring officer in the new framework

Effective practice – the Standards Board recommends:

- A pre-meeting with the independent chair.

- Preparing a summary of the allegation for the standards committee.
- Highlighting what the potential Code breaches are which underlie an allegation to the standards committee.
- Allowing case reading time for the monitoring officer and the standards committee.

6) Completing existing investigations

Many authorities will have outstanding investigations and the Standards Board encourages authorities to clear such investigations – particularly long-standing cases – before the new framework comes into effect.

Any authority experiencing difficulties in completing an investigation should seek advice and support from the Standards Board. Please contact Rebecca Strickson, Local Investigations Co-ordinator on **0161 817 5372**, or email rebecca.strickson@standardsboard.gov.uk.

7) Local assessment and the corporate complaints process

Effective practice – consider:

- How will the public be informed of the new arrangements?
- Who will receive and log an allegation?
- The production of an individual information leaflet for the local assessment process, possibly combined with the corporate complaints process.

8) Future monitoring by the Standards Board

The Standards Board is consulting a sample of authorities involved in a pilot study on proposals for an online information return system, which will allow authorities to tell us about how local arrangements are working.

This system is being designed based on what standards committees need locally, and to enable authorities to provide information to the Standards Board as simply as possible. Authorities will be able to use the system locally for their own records, to keep standards committees informed of their authority's ethical activities.

Proposals for the system include quarterly online returns on cases, which will be simple and quick to use, and nil returns if there is no activity to report.

9) Local assessment guidance

We will help standards committees by providing guidance in 2008 on all aspects of the local assessment process, subject to the passage of the relevant regulations, with a toolkit to include:

- Template notices for publicising the authority's Code of Conduct complaint process.
- Complaint assessment flowcharts.
- A standard complaint form.
- Template letters for each stage in the process.
- Template referral and non-referral decision notices.
- Guidance to assist with drafting criteria and for the authority to define its threshold for referral.
- Template terms of reference for assessment and review committees.

Local assessment information now available online

The Standards Board for England's website has been updated to feature a new section on local assessment of complaints.

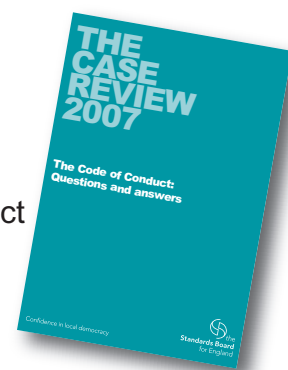
This section, accessible from the main menu, aims to keep you up to date on the new arrangements and what they will mean for local

authorities and the Standards Board's role. You can find out about any new developments in this area in the section's *Latest news* page.

If you have an enquiry about the proposed changes or anything else relating to local assessment, please phone **0845 078 8181** or email enquiries@standardsboard.gov.uk.

Case Review 2007

The *Case Review 2007* is a paragraph-by-paragraph analysis of the Code of Conduct and is available to download from our website.



We intend to reissue the *Case Review*, complete with its paragraph-by-paragraph analysis, on an annual basis to reflect the evolving interpretation and developing understanding of the Code.

Issues of the *Case Review 2007* were distributed to delegates at this year's Annual Assembly. Additional hard copies cost £20 and can be ordered by calling **0161 817 5300** or by emailing us at publications@standardsboard.gov.uk.

Satisfaction high for Annual Assembly

Almost 800 delegates attended the Standards Board's Sixth Annual Assembly of Standards Committees held at Birmingham ICC in October 2007. This year's conference was a sell-out event and our feedback suggests it was a resounding success, with a 97% satisfaction rate among delegates.

Called *Down to detail: Making local regulation work*, the conference provided a range of sessions to help build the skills, contacts and resources necessary to meet the challenges of local assessment. And, as the minister Parmjit Dhanda MP said on the opening day, it came at a

crucial time for standards committees, with the *Local Government and Public Involvement in Health Act 2007* having now been passed in Parliament, as discussed on page 2 of this *Bulletin*.

More information on the event is available from our conference website, www.annualassembly.co.uk, where you can also download materials such as newsletters, speeches, session slides and handouts.

Our next Annual Assembly will be held again at the ICC in Birmingham on 13 and 14 October 2008. For further information, please email: annualassembly2008@standardsboard.gov.uk

Stronger action needed on ethical governance

The latest Audit Commission self-assessment survey reveals that although councils are generally managing the ethical agenda well, there are a number of areas that require stronger action.

Survey background

The self-assessment survey was created by the Audit Commission in conjunction with the Standards Board for England and the Improvement and Development Agency (IDeA). It is one element of the four-part Ethical Governance Diagnostic Toolkit, which also includes a full diagnostic, a light-touch health check (provided by the IDeA) and workshops.

The survey helps councils assess and then, where necessary, improve their ethical governance procedures by helping them understand the key ethical governance issues they are now facing.

Key findings

- Members generally demonstrate high standards of behaviour.

- Leaders and chief executives are proving themselves as positive role models in many councils.
- Roles, responsibilities and relationships of members and officers relating to the ethical framework are not always clearly understood.
- Standards committees make a difference, but they don't always explain to other members, officers and the public what they do, the issues they are addressing, and the progress they are making.
- Communication, training, guidance and information are critical areas and often need more of a focus.

The survey has highlighted key areas that councils actively need to address to improve ethical behaviour and to fully meet the ethical agenda.

For further details on these findings or on the Ethical Governance Toolkit, please contact Hannah Pearson on **0161 817 5417** or email hannah.pearson@standardsboard.gov.uk.

Independent adjudicator abolished – new role for standards committees

Restrictions on political activities by certain local government staff were introduced under the *Local Government and Housing Act 1989*, which provided for the appointment of an independent adjudicator to grant dispensations for staff to engage in certain political activities.

Under the *Local Government and Public Involvement in Health Act 2007*, the role of independent adjudicator will be abolished and the duties transferred to local authority standards committees.

These duties are:

- To consider applications from local authority employees for exemption from political restriction in respect of their posts.

- Where appropriate, to issue directions requiring a local authority to include a post in the list of politically restricted posts it maintains.
- To give general advice, following consultation with appropriate parties, on the application of criteria for designation of a politically restricted post.

The timing of this transfer of functions from the independent adjudicator is a government matter, but the Standards Board urges authorities to ensure that their standards committees are made aware of the change.

We expect the relevant government department, Communities and Local Government, to issue guidance on this matter. The department may be contacted via www.communities.gov.uk or on 020 7944 4400.

Updated advice on suspensions

In Issue 21 of the *Bulletin*, the Standards Board outlined what a member should and should not do if they are suspended.

The decision by Collins J in *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin), has led us to review that guidance.

A member of an authority who is suspended continues to be a member of that authority. They can quite properly refer to themselves as a councillor or as an elected member, although they should also make it clear that they are currently suspended.

However, someone who is fully suspended may not, while they are suspended, exercise any of the functions or responsibilities of membership of the authority. This means that they should not take part in any formal business of the authority, they should not use or have access to council facilities, and they should not receive their council allowances.

A member who is subject to partial suspension may not, during the period of that suspension, exercise the particular functions or responsibilities from which they are suspended. What those functions or responsibilities are will depend on the exact terms of their suspension, and the standards committee needs to describe precisely what particular functions are proscribed.

Under the 2001 Code of Conduct, two paragraphs applied “in any other circumstance” outside the functions or responsibilities of membership of an authority. As such, these provisions still applied to members who were suspended. The *Livingstone* judgment restricted the effect of these provisions.

The position now is that three paragraphs under the revised 2007 Code of Conduct will apply, “at any other time, where that conduct constitutes a criminal offence”.

The three paragraphs will be:

- Paragraph 3(2)(c) – intimidation of certain persons in relation to an allegation under the Code.
- Paragraph 5 – disrepute.
- Paragraph 6(a) – improperly conferring or securing an advantage or disadvantage.

However, this will only occur when amendments to Section 52 of the *Local Government Act 2000* come into effect. Until this time, the 2007 Code of Conduct does not apply to a person who has been suspended in respect of a relevant function of office for a relevant period of time, so long as the member makes it clear that they have been suspended and does not purport to act as a representative of their authority.

As an example, if a member is suspended from appointment to a planning committee for a period of two months, the relevant function is membership of the planning committee and the relevant time period is two months. The Code

does not currently apply to the member in respect of this function for this time period, so long as the member makes it clear they have been suspended. When the amendments to the *Local Government Act 2000* come into force, conduct that constitutes a criminal offence will also be covered in respect of this function during this time period, in relation to the three paragraphs of the Code listed above.

New Board members required

With the end of current members' terms approaching, Communities and Local Government is seeking to recruit a new chair, deputy chair and two new Board members for the Standards Board for England.

Communities and Local Government is particularly seeking applications for the Board member roles from candidates who have experience as an independent member of a local standards committee or as a local authority monitoring officer.

Full details of all the posts, including how to apply, can be found at www.clgstandards.org.

The closing date for applications for chair is 20 December 2007. For all other roles it is 14 January 2008.

The Standards Board at Christmas

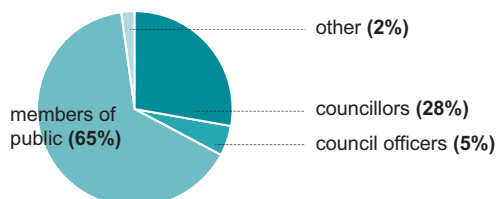
The Standards Board for England's offices will be open during the majority of the festive period, but will be closed on Christmas Day, Boxing Day and New Year's Day. We will endeavour to respond to your enquiries as soon as possible during this time.

Referral and investigation statistics

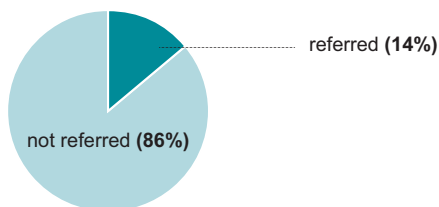
The Standards Board for England received 2,098 allegations between 1 April 2007 and 31 October 2007, compared to 1,996 during the same period in 2006.

The following charts show referral and investigation statistics during the above dates.

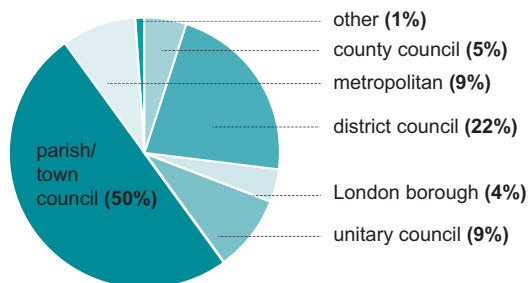
Source of allegations received



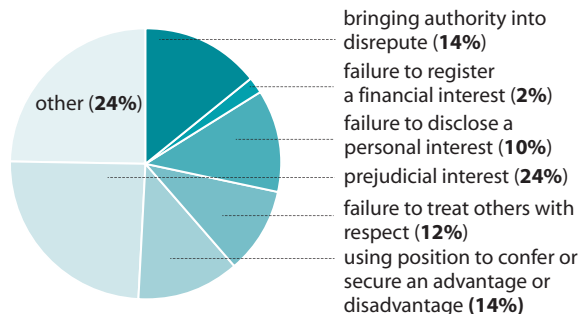
Allegations referred for investigation



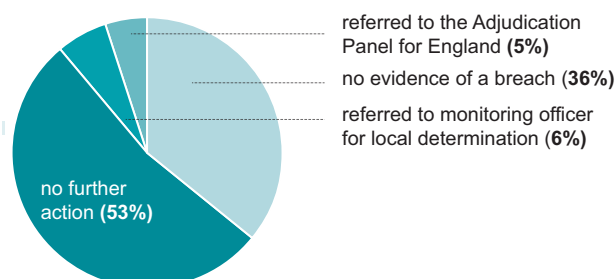
Authority of subject member in allegations referred for investigation



Nature of allegations referred for investigation



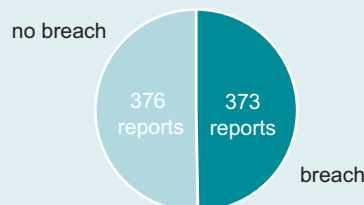
Final findings



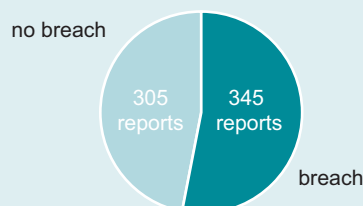
Local investigation statistics

For the period 1 April 2007 to 31 October 2007, ethical standards officers referred 171 cases for local investigation – equivalent to 55% of all cases referred for investigation. Since 1 April 2007 there have been eight appeals to the Adjudication Panel for England following standards committee hearings. Of all cases referred for local investigation since November 2004, we have received a total of 749 reports – please see below for a statistical breakdown of these cases.

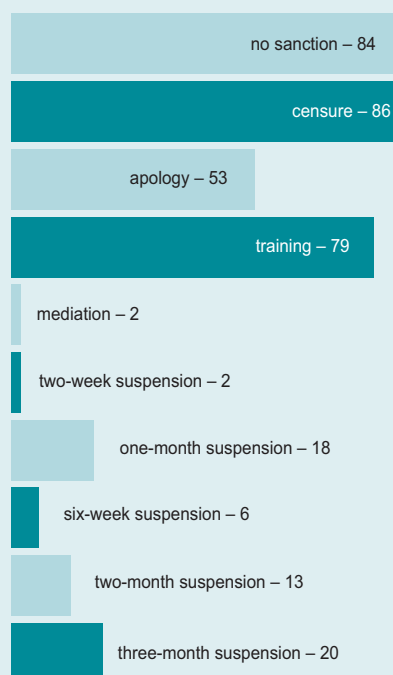
Monitoring officers' recommendations following local investigations



Standards committee hearings



Standards committee determinations



LOCAL ASSESSMENTS

Report By: Head of Legal and Democratic Services

Wards Affected

Countywide

Purpose

1. To consider the checklist issued by the Standards Board for England set out at pages 4 and 5 of Bulletin 36 and for the committee to consider what further actions are needed.

Financial Implications

2. Training and possible extension of membership of the committee and agreements with adjoining local authorities

Background

3. As the committee is aware following the passing of the Local Government and Public Involvement in Health Act 2007 receiving the royal assent on the 30th October 2007 there are provisions within the Act which require the committee to consider further actions. The Standards Board have issued a checklist for committees to consider as part of the arrangements for local assessments and filtering of allegations. The issues identified are as follows:-

- Size of standards committees
- Structures of standards committees
- Training
- Local assessment criteria
- Completing existing investigations
- Role of the Monitoring Officer
- Local assessment and the corporate complaints process
- Future monitoring by the Standards Board

4. I will refer to each of these headings in my report.

Size of standards committees

5. As committee members are aware a committee must have a minimum of three members (two elected members and one independent member) and an independent chair (from April 2008). One member must be from the parish or town councils or have responsibilities for those councils.
6. The Standards Board recommends that at least six members as a minimum (three elected members and three independent members).

7. Two or possibly three parish or town council members if the authority has responsibilities for those councils. Consideration of whether more members are required to ensure cover in the event of conflicts of interest, holidays or sickness

Structure of standards committees

8. In addition to the role as champion and guardian of the authority's ethical standards, standards committees will now have three separate but distinct roles in relation to complaints about member conduct:-
 - Receiving and assessing complaints;
 - Reviewing local assessments;
 - Conducting hearings following investigation
9. To avoid perceptions of bias or pre determination, members of the standards committee who carry out a local assessment decision should not be involved in the review of the same decision, should one be requested.
10. The Standards Board recommends a structure of sub-committees or the standards committee acting as a pool of members to deal with the different roles.
11. As a minimum, two separate sub-committees, one for taking initial assessment decisions and one for taking decisions on reviews
12. Subject to regulations, any sub-committee should also have an independent chair
13. A member who was involved in an initial assessment decision, or following referral of a complaint back to the standards committee from the monitoring officer or Standards Board for another assessment decision, can be a member of the committee that hears and determines the complaint. This is because an assessment decision only relates to whether a complaint discloses something that needs to be investigated. It does not require deliberation of whether the conduct did or did not take place and so no conflict of interest will arise in hearing and determining the complaint.
14. A separate consideration by the committee could also be instead of a structure of sub-committees to enter into agreements with adjoining standards committees for example Worcestershire or Shropshire to ask their committees to carry out reviews and for this committee to offer reciprocal arrangements at no cost to the authorities involved. This should be formalised by way of an agreement if this was felt to be a process that the committee would want to explore.

Training

15. The Standards Board recommends that standards committees are fully trained on the Code of Conduct and that standards committees are offered other training to equip them with necessary skills, for example in conducting a hearing
16. Independent chairs and vice-chairs are trained in chairing meetings. Any newly-appointed standards committee members receive a comprehensive induction to the role and appropriate training.

17. In addition to the above training of the committee there is also a legal requirement to train parish councils and assist with their training in relation to ethical standards and Code of Conduct. The training strategy should therefore be recommended to be formulated between the committee and Herefordshire Association of Local Councils and to seek to engage the parish councils that are not members of Herefordshire Association of Local Councils the use of the Council's Parish Liaison Officer.

Local assessment criteria

18. Guidance will be available from the Standards Board on developing criteria and the types of issues to be considered when a committee has to assess a complaint.
19. Standards committees will need to develop their own criteria, that reflect local circumstances and priorities and which are simple, clear, open and ensure fairness. The committee will therefore have to develop such criteria for the future and this should be made available on the Council's website and intranet service.
20. Monitoring officers will be able to acquire additional factual information in order to support such an assessment which is readily available about allegations before the assessment begins. This could be from minutes of meeting or the register of interests, for example, if such information about a complaint would assist decision-making. It should not include interviews or investigation.
21. A complainant has a right to appeal if a complaint is rejected, so standards committees will be able to invite complainants to submit further information in support of the complaint at the review stage in the process.

Completing existing investigations

22. The Board encourages standards committees to clear existing investigations before the new framework comes into effect. There are currently no outstanding investigations.

Role of the Monitoring Officer

23. The Standards Board recommends a pre-meeting with the independent chair of the committee preparing a summary of the allegation for the standards committee highlighting what the potential Code breaches are which underlie an allegation to the standards committee. Allowing committee members reading time.
24. In addition the committee may need to consider whether or not it is appropriate where matters are referred to the committee directly by the Monitoring Officer or the Deputy Monitoring Officer and the resources available to support the committee during the initial assessments.

Local assessment and the corporate complaints process

25. The committee will need to consider how the public will be informed of the new arrangements, who will receive and log an allegation, the production of an individual information leaflet for the local assessment process (possibly combined with the corporate complaints process).

Future monitoring by the Standards Board

26. The Standards Board is consulting a sample of authorities involved in a pilot study on proposals for an online information return system which will allow authorities to tell the Board about how local arrangements are working. As committee members are aware the Board's role will reduce to that mainly of a regulatory function and ensuring consistency of the application of the Code in relation to investigations.
27. The Board will also provide guidance in 2008 on all aspects of local assessment process, subject to the passage of the relevant regulations. A toolkit is likely to provide templates of notices, flowcharts, standard complaint form and a template letter for each stage of the process and other matters.

Recommendations**THAT**

- (a) **the committee considers the report and to develop the recommendations made by the Standards Board set out above;**
- (b) **the committee receive update report from the Head of Legal and Democratic Services on the local assessment as and when they become available;**
- (c) **consideration be given to composition of membership of the committee;**
- (d) **the committee considers whether to set up a sub-committee or to make arrangements with an adjoining authority with regard to reviews of initial assessments of investigations;**

Background Papers

- Bulletin 36

RESTRICTIONS ON POLITICAL ACTIVITIES BY LOCAL AUTHORITY OFFICERS

Report By: Head of Legal and Democratic Services

Wards Affected

Countywide

Purpose

1. To consider the implications of Section 202 – 203 of the Local Government and Public Involvement Health Act 2007 in that the committee will be required to consider any application for exemption from political restriction which is made to the committee in respect of any post and it may also give directions to the authority requiring it to include a post in a list maintained by the authority under Section 2 (2) of the Local Government and Housing Act 1989.

Financial Implications

2. This adds to the work of the committee in that previously this was a matter that would be considered by an adjudication panel under Section 3 of the Local Government and Housing Act 1989. Those duties are now being transferred to the standards committee.

Background

3. Committee members may not be aware but as a result of the Local Government and Housing Act 1989 a person can be disqualified from becoming a member of a local authority if he holds a politically restricted post under that local authority or any other local authority in Great Britain. Section 2 of the 1989 Act identifies posts that are politically restricted which includes the following officers:

The head of the authority's paid service (Chief Executive), the statutory and non statutory chief officers (Directors), the Monitoring Officer and any officer holding a post to which he was appointed as a political assistant and any other officer not falling within these provisions whose post is specified by the authority in a list maintained in accordance with section 2 (2) any directions under section 3 or section 100G(2) of the Local Government Act 1972

4. The local authority is required to prepare and maintain a list of the posts which are politically restricted. The effect of this is not to permit those officers who fall within the political restrictions to be members of a political party whilst being officers of the authority. However under section 3 of the Local Government and Housing Act 1989 there is provision for the grant of exemptions and supervision on political restriction and this was normally carried out by an adjudication panel. The duties under section 3 have now

been transferred to the standards committee as set out at section 202 of the Local Government and Public Involvement in Health Act 2007.

Considerations

5. The committee will be tasked with considering any application for exemption from political restriction which is made by or in respect of any post by the holder of the post and may on the application of any person give directions to the Council requiring it to include a post and to review the list maintained by the authority under section 2(2) of the Local Government and Housing Act 1989
6. Attached is appendices 1 a copy of the Council's current Human Resources Policy on politically restricted posts and this will need to be amended to reflect the changes in terms of adjudication of future exemptions

Recommendations

THAT

- (a) **the committee note the report in respect of politically restricted posts**
- (b) **the committee makes any comments**
- (c) **the committee to receive a further report from the Head of Legal and Democratic Services when guidance is issued by the Department for Communities and Local Government**

Appendix

Appendix 1 – A copy of the Council's current Human Resources Policy on politically restricted posts

Background Papers

None



POLITICALLY RESTRICTED POSTS

The Local Government and Housing Act 1989 restricts the political activities of certain groups of paid officers.

Employees in such posts cannot become or remain a councillor of a local authority. Such employees cannot: -

- ◆ be a candidate, or prospective candidate for election as an MP, MEP or local authority councillor
- ◆ act as an election agent or sub agent for a candidate for election as an MP, MEP or local authority councillor
- ◆ hold office in a political party
- ◆ canvass at elections on behalf of a political party
- ◆ speak or write in public in a manner that appears to be designed to affect public support for a political party.

The Local Government Officers (Political Restrictions) Regulations 1990 do allow the display of a poster or other document on property occupied by a post holder at their home or on a privately owned vehicle or article.

Definition of Politically Restricted Posts

The three categories of politically restricted posts are: -

- ◆ 'specified posts', i.e. the Chief Executive, Directors, Heads of Service, monitoring officer, assistants to political groups, officers to whom certain powers are delegated, other officers reporting direct to the Chief Executive or directly to the authority and/or its committees, sub-committees or any member groups.
- ◆ Anyone whose remuneration level is or exceeds Spinal Column Point 44. This includes staff whose basic salary grade is less than the SCP, but whose total remuneration package, eg bonus schemes, lease car, etc would take them to or beyond point 44.
- ◆ Staff on salary grades less than SCP44 but whose posts have been listed by their Authority as 'politically sensitive' on the basis that they:
 - ◇ regularly give **advice** to Council committees, sub-committees or any member groups rather than simply providing factual information, and / or
 - ◇ speak authoritatively and regularly to journalists on behalf of the Council rather than simply providing factual information.

Secretarial and support staff who might otherwise meet the above definitions are excluded, as are teachers, (including head teachers) and lecturers. Support staff in education establishments are subject to the provisions of the Act.

Appeals

Employees whose posts are politically restricted can appeal (via their Directorate Personnel Officer) to the Independent Adjudicator for exemption. The appeal must be in writing formally seeking exemption and, in the case of post holders below the remuneration level, giving the reason for disagreeing with the decision to list the post.

Administration

A list of politically restricted posts is held within Personnel Services.

Directors are responsible for identifying those posts that are restricted. They should notify their Directorate Personnel Officer of any changes affecting the political sensitivity of the duties of the post.

Directorate Personnel Officers are responsible for giving notification to employees that their posts are politically restricted and for outlining their appeal rights. This includes increases in salary to reach SCP 44. They will also ensure that the centrally held list is updated.

When a post that is subject to the Act becomes vacant potential applicants must be informed that the post is politically restricted, with an explanatory note being included in application packs.

Candidates should be reminded during the interview that the post they have applied for is politically restricted and the implications explained.

The restrictions form part of the contract of employment for anyone who is in a politically restricted post.

Document is Restricted

CONSULTATION DOCUMENT ON ORDERS AND REGULATIONS RELATING TO THE CONDUCT OF LOCAL AUTHORITY MEMBERS IN ENGLAND

Report By: Head of Legal and Democratic Services

Wards Affected

Countywide

Purpose

1. To seek the views of the committee regarding the consultation issued on the 3rd January 2008 by the Department for Communities and Local Government on orders and regulations relating to the conduct of local authority members in England with regard to local assessments.

Background

2. The Local Government and Public Involvement in Health Act 2007 introduces the framework for significant changes to the process of handling standards allegations against members of local authorities. These changes include a devolution of the handling of such allegations from the Standards Board for England to individual local authorities standards committees. The Department for Communities and Local Government is now consulting on a number of issues relating to the implementation of these changes. The consultation seeks the views of specific proposals set out in the consultation document attached at Appendix 1 by 15th February 2008.
3. The Department's intentions are to implement the proposed changes within the consultation from the 1st April 2008. Also attached is a copy of the proposed response to the consultation from Bevan Brittan for the committee's consideration and any other matters for consideration that the committee may wish to make in respect of the consultation document.

Recommendations

THAT

- (a) **the views of the committee are sought with regard to the proposed orders and regulations consultation**
- (b) **the committee considers the response from Bevan Brittan to the consultation as part of that process**
- (c) **such comments to form the response from the standards committee to the Department for Communities and Local Government**

Appendices

Appendix 1 – Consultation document

Appendix 2 – Proposed response to consultation document by Bevan Brittan

Background Papers

None

To Chief Executives of:
County Councils and District Councils
London Borough Councils
The Greater London Authority
National Park Authorities
The Broads Authority

Our Ref:

Your Ref:

Date: 3 January 2008

The Clerk:
City of London
Council of the Isle of Scilly
Combined Fire and Rescue Authorities
Fire and Civil Defence Authorities
Police Authorities in England and Wales
Joint Waste Disposal Authorities in England

The Clerk:
Parish and Town Councils in England

Dear Colleague,

CONSULTATION ON ORDERS AND REGULATIONS RELATING TO THE CONDUCT OF LOCAL AUTHORITY MEMBERS IN ENGLAND

I am writing to inform you that the Government has today published the enclosed consultation paper which seeks views on the detailed arrangements for putting into effect the orders and regulations to provide a revised more locally-based ethical regime for the conduct of local councillors in England.

Part 10 of the Local Government and Public Involvement in Health Act 2007 amends the Local Government Act 2000 to provide for a revised ethical conduct regime for local government based on the principle of proportionate decision-making on conduct issues by local authorities. In order to implement the revised regime, we now need to put in place detailed arrangements to allow standards committees and the Standards Board to undertake their new roles. These arrangements need to cover:

- The operation of standards committees' powers to make initial assessments of misconduct allegations.
- The operation of other functions by standards committees and the Adjudication Panel in issuing penalties and sanctions.
- The operation of the Standards Board's revised strategic role to provide supervision, support and guidance for the regime.
- Other matters, such as the rules on the granting of dispensations, the granting of exemptions of posts from political restrictions and the pay of local authority political assistants.

The paper sets out for each of these issues, the specific purpose of the provisions and the proposals for how the rules should operate via appropriate regulations and orders under the Local Government Act 2000. Particular questions on which we would welcome comments are also summarised at Annex A to the paper.

We wish to make arrangements for these provisions to come into effect in Spring 2008, and are therefore seeking views on how the detailed rules should work in practice. Copies of the consultation paper are being sent to all principal local authorities, parish councils and other organisations and individuals who have a particular interest in these issues. If you wish to comment, please send responses either by post to:

William Tandoh
Department for Communities and Local Government
Local Democracy and Empowerment Directorate
Local Governance Division
5/G10 Eland House
Bressenden Place
London
SW1E 5DU

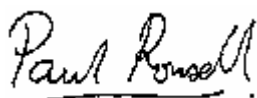
Or by e-mail to: william.tandoh@communities.gsi.gov.uk

by **Friday 15 February 2008**.

Any queries you may have on this letter or the enclosed paper should be directed to either:

Karl Holden (tel: 020 7944 5962; karl.holden@communities.gsi.gov.uk)
or William Tandoh (tel: 020 7944 8765; william.tandoh@communities.gsi.gov.uk)

Yours sincerely

A handwritten signature in black ink that reads "Paul Rowsell". The signature is written in a cursive style and is underlined.

Paul Rowsell

Orders and Regulations Relating to the Conduct of Local Authority Members in England Consultation



Orders and Regulations Relating to the Conduct of
Local Authority Members in England
Consultation

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

© Crown Copyright, 2008

Copyright in the typographical arrangement rests with the Crown.

This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

Any other use of the contents of this publication would require a copyright licence. Please apply for a Click-Use Licence for core material at www.opsi.gov.uk/click-use/system/online/pLogin.asp, or by writing to the Office of Public Sector Information, Information Policy Team, St Clements House, 2-16 Colegate, Norwich, NR3 1BQ. Fax: 01603 723000 or email: HMSOLicensing@cabinet-office.x.gsi.gov.uk

If you require this publication in an alternative format please email: alternativeformats@communities.gsi.gov.uk

Communities and Local Government Publications
PO Box 236
Wetherby
West Yorkshire
LS23 7NB
Tel: 08701 226 236
Fax: 08701 226 237
Textphone: 08701 207 405
Email: communities@twoten.com
or online via the Communities and Local Government website:
www.communities.gov.uk

January 2008

Product Code: 07 LGSR 05005

Contents

Chapter 1	
Introduction	1
Chapter 2	
New standards committee powers to make initial assessments of misconduct allegations, composition of committees and access to information	4
Chapter 3	
The Standards Board’s new monitoring function and the circumstances where it may suspend a standards committee’s function of undertaking the initial assessment of misconduct allegations and for other committees or the Standards Board or joint committees to undertake this role	14
Chapter 4	
Adjudications by case tribunals of the Adjudication Panel	21
Chapter 5	
Issuing dispensations to allow councillors to participate in meetings so as to preserve political balance	25
Chapter 6	
The granting and supervision of exemptions of certain local authority posts from political restrictions	27
Chapter 7	
Other issues	29
Annex A	
Summary of questions	30
Annex B	
The Consultation Criteria	33

Chapter 1

Introduction

1. We are consulting on the detailed arrangements for putting into effect orders and regulations to provide a revised ethical regime for the conduct of local councillors in England.
2. Part 10 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act) provides for a revised ethical conduct regime for local government based on the principle of proportionate decision-making on conduct issues by local authorities. We wish to make arrangements for these provisions to come into effect in Spring 2008, and to seek views on how the detailed rules should work in practice.
3. The paper also consults on other undertakings relating to the operation of the regime in respect of the political restrictions imposed on certain local government posts and the maximum pay of political assistants. We are also taking the opportunity to consult on proposals to amend the Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002, with a view to resolving concerns which have been raised by some local authorities on the operation of some aspects of the current provisions.
4. This consultation follows extensive earlier consultation on the basic principles on which the revised conduct regime for local government should be based. The Discussion Paper *'Standards of Conduct in English Local Government: The Future'*, of December 2005, set out the Government's responses, regarding the reform of the regime relating to standards of conduct of local government, to the recommendations of the Committee on Standards in Public Life, the report of the then Office of the Deputy Prime Minister Select Committee and the Standards Board. The Local Government White Paper, *'Strong and Prosperous Communities'*, issued in October 2006, outlined the Government's proposals to introduce a more proportionate and locally based decision-making regime for the investigation and determination of all but the most serious of misconduct allegations against members of local authorities.
5. Our most recent consultation with regard to the conduct regime was a six week consultation between January and March this year on amendments to the model code of conduct for local authority members, which resulted in a revised model code being introduced with effect from 3 May 2007.

6. For the new, reformed ethical regime based on a devolutionary approach to become operational, we need to make regulations and orders under the Local Government Act 2000 (the 2000 Act) as amended by Part 10 of the 2007 Act to implement the proposals set out in the Local Government White Paper to deliver a more locally based conduct regime for local government members, with local standards committees making initial assessments of misconduct allegations and most investigations and determinations of cases taking place at local level.
7. We now need to put in place detailed arrangements to allow standards committees and the Standards Board to undertake their new roles under the new regime. These arrangements need to cover:
 - The operation of standards committees' powers to make initial assessments of misconduct allegations.
 - The operation of other functions by standards committees and the Adjudication Panel in issuing penalties and sanctions.
 - The operation of the Standards Board's revised strategic role to provide supervision, support and guidance for the regime.
 - Other matters, ie the rules on the issue of dispensations, the issue of exemptions of posts from political restrictions and the pay of local authority political assistants.
8. The paper sets out for each of these issues in turn the specific purpose of the provisions, the proposals for how the rules should operate via appropriate regulations and orders under the 2000 Act, and seeks views on the proposals, including highlighting particular questions on which consultees' comments would be welcome (summarised at Annex A).
9. We aim to undertake a separate consultation shortly on amendments to the instruments setting out the general principles which govern the conduct of local councillors and the model code of conduct, which members are required to follow.

Position of Welsh police authorities

10. The new ethical conduct regime providing for the initial assessment of misconduct allegations by standards committees will not apply to Welsh police authorities. The initial assessment of allegations in respect of members of Welsh police authorities will therefore continue to be a matter for the Public Services Ombudsman for Wales and not local standards committees. The proposals referred to in this paper in respect of joint standards committees will also not apply to Welsh police authorities. However, the rules on the size, composition and procedures of standards committees and the proposed amendment to the dispensation regulations will apply to these authorities.

11. We are asking for comments on this paper by 15 February 2008. This effectively gives consultees six weeks to respond. This reflects the period normally allowed for consultation with local government in the Framework for Partnership between the Government and the Local Government Association. As mentioned above, significant consultation has already been undertaken about the principles underpinning the new reformed regime and the approach to be adopted in the regulations and orders under the new regime.
12. Comments should be sent to:
William Tandoh
Address: Department for Communities and Local Government
Local Democracy and Empowerment Directorate
5/G10 Eland House, Bressenden Place, London SW1E 5DU
e-mail: william.tandoh@communities.gsi.gov.uk

by **15 February 2008.**

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Chapter 2

New standards committee powers to make initial assessments of misconduct allegations, composition of committees and access to information

Purpose

1. Regulations will need to be made to amend and re-enact existing provisions in the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 and to amend and re-enact the provisions of the Relevant Authorities (Standards Committee) Regulations 2001, to make provision:
 - with respect to the exercise of the new initial assessment functions by standards committees of relevant authorities in England;
 - as to the powers and validity of proceedings of standards committees, including notification requirements;
 - with regards to the publicity to be given to matters referred to monitoring officers of local authorities;
 - in relation to the way in which any matters referred to the monitoring officer of a local authority by a standards committee should be dealt with;
 - to enable a standards committee to refer a case to the Adjudication Panel (ie the independent body which decides whether in the more serious cases the code of conduct has been breached and what sanction, if any, should be applied to the member) where the standards committee considers that the sanctions available to it would be insufficient;
 - with respect to the size and composition of standards committees and access to meetings and information.

Proposals

a) Standards committee members and initial assessment

2. In order to undertake their new functions for making initial assessments of misconduct allegations and considering requests to review decisions to take no action, under powers conferred by Part 10 of the 2007 Act, as well as existing powers for standards committees to make determinations of allegations, each standards committee will need to have a clear operational structure. It is likely that there will be a need for sub-committees of standards committees to be created, so that the separate functions involved in the ethical regime for local authority members can be appropriately discharged, namely:

- The initial assessment of a misconduct allegation received by a standards committee under section 57A of the 2000 Act.
 - Any request a standards committee receives from a complainant to review its decision to take no action in relation to the misconduct allegation under section 57B of the 2000 Act.
 - Any subsequent hearing of a standards committee to determine whether a member has breached the code, and where appropriate impose a sanction on a member.
3. Standards committees will need to minimise the potential risk of failing to conduct the above processes appropriately. In order to do this and ensure fairness for all parties in the operation of the ethical regime, we propose that the regulations should prohibit a member of a standards committee who has taken part in decision-making on the initial assessment of an allegation under section 57A of the 2000 Act, or considered an allegation which has been referred back to the standards committee by a monitoring officer or ethical standards officer, from being involved in the review of any subsequent request from the complainant under section 57B of the 2000 Act for a review of the committee's decision to take no action. The most obvious way of achieving this would be to require sub-committees of the standards committee to exercise the different functions.
4. However, we are aware of the resource implications of prohibiting members of standards committees from undertaking certain functions of the ethical regime and the problems this may cause for local authorities. Accordingly, we propose that members of a standards committee who have been involved in the initial assessment of a misconduct allegation, or a review of a standards committee's previous decision to take no action, should not be prohibited from taking part in any subsequent hearing by the standards committee to determine whether that matter constituted a breach of the code of conduct and, if so, whether any sanction is appropriate.

Question

- Q1. Does our proposal to prohibit a member who has been involved in a decision on the initial assessment of an allegation from reviewing any subsequent request to review that decision to take no action (but for such a member not to be prohibited necessarily from taking part in any subsequent determination hearing), provide an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach? Would a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by sub-committees be workable?**

b) Members of more than one authority - parallel complaint procedures

5. We are aware that the introduction of the regime for the initial assessment of misconduct allegations may raise an issue with regard to what should happen if a misconduct allegation is made against an individual who is a member of more than one authority (known as a dual-hatted member) and, as such, may have failed to comply with more than one relevant authority's code. For example, an individual who is a member of a district council and a police authority, may be the subject of allegations that he or she has breached the code of both authorities. As such, it would be possible for both the standards committee of the district council and the police authority to receive allegations against the member.
6. Such a situation could lead to inconsistencies in how allegations are dealt with, as one standards committee could decide that no action should be taken with regard to an allegation, whilst another standards committee could refer the allegation for investigation. In addition, to the inconsistencies that this situation may create, there is the issue of a member being subject to an investigation in relation to the same allegation more than once. One potential option for avoiding such a situation would be for the regulations to require that where an allegation of misconduct is made to two separate standards committees, for those committees to decide which one of them should consider the matter, and in default of agreement for the allegation to be referred to the Standards Board who could then decide how it should be dealt with.
7. However, in the spirit of the new devolved conduct regime, we consider that decisions on whether to deal with a particular allegation should be taken by standards committees themselves, following discussion with each other and taking advice as necessary from the Standards Board. This would enable a cooperative approach to be adopted, including the sharing of knowledge and information about the local circumstances and cooperation in the carrying out of investigations to ensure effective use of resources.
8. Two standards committees might, for example, consider it would be appropriate for both of them to consider similar allegations or the same allegation against the same individual, and even to reach a different decision on the matter. Under the new locally based regime standards committees will be encouraged to take into account local factors which affect their authorities and communities. Allegations of misconduct constituting a particular criminal offence might, for example, be taken more seriously by a standards committee of a police authority, than of another type of authority. And this could lead to the two standards committees reaching a different decision on the matter.

Question

Q2. Where an allegation is made to more than one standards committee, is it appropriate for decisions on which standards committee should deal with it to be a matter for agreement between standards committees? Do you agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board?

c) Publicising the new initial assessment procedure

9. In order to ensure that people are aware of the existence of the new ethical regime and the local arrangements for how to make a misconduct allegation, we propose to include in the regulations a requirement that each standards committee should publish a notice detailing where misconduct allegations should be sent after the new regime has commenced. We also propose that the regulations should require a standards committee to use its best endeavours to continue to bring to the public's attention the address to which misconduct allegations should be sent, as well as any changes in those arrangements.
10. We propose that the Standards Board for England will then issue guidance on the content of the notice, and on how the requirement for the standards committee to provide appropriate information on the regime may be met, including, for example, advertising in one or more local newspapers, a local authority's own newspaper or circular and the authority's website.

d) Guidance on timescale for making initial assessment decisions

11. In order to achieve sensible consistency in the way allegations are dealt with across local authorities, we think it is appropriate for good practice guidance by the Standards Board to indicate the time scale in which a standards committee would be expected to reach a decision on how a misconduct allegation should be dealt with, for example 20 working days, as well as to provide other guidance to assist standards committees in complying with the timescale.
12. Since it is our intention that the new ethical regime should be implemented by light-touch regulation, we do not propose that such a deadline is prescribed by regulations accompanied by any statutory penalty for failure to meet the time scale. Our proposal is that the Standards Board, in considering the operation of the ethical regime by authorities would take into account the overall compliance each authority has demonstrated with the guidance, including guidance on the timetable for action, so that lack of compliance with the timescale on its own would not of itself trigger intervention action by the Board. This kind of regime would suggest that it would be preferable if the timescale was retained as part of the guidance rather than imposed as a statutory requirement.

*Question***Q3. Are you content with our proposal that the timescale for making initial decisions should be a matter for guidance by the Standards Board, rather than for the imposition of a statutory time limit?****e) Requirement for a standards committee to provide a written summary of an allegation to the subject of the allegation**

13. To ensure that the ethical regime is fair and transparent for all parties, new section 57C(2) of the 2000 Act requires a standards committee to take reasonable steps to give a written summary of an allegation it receives to the person who is the subject of it. This will make sure that he or she knows what the allegation is. However, we consider that there may be certain circumstances where it may not be appropriate for a standards committee to provide information to the subject of an allegation at the time it receives the allegation. We wish to provide by regulation that where the standards committee forms the reasonable view that it would be in the public interest not to provide the written summary, it would have the discretion to defer doing so. We propose to provide that standards committees would be required to take into account advice on the withholding of information provided by the monitoring officer and guidance from the Standards Board. The regulations can stipulate when the duty to provide the summary must be complied with. We propose that the obligation to provide the summary should normally arise after a decision is made on the initial assessment, but in cases where the concerns referred to above apply, it should instead arise after the monitoring officer or ethical standards officer has carried out sufficient investigation, but before any substantive hearing of a case against the subject of the allegation.
14. Guidance from the Standards Board would give advice on the circumstances in which a standards committee would be entitled to operate its discretion to defer giving the written summary of the allegation. This guidance might include taking such action in the following circumstances.
- Where the disclosure of the complainant's personal details or details of the allegation to the person who is the subject of the allegation, before the investigating officer has had the opportunity to interview the complainant, may result in evidence being compromised or destroyed by the subject of the allegation.
 - Where there is the real possibility of intimidation of the complainant or witnesses by the subject of the allegation.
15. Where a standards committee is relieved of the duty to give a written summary of an allegation to a member, it might exercise its discretion to give some more limited information to the member for example by redacting certain information, if this would not prejudice any investigation.

Question

Q4. Do you agree that the sort of circumstances we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made? Are there any other circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?

f) Requirement for a standards committee to give notice of decisions under section 57A and 58 of the 2000 Act

16. In addition to the requirement outlined in the above section, the 2000 Act, as amended, requires a standards committee and the Standards Board to 'take reasonable steps' to give written notice of a decision to take no further action, including the reasons for its decision, to the complainant and the subject member. In addition, a standards committee is required to notify the subject of an allegation, if it receives a request from the complainant to review its decision to take no action regarding a misconduct allegation.
17. We propose that guidance issued by the Standards Board will set out best practice for committees including practice with respect to the notification of a complainant, a subject member or any other appropriate person of the progress of the handling of the allegation. We propose that such guidance would include advice that the Standards Board or the standards committee should take reasonable steps to notify the complainant and the subject member where:
- the Standards Board decides under section 58 of the 2000 Act, to refer a matter back to the relevant standards committee or refer the allegation to an ethical standards officer for investigation;
 - a standards committee decides to refer a matter to another relevant authority under section 57A(3) of the 2000 Act, to the Standards Board under section 57A(2)(b) of the 2000 Act or the monitoring officer under section 57A(2)(c) of the 2000 Act; or
 - a monitoring officer decides to refer a matter back to a standards committee under section 57A of the 2000 Act. Such a notice may include the reasons why a monitoring officer has decided to refer the case back.

g) References to monitoring officers under section 57A(2)(a) of the 2000 Act

18. Section 57A(2)(a) of the 2000 Act, provides that a standards committee may refer an allegation it receives to the monitoring officer of the authority. We propose to provide for the monitoring officer to be able to investigate and make a report or recommendations to the standards

committee. However, in addition, we propose to provide in the regulations that when a standards committee refers a case to a monitoring officer it may also direct the monitoring officer that the matter should be dealt with otherwise than by investigation. Dealing with an allegation other than by investigation would allow the monitoring officer the discretion, assisted by guidance from the Standards Board, to tackle the problem identified in ways such as the provision of training or mediation to the particular member or making amendments to the authority's internal procedures, for example, arrangements for the provision of training to all members.

19. Enabling a standards committee to refer a case to the monitoring officer for action other than investigation is intended to address situations where the standards committee considers that a case has relevance for the ethical governance of the authority, eg where there are disagreements between members or cases of repeated poor behaviour, which do not require a full investigation, but where a committee feels that some action should be taken.

h) References to monitoring officers – procedure for referring allegations back to a standards committee

20. We propose to set out in the regulations the circumstances where a monitoring officer may refer an allegation back to the standards committee under section 66(2)(f) of the 2000 Act, and the procedure for doing so. We propose that such a referral would apply in the following circumstances:
- where, during an investigation or following a referral for action other than investigation, evidence emerges that, in the monitoring officer's reasonable view, a case is materially either more serious or less serious than originally seemed apparent, which might mean that, had the standards committee been aware of that evidence, it would have made a different decision on how the matter should be treated;
 - where a monitoring officer becomes aware of a further potential misconduct allegation which relates to the matter he or she is already investigating. In such circumstances, the monitoring officer may refer the matter back to the standards committee to decide on how the new matter should be treated;
 - where the member subject to the allegation has resigned, is terminally ill or has died.
21. With regard to the procedure which a monitoring officer must observe when referring an allegation back to a standards committee, we propose to set out in the regulations that where a monitoring officer refers back an allegation to a standards committee he or she must send written notification of his or her decision to refer a case back and the reasons for the decision to the relevant standards committee. In such

circumstances, the standards committee will then be required to undertake a further assessment of the allegation and reach a decision under section 57A(2) to (4) of the 2000 Act.

Question

Q5. Do you agree that circumstances should be prescribed, as we have proposed, in which the monitoring officer will refer a case back to the standards committee?

i) Referral of matters from a standards committee to the Adjudication Panel for England for determination

22. With the introduction of the more locally based conduct regime, we consider that it is likely that standards committees will be required to make determinations in respect of more serious cases, which are currently dealt with by the Standards Board, its ethical standards officers and subsequently referred to the Adjudication Panel. We consider that providing a standards committee with the right to refer to the Adjudication Panel, where it considers that a breach of the code may merit a sanction higher than that available to the committee, will allow any sanction imposed to match the level of seriousness of the breach of the code.

23. We propose that it would be a matter for the standards committee to make a decision following the receipt of the monitoring officer's report that, if the member was found to have committed the breach, the appropriate sanction would be higher than that which the standards committee would be able to impose. Such a provision would ensure that the subject of the allegation would not be required to face both a standards committee hearing and then a separate hearing of the Adjudication Panel in respect of the same allegation.

24. In order to ensure that standards committees only refer the most serious cases to the Adjudication Panel, we propose to provide in the Regulations that the Adjudication Panel may refuse to accept a referral from a standards committee under certain circumstances, for example, where the Adjudication Panel does not consider, on the face of the evidence, that the matter would attract a sanction of greater than that currently available to standards committees.

j) Increase the maximum sanction available to standards committees

25. As stated above, with the introduction of the more locally based conduct regime, we consider that standards committees will be required to consider more serious cases. Accordingly, we propose to increase the maximum sanction which a standards committee can impose on a member who it has found to have breached the code from a three months partial suspension or suspension to six months.

Question

Q6. Are you in favour of an increase in the maximum sanction the standards committee can impose? If so, are you content that the maximum sanction should increase from three months to six months suspension or partial suspension from office?

k) Composition of a standards committee and sub-committees of standards committees

26. Section 53(4) of the 2000 Act requires that a standards committee should be chaired by a person who is neither a member nor an officer of a relevant authority (“an independent member”). The existing rules relating to independent members will continue to apply so that the independent member must not have been a member or officer of the authority within the previous 5 years. As indicated earlier, committees are likely to appoint sub-committees in order to undertake the three separate functions involved in the ethical regime for local authority members:
- The initial assessment of a misconduct allegation (section 57A of the 2000 Act).
 - Any review of a decision to take no action (section 57B of the 2000 Act).
 - A hearing to determine whether a member has breached the code and whether to impose a sanction.
27. In order to maintain the robustness and independence of decision-making, we consider that it is important for an independent member to chair each of the sub-committees discharging each of the functions listed above.
28. We propose that the rules should remain as currently provided under the Relevant Authorities (Standards Committee) Regulations 2001 with regard to the size and composition of standards committees (including providing that where a committee has more than three members, at least 25% of them should be independent), and on the proceedings and the validity of the proceedings of committees and sub-committees (including that a meeting should not be quorate unless there are at least three members present).

Question

Q7. Do you have any views on the practicability of requiring that the chairs of all sub-committees discharging the assessment, review and hearing functions should be independent, which is likely to mean that there would need to be at least three independent chairs for each standards committee? Would it be consistent with robust decision-making if one or more of the sub-committee chairs were not independent?

l) Public access to information on decisions on initial assessments of allegations under section 57A and reviews under section 57B

29. We consider that it would not be appropriate for a meeting of a standards committee to undertake its role on making an initial assessment under section 57A to be subject to rules regarding notices of meetings, circulation of agendas and documents and public access to meetings, as set out in the Relevant Authorities (Standards Committees) Regulations 2001. We take the view that it would not be appropriate for the above rules to apply to meetings which make the initial assessment decisions, as they may be considering unfounded and potentially damaging allegations about members which it would not be appropriate to make available to the general public. Currently, the Standards Board does not publish any information about cases that it does not decide to refer for investigation, which may include, for example, cases which are malicious or politically motivated. Consistent with this approach, we do not take the view that it would be appropriate to give such allegations of misconduct any publicity during the initial assessment phase.

30. For similar reasons, we also do not consider that a standards committee's function of reviewing a decision to take no action regarding a misconduct allegation should be subject to the access to information rules in respect of local government committees.

31. Accordingly, we propose that initial assessment decisions under section 57A of the 2000 Act, and any subsequent review of a decision to take no action under section 57B of the 2000 Act, should be conducted in closed meetings and should not be subject to notice and publicity requirements under Part 5A of the Local Government Act 1972. This approach was supported strongly by those authorities who participated in the Standards Board's recent initial assessment pilot schemes.

Question

Q8. Do you agree with our proposal that the initial assessment of misconduct allegations and any review of a standards committee's decision to take no action should be exempt from the rules on access to information?

Chapter 3

The Standards Board's new monitoring function and the circumstances where it may suspend a standards committee's function of undertaking the initial assessment of misconduct allegations and for other committees or the Standards Board or joint committees to undertake this role

Purpose

32. Under the new locally based ethical regime, the Standards Board will provide guidance and support to standards committees and monitoring officers on undertaking their new roles and will monitor their performance to ensure consistency of standards across the country.
33. In order to support this role, the Standards Board will be putting in place monitoring arrangements to ensure that the local regime is operating efficiently and effectively. This will involve authorities completing periodic online returns in relation to the cases they handle and producing an annual report, which the Standards Board will monitor. The Board's monitoring will be undertaken against a series of criteria which they will set out in guidance.
34. The Board's approach has been developed in consultation with a range of local authorities and the aim is to provide support for authorities in ensuring the efficient operation of the local regime and to be easy for authorities to use. The information gathering system will enable the Standards Board to analyse the information received in order to identify and share good practice, which will assist authorities in assessing and improving their own performance. It will also allow the Standards Board to identify those standards committees and monitoring officers who are encountering difficulties in undertaking any aspect of their roles, as well as to identify how to assist them to improve their performance.

Proposals

35. Section 57D of the 2000 Act provides that the Standards Board may, in circumstances prescribed by regulations by the Secretary of State, direct that a standards committee's function of undertaking the initial assessment of misconduct allegations be suspended until the Board revokes such a suspension. The Standards Board's decision on whether to suspend a standards committee's initial assessment function will be made on a case-by-case basis and will be informed by information gathered by the Board about the performance of standards committees and monitoring officers. The Board's consideration of the suspension of a committee's powers may be triggered by one or a number of circumstances such as:

- a breakdown of the process for holding hearings;
 - a disproportionate number of successful requests to review a standards committee's decision to take no action;
 - repeated failure to complete investigations within reasonable timescales;
 - repeated failure to carry out other duties expeditiously, including repeated failures to comply with the proposed 20 working days deadline for making an initial assessment of an allegation;
 - failure to implement standards committee's decisions; or
 - repeated failure to submit periodic returns to the Standards Board under section 66B and information requests under section 66C.
36. In circumstances where a standards committee's initial assessment functions have been suspended, the standards committee must refer any misconduct allegation it receives to the Standards Board or a standards committee of another relevant authority in England, with its consent, to undertake the initial assessment function.
37. Our aim is that the Standards Board should use its power to suspend a standards committee's initial assessment functions only as a last resort, and after strenuous attempts to improve the authority's performance have failed, resulting in the committee's failure to operate an effective initial assessment process. The Standards Board will endeavour to provide support, guidance and advice to local authorities throughout.
38. As there are numerous circumstances in relation to the performance of the ethical regime which may lead the Standards Board to direct that a standards committee's initial assessment function be suspended, we propose that the regulations should allow for any circumstances where the Standards Board is satisfied that a suspension of the standards committee's functions would be in the public interest. In operating this discretion, the Board would be required to have regard to the range of factors set out in paragraph 35, above.

Question

Q9. Have we identified appropriate criteria for the Standards Board to consider when making decisions to suspend a standards committee's powers to make initial assessments? Are there any other relevant criteria which the Board ought to take into account?

Arrangements for undertaking initial assessments

a) Circumstances where the initial assessment functions may be undertaken by another standards committee

39. Section 57D(2) of the 2000 Act provides that where the initial assessment function of one authority has been suspended, that function may be undertaken by the standards committee of another authority. We propose to allow for such arrangements to be made where the Standards Board and the receiving standards committee agree that it would be appropriate. Provision would also be made to allow a committee to withdraw from such an agreement if it chose to. We will make regulations as necessary, to facilitate such arrangements.

b) Possibility of providing for the Standards Board or standards committees to charge those standards committees which have had their initial assessment functions suspended for undertaking those functions on their behalf

40. Because of the impact which a transfer of responsibility for initial assessment to another standards committee could have, one option might be to allow an authority or the Standards Board to levy a charge against the authority whose standards committee has had its initial assessment functions suspended, to meet the cost of carrying out its functions.
41. There is no express provision in the 2000 Act dealing with the imposition of charges and we do not intend at this stage to make any provision to provide for any.
42. However, we would be grateful for views from consultees about whether the ability to charge a fee to recover the costs of undertaking another committee's role would contribute to the effective operation of the new ethical regime. For example, allowing a charge for the recovery of costs for undertaking the initial assessment role may help to encourage high performing standards committees to agree to undertake another standards committee's functions during the period that its functions are suspended. Such an approach may also encourage standards committees to undertake their responsibilities under the 2000 Act efficiently and effectively, in order to avoid having to pay the costs of another authority taking over their role if their functions are suspended.

Question

Q10. Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally-based ethical regime? If so, should the level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?

c) Proposed procedures for the suspension of a standards committee's initial assessment functions and the re-instatement of those functions

43. In relation to the procedure which the Standards Board should follow when using its power to direct that a standards committee's initial assessment function is suspended, we propose that the Regulations should set out the following requirements and procedures.
- Before a direction to suspend, the Standards Board should send the authority's chief executive a written notice of intention to suspend the functions of the standards committee. Copies of this would be sent to the person who chairs the standards committee and the monitoring officer. The notice may include any recommendations and directions aimed at improving the performance of a standards committee.
 - The Standards Board will exercise the suspension power under section 57D of the 2000 Act by written direction, sent to the relevant authority's chief executive and copied to the person who chairs the standards committee and the monitoring officer. The standards committee's functions will be suspended from the date specified in the written notice of direction from the Standards Board. Under that section, the Standards Board may direct that the standards committee must refer any misconduct allegations for action either to the Board itself or to the standards committee of another authority if that committee has consented.
 - A direction to suspend the local assessment function may be revoked where the Standards Board is satisfied that the suspension should cease based on evidence and undertakings given by the relevant standards committee. The revocation takes effect from the date specified in the notice of revocation.
 - The standards committee should be required to publicise the fact that their power to make initial assessments has been suspended and what alternative arrangements will apply for the handling of misconduct allegations, including the fact that new allegations will be dealt with elsewhere, in one or more local newspapers. Where a committee's power to make initial assessments is reinstated, the committee should similarly be required to publicise the arrangements which will apply for handling allegations following the reinstatement.

44. During a suspension, we envisage that the Standards Board should maintain communication with the monitoring officer and the standards committee chair, as well as other relevant people within the authority, in order to develop an action plan for improving the authority's performance. The aim of the action plan will be to set out the action which the standards committee and the monitoring officer need to take which would then justify the reinstatement of the standards committee's functions in the shortest possible time. We consider that the authority should be required to demonstrate improvement, through evidence, in its ability to discharge its functions under the Act. We propose that the Standards Board will provide various types of support throughout the process including, but not limited to, giving advice and guidance, sharing best-practice or participating in peer reviews, advising that training be undertaken or that a relevant authority enter into joint working arrangements with other local authorities.
45. In order for a standards committee's functions to be re-instated as soon as practically possible, the Standards Board will require cooperation from the suspended authority to ensure the Section 57A, 57B and 57C functions can be carried out. We propose to include within regulations governing the functions of standards committees an obligation to co-operate with the Standards Board during any period of suspension of its initial assessment functions, and to have regard to guidance issued by the Standards Board regarding the re-instatement of those functions, as a means to promote and maintain high standards of conduct, including the publication by the standards committee of a notice of any decision by the Standards Board to suspend the committee's functions or to revoke such a decision.

d) Joint working

46. In order to promote more effective ways of working, we propose to enable a standards committee to work jointly with one or more other standards committees in exercising their new functions under the local decision-making regime for allegations of misconduct, which might allow, for example, for more efficient use of common resources and aid the sharing of information, expertise, advice and experience.

i) Functions applicable for joint working

47. In common with the wishes expressed by many standards committees in recent pilot exercises on joint working run by the Standards Board, we wish all standards committees' functions to be available for joint working, but for each standards committee to decide which of the ethical regime functions it would like to operate jointly with other standards committees. For instance, the majority of those authorities involved in the pilots intended only to operate jointly the initial assessment functions under section 57A of the 2000 Act, whilst other authorities expressed an interest in extending joint arrangements to cover the holding of hearings and determinations of whether a member has breached the code.

ii) Structure and procedural rules of joint standards committees

48. Following the results from the joint working pilot, we believe relevant authorities may best establish joint standards committees within schemes which reflect the regulatory requirements, and which are agreed by each participating local authority. The regulations will specify the functions in relation to which joint working arrangements may be made. Guidance from the Standards Board will give advice on the content of these arrangements, including:

- size of joint committee, number of independent members and independent chair (ie to follow the rules on the size and composition of individual standards committees)
- residual functions retained by standards committees (if any)
- process for dissolution
- process for appointment of members of a joint standards committee, including independent members and parish representatives
- process for individual relevant authorities to withdraw from the joint standards committee
- the appointment of a lead monitoring officer for the joint standards committee or outline division of monitoring officers duties between the relevant authority monitoring officers
- payment of allowances
- arrangements for where the Standards Board suspends the functions of the joint standards committee

49. Guidance issued by the Standards Board will help local authorities decide what joint arrangements might be suitable for them. The options available would include the creation of a joint committee which would undertake all the functions of the individual committees, which could be particularly appropriate and represent a sensible use of resources for single purpose authorities, who are the source of fewer complaints than other authorities. Alternatively, agreements would be possible to allow one or more of committees' functions, ie the initial assessment of allegations, the review of a decision to take no action or the determination hearing, to be undertaken by the joint committee. In either model, it would be possible for the joint committee to establish sub-committees to deal with particular functions.

50. Regulations will make clear that joint standards committees are bound by the same rules and procedures that apply to standards committees. However, we believe an exception should be made in relation to the requirement that a parish representative be present when a matter relating to a parish council in the relevant authority's area is discussed. For joint standards committees, this requirement should be satisfied if a parish representative from any parish in the area covered by the joint standards committee is in attendance. That is, it is not necessary for the parish representative to come from the area of the particular parish a member of which is the subject of the matter being considered.

Question

Q11. Would you be interested in pursuing joint working arrangements with other authorities? Do you have experience of joint working with other authorities and suggestions as to how it can be made to work effectively in practice? Do you think there is a need to limit the geographical area to be covered by a particular joint agreement and, if so, how should such a limitation be expressed? Do you agree that if a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint committee's area attends?

Chapter 4

Adjudications by case tribunals of the Adjudication Panel

Purpose

51. To extend the range of sanctions available to case tribunals of the Adjudication Panel, to prescribe the circumstances in which a reference to the Adjudication Panel following an investigation or an interim report by an ethical standards officer may be withdrawn, and to make provision for a case tribunal to give notice of its decision that a member has breached the code to a standards committee and to prescribe the purpose and effect of such a notice.

Proposals

a) To extend the range of the sanctions available to a case tribunal of the Adjudication Panel

52. To ensure that a tribunal has a full range of sanctions available to it in cases where it has found that a member has breached the code, we intend to make available to a tribunal a wider range of less onerous sanctions equivalent to those already available to standards committees (which are contained in regulation 7 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003, as amended by regulation 8 of the Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004)). We consider that they should be available to a tribunal of the Adjudication Panel when reaching a decision on which sanction it should impose, so that the seriousness of the breach of the code can be matched by the level of the sanction imposed. We intend to make regulations which will enable a case tribunal to impose sanctions including the censure of the member, the restriction of the member's access to the premises of the authority and the use of the authority's resources, and a requirement for the member to undertake training or conciliation.
53. The full range of sanctions which we propose to make available to the Adjudication Panel is as follows:
- No sanction should be imposed.
 - Censure of the member.
 - Restriction for a period of up to 12 months of the member's access to the premises of the authority and the member's use of the resources of the authority, provided that any such restrictions imposed on the member –
 - (a) are reasonable and proportionate to the breach; and

(b) do not unduly restrict the member's ability to perform his functions as a member.

- Requirement that the member submits a written apology in a form specified by the case tribunal.
- Requirement that the member undertake training as specified by the case tribunal.
- Requirement that the member undertake conciliation as specified by the case tribunal.
- Suspend or partially suspend the member for a period of up to 12 months or until such time as he or she submits a written apology in a form specified by the case tribunal.
- Suspend or partially suspend the member for a period of up to 12 months or until such time as he or she undertakes such training or conciliation as the case tribunal may specify.
- Suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned or any other relevant authority for up to 12 months or, if shorter, the remainder of the member's term in office.
- Disqualify the member from being or becoming a member of that or any other authority for a maximum of 5 years.

Question

Q12. Are you content that the range of sanctions available to case tribunals of the Adjudication Panel should be expanded, so the sanctions they can impose reflect those already available to standards committees?

b) Withdrawing references to the Adjudication Panel

54. We propose to prescribe in the regulations that an ethical standards officer may withdraw a reference to the Adjudication Panel in certain circumstances. These would include circumstances where:

- after the ethical standards officer has determined that the case should be referred to the Adjudication Panel for adjudication, further evidence emerges that indicates that the case is not as serious as thought originally so that, in the ethical standards officer's view, there is no longer any justification for presenting the case to the Panel;
- a penalty imposed by another body meant the Adjudication Panel could do no more (for example, a sentence of imprisonment of three months or above for a related or non-related offence which would disqualify the member from office for 5 years); or

- the pursuit of the case would not be in the public interest, such as where the member accused has been diagnosed with a terminal illness or has died.
55. Before an ethical standards officer withdraws a reference to the Adjudication Panel, we propose that the regulations should require the ethical standards officer to notify the complainant, the subject of the allegation and the monitoring officer of the relevant authority of the proposed withdrawal. These people would therefore have the opportunity to make representations to the ethical standards officer in advance of the final decision of the withdrawal of the case being taken. We would also provide that the consent of the President of the Adjudication Panel would need to be obtained before a case could be withdrawn. We propose equivalent provision as regards the referral of interim reports from ethical standards officers to the Adjudication Panel.

Question

Q13. Do you agree with our proposals for an ethical standards officer to be able to withdraw references to the Adjudication Panel in the circumstances described? Are there any other situations in which it might be appropriate for an ethical standards officer to withdraw a reference or an interim reference?

c) Decision notices of case tribunals of the Adjudication Panel

56. We propose to ensure, through regulations, that the rules relating to the suspension of a member who has been found to have breached the code by the Adjudication Panel are consistent with those which already apply in respect of disqualification.
57. Where a case tribunal of the Adjudication Panel decides that a member has breached his or her authority's code and that the breach warrants the suspension of that member, there is a requirement for the case tribunal to issue a notice to the relevant local authority. Currently, the effect of the suspension notice, unlike an Adjudication Panel's notice to disqualify a member, is not to put into effect the suspension of the member but instead merely to give notice to the standards committee that the person has failed to comply with the code of conduct. Accordingly, the local authority which receives a suspension notice from the Adjudication Panel must currently take action actually to suspend the relevant member. Section 198 of the 2007 Act amends the 2000 Act in respect of the decisions of case tribunals in England. This allows the Secretary of State to make regulations which provide for the effect that any notice issued by the case tribunal is to have. We propose to prescribe that in the case of the issue by the case tribunal of any notice, the effect of the notice will in future have the effect set out in the notice so that no further action is needed by the relevant authority before the notice can come into effect.

58. We also propose that a notice from the Adjudication Panel should have immediate effect, unless otherwise stated, and that the notice should give information on what breach of the code has been found and the sanction imposed. We propose that the notice should be sent to the chairman of the standards committee and copied to the monitoring officer and the member who is the subject of the notice. We propose that, consistent with current practice, the fully reasoned decision of the tribunal is provided to the above people within two weeks of the decision being taken.

Chapter 5

Issuing dispensations to allow councillors to participate in meetings so as to preserve political balance

Purpose

59. It is proposed to amend the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 (“the Dispensations Regulations”), to clarify the rules relating to standards committees granting dispensations to members of local authorities.

Proposal

60. Some local authorities have from time to time expressed concern about the current drafting of the Dispensations Regulations, the effect of which is to allow standards committees to grant dispensations from the prohibition of a member to participate in any business where: more than 50% of the members participating would otherwise be prevented from doing so, and where the political balance of the committee would otherwise be upset.
61. Some authorities have identified the following concerns in the operation of these regulations:
- Regulation 3(1)(a)(i) provides that a dispensation may be issued where the number of members of the authority prohibited from ‘participating in the business of the authority’ exceeds 50% of those entitled or required to participate. It is claimed that this reference to an entitlement to participate is ambiguous, since in some authorities all members are entitled to attend all committee meetings. The reference to the entitlement to participate in meetings could be replaced with reference to the number of members able to vote on a particular matter.
 - Regulation 3(1)(a)(ii) refers to the inability of the authority to comply with section 15(4) of the Local Government and Housing Act 1989. Since that section relates to the appointment of members to committees, and not to the attendance of members at committees it is suggested that what is meant by the term “not able to comply with any duty” under that section of the 1989 Act is ambiguous and might be clarified. Additionally, it could be clarified that the regulations are intended to deal with situations where a majority on a committee would be lost; the intention is not that they should aim to retain the precise political balance on each committee.

- The reference to section 15(4) could be interpreted as allowing dispensations to be granted in relation to committees but not in relation to full council meetings, where issues of political balance can be of concern particularly where there are hung councils or councils with small majorities.

62. To address these concerns, we propose to amend the regulations to make it more clear that they have the following effect:

- A standards committee should be able to grant dispensations if the effect otherwise would be that the numbers of members having the right to vote on a matter would decrease so that a political party lost a majority which it previously held, or if a party gained a majority which it otherwise did not hold
- It should be possible to grant a dispensation if the matter is under discussion at a committee or at a meeting of the full council.

Question

Q14. Have you made decisions under the existing dispensation regulations, or have you felt inhibited from doing so? Do the concerns we have indicated on the current effect of these rules adequately reflect your views, or are there any further concerns you have on the way they operate? Are you content with our proposal to provide that dispensations may be granted in respect of a committee or the full council if the effect otherwise would be that a political party either lost a majority which it had previously held, or gained a majority it did not previously hold?

Chapter 6

The granting and supervision of exemptions of certain local authority posts from political restrictions

Purpose

63. The purpose of the regulations is to prescribe that a local authority which is not required to establish a standards committee, should establish a committee to exercise functions in respect of the granting and supervision of exemptions from political restrictions.

Proposals

64. Section 202 of the 2007 Act inserts a new section 3A into the Local Government and Housing Act 1989 to provide that the granting and supervision of exemptions of posts from political restrictions should be a matter for relevant local authorities' standards committees. There are, however, some authorities subject to requirements with regard to politically restricted posts which are not required to establish standards committees. The only such authorities of which we are aware are waste disposal authorities.
65. In order to ensure that such authorities are able to make decisions on the exemption of certain posts from political restrictions, in accordance with section 3A of the Local Government and Housing Act 1989, we propose that those relevant authorities which are not required to have standards committees should establish committees to undertake this function. We propose to provide in the regulations that the rules regarding the minimum number of members the committee should have, the proportion of members who should be independent and the requirement to have an independent chair, which apply to standards committees, as set out in the 2000 Act, as amended, and the regulations discussed above regarding standards committees should also apply to the committees of these authorities.
66. This provision should not prevent these types of authorities from instead discharging their responsibilities with regard to the granting and supervision of exemptions from political restrictions by entering into agreements with other authorities to carry out this role on their behalf, under section 101 of the Local Government Act 1972. We propose therefore that authorities should have the option of which of the above approaches to take, so that it would only be in circumstances where the authority has not made arrangements for the discharge of this function by another authority that it would be required to set up its own committee to undertake the function itself.

Question

Q15. Do think it is necessary for the Secretary of State to make regulations under the Local Government and Housing Act 1989, to provide for authorities not required to have standards committees to establish committees to undertake functions with regard to the exemption of certain posts from political restrictions, or will the affected authorities make arrangements under section 101 of the Local Government Act 1972 instead? Are you aware of any authorities other than waste authorities which are not required to establish a standards committee under section 53(1) of the 2000 Act, but which are subject to the political restrictions provisions?

Chapter 7

Other Issues

(a) Maximum pay of local authority political assistants – results of earlier consultation

Purpose

67. The purpose of the proposed order is to specify the point on the local authority pay scale which will serve as the maximum pay for local authority political assistants.

Proposals

68. In August 2004, the then Office of the Deputy Prime Minister published the *Review of the Regulatory Framework Governing the Political Activities of Local Government Employees – A Consultation Paper*. In the paper we invited views on the pay arrangements for political assistants. There was a consensus among consultees in favour of linking the maximum pay for political assistants to local government pay scales. Various spine points on the local government scale were suggested as the maximum which should apply, and many suggested spine point 49. Authorities did not suggest that further payments such as London weighting should be added on top of the proposed maximum rate.
69. Accordingly, we propose that the order should set the maximum pay for local authority political assistants at point 49 on the National Joint Council for Local Government Services pay scale (currently £39,132 pa). Local authorities will be able to pay remuneration including any allowances to their political assistants provided remuneration to any individual does not exceed the overall rate represented by spine point 49 from time to time in force.

(b) Effective date for the implementation of the reformed conduct regime

70. We propose that those arrangements referred to in this consultation paper which will implement the reformed conduct regime for local councillors will be implemented no earlier than 1 April 2008. We are aware that this is the date which many authorities have been working to, and that there is an expectation by many in the local government world that the amendments will commence on this date. Feedback from authorities to the Standards Board has suggested that many authorities wish the revised framework to be put in place as soon as practically possible.

Question

Q16. Do you agree with our proposal to implement the reformed conduct regime on 1 April 2008 at the earliest?

Annex A: Summary of questions

Your views

We would welcome your views on the issues covered by this consultation paper and any other comments and suggestions you may have.

Questions

The specific questions which feature throughout the text of this paper are reproduced for ease of reference:

Q1. Does our proposal to prohibit a member who has been involved in a decision on the assessment of an allegation from reviewing any subsequent request to review that decision to take no action (but for such a member not to be prohibited necessarily from taking part in any subsequent determination hearing), provide an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach? Would a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by sub-committees be workable?

Q2. Where an allegation is made to more than one standards committee, is it appropriate for decisions on which standards committee should deal with it to be a matter for agreement between standards committees? Do you agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board?

Q3. Are you content with our proposal that the timescale for making initial decisions should be a matter for guidance by the Standards Board, rather than for the imposition of a statutory time limit?

Q4. Do you agree that the sort of circumstances we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made? Are there any other circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?

Q5. Do you agree that circumstances should be prescribed, as we have proposed, in which the monitoring officer will refer a case back to the standards committee?

Q6. Are you in favour of an increase in the maximum sanction the standards committee can impose? If so, are you content that the maximum sanction should increase from three months to six months suspension or partial suspension from office?

Q7. Do you have any views on the practicability of requiring that the chairs of all sub-committees discharging the assessment, review and hearing functions should be independent, which is likely to mean that there would need to be at least three independent chairs for each standards committee? Would it be consistent with robust decision-making if one or more of the sub-committee chairs were not independent?

Q8. Do you agree with our proposal that the initial assessment of misconduct allegations and any review of a standards committee's decision to take no action should be exempt from the rules on access to information?

Q9. Have we identified appropriate criteria for the Standards Board to consider when making decisions to suspend a standards committee's powers to make initial assessments? Are there any other relevant criteria which the Board ought to take into account?

Q10. Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally-based ethical regime? If so, should the level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?

Q11. Would you be interested in pursuing joint arrangements with other authorities? Do you have experience of joint working with other authorities and suggestions as to how it can be made to work effectively in practice? Do you think there is a need to limit the geographical area to be covered by a particular joint agreement and, if so, how should such a limitation be expressed? Do you agree that if a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint committee's area attends?

Q12. Are you content that the range of sanctions available to case tribunals of the Adjudication Panel should be expanded, so the sanctions they can impose reflect those already available to standards committees?

Q13. Do you agree with our proposals for an ethical standards officer to be able to withdraw references to the Adjudication Panel in the circumstances described? Are there any other situations in which it might be appropriate for an ethical standards officer to withdraw a reference or an interim reference?

Q14. Have you made decisions under the existing dispensation regulations, or have you felt inhibited from doing so? Do the concerns we have indicated on the current effect of these rules adequately reflect your views, or are there any further concerns you have on the way they operate? Are you content with our proposals to provide that dispensations may be granted in respect of a committee or the full council if the effect otherwise would be that a political party either lost a majority which it had previously held, or gained a majority it did not previously hold?

Q15. Do you think it is necessary for the Secretary of State to make regulations under the Local Government and Housing Act 1989 to provide for authorities not required to have standards committees to establish committees to undertake functions with regard to the exemption of certain posts from political restrictions, or will the affected authorities make arrangements under section 101 of the Local Government Act 1972 instead? Are you aware of any authorities other than waste authorities which are not required to establish a standards committee under section 53(1) of the 2000 Act, but which are subject to the political restrictions provisions?

Q16. Do you agree with our proposal to implement the reformed conduct regime on 1 April 2008 at the earliest?

Comments should be sent by e-mail
or post by **15 February 2008** to:

William Tandoh
Department for Communities and Local Government
Local Democracy and Empowerment Directorate
5/G10 Eland House
Bressenden Place
London SW1E 5DU
e-mail: william.tandoh@communities.gsi.gov.uk

Annex B: The Consultation Criteria

1. The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form.
2. Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (for example, under European Union law), they should otherwise be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.
3. The criteria are:
 - a. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
 - b. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - c. Ensure that your consultation is clear, concise and widely accessible.
 - d. Give feedback regarding the responses received and how the consultation process influenced the policy.
 - e. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
 - f. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.
4. The full consultation code may be viewed at http://www.cabinetoffice.gov.uk/regulation/consultation/consultation_guidance/the_code_and_consultation/index.asp#codeofpractice
5. Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process, please contact:

David Plant, Head of Better Regulation Unit,
 Department for Communities and Local Government,
 Zone 6/H10, Eland House, Bressenden Place, London SW1E 5DU

e-mail: David.Plant@communities.gov.uk



Response to Consultation

Orders and Regulations Relating to the Conduct of Local Authority Members in England

1 Introduction

The Local Government and Public Involvement in Health Act 2007 introduces the framework for significant changes to the process of handling standards allegations against members of local authorities. These changes include the devolution of the handling of such allegations from the Standards Board for England to individual local authorities' Standards Committees, and are to be welcomed. The Department for Communities and Local Government is now consulting on a number of issues relating to the implementation of these changes, seeking views on specific proposals, as set out below, by 15th February.

The Department's intention is to implement the changes from 1st April 2008. However, whilst the issues which are the subject of this consultation are important, there remain a substantial number of other matters and much detail which will need to be resolved by the final Regulations and Guidance, and it is equally important that sufficient time is allowed for proper consultation on the draft statutory instruments and draft guidance. Given that a statutory instrument has to be laid before Parliament for at least 6 weeks before it takes effect, the proposed implementation date of 1st April 2008 leaves only one week for any issues raised in response to this consultation to be taken into account in the drafting of the statutory instruments, let alone consultation on the draft regulations and draft guidance. Further, as the proposed changes will require the recruitment of additional Independent Co-opted Members to Standards Committees, which many authorities undertake through a public advertisement and appointment procedure, many authorities will not be in a position to undertake these new functions from 1st April. Experience of past changes to the system, and particularly changes to the Code of Conduct, underline how important it is to get these changes right first time, with the benefit of full consultation, rather than to rush half-considered changes into effect.

At the same time, there is a need for changes to the Code of Conduct itself, amongst other things to pick up infelicities in the present Code, to deal with Ward Councillor decision-making and to reconcile the Code and the new Act on the application of the Code to private life. No proposals for such changes have yet emerged for consultation. It would be sensible to introduce the changes to the Code at the same time as changes to the system for enforcing the Code. Accordingly, the proposed implementation date of 1st April 2008 now appears unrealistic.

The experience of the pilot exercises and the role-plays is that the implementation of "local first sieve" will require local authorities to undertake a considerable amount of additional work. They will now receive and need to process more allegations, as currently many are filtered out by the Standards Board for England or found on investigation to be unjustified, and each of these will require to be read and reported to the Referrals Sub-Committee by the Monitoring Officer. They will require larger Standards Committees with more meetings

in order to undertake the initial assessment process. And it is clear that these changes will lead to a significant increase in the number of matters going to investigation. This will require substantial resources, over and above the current costs incurred by the Standards Board for England in undertaking this task.

2 Responses to specific consultation issues:

The specific issues on which the Department are seeking views are as follows:

Q1. Does our proposal to prohibit a member who has been involved in a decision on the assessment of an allegation from reviewing any subsequent request to review that decision to take no action (but for such a member not to be prohibited necessarily from taking part in any subsequent determination hearing), provide an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach? Would a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by sub-committees be workable?

A1. It is clear that the 2007 Act anticipates that different members will be required to undertake the initial assessment and the review functions. The less certain issue is really about whether different members are required to undertake any hearing on a matter. Whilst the 2007 Act is silent on the issue, our view is that a member against whom an allegation has been made is likely to feel unfairly prejudiced if the same members were to conduct a hearing on a matter where those same members had previously seen the original allegation, with no counter-evidence, and taken a decision that it appeared to show a breach of the Code of Conduct and merited investigation. For this reason, we are clear that the new system as set out in the 2007 Act will require that no single member be involved in more than one stage of the process, whether that be the initial assessment, the review or the hearing.

Having got to that position, the next question is how that is to be achieved. It is theoretically possible that each stage be conducted by the full Standards Committee, but that by some process particular members fail to attend at the various stages, so avoiding any member's involvement in more than one stage. However, strictly, under such a procedure each member would still be entitled to attend at each stage. As a result, the only practical procedure would be to arrange for each separate stage to be conducted by a separate Sub-Committee of the Standards Committee, each with different membership. We note that in Q7, below, the Department tacitly accepts the need for a minimum of 3 Independent Co-opted Members on the Standards Committee, in other words accepts that the hearing process will have to be conducted by a separate Sub-Committee.

In the light of the above, the question as to whether authorities can resource 3 such separate Sub-Committees is irrelevant, as that is what they will have to do as a result of the system set out in the 2007 Act. It does mean a very substantial increase in the number of members, including Independent Co-opted Members, of Standards Committees, and this is an additional cost, rather than a cost transferred from the Standards Board for England, which will have serious resource implications for local authorities

Q2. Where an allegation is made to more than one standards committee, is it appropriate for decisions on which standards committee should deal with it to be a matter for agreement between standards committees? Do you agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board?

A2. We agree that, whilst a single act of a member may lead to allegations of misconduct being made to two or more authorities of which the individual is a member, it would be inappropriate to require that those authorities secure that these allegations are to be handled by a single authority, or by some other specified joint arrangement. Specifically, we agree that a single action by a member may have different implications in the different authorities, possibly because the two authorities have different Codes of Conduct, or because the action was more serious for one authority as it was a breach of a regulatory function for which that particular authority was responsible. It must therefore be for the separate authorities to decide whether an individual matter would be appropriate for joint treatment in any respect. However, it would be helpful if the Standards Board for England could be asked to facilitate joint treatment where authorities are unable to reach agreement between themselves.

The mechanisms available for achieving such joint working would be either a joint working agreement between the respective authorities under Section 189 (to which we refer in more detail below, but which may not enable a voluntary transfer of part only of an authority's functions and so may not be appropriate for this purpose, but for which the Standards Board for England could usefully procure a model, thus enabling such case-specific joint working to be set up at very short notice for a particular case, if that is legally possible) or by a direction of the Standards Board for England under Section 57D(1) transferring a function to a consenting authority (which is unlikely to be available at short notice on a case-by-case basis, as it might have to deal with issues such as the establishment and composition of a joint Sub-Committee for the case) or that where each authority has decided that the matter shall be investigated, for the two Monitoring Officers agree to appoint the same Investigating Officer to conduct a joint investigation, although this may as yet have to result in two separate reports, one for each authority. In practice, unless a direction could be made during the time taken by the investigation to enable a joint hearing before a joint Sub-Committee, it might still be possible for the Hearings Sub-Committees of the two authorities to conduct parallel hearings, in the same room at the same time, merely separating in order to consider their decisions on each element of the complaint which was relevant to their own authority.

Q3. Are you content with our proposal that the timescale for making initial decisions should be a matter for guidance by the Standards Board, rather than for the imposition of a statutory time limit?

A3. We agree that it would be inappropriate to impose a statutory time limit for the initial assessment process, and that this is better dealt with by guidance, with the Standards Board for England having reserve power to intervene were an authority regularly to fail to achieve the guideline time. Given that the Standards Board for England aims to conduct the initial assessment in 8 working days, we consider that 20 working days is an appropriate guideline time for this process. However, we consider that there can be exceptions where it would be inappropriate for such a guideline time to apply, as evidenced by the fact that the Standards Board for England has on occasion felt that it will hold over the initial assessment, for example pending the determination of another allegation concerning the same member, and that any guideline time should make provision for such exceptions.

We note that a 20 working day guideline time for this purpose is inconsistent with the 3 month statutory time limit set in Section 57(4)(b) of the 2007 Act for the conduct of the review function, and would suggest that authorities be urged to conduct such reviews rather more promptly than is strictly required by the Act.

Q4. Do you agree that the sort of circumstances we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made? Are there any other

circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?

A4. Before going on to consider the merits of what is proposed by the Department, we must comment that it is contrary to the apparent intention of Parliament which, by placing the requirement on the Standards Committee to inform the member of the allegation in Section 57C(2), before the requirement in Section 57C(c) for the Committee to determine whether to take any action on the allegation, appears to have intended that the member should be informed before such initial assessment is undertaken. However, this is inconsistent with the fact that the duty to inform is placed on the Committee, which is not covered by Section 101 of the Local Government Act 1072 and accordingly has no ability to delegate the function of informing the member to an officer. As a result, strictly, the Committee would have to take this decision by resolution at a meeting, which, given the proposed guideline time for the initial assessment, would almost certainly be the meeting at which the initial assessment is undertaken. In practice, we are sure that officers will undertake this task, but we have to remark on the inadequacy of the legislation in this respect.

We recognise that this issue of prior notification has been one of considerable controversy, with members against whom allegations have been made being very concerned that the first they learn of an allegation should be after a decision has been taken to investigate, or not to investigate, that allegation. The member concerned cannot reasonably have any input into the initial assessment, because of the time available, because you cannot reasonably conduct an investigation as to whether to investigate, and because he/she will have a prejudicial interest in the matter. Prior notification does raise the potential for a member to apply, or seek to apply, undue influence to members of the Committee to secure that no investigation is undertaken. However, we consider that the ideal would be for the Act to be amended to enable the function of prior notification to be delegated to an officer, and for guidance to recommend that such prior notification be sent to the member at the same time as the report in respect of the initial assessment of the particular allegation is sent to the members of the appropriate Committee or Sub-Committee. If no legislative amendment is available, we appreciate that prior notification to the member concerned is not necessary for justice, but that if Committees are to go against the apparent intention of Parliament by not giving prior notification to the member, it must be on the basis of clear guidance from the Standards Board for England.

We consider that it would be helpful if the Standards Board for England provided guidance on the information which should normally be contained in such a summary of the allegation for the purpose of notifying the member of the allegation.

At the other end of the spectrum, it is clear that a fair hearing cannot be conducted unless the member has previously been supplied with a copy of the investigating officer's report, and that it is standard practice for the member to have been asked to comment on a draft investigating officer's report. It is also hard to see how a comprehensive investigation can be undertaken without making enquiry of the member, which will reveal the fact of the allegation. Accordingly, we can see no case for deferring such notification beyond at the latest the completion of any investigation.

However, we do accept that there may very occasionally be instances where there is a risk of intimidation, or attempted intimidation, of witnesses. For this reason, we understand the Department's suggestion that such notification might in exceptional cases be deferred, though it would be hard to justify such deferral once those witnesses had been interviewed and made written witness statements. We consider that, whilst such a deferral facility may

be useful, but it should only be used on the specific instruction of the Committee at the time of the initial assessment or review.

We also note that an authority would be unlikely to be able to resist a request for data subject access by the member against whom the allegation is made, under the Data Protection Act, as allegations of breach of the Code of Conduct would not come within the exemptions for prevention of crime. However, the time-limits for responding to a DPA request do mean that the authority would not have to disclose this information before the Committee had undertaken its initial assessment. Freedom of Information request by third parties could probably be resisted in terms of protecting the effective discharge of public affairs.

Q5. Do you agree that circumstances should be prescribed, as we have proposed, in which the monitoring officer will refer a case back to the standards committee?

A5. We agree that it is important that as far as practicable the complainant and the member against whom the allegation has been made should be kept informed of how the allegation is being handled, and what stage in the process has been reached. The transfer of responsibility for handling an allegation from the Standards Board for England to the local authority, or from one local authority to another, are clearly key stages which should be notified to the complainant and to the member.

We are confused by the reference to a decision by the Monitoring Officer under section 57A to refer a matter back to the Standards Committee, as there does not appear to be provision for this in Section 57A, and suspect that this may have been intended to be a reference to section 66(2)(f) of the 2000 Act.

We agree that a Standards Committee should have the ability to refer an allegation to the Monitoring Officer for action short of a formal investigation, for example for training or mediation.

We are concerned that the 2007 Act makes no express provision for local resolution of allegations, and we would encourage the Standards Board for England to issue guidance on how this may be achieved in appropriate cases. Not all cases are susceptible to local resolution, but given the cost of formal investigations and hearings, it clearly makes sense to seek amicable local resolution where possible. For example, it may be possible for a Monitoring Officer on receipt of an allegation to suggest to the member concerned that his/her conduct may not have been appropriate and that he/she may wish to consider making an apology to the complainant, and to see whether the complainant would be satisfied by such an apology. Where that was the case, the Monitoring Officer might be able to report to the Committee at initial assessment stage and advise that the member has apologised and that the complainant no longer wishes the complaint to proceed, in which case the Committee may feel able to decide that the allegation no longer merits investigation. However, this would be a pragmatic solution which finds no support in the 2007 Act, and it would be very helpful if the Standards Board for England were to endorse such a role for Monitoring Officers.

We agree with the principle that the Monitoring Officer should be able to refer a matter back to the Standards Committee where the circumstances have significantly altered since the Standards Committee took the decision that the matter merited investigation. However, we are not convinced that the discovery of further potential misconduct comes within this category. Specifically, the Standards Committee's remit under the 2007 Act is limited to the circumstance where there is a written allegation of misconduct, and the Monitoring Officer's remit is then limited to investigation of the matter as referred by the Committee. As a result, the Standards Committee will have no remit in relation to the further misconduct unless a

written allegation is made in respect of if, and there is not provision for the Investigating Officer, unlike and Ethical Standards Officer, to widen the scope of his/her investigation. Perhaps the only available course would be for the Standards Committee then to request the Standards Board for England to take responsibility for the existing matter and at the same time to secure that a further written allegation is made in respect of the further apparent misconduct and also refer that matter to the Standards Board for England. Please see below our comments on the handling of multiple allegations.

Where such reference back is made, it is a significant step which would normally justify notification to the complainant and to the member concerned, but it is worth noting that such notification would arise prior to consideration by the Committee, and so would be a departure from the pattern set in respect of notification on the initial complaint.

Two important issues which are not canvassed in the Consultation Paper but which do need to be addressed are as follows:

- (a) whether such a review is to be a complete reconsideration, or whether it is merely to identify whether the original assessment was manifestly unreasonable, and
- (b) whether the review can take into account new information which was not available at the initial assessment stage, or whether it is limited to the initial allegation

Q6. Are you in favour of an increase in the maximum sanction the standards committee can impose? If so, are you content that the maximum sanction should increase from three months to six months suspension or partial suspension from office?

A6. We agree that an increase in the maximum local sanction is required if more cases are to be handled locally. We consider that the proposal for a maximum 6 months suspension at local level is actually a very modest increase and we would like to see an increase to a maximum of 9 months suspension. We note that the maximum local sanction in Wales has been 6 months for the past 6 years and this does not seem to have caused any problems.

Q7. Do you have any views on the practicability of requiring that the chairs of all sub-committees discharging the assessment, review and hearing functions should be independent, which is likely to mean that there would need to be at least three independent chairs for each standards committee? Would it be consistent with robust decision-making if one or more of the sub-committee chairs were not independent?

A7. We agree that the Chairs of all Sub-Committees should be Independent Co-opted Members. Indeed there is a much stronger argument for the independence of Chairs of Sub-Committees handling individual cases, rather than for the main Standards Committee which has more responsibility for policy and resources.

We note the reference to three independent chairs, which appears tacitly to accept that the members involved in hearings cannot also be involved in the initial assessment or the review of a particular allegation.

Q8. Do you agree with our proposal that the initial assessment of misconduct allegations and any review of a standards committee's decision to take no action should be exempt from the rules on access to information?

A8. We agree that the initial assessment and review functions should be conducted without press and public access. As the Department points out, publication of the agenda and reports 5 clear days in advance gives rise to prejudicial publicity on allegations which may have no substance. We would however suggest that the processes be exempted from all access to information rules, but that the fact of the meeting should still be publicised in the normal way under Section 100B of the Local Government Act 1972 together with an agenda which does not disclose the name of either complainant or member. The fact of the meeting will be disclosed on room booking sheets anyway, so it seems better not to try to conceal it.

Practical experience from conducting role-play simulations of the local first sieve exercise has demonstrated that it is much easier to conduct without press and public attendance. The member concerned would have a prejudicial interest, which would lead to imbalance if the complainant could attend, albeit with no right of audience, but the member could not. The initial assessment process is in any case not a finding of breach or no breach.

As a further point, we would request that the Regulations and Guidance enable the Standards Committee to group allegations together for joint investigation. We have found that an authority may receive a number of allegations against a particular member, each of which may not merit investigation, but which together indicate a serious course of conduct amounting, for example, to bullying (see APE case decision number 322, Councillor Janik at Slough Borough Council as an example of a number of minor events amounting to serious bullying). If each case has to be dealt with separately, then such cases will be missed. But if the Committee can instruct that they be taken together and be subject of a single investigation, and of appropriate a single hearing, they can be dealt with much more appropriately. This goes back to the issue of admission of press and public, as a Committee undertaking initial assessment in public will be constrained to taking each item of business separately, taking a discreet decision on each item, whereas a Committee undertaking the same task in private can go back over its initial reaction in the light of later items on the same agenda.

We do still have an outstanding issue in that there is no statutory confidentiality for Monitoring Officer reports, and particularly draft reports, unlike the position for Ethical Standards Officers' report. We request that the opportunity be taken to remedy this omission and bring local investigation reports into line with national reports.

Q9. Have we identified appropriate criteria for the Standards Board to consider when making decisions to suspend a standards committee's powers to make initial assessments? Are there any other relevant criteria which the Board ought to take into account?

A9. We agree with the criteria as listed, but question whether a disproportionate number of successful appeals to the Appeals Tribunal from decisions of an authority's Standards Committee might also be an indication of failings within an authority and there might be added as an appropriate criteria for intervention.

We question whether intervention needs to be total. We suggest that it would be helpful if it were made clear that intervention might be only in respect of parts of the process, such as failure to undertake prompt initial assessments, rather than in respect of the whole functions.

Q10. Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally-based ethical regime? If so, should the

level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?

A10. The handling and determination of conduct allegations is an expensive process, and the additional funding available from the Department will not cover the extra costs to be met by individual authorities. It would be unfortunate if an authority were to elect to fail to perform this function out of consideration of costs, and on that basis a system of recharging would appear to be sensible. However, any such system must be simple, so that it does not absorb in administrative costs any benefits which it might confer. For that reason a scale of charges for the initial assessment, review and hearing would seem to be appropriate. However, there are very substantial variations in the costs of investigations, from £5,000 to £50,000, and we consider that actual cost recharge for investigations would be appropriate.

Q11. Would you be interested in pursuing joint arrangements with other authorities? Do you have experience of joint working with other authorities and suggestions as to how it can be made to work effectively in practice? Do you think there is a need to limit the geographical area to be covered by a particular joint agreement and, if so, how should such a limitation be expressed? Do you agree that if a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint committee's area attends?

A11. As a preliminary point, we are concerned that the power to form Joint Committees contained in Section 189 of the 2007 Act may not enable authorities to form joint committees for only part of their standards functions, such as for the initial assessments but not for the hearings. Section 53 of the 2000 Act provided for each authority to establish a committee which is to have the functions defined by the Act – in other words to discharge the whole of the standards function for that authority. There is no power for an authority to form two or more standards committees and to divide the functions between those two committees. Section 189(1) and (2) of the 2007 Act provide for regulations to enable two or more authorities to form a joint committee, and arrange for this joint committee to exercise “relevant functions”, which comprise the functions conferred on the Standards Committee of each of the participating authorities. We would seek your confirmation that this means that the Joint Committee can be given some, but not all, of the standards functions of the participating authorities.

Provided that that hurdle is overcome, we consider that the facility to form joint committees, and for those joint committees to form joint sub-committees to undertake particular functions, would be very welcome. We can see a very strong case for regional groupings of Police and Fire Authorities, each of which has a Standards Committee but in respect of whose members there are very few complaints, and accordingly we would consider that a geographical limit would be inappropriate, but that this should be left to what authorities consider would be effective for the discharge of these functions.

We consider that it is much more likely that authorities will agree joint arrangements for initial assessments and reviews, but less likely for actual hearings. Such joint arrangements can be very effective in sharing the workload and minimising the call on each authority for members, and Independent Co-opted Members. However, if we are trying to keep the size of such joint sub-committees down to a reasonable size, there is no mechanism at present to have “occasional” parish members, who are or are not entitled to participate according to the identity of the authority that the member against whom the allegation has been made. The alternative would be to include a parish member for the areas of each of the participating principal authorities, which would mean too large a Joint Sub-Committee if it were not to be dominated by parish councillors.

Q12. Are you content that the range of sanctions available to case tribunals of the Adjudication Panel should be expanded, so the sanctions they can impose reflect those already available to standards committees?

A12. We support this change. It is sensible that case tribunals should have available to them the full range of sanctions available to Standards Committees. The same should apply to Appeals Tribunals.

In the spirit of delegation, we would ask you to consider a amendment to the remit of Appeals Tribunals under Regulation 13 of the Local Determination Regulations, to make it clear that an Appeals Tribunal should not re-conduct the hearing and substitute its discretion for that of the Standards Committee, but should only overturn the decision or part of the decision of a Standards Committee where it is of the opinion that that decision was either outside the powers of the Standards Committee or was unreasonable. If we are going to trust Standards Committees with more cases and more powers, they cannot operate if their decisions are to be overturned too frequently because the Appeals Tribunal comes to a different value judgement.

Q13. Do you agree with our proposals for an ethical standards officer to be able to withdraw references to the Adjudication Panel in the circumstances described? Are there any other situations in which it might be appropriate for an ethical standards officer to withdraw a reference or an interim reference?

A13. We agree with this proposal to enable an Ethical Standards Officer to withdraw a case from the Adjudication Panel where there has been a material change in circumstance since the original decision was taken to refer the matter.

We also agree that the decision of a case tribunal to suspend a member should be effective upon the decision of the case tribunal, rather than having to be referred to and actioned by the authority's Standards Committee.

Q14. Have you made decisions under the existing dispensation regulations, or have you felt inhibited from doing so? Do the concerns we have indicated on the current effect of these rules adequately reflect your views, or are there any further concerns you have on the way they operate? Are you content with our proposals to provide that dispensations may be granted in respect of a committee or the full council if the effect otherwise would be that a political party either lost a majority which it had previously held, or gained a majority it did not previously hold?

A14. We agree that Regulation 3(1)(a)(i) of the Dispensations Regulations should be clarified to ensure that it relates to the position where half of the members of a decision-making body who would, apart from the prejudicial interest, have been entitled to vote on the particular matter, are required by such prejudicial interest to withdraw.

We would draw to your attention the current difficulty that a request for a dispensation must be made by an individual member, but in that application the member must evidence that more than half of the decision-making body are precluded from participating on the particular item.

On Regulation 3(1)(a)(ii), providing for a dispensation where the authority is unable to comply with its duty to secure proportionality, we would ask the Department to address the issue that, as presently drafted, this only applies when the Council is appointing a Committee, or a Committee is appointing a Sub-Committee, as proportionality relates to the composition of the members of the Committee as appointed, rather than those who attend

and vote on any particular occasion. Accordingly, if this provision is to be amended to give effect to the Department's intention as set out in the Consultation Paper, it must apply where "such members of the decision-making body would be precluded from voting on the particular matter by reason of prejudicial interest, that the number of members of a party group which has a majority of the total membership of that decision-making body and who are not so precluded from voting on the matter do not comprise a majority of the total number of members of that decision-making body who are not precluded from voting on that particular matter."

We would ask that the same power of dispensation be applied to Sub-Committees as to Committees.

We would ask whether the dispensation must be limited to that number of members of the majority party necessary to re-establish a bare majority for the majority party, or should apply to all members of the majority party. We are of the opinion that a relaxation which enables only members of the majority party to vote where they have clear prejudicial interests is likely to give rise to considerable resentment among members of minority parties subject to similar or lesser prejudicial interests, and accordingly that in such circumstances all members with prejudicial interest should be given a dispensation irrespective of party.

We note that, even if the proposal overcomes the issue of prejudicial interests, it is likely that in many cases the particular members' participation in the decision may give rise to allegations of apparent bias and/or predetermination. As the participation of these members will in all probability (indeed is intended to) alter the outcome of the Committee's decision, the members with prejudicial interests are likely to be precluded from participating because their participation is likely to vitiate the decision of the Committee.

It should be noted that many authorities operate systems of "substitute members" on Committees and Sub-Committees (the legal authority for which is dubious). The result is that on committees and Sub-Committees a party group can often withdraw a member with a prejudicial interest and substitute another member who is not subject to such a restriction, without recourse to dispensations.

Q15. Do you think it is necessary for the Secretary of State to make regulations under the Local Government and Housing Act 1989 to provide for authorities not required to have standards committees to establish committees to undertake functions with regard to the exemption of certain posts from political restrictions, or will the affected authorities make arrangements under section 101 of the Local Government Act 1972 instead? Are you aware of any authorities other than waste authorities which are not required to establish a standards committee under section 53(1) of the 2000 Act, but which are subject to the political restrictions provisions?

A15. We suggest that it may not be possible for waste disposal authorities to use Section 101 of the Local Government Act 1972 to arrange for the function of granting exemptions from political restrictions to be discharged by another authority. Section 202 of the 2007 Act (inserting a new Section 3A to the Local Government and Housing Act 1989) confers this power specifically on the Standards Committee of each authority. For waste disposal authorities, which do not have standards committees, this purpose is simply frustrated and the power is therefore not so conferred, and so cannot be transferred by the authority. Rather than cause waste disposal authorities to establish Standards Committees simply for this one very occasional purpose, would it not be more cost effective as and when legislative opportunity arises to provide that the new Section 3A shall apply to authorities without Standards Committees so as to confer the function on the authority rather than on such a Standards Committee?

Q16. Do you agree with our proposal to implement the reformed conduct regime on 1 April 2008 at the earliest?

A16. The Department's intention is to implement the changes from 1st April 2008. However, whilst the issues which are the subject of this consultation are important, there remain a substantial number of other matters and much detail which will need to be resolved by the final Regulations and Guidance, and it is equally important that sufficient time is allowed for proper consultation on the draft statutory instruments and draft guidance. Given that a statutory instrument has to be laid before Parliament for at least 6 weeks before it takes effect, the proposed implementation date of 1st April 2008 leaves only one week for any issues raised in response to this consultation to be taken into account in the drafting of the statutory instruments, let alone consultation on the draft regulations and draft guidance. Further, as the proposed changes will require the recruitment of additional Independent Co-opted Members to Standards Committees, which many authorities undertake through a public advertisement and appointment procedure, many authorities will not be in a position to undertake these new functions from 1st April. Experience of past changes to the system, and particularly changes to the Code of Conduct, underline how important it is to get these changes right first time, with the benefit of full consultation, rather than to rush half-considered changes into effect.

In this context we must remark that the current consultation allows only some 6 weeks for response, whereas the Code of Conduct on Consultations which has been adopted by the Government prescribes that consultation shall allow a minimum of 12 weeks for written consultation at least once during the development of the policy. That commitment has clearly not been met by the Government in this case.

At the same time, there is a need for changes to the Code of Conduct itself, amongst other things to pick up infelicities in the present Code, to deal with Ward Councillor decision-making and to reconcile the Code and the new Act on the application of the Code to private life. No proposals for such changes have yet emerged for consultation. It would be sensible to introduce the changes to the Code at the same time as changes to the system for enforcing the Code. Accordingly, the proposed implementation date of 1st April 2008 now appears unrealistic.

Bethan Evans
Local Government Partner
Tel: 0844 736 8993
E-mail: bethan.evans@bevanbrittan.com

Peter Keith-Lucas
Local Government Partner
Tel: 0844 736 1741
E-mail: peter.keith-lucas@bevanbrittan.com

8th January 2008

TRAINING ON THE NEW CODE AND LOCAL ASSESSMENTS

Report By: Head of Legal and Democratic Services

Wards Affected

Countywide

Purpose

1. To consider training for committee members jointly with committee members from Worcestershire or Shropshire County Councils.
2. To consider training on the new code for Herefordshire council members and parish and town council members within Herefordshire.

Financial Implications

3. Officers time and Chairman's time in developing an appropriate strategy and attending appropriate training where possible.

Background

4. As committee members are aware the committee is tasked with the responsibility of training parish council members in relation to ethical standards and the Code of Conduct. A training event took place with the support of the Herefordshire Association of Local Councils (HALC) on the 25th day of October 2007. There was a significant turnout from the parishes. The CD entitled "The Code of Conduct" issued by the Standards Board together with support from the Head of Legal and Democratic Services clarifying some issues was presented to that meeting. Whilst there was a significant turnout there is still further work to be done.
5. Herefordshire Council members have also received training on the new Code of Conduct and approximately 50% of council members attended that training and an additional date has been identified for early this year and inviting those members who were unable to attend the previous training to attend this session.
6. The committee will need to consider a training strategy for both parish council members through the Herefordshire Association of Local Councils and also how to engage those parish councils who are not members of Herefordshire Association of Local Councils and to formulate a training strategy on the new Code of Conduct and local assessments.
7. The committee will also need to consider how best to make material available to the public on changes by use of the Council's website, Herefordshire Matters and other media.

8. In relation to standards committee members the Head of Legal and Democratic Services has written to both Worcestershire and Shropshire who have both indicated an interest and the Head of Legal and Democratic Services is trying to arrange a meeting with them to agree a plan and date for training on local assessments and filtering. This will be reported to committee members as soon as possible.

Recommendations

THAT

the committee considers the above training and any other comments it may wish to make in relation to training in respect of local assessment, parish council members, and members of Herefordshire Council

Background Papers

None

ANNUAL REPORT OF THE STANDARDS COMMITTEE FOR 2007

Page 1 – Cover Picture (To be chosen at meeting on 18 January 2008. I am awaiting a good selection from our graphic designer!)

Page 2 – Herefordshire...covers 842 square miles etc.

Page 3 – Open, Fair and Proportionate (what we do)

Page 4 onwards:

Membership in 2007 and photographs (Members to decide if they want to update their bios or photographs)

ACTIVITIES IN 2007

THE LOCAL AUTHORITIES (MODEL CODE OF CONDUCT) ORDER 2007

We commented on the consultation to the Model Code of Conduct early in 2007, and made recommendations to Council on the Code, which it adopted in July 2007.

TRAINING

We considered the Head of Legal and Democratic Services' guidance on the statutory requirements relating to Council publicity in the run-up to the May 2007 elections (the purdah period), and produced a separate A4 guidance leaflet for parish and town councils.

Following the May 2007 elections, the Committee contributed to the induction literature and the councillors' induction programme. Our chairman gave a talk to members as part of the induction programme, on standards and ethics, and on the role of the Committee.

We held joint training sessions with the Herefordshire Association of Local Councils (HALC) in June and October 2007. We focussed on the implications (and implementation) of the new Code of Conduct, and on prejudicial and persona interests, as part of their broader training programme for parish and town councillors. We continue to work closely with HALC, and the excellent relationship we have with them is greatly valued.

We will be holding further joint training sessions for Standards Committee members from Herefordshire and Worcestershire, and also the Fire and Rescue, and Police Authorities. The subject will be the new Model Code of Conduct, and dealing with Local Assessment.

HEARINGS AND LOCAL INVESTIGATIONS

We have finalised our guidance for those attending Standards Committee hearings, and are in a position to start using this before and during hearings, to make participants aware of what to expect from the hearing process. This, together with a procedure note for officers, will provide comprehensive guidance for everyone involved.

We have considered the final reports of investigations relating to complaints against eight councillors. In each case, we found that there was no failure to follow the Code of Conduct. The full texts of all out decision notices can be found on the Council's website.

THE STANDARDS BOARD FOR ENGLAND: HANDLING OF COMPLAINTS

We have continued to monitor the Board's handling of complaints, and are pleased to see continued improvement in the speed with which these are dealt with.

DISPENSATIONS

It has been a particularly busy year for requests from parish and town councils for "dispensations" – that is, for our permission for members who have a prejudicial interest to be able to participate in council business when the subject of that interest is being discussed. This is partly due to the impact of the May 2007 elections, which brought in new members.

Our plain-language guide (available on the Council website) explains the background to dispensations, the legal basis for which is complex. We sought advice from the SBE in respect of the Regulations, in particular, the wording of paragraph 3(1)(a)(i), which in the light of a number of dispensations we had considered, we felt was ambiguous. The SBE agreed with us, but suggested that we should make our own interpretation on the basis that any reasonable interpretation is unlikely to be challenged. We are minded to adopt a more generous interpretation, because we are concerned that the business of parish and town councils might otherwise be unnecessarily obstructed.

WEST MERCIA INDEPENDENT MEMBERS' FORUM

STANDARDS BOARD FOR ENGLAND SUMMER ROADSHOW

Two of our members, Mr David Stevens and Mr Richard Gething, represented the Standards Committee at the SBE Roadshow in Birmingham on 14 June. It focused primarily on the new Code, and was a valuable forum for sharing advice. They were able to give feedback first-hand on the Committee's views on this subject.

SIXTH ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

The Committee was well represented at the Annual Assembly of Standards Committees this year, both in terms of attendance and participation. The Chairman and the Head of Legal and Democratic Services both led seminars at the conference.

It was an invaluable experience, and provided a great deal of information on the new Code of Conduct, and on local assessment. We will need to decide how to deal effectively with the extra stages in the investigation process that will become our responsibility.

We also had the opportunity to share our annual report, chairing checklist, and hearing guidance with other authorities, and these were met with approval and numerous requests to take the documents away and replicate them. We felt that this said a lot for best practice in Herefordshire.

GUIDANCE, PROTOCOLS AND THE CONSTITUTION

We have reviewed the various codes and protocols for which we are responsible to ensure that they are compliant with the new Code.

Code for Members and Officers Dealing with Planning Matters;

Protocol on the Use of Council Resources by Members;

Protocol for Member/Officer Relations;

Code of Corporate Governance;

Communications Protocols.

LOCAL ASSESSMENT/THE LOCAL FILTER

The Committee has contributed to the project run by the SBE to assist planning for the operation of the local filter. This is a major change to the local government standards framework, and means that all cases will first be dealt with at local level, with referral to the SBE every much the exception. We have argued for this change strongly, and are sure that local ownership of the process will be welcomed in Herefordshire.

WEBSITE

The Standards Committee now has its own web pages on the Council website, where you can find more information about what we do, view agenda, minutes, and hearing details, and download forms and practical guidance. There are also links to other related organisations such as the Standards Board and the Herefordshire Association of Local Councils. You can find our pages by going to www.herefordshire.gov.uk, and clicking on "Standards and Ethics" in the Quick Links box on the right hand side of the home page.

SPECIAL AUDIT INVESTIGATION AND FINANCIAL GOVERNANCE

A LOOK BACK AT 2007

OUTLOOK FOR 2008

Document is Restricted

Document is Restricted

