



# Constitution

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# Part 1: Introduction and Short Guide to the Constitution

## 1 Purpose of this Introduction and Short Guide

- 1.1 This section introduces and gives an overview of what can be found in the County Council's Constitution.
- 1.2 Please note the guide is only a summary and so please look at the detailed rules within the relevant sections as necessary.

## 2 Introduction

- 2.1 Cumbria County Council ('the County Council') is the second largest local authority in England and Wales based on land area. It is also one of the most sparsely populated, with only 0.7 persons per hectare compared with the England and Wales average of 3.2. Cumbria's total population is approximately 500,000.
- 2.2 County Councillors ('members') are elected every four years, and everyone aged over 18 and on the electoral register for the County may vote. There are 84 members of the County Council, each representing a single electoral division with an average electorate of about 4,700.
- 2.3 Most members are elected with the support of the political parties. The current political composition of the County Council is Labour 36, Conservative 25, Liberal Democrat 15, Independents 4, Independents – Non Aligned 2 and 2 West Cumbria Independents.
- 2.4 The County Council represents and speaks for all the people who live in Cumbria. It champions their interests with central government, European institutions and a wide range of statutory, voluntary and private sector bodies whose decisions impact on the quality of life of Cumbrian residents.
- 2.5 The county of Cumbria has a three tier system of local government; the County Council; the local Borough or District Council; and a Parish or Town Council. In addition some parts of the County lie within the boundaries of the Lake District or the Yorkshire Dales National Parks. Each of these authorities is responsible for different services.
- 2.6 The County Council is responsible for a wide range of services, examples being:
  - Children's services;
  - Adult social care;
  - Public health;
  - Fire and Rescue services;
  - Public Safety

- Highways;
- Community services such as libraries and archives;
- Waste disposal;
- Trading standards;
- Spatial planning.

2.7 The County Council has a turnover of approximately £790m and is responsible for a pension fund valued at £1.9b. The County Council employs approximately 7,000 people (excluding staff in schools).

### **3 Political Governance Arrangements**

3.1 The way the County Council works, and how decisions are made, is set out in the Council's Constitution (see Parts 2 – 7 of this document). The Constitution is a lengthy document and this short guide is intended to provide a brief summary and overview.

3.2 The County Council's political governance arrangements have to meet the requirements of law, particularly the Local Government Act 2000.

3.3 In June 2009, the County Council elected for the first time a "strong leader" (the Leader') who in turn appoints a Deputy Leader and between one and eight other members to form a Cabinet. The Cabinet is responsible for much of the day to day executive functions of the Council, and operates within the budget and policies approved by the County Council. Six Local Committees, based on District Council areas, take decisions on a wide range of local issues within policies set by the Council and/or Cabinet.

3.4 A structure chart showing the main features of the Council's Cabinet and Committee Structure is set out at Appendix A.

### **4 The Full Council**

4.1 The 84 members of the County Council meet in full Council ('the Council') at least seven times a year.

4.2 The main roles of the full Council are:

- (a) To approve the Constitution; and
- (b) To determine policies that set the framework for the way in which the County Council carries out its functions. These are called "Policy Framework Documents" and are set out in the Constitution in section 3 of Part 2A of the Constitution; and
- (c) To approve the County Council's revenue and capital budget and the County Council Tax precept; and
- (d) To appoint or dismiss the Leader

- 4.3 Council meetings take place on a Thursday at County Offices, Kendal, at 10.00 am, unless otherwise agreed with the Chairman of the Council.
- 4.4 The agenda and papers are normally sent to members 5 working days before the date of the meeting. The detail regarding access to information is available at Part 5D of the Constitution.
- 4.5 The order of business for Council meetings and the time limits for the consideration of the various items of business are set out in the Council Procedure Rules at Part 5A of the Constitution.
- 4.6 A summary of the order of business is as follows:
- (a) After the roll call, where attendance and apologies for absence are recorded, the first item on the agenda is a standard one relating to members' interests. This also appears as the first item on agendas for most other meetings. Members are invited to declare whether they have an interest in any item on the agenda;
  - (b) Following the minutes of the last meeting, the Chair of the County Council, the Leader, Cabinet members and the Chief Executive refer briefly to significant events which have occurred since the previous meeting, such as awards or commendations, the inclusion of Cumbria residents in the Honours List or the retirement of senior officers;
  - (c) There is then an opportunity under the Council's Public Participation Scheme for any member of the public who has given the required notice to present a petition to the Council or ask a question. Public participation is time-limited to 30 minutes.
  - (d) The next item on the agenda is the minutes of the Cabinet, which provides an opportunity for any member of the Council to ask a question on any matter in the Cabinet minutes. This is followed by questions from individual members to Cabinet members or committee chairs.
  - (e) The County Council then proceeds to debate those major policy matters which are for full Council to consider or determine.
  - (f) Following the consideration of reports of committees on which questions may be asked, the County Council debates any notices of motion proposed by members. The final agenda item is speeches, under which any member may speak for no more than five minutes on a matter relevant to Cumbria.
- 4.7 The Chair of the Council is elected by the full Council and has the following responsibilities:

- (a) To uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) To preside over meetings of the full Council, so that its business can be carried out efficiently and with regard to the rights of members and the interests of the community;
- (c) To ensure that the full Council meeting is a forum for the debate of matters of concern to the local community, and the place at which members who are not on the Cabinet are able to hold the Cabinet to account; and
- (d) To promote public involvement in the Council's activities.

4.8 Members are democratically accountable to residents in their electoral division. Members' overriding duty is to the whole community of Cumbria, but they have a special duty to their constituents, including those who did not vote for them.

4.9 The key roles of all members are to:

- (a) Collectively (through the County Council) to be the ultimate policy makers and to approve the strategies and plans forming the Council's budget and policy framework;
- (b) Represent their communities and bring their views into the Council's decision-making process, i.e. become the advocate of and for their communities;
- (c) Deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
- (d) Balance different interests identified within the electoral division and represent the electoral division as a whole;
- (e) Be involved in decision making;
- (f) Be available to represent the Council on other bodies; and
- (g) Maintain the highest standards of conduct and ethics.

## **5 The Cabinet**

5.1 Within the Budget and Policy Framework set by the full Council, the Cabinet is responsible for carrying out all the County Council's executive functions in delivering services to the community except those that have been delegated to local committees or officers.

- 5.2 Executive functions are those functions of the County Council which the Local Government Act 2000 states are to be the responsibility of the Leader and Cabinet. These are the vast majority of the council's functions. Some of these functions have been delegated by the Leader to Local Committees and officers.
- 5.3 The Cabinet comprises the Leader, the Deputy Leader and up to eight other members. The Cabinet is responsible for taking most of the major decisions to deliver the Council's priorities, for example in relation to children's services and adult social care. Increasingly the Cabinet pursues its objectives through working in partnership with a wide range of other bodies, including other tiers of local government, and with the private and third sectors.
- 5.4 Under the "strong leader" model adopted by the Council, the Leader of the Council will normally hold office for a four year term until the next whole council elections. However, there is provision to remove the Leader from office by resolution of the Council. Only the Leader may remove the Deputy Leader and members of the Cabinet.
- 5.5 Another significant feature of the "strong leader" model is that the Leader has substantial discretion to determine how executive functions are carried out. The Cabinet can form sub-committees or working groups to deal in more depth with particular political and council priorities. Only members may be appointed to the Cabinet. There can be no co-opted members, deputies or substitutes for Cabinet members. Neither the Chairman nor Vice-Chairman of the Council may be appointed to Cabinet.
- 5.6 Cabinet Procedure Rules are set out in Part 5B of the Constitution.
- 5.7 Cabinet members have the following portfolios, although decisions are taken collectively by the Cabinet:
- Finance;
  - Children's Services;
  - Schools and Learning;
  - Health and Care Services;
  - Environment;
  - Public Health and Community Services;
  - Highways and Transport;
  - Economic Development and Property; and
  - Fire, Public Safety and Central Support Services.
- 5.8 Cabinet members hold office until:
- (a) They resign from the Cabinet; or
  - (b) They are no longer councillors ('members'); or
  - (c) They are removed from the Cabinet by the Leader.

- 5.9 Cabinet meetings are open to the press and public and take place on a Thursday every four weeks, usually at Carlisle or Kendal.
- 5.10 As part of every Cabinet agenda, there is an opportunity under the Council's Public Participation Scheme for any member of the public who has given the required notice to present a petition to the Council or ask a question. Public participation is time-limited to 30 minutes.

## **6 Overview and Scrutiny**

- 6.1 Scrutiny Boards provide checks and balances within the Council and are the principal means by which the Cabinet is held to account. Most importantly, the boards also assist in the development of County Council policy by looking at existing policies and the effectiveness of their delivery, and reviewing whether new policies or changes to existing policies are needed. Overview and Scrutiny Procedure Rules are set out in Part 5C of the Constitution.
- 6.2 The guiding principle for the work of the Scrutiny Boards is that it should involve constructive criticism, with the aim of improving decision making. The emphasis of the work is on making a positive contribution to the development of policy and performance and this is largely carried out through the work of task and finish groups. These are member bodies set up with a specific remit to consider how a particular service or services could be improved. The membership of task and finish groups may be selected from all non-Cabinet members.
- 6.3 Scrutiny Boards can:
- (a) Undertake policy reviews and make recommendations to Cabinet;
  - (b) Review and scrutinise any area of the Council's performance or its policy objectives;
  - (c) "Call in" a decision of the Cabinet (and certain decisions of Local Committees and Corporate Directors) for review before implementation and refer the decision back to the Cabinet (or local committee) for further consideration. The procedure and timescales are laid down in the Overview and Scrutiny Procedure Rules (paragraph 13) Constitution; and
  - (d) Make observations and comments on matters coming before the Cabinet (pre-scrutiny).
- 6.4 The Scrutiny Management Board has overall strategic responsibility for the overview and scrutiny function by commissioning all task and finish scrutiny work and overseeing and approving a single overview and scrutiny work programme. The Scrutiny Management Board is supported by three Scrutiny Advisory Boards each with a distinct cross-cutting theme:

- Children and Young People;
- Adults; and
- Communities and Place.

6.5 Policy review work is undertaken through task and finish groups whose members may be selected from all non-Cabinet members.

6.6 In addition there is a separate overview and scrutiny committee dealing with matters concerning health and health services in Cumbria. Each District Council is eligible to nominate a District Councillor to sit on the Cumbria Health Scrutiny Committee. For service variations which affect both Lancashire and Cumbria the Cumbria and Lancashire Joint Health Scrutiny Committee meets on an ad hoc basis. See paragraph 15 of the Overview and Scrutiny Procedure Rules.

6.7 Members of the Cabinet may not be members of an overview and scrutiny board or the Health Scrutiny Committees.

6.8 The Scrutiny Advisory Boards and Health Scrutiny Committees are important in demonstrating accountability. They can require Cabinet members and officers to attend their meetings to account for and justify decisions and how they are taken.

6.9 They can also invite outside organisations and representative groups to attend meetings to give their views on service or policy issues.

## 7 Local Committees

7.1 Local Committees form an important part of the decision making structure. They have delegated responsibility for a range of functions where decisions are taken by local members, reflecting local circumstances. These six Local Committees are based on district council boundaries and their membership includes all members whose electoral divisions fall within the Local Committee area. The size of each Local Committee therefore varies as follows:-

### From May 2013

Allerdale Local Committee	16 members
Barrow Local Committee	11 members
Carlisle Local Committee	18 members
Copeland Local Committee	12 members
Eden Local Committee	9 members
South Lakeland Local Committee	18 members

7.2 Local Committees have responsibility for certain executive functions. Any executive decisions taken by Local Committees are subject to review (and call-in) by Scrutiny Boards and Cumbria Health Scrutiny Committee in the same way as decisions taken by the Cabinet can be called in.

- 7.3 However, Local Committees also make some non-executive decisions and these cannot be called in. The Constitution clearly sets out which decisions fall into which category.
- 7.4 As part of every Local Committee agenda, there is an opportunity under the Council's Public Participation Scheme for any member of the public who has given the required notice to present a petition or ask a question. Public participation is time-limited to 30 minutes.

## **8 Other Council Committees**

- 8.1 By law a small number of important Council functions cannot be undertaken by the Cabinet. These non-executive functions are carried out by the following committees:

(a) **The Audit and Assurance Committee**

The Committee provides assurance of the adequacy of the risk management framework and internal control environment of the council, and oversight of the financial reporting process.

(b) **The Pensions Committee**

The Committee administers the Cumbria Pensions Fund.

(c) **The Development Control and Regulation Committee**

The Committee deals with applications for planning permission for waste disposal and mineral extraction, developments proposed by the County Council and for public rights of way and commons registration matters

(d) **Staffing Committee**

The Committee is the final internal appeal body to hear and determine appeals for dismissal for misconduct or capability.

(e) **The Standards Committee**

The Committee comprises five members of the County Council and two independent co-opted members. The Standards Committee aims to ensure that members and officers maintain the highest ethical standards across all areas of the Council's services.

The Committee's Chair is an independent co-opted member.

(f) **Workington Harbour Board**

The Board carries out the Council's functions in respect of the Port of Workington under the Harbour Acts.

- 8.2 In addition the Council has a number of panels and sub-groups to undertake specific work. These report in to and advise the main decision making bodies of the council.

### **8.3 Cumbria Health and Wellbeing Board**

The Board enables strategic planning and accountability for health and well-being services, across a range of sectors and providers.

## **9 Agendas and Reports**

9.1 Agendas for all of the Council's main meetings are published five clear working days in advance of the meeting. Copies are sent to all members of the Committees, and can be accessed on the Council's website at <http://www.cumbria.gov.uk/councilmeetings/default.asp> under "Council and Democracy". The order of business for committees and sub-committee meetings are set out in the Council Procedure Rules at Part 5A of the Constitution.

## **10 Codes of Conduct for Members and Officers**

10.1 Members must observe the Members' Code of Conduct. Amongst other things this requires members to consider whether they have an interest in any matter on the agenda for a meeting and if so whether there is a need to disclose such an interest.

10.2 Officers also must observe the Officers' Code of Conduct which sets guidelines on behaviour and standards of conduct at work.

## **11 Other Rules and Procedures**

11.1 The following sections of the Constitution set out the detailed procedural rules (that have not been referred to previously in this guide) that must be followed in conducting Council business:

- (a) Procedure for Budget Debate at Council;
- (b) Access to Information Rules;
- (c) Financial Standing Orders;
- (d) Contract Procedure Rules;
- (e) Officer Employment Procedure Rules;
- (f) Member Officer Protocol;
- (g) Anti-Fraud, Bribery and Corruption Policy;
- (h) Employee Whistle Blowing Policy;
- (i) Planning Protocols, and
- (j) Partnerships.

## **12 Key Decisions and the Forward Plan**

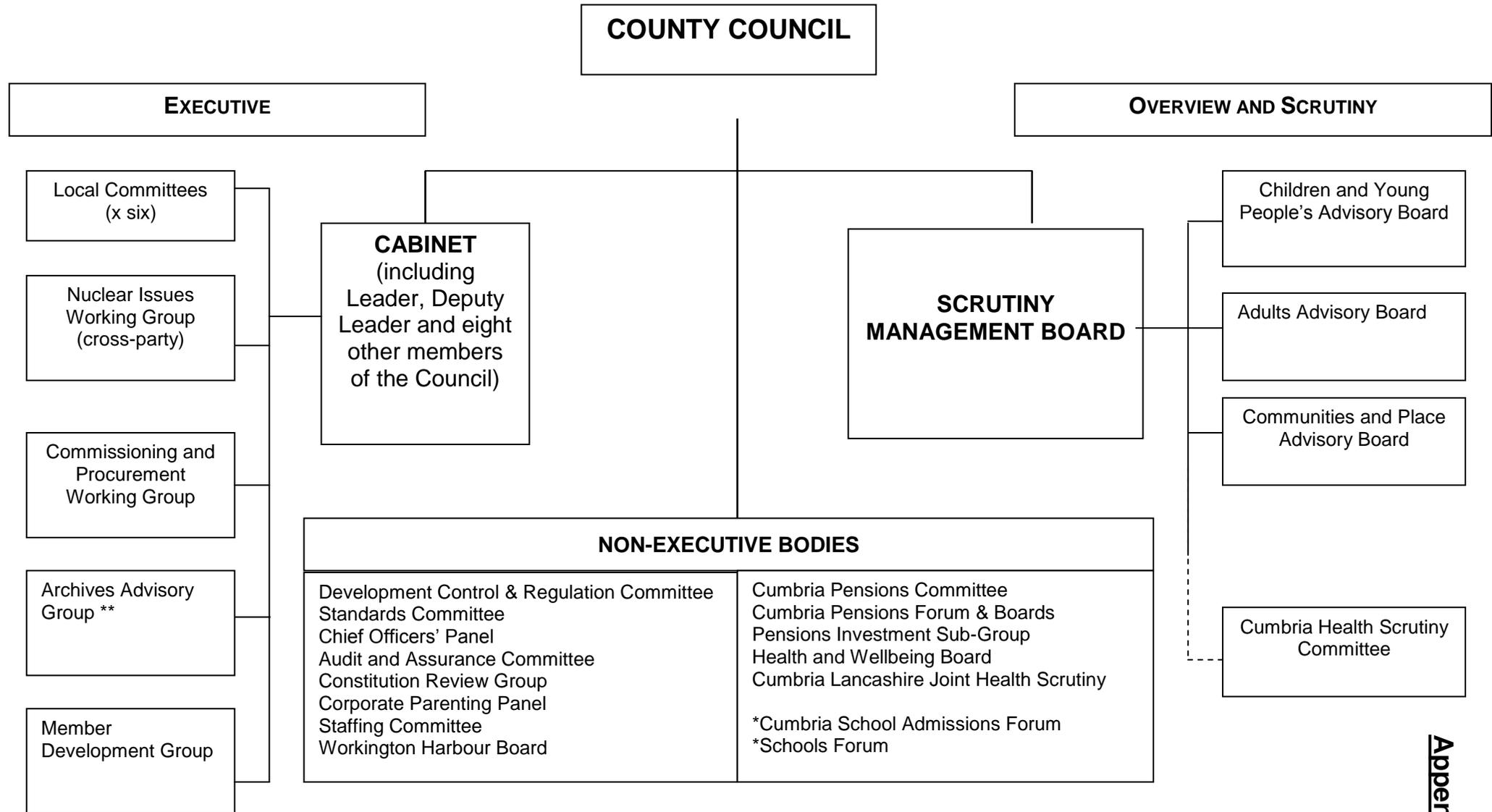
- 12.1 The Leader publishes each month a Forward Plan which sets out the “key decisions” to be taken by the Cabinet, Local Committees or Corporate Directors over a two month period. A key decision for this purpose is one which is likely to be significant in terms of expenditure or savings, or significant in terms of its impact on communities.
- 12.2 The Forward Plan enables members and the public to see what key decisions are proposed, who will be taking them, and when and what consultation is proposed.
- 12.3 Key decisions cannot always be identified in advance. In certain circumstances Cabinet, Local Committees and sometimes officers (Corporate Directors) may take key decisions not published in the Forward Plan provided that the Chair of the relevant Scrutiny Advisory Board or Cumbria Health Scrutiny Committee has been consulted as necessary.

## **13 Officer Management Structure**

- 13.1 The law makes a clear distinction between the members of a local authority and the paid, professional staff who advise members and manage services under their overall direction. It is not possible for a member to be employed by the county council, or for an officer to stand for election for the county council. Additionally, it is an important principle that officers serve the whole Council and must be careful to maintain their political neutrality. In Cumbria, members and officers work closely together in pursuing the interests of the people the County Council serves, while being aware of the fact that their roles are different and complementary.
- 13.2 The Chief Executive (‘Head of Paid Service’) is the head of the County Council’s paid service and the Council’s principal adviser on policy. The Chief Executive chairs the Council’s Corporate Management Team. The Corporate Management Team is made up of the Chief Executive, Corporate Directors and other officers who fulfil statutory roles.
- 13.3 The Monitoring Officer’s role is to make sure that the Council acts lawfully and that its actions do not give rise to maladministration or injustice.
- 13.4 The Section 151 Officer is responsible for the proper administration of the Council’s financial affairs.
- 13.5 Below the Chief Executive and Corporate Directors, the staff of the County Council are organised into services, each of which is led by an Assistant Director.
- 13.6 The officer structure is shown at Appendix B.

13.7 A glossary of terms is provided at 7.

# COUNTY COUNCIL POLITICAL GOVERNANCE ARRANGEMENTS



\* The following bodies consider a variety of matters relating to schools & education

\*\*This body will meet only when necessary and has not been appointed to.



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# Part 2: Guide to Decision Making

## 1 Principles of Decision Making

- 1.1 All decisions of the Council will be made in accordance with the following principles:
- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
  - (b) Due consultation and the taking of professional advice from Officers;
  - (c) Respect for human rights;
  - (d) A presumption in favour of openness and reasonableness
  - (e) Clarity of aims and desired outcomes; and
  - (f) An explanation of what options considered and the reasons for the final decision.

## 2 Types of Decision

- 2.1 The County Council's decision making structure is summarised below.

### **Decisions that can only be made by Full Council**

- 2.2 Decisions relating to the functions listed in Part 2A of this Constitution will be made only by the Council.

### **Key Decisions**

- 2.3 A key decision is significant in terms of expenditure or savings if it relates to a matter which exceeds £500,000 in value, except those decisions taken by:

- (i) the Chief Executive or Assistant Director - Finance under delegated authority in connection with treasury management;
- (ii) the Corporate Director – Children and Families Services or the Corporate Director – Health Care and Community Services under delegated authority in relation to care plans for individual children and young people or adults;

### OR

Significant in terms of its effect on communities living or working in an area comprising two or more electoral divisions if it would change, or proposes changes to, the way in which services are used or provided. Significant in this context means important or far reaching.

Examples would include proposals for changing the character of a school, closing down or opening Council services, and major changes in transport arrangements affecting an area. This is not an exhaustive list of, and in considering whether a decision is a 'key decision', for the purposes of the Regulations the Council seeks to apply the principle that the public in the area affected should not be taken by surprise by the proposed decision.

2.4 A decision taker may only make a key decision in accordance with the requirements of the Access to Information Procedure Rules set out in Part 5D of this Constitution. (paragraph 13-17).

2.5 Generally, key decisions will only be made by the Cabinet, a committee of the Cabinet, a joint committee, a Local Committee or a Corporate Director. No officer other than a Corporate Director can take a key decision. For the avoidance of doubt if a Corporate Director is not able to take a decision and the decision cannot wait then the Chief Executive may take the decision instead.

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

2.6 The Council meeting will follow the Council rules set out in Part 5A of this Constitution when considering any matter.

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

2.7 The Cabinet will follow the Cabinet Procedure Rules set out in Part 5B of this Constitution when considering any matter.

#### **Decision Making by Scrutiny Advisory Boards and the Health Scrutiny Committee**

2.8 Scrutiny Advisory Boards and the Health Scrutiny Committee will follow the Overview and Scrutiny Procedure Rules set out in Part 5C of this Constitution when considering any matter.

#### **Decision making by Other Committees established by the Council**

2.9 Local and Other Committees will follow those parts of the Council rules set out in Part 5A of this Constitution as apply to them. (paragraph 23).

# Part 2A: The Council

## 1 Summary

- 1.1 The 84 members of the County Council all meet together as the Full Council to decide the Council's overall policies and set the budget each year.
- 1.2 The meeting is presided over by the Council's Chair and run according to formal rules of debate.
- 1.3 Full Council is responsible for electing the Leader of the Council and taking constitutional decisions.

## 2. Functions of the full Council

- 2.1 The functions of the full Council are to:
  - (a) Adopt and change the Constitution (except that minor changes and corrections may be made by the Monitoring Officer in accordance with any powers delegated to him/her);
  - (b) Approve the annual Council Budget and Medium Term Financial Plan.
  - (c) Approve the Policy Framework and the strategies and policies that sit within it.
  - (d) Determine any decision which is contrary or not wholly in accordance with the council's Budget or Policy Framework, as set out in the Budget and Policy Framework Procedure Rules, unless urgent.
  - (e) Appoint and remove the Leader of the Council.
  - (f) Approve the Terms of Reference for Committees, deciding on their composition, and making appointments to them.
  - (g) Appoint the Chair and Vice Chair of Scrutiny Management Board;
  - (h) Appoint representatives to outside bodies, unless the appointment is an executive function or has been delegated by the Council;
  - (i) Adopt a Members' Allowances Scheme and Code of Conduct;
  - (j) Conferring the title of Honorary Alderman;
  - (k) Confirm the appointment of the Head of Paid Service; (paragraph 3)
  - (l) Confirm the appointment of the Returning Officer;

- (m) Make, amend, revoke, re-enact, or adopt byelaws, and promoting or opposing the making of local legislation or personal Bills;
- (n) Determine which local choice functions will be discharged by full Council.
- (o) All other matters which, by law, must be reserved to Council.

### **3 The Policy Framework**

3.1 The Policy Framework means the following plans and strategies:

- (a) Council Plan;
- (b) Local Transport Plan;
- (c) Youth Justice Strategic Plan;
- (d) Cumbria Minerals and Waste Local Plan;
- (e) Fire and Rescue Service Integrated Risk Management Plan;
- (f) Joint Municipal Waste Management Strategy;
- (g) Cumbria's Economic Ambition;
- (h) Public Health Strategy; and
- (i) Development Plan (including the Cumbria Sub-Regional Spatial Strategy and countywide Supplementary Planning documents, currently the Wind Energy Supplementary Plan).

3.2 Council is responsible for the adoption of the Policy Framework, and individual plans and strategies will be approved by Council and refreshed at intervals of not more than three years.

3.3 The Policy Framework is developed in line with the Budget and Policy Framework Procedure Rules contained within Part 5E of this constitution.

### **4 The Budget**

4.1 The budget includes the allocation of revenue and capital financial resources to services and projects, and the transfers to/from reserves and contingencies, the level of balances, and the grants available from Government.

- 4.2 It also includes the processes of approving the Council Tax base, setting the Council Tax for the forthcoming financial year, and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure, and the setting of virement limits.
- 4.3 The Council will normally approve as part of the budget the annual Treasury Management Strategy.
- 4.4 More details of the resource allocation and budget preparation procedure rules are set out in Part 5G of this Constitution.

## **5 Election and Terms of Members**

- 5.1 The regular election of members will be held on the first Thursday in May every four years (although on rare occasions the date may be altered to coincide with other National or European Elections). The terms of office of members will start on the fourth day after being elected, and will finish on the fourth day after the date of the next regular election.

## **6 Role and Function of the Chair of Council**

- 6.1 The Chair, and, in his/her absence, the Vice-Chair, will be elected by the full Council annually and will have the following roles and functions:
  - (a) **Ceremonial Role:** To represent the Council at events of a civic or ceremonial nature, whether organised by the Council or by some other body.
  - (b) **Chairing the Council Meeting:** To be responsible for chairing all full Council meetings.
  - (c) **Responsibilities:**
    - (i) To uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
    - (ii) To preside over meetings of the Council, so that its business can be carried out efficiently and with regard to the rights of members and the interests of the community;
    - (iii) To ensure that the Council meeting is a forum for the debate of matters of concern to the local community, and the place at which members who are not on Cabinet are able to hold Cabinet to account;
    - (iv) To promote public involvement in the Council's activities.

## **7 Proceedings of the full Council**

- 7.1 The full Council will conduct its proceedings in accordance with the Council Procedure Rules set out in Part 5A of this Constitution.

## **8 Membership**

8.1 The membership of the Full Council comprises all 84 members.

# Part 2B: The Cabinet

## 1 Summary

- 1.1 The Cabinet (comprising the Leader of the Council and up to 9 other members appointed by him/her) is the main decision making body of the County Council.
- 1.2 The Cabinet is responsible for all the functions of the County Council unless they are delegated elsewhere, either by law or under this Constitution.
- 1.3 The powers and functions of the Cabinet are known as “executive” functions.

## 2 Functions of the Cabinet

- 2.1 The functions of the Cabinet are to:
  - (a) Recommend to full Council the annual revenue budget and capital programme and Treasury Management Strategy.
  - (b) Recommend in-year changes to the budget that are reserved to full Council.
  - (c) Recommend to full Council the policies and strategies that form the Policy Framework.
  - (d) Consider and review reports on the implementation of the budget.
  - (e) Approve in-year changes to the budget and Capital Programme that are reserved to Cabinet;
  - (f) Approve receipt of external grant funding and authorise the council to act as Accountable Body on behalf of other organisations.
  - (g) Approve new Capital schemes up to £0.500m where funded from additional Government grants and/or grants or contributions from external bodies.
  - (h) Consider and review reports on the council’s performance.
  - (i) Approve the award of contracts that are reserved to Cabinet.
  - (j) Agree strategies and plans that are not in the Policy Framework and are not delegated to Corporate Directors.
  - (k) Take decisions to implement the County Council’s policies that are not delegated to Corporate Directors.
  - (l) Consider reports on significant changes or issues relating to service delivery.

- (m) Agree responses to consultation papers when appropriate.
- (n) Make appointments to and the payment of grants to outside bodies within its remit;
- (o) Receive and consider referrals from Local Committees and Scrutiny Advisory Boards, including referrals from the call-in process.
- (p) Have responsibility for Health & Safety for the Council as an employer.

2.2 The Cabinet may also act on behalf of the Cumbria Fire and Rescue Service for the purposes of the Fire and Rescue Services Act 2004.

2.3 No Cabinet functions are currently delegated to individual members of the Cabinet.

### **3 The Leader**

3.1 The Leader is elected by a simple majority at the annual Council meeting following the four-yearly county council elections. The Leader holds office for 4 years and remains in position until the annual Council meeting following the next county council elections, unless:

- (a) He/she resigns as Leader; or
- (b) He/she is disqualified or is otherwise removed from office; or
- (c) The Council passes a resolution to remove the Leader; or
- (d) He/she is no longer a member

(N.B. if the Leader is not elected or does not stand for election, he/she will remain in office during the period between the election and the annual Council meeting when a new Leader will be elected);

3.2 Where the Council decides (by a simple majority of those present) to remove the Leader from office a new Leader will either be elected at the meeting which takes that decision or at the next meeting.

3.3 Otherwise, in the event of there being a vacancy in the office of Leader, the Council shall elect a new Leader at its next ordinary meeting of full Council.

### **4 The Deputy Leader**

4.1 The Leader will appoint a member to be Deputy Leader of the Council. The Deputy Leader must be a member of the Cabinet.

4.2 The Deputy Leader will hold office until the end of the Leader's term of office, unless:

- (a) He/she resigns as Deputy Leader; or

(b) He/she is removed by the Leader; or

(c) He/she ceases to be a member of the Council.

4.3 If for any reason the Leader is unable to act or the office of Leader is vacant, the Deputy Leader will act in his/her place.

## **5 The Cabinet Members**

5.1 The Leader shall also appoint between one and eight other members of the Council to serve on the Cabinet.

5.2 If for any reason the Deputy Leader is unable to act or the office is vacant, the Cabinet will act in the Deputy Leader's place or will arrange for a member of the Cabinet to act in his/her place.

## **6 Changes in the Composition of the Cabinet**

6.1 The other Cabinet members shall hold office until:

(a) They resign from office as a Cabinet member; or

(b) They cease to be a member of the Council; or

(c) They are removed from office by the Leader; or

(d) The date of the Council's annual meeting in the year in which ordinary County Council elections take place.

6.2 The Leader shall notify the Assistant Director – Corporate Governance in writing of the size and composition of the Cabinet and of any subsequent changes and the date from which any changes are to take effect.

6.3 The Assistant Director – Corporate Governance must inform all members of the County Council of any changes to the size and composition of the Cabinet within seven working days of being notified by the Leader.

## **7 Proceedings of the Cabinet**

7.1 The Cabinet will conduct its proceedings in accordance with the Cabinet Procedure rules set out in Part 5B of this Constitution.

## **8 Membership**

8.1 The membership of the Cabinet (as at 23 October 2018) is set out in the table below.

<b>Name</b>	<b>Portfolio Holder</b>	<b>Responsibilities</b>
Mr SF Young (Labour)	Leader of the Council	Strategic Overview Corporate Governance Key External relations Communications Health and Wellbeing Board Strategic Overview Finance Commissioning and Procurement Enterprise and Innovation
Mrs A Burns (Labour)	Children's Services (Statutory Lead Member for Children's Services)	Children and Families Early Help and Partnerships
Ms Sue Anderson (Liberal Democrat)	Schools and Learning	Schools and Learning Inclusion
Mr KA Little (Labour)	Highways and Transport	Highways Transport Fleet Flood Protection Windermere Ferry
Mr Peter Thornton (Liberal Democrat)	Health and Care Services	Social Care Older Adults Physical Disabilities Learning Disabilities Mental Health Cumbria Care
Ms Celia Tibble (Labour)	Environment	Environment Planning Waste Trading Standards Energy Efficiency Countryside Access Coroners Health and Safety
Mr DE Southward (Labour)	Economic Development and Property	Economic Development Connecting Cumbria Nuclear Related Issues Property Skills Port of Workington

<p>Ms Deborah Earl (Labour)</p>	<p>Public Health and Community Services</p>	<p>Public Health Local Committees Libraries and Archives Registrars Adult and Community Learning Active Cumbria Welfare</p>
<p>Ms Janet Willis (Liberal Democrat)</p>	<p>Customers, Transformation and Fire &amp; Rescue</p>	<p>Customer Services IT and Digital Transformation Organisational Change People Management Member Development Community Safety Fire and Rescue Service Resilience Planning</p>

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# Part 2C: Overview and Scrutiny

## 1 Summary

1.1 Scrutiny Boards meet in public to discuss and make recommendations on the development of policy and to hold the Leader and Cabinet to account for their actions.

1.2 Scrutiny Boards are responsible for:

- (a) Reviewing and scrutinising decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (b) Making reports and/or recommendations to the full Council and/or the Cabinet and/or any Local Committee in relation to the functions of that body;
- (c) Considering any matter affecting the area or residents;
- (d) Exercising the right to call-in, for reconsideration, decisions made but not yet implemented by the Cabinet, a Local Committee or where a Corporate Director has taken a key decision; and
- (e) Establishing ad hoc task and finish groups to undertake specific tasks.

1.3 Any reference to Scrutiny Boards includes the following:

- (f) Scrutiny Management Board;
- (g) Scrutiny Advisory Boards for Children and Young People, Communities and Place, Adults;
- (h) Cumbria Health Scrutiny Committee;
- (i) Cumbria and Lancashire Joint Health Scrutiny Committee.

## 2 Functions of the Scrutiny Boards

2.1 In order to undertake their policy development and review role, the functions of the Scrutiny Boards are to:

- (a) Assist the Council and the Cabinet in the development of the budget and the policy framework by in-depth analysis of policy issues;
- (b) Conduct research, community consultation and other consultation;
- (c) Consider and implement mechanisms to encourage and enhance community participation in the development of policy;

- (d) Question members of the Cabinet and/or Local and Other Committees and County Council officers about their views on issues and proposals affecting the area;
- (e) Liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working;
- (f) Require representatives of relevant NHS bodies and relevant health service providers to attend the Cumbria Health Scrutiny Committee to discuss policy issues relating to the planning, provision and operation of health services in Cumbria.

2.2 In order to undertake their Scrutiny role, the functions of the Scrutiny Advisory Boards are to:

- (a) Review and scrutinise the decisions, initiatives and projects and performance of the Cabinet and/or Local and Other Committees and County Council officers in relation to individual decisions, initiatives and projects through the call-in process or pre-scrutiny;
- (b) Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- (c) Question members of the Cabinet and/or Committees and County Council officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- (d) Make recommendations to the Cabinet and/or appropriate Local and Other Committees and/or Council arising from the outcome of the scrutiny process;
- (e) Review and scrutinise the performance of other public bodies and partners in the area and invite reports from them by requesting (and in the case of relevant NHS bodies and relevant health service providers requiring them) to address the Scrutiny Board about their activities and performance; and
- (f) Question and gather evidence from any person with their consent.

### **3 Proceedings and Terms of Reference of Scrutiny Advisory Boards**

- 3.1 The terms of reference and procedure rules for all Scrutiny Advisory Boards are included in the Overview and Scrutiny Procedure Rules set out in part 5C (paragraph 15) of this Constitution.

#### **4 Membership**

- 4.1 Members of the Cabinet are not eligible to sit on Scrutiny Boards.
- 4.2 The membership of individual Scrutiny Boards are set out in the Overview and Scrutiny Procedure Rules (paragraph 15).

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# Part 2D: Local Committees

## 1 Summary

- 1.1 The six Local Committees are based on district council boundaries and their membership includes all members whose electoral divisions fall within the Local Committee area. The size of each Local Committee therefore varies.
- 1.2 The six Local Committees take decisions on a wide range of local issues within policies set by the Council and/or Cabinet.

## 2 Functions of Local Committee

- 2.1 Local Committees have Executive and Non-Executive functions. Executive decisions of Local Committees are subject to call-in.
- 2.2 Local Committees, in exercising their functions (both executive and non-executive), must comply with the Council's Budget and Policy Framework and the policies of the Council as adopted and endorsed by the Council or Cabinet.
- 2.3 A Local Committee is able to arrange for its functions to be carried out by an officer of the County Council.

### Executive Functions

- 2.4 The executive functions of the Local Committees are to:
  - (a) Produce an Area Plan and Area Delivery Plans which help shape services and places within the area.
  - (b) Consider and approve proposals for local economic initiatives.
  - (c) Receive quarterly reports on the performance management of services devolved to Local Committees.
  - (d) Provide oversight of the services provided or procured by the County Council, including assessing local needs for money advice (including debt advice support commissioned externally) across their area, the value of current services to local communities in the context of the Council's policies and plans and the needs for future provision and procurement services.
  - (e) Support the development of debt rescue and money advice including the development of Credit Unions across their area.

- (f) Encourage community engagement and enable communities to make their voices heard, the local committee will:
- (i) Make arrangements to secure dialogue with communities within their area by:
    - Establishing and operating Neighbourhood Forums
    - Working with district and parish councils, PCT, police and other community bodies serving the interests of their area.
    - Regularly review the operation of these arrangements and make changes to secure the improvement of community engagement throughout their area.
  - (ii) Consider and address issues raised through, liaison groups, parish and town councils and other community bodies and make relevant recommendations to Cabinet, and to partners.
  - (iii) Co-ordinate for the Council processes for consultation and engagement with local communities and arrange consultation with communities on matters referred to them by the Council, the Cabinet, another Committee or County Council officers.
  - (iv) Lead on the Council's local participatory budgeting work, ensuring that this activity positively contributes towards the prioritisation of budgets.
  - (v) Liaise on behalf of local communities with County Council departments and other public bodies and utilities.
  - (vi) Pursue local initiatives that will encourage and support local communities in their relationships with the Council, County Council services and with other public bodies.
  - (vii) Contribute to the formulation of all strategies, plans and policies of the Council with reference to the circumstances and characteristics of their area.
- (g) Exercise the powers and duties of the County Council in respect of school crossing patrols.
- (h) Determine applications for grants, loans and contributions to outside bodies, voluntary organisations, individuals or third sector organisations (which are not specifically delegated to an officer) within a policy approved by the Cabinet.

- (i) Approve grants on the recommendation of bodies or persons approved by the Local Committee to make recommendations in respect of grants for the Local Committee area, where the proposed grant is more than £5,000.
- (j) Make grants to third sector organisations to meet part or the whole of the cost to the organisation of leasing County Council premises within a policy approved by the Cabinet.
- (k) Make a financial subsidy to third sector organisations leasing premises from the Council.
- (l) Nominate local authority governors to maintained schools.
- (m) Determine the level and nature of community engagement and empowerment work in the area.
- (n) Annually review the impact of the Local Committee and wider County Council community consultation, engagement and empowerment activity within their area, and develop an action plan to improve the local effectiveness of these activities.
- (o) Allocate, in accordance with the guidance agreed by Cabinet (on 3 March 2011), funds from the 0-19 services budget in order to support positive activities, both targeted and mainstream, designed to improve outcomes for children and young people and reduce inequalities and, in doing so, ensure that projects should address at least one of the following criteria:
  - (i) Providing access to play, recreational, leisure or outdoor activities.
  - (ii) Providing access to care or educational activities.
  - (iii) Providing access to safe and enjoyable places for children and young people to go.
  - (iv) Providing access to holiday, weekend or out of school activities.
  - (v) Enabling children and young people's involvement and participation e.g. forum, youth council, engagement, empowerment, decision-making.
  - (vi) Supporting children and young people to take part in volunteering or community action.

The maximum individual amount that an officer may be authorised by the Local Committee to allocate shall be £5,000. Any allocation made by an officer must be reported to the next meeting of the Local Committee.

- (p) Approve Local member scheme proposals, i.e. projects which offer benefits to communities in the electoral division concerned and help resolve local issues already identified through local community engagement and in line with the priorities within the Council Plan, and specific local priorities within the Area Plan for the Local Committee area.
- (q) Determine and deliver the following programmes, within agreed budgets, policies and standards:
  - (i) General highway maintenance including routine cyclical maintenance, street lighting and hard surfacing urban rights of way.
  - (ii) Non-principal road structural maintenance. including; general minor works, danger reduction schemes, sustainable transport (cycling and walking) schemes individual value.
  - (iii) Grass cutting, street lighting, and verge maintenance.
  - (iv) Such part of the principal road structural carriageway maintenance budget as may be delegated by Council (the funds to be available only for this purpose).
  - (v) Maintenance of cycleways.
  - (vi) The delivery, within agreed budgets, of programmes for priority transport improvement schemes and principal road structural maintenance schemes.
- (r) Exercise the powers and duties of the Council relating to the maintenance of Public Rights of Way (subject to existing delegation agreements with other authorities).
- (s) Name and determine the opening hours of local libraries.
- (t) Apart from Local Strategic Partnerships or bodies fulfilling that role, to make appointments to outside bodies not dealt with by the Council or the Cabinet.
- (u) Exercise the powers and duties of the County Council, under Parts I, II, and IV of the Road Traffic Regulation Act 1984 within their Area, EXCEPT THAT:
  - (i) In relation to Traffic Regulation Orders ('TRO's') which involve the introduction of on-street parking charges , and those TRO's which involve the changes to restrictions to accommodate the on-street

parking charges, (which have been delegated to the Corporate Director - Economy and Highways) the Committee's role will be limited to the initial identification of areas and streets; and

- (ii) TROs which involve the introduction of charging for on-street residents permits, (which have been delegated to the Corporate Director - Economy and Highways) are excluded.
- (v) Authorise the making of applications to the Magistrates' Court for stopping up or diversion of highways within their Area, under the Highways Act 1980.
- (w) Consider and determine grants for public transport services within their area.
- (x) Exercise the Council's functions in respect of locally based Trusts.
- (y) Authorise any powers exercisable under the Cycletracks Act 1984.
- (z) Publish schemes for the making up and adoption of private streets under Part XI of the Highways Act 1980.
- (aa) Up until 20 October 2017 (when existing Gating Orders become Public Spaces Protection Orders), authorise the variation or revocation of existing gating orders where the restrictions imposed by the orders are no longer expedient in all the circumstances for the purpose of reducing crime or anti-social behaviour
- (bb) Consider any Public Spaces Protection Orders proposed to be made by the relevant District/Borough Council under sections 59 to 75 of the Anti-social Behaviour, Crime and Policing Act 2014, which restrict a public right of way.
- (cc) Apply to the Secretary of State for area designation under the Countryside and Rights of Way Act 2000.
- (dd) Determine the Council's position in respect of a proposal to establish a Business Improvement District in their area and to authorise an officer to exercise the Council's vote in the ballot relating to that proposal.

### **Non-Executive Functions**

2.5 The non-executive functions of the Local Committees are to:

- (a) Consider reports on resilience planning for their area;

- (b) At least annually to performance monitor the local impact of Council services and make recommendations to improve both the Council's performance and local social, environmental and economic well-being.
- (c) Consider all relevant inspections reports and to make recommendations to the Council, Cabinet or Scrutiny Boards as appropriate;
- (d) Support the development of community empowerment through locality working (incorporating community engagement, community governance and responsive management) within their area and to make recommendations to the Council, Cabinet or Scrutiny Boards as appropriate;
- (e) At least annually as part of its area planning work, receive community profiles – including local perceptions on services – which articulate local needs and opinion;
- (f) Engage in the review, development and redesign of neighbourhood services in their areas, and make recommendations to Council, Cabinet or Scrutiny Boards as appropriate;
- (g) Engage in area property reviews, in line with the Council's Asset Management Strategy.
- (h) Receive regular reports on local neighbourhood services and make recommendations to Council, Cabinet or Scrutiny Boards on improvements - in light of knowledge about local communities, needs and opportunities in the area.

### 3 Membership

3.1 The membership of the Local Committees is set out in the table below.

County Council Local Committee for Allerdale	<b>Membership:</b> The 16 County Councillors elected for the Allerdale area
County Council Local Committee for Barrow in Furness	<b>Membership:</b> The 11 County Councillors elected for the Barrow in Furness area
County Council Local Committee for Carlisle	<b>Membership:</b> The 18 County Councillors elected for the Carlisle area

County Council Local Committee for Copeland	<b>Membership:</b> The 12 County Councillors elected for the Copeland area
County Council Local Committee for Eden	<b>Membership:</b> The 9 County Councillors elected for the Eden area
County Council Local Committee for South Lakeland	<b>Membership:</b> The 18 County Councillors elected for the South Lakeland area

N.B. for Local Committee Budget Transfers see part 5G Financial Standing Orders FR2 'Control of Resources' paragraph 10 "Local Committee Budget Transfers".

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# Part 2E: Audit & Assurance Committee

## 1 Summary

- 1.1 The purpose of the Audit & Assurance Committee is to provide independent assurance to Members on the adequacy of the risk management framework and the internal control environment.
- 1.2 The Committee provides an independent review of Cumbria County Council's governance, risk management and control frameworks and oversees the financial reporting and annual governance processes.
- 1.3 The Committee is also responsible for overseeing internal audit and external audit, helping to ensure efficient and effective assurance arrangements are in place.

## 2 Functions of the Audit & Assurance Committee

- 2.1 The functions of the Audit and Assurance Committee are to:

### **Governance, Risk and Control**

- (a) Review the council's corporate governance arrangements including the Annual Governance Statement against the good governance framework.
- (b) Consider the council's arrangements to secure value for money and review assurances and assessments on the effectiveness of these arrangements.
- (c) Consider the council's framework of assurance and ensure that it adequately addresses the risks and priorities of the council and in so doing, monitor the effective development and operation of risk management in the council.
- (d) Consider reports on the effectiveness of internal controls and monitor the implementation of agreed actions.
- (e) Review the assessment of fraud risks and potential harm to the council from fraud and corruption.
- (f) Monitor the counter-fraud strategy, actions and resources and effectiveness of the whistleblowing arrangements.

### **Internal Audit**

- (g) Approve the internal audit charter.
- (h) Approve the risk based internal audit plan, including internal audit's resource requirements, the approach to using other sources of assurance and any work required to place reliance upon these other sources.

- (i) Make appropriate enquiries of both management and the head of internal audit to determine if there are any inappropriate scope or resource limitations.
- (j) Consider reports from the head of internal audit on internal audit's performance during the year, including the performance of external providers of internal audit services. These will include:
  - (i) Updates on the work of internal audit including key findings, issues of concern and action in hand as a result of internal audit work.
  - (ii) Regular reports on the results of the Quality Assurance and Improvement Programme.
  - (iii) Reports on instances where the internal audit function does not conform to the Public Sector Internal Audit Standards and Local Government Application Note\*, considering whether the non-conformance is significant enough that it must be in the Annual Governance Statement.
  - (iv) To receive reports outlining the action taken where the head of internal audit has concluded that management has accepted a level of risk that may be unacceptable to the authority or there are any concerns about progress with the implementation of agreed actions.
- (k) Consider the head of internal audit's annual report specifically:
  - (i) The statement of the level of conformance with the Public Sector Internal Audit Standards and Local Government Application Note and the results of the Quality Assurance and Improvement Programme that supports the statement – these will indicate the reliability of the conclusions of internal audit.
  - (ii) The opinion on the overall adequacy and effectiveness of the council's framework of governance, risk management, and control together with the summary of the work supporting the opinion – these will assist the committee in reviewing the Annual Governance Statement.
- (l) Consider a report on the effectiveness of internal audit to support the Annual Governance Statement.

\*The Local Government Application Note is a CIPFA publication which accompanies the Public Sector Internal Audit Standards (PSIAS) and provides further detail and clarification for Local Authorities in applying the PSIAS.

## **External Audit**

- (m) Consider the external auditor's annual letter, relevant reports, and the report to those charged with governance.

- (n) Consider specific reports as agreed with the external auditor.
- (o) Comment on the scope and depth of external audit work and to ensure it gives value for money.

### **Financial Management and Reporting**

- (p) Review the annual statement of accounts. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the council.
- (q) Consider proposed amendments to the Council's Financial Regulations before their adoption by the Council.
- (r) Scrutinise the Treasury Management Strategy and through review gain assurance that systems of Governance and control for Treasury Management are effective.

### **Accountability Arrangements**

- (s) Report to full council on a regular basis on the committee's performance in relation to the terms of reference and the effectiveness of the committee in meeting its purpose.
- (t) Liaise as necessary with Cabinet, Scrutiny and other functions to maximise the value of review work within the Council.
- (u) Ensure that adequate training is provided internally and externally to enable members to fulfil their role.

## **3 Membership**

- 3.1 The membership of the Audit and Assurance Committee comprises of 7 members.

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# Part 2F: Cumbria Health and Wellbeing Board

## 1 Summary

- 1.1 The Health and Wellbeing Board exists to provide a strategic platform for partners to work better together to ensure that everyone in Cumbria is able to benefit from improvements in health and well-being.

## 2 Functions of the Health and Wellbeing Board

- 2.1 The functions of the Health and Wellbeing Board are to:

- (a) Provide a structure for strategic local planning and accountability of health and wellbeing related services across a range of sectors and providers.
- (b) Assess the needs of the local population and lead the statutory enhanced joint strategic needs assessment ('JSNA').
- (c) Formulate and ensure the delivery of a Joint Health and Wellbeing Strategy.
- (d) Promote integration and partnership across areas through promoting joined-up working across the NHS, social care and public health.
- (e) Set the direction for health and wellbeing improvements in Cumbria while maintaining current programmes through transition.
- (f) Support and encourage strong partnership working between local organisations in the six localities in Cumbria involved in health and wellbeing.
- (g) Respond to the NHS Commissioning Board when views are sought regarding the Clinical Commissioning Group ('CCG').
- (h) Improve the transparency and accountability to local people of services, organisations and decision making connected to health and wellbeing.
- (i) Support joint commissioning and pooling of budgets and lead commissioner arrangements.
- (j) Oversee and review performance in the delivery of health and wellbeing improvements and outcomes and be accountable for the overall strategic performance management of agreed countywide health and wellbeing outcomes.

- (k) Actively engage with the other key partnerships to ensure achievement of outcomes in all agreed areas and to extend the reach of the Joint Health and Wellbeing Strategy by ensuring alignment with other strategies and plans.
- (l) Encourage wide engagement of partners throughout the Health and Wellbeing partnership structure by ensuring involvement in consultations, stakeholder events, good practice sharing, and task and finish groups.
- (m) Ensure the CCG plans are consistent with the agreed Joint Strategic Needs Assessment.

### **3 Voting**

- 3.1 All members of the Health and Wellbeing Board are voting members.

### **4 Membership**

- 4.1 The membership of the Health and Wellbeing Board comprises of:
  - Leader of the County Council (Chair);
  - Chair of the CCG (Vice Chair);
  - Accountable officer from the CCG;
  - A representative of Healthwatch Cumbria;
  - County Council's Corporate Director - Health Care and Community Services;
  - County Council's Corporate Director – Children and Families Services;
  - County Council's Assistant Director – Public Health and Communities;
  - County Council Cabinet member for Health and Care Services;
  - County Council Cabinet member for Children's Services;
  - County Council Cabinet member for Public Health and Communities;
  - A representative from NHS England;
  - A representative of the six District Councils;
  - The Chair of the North Cumbria University Hospitals Trust;
  - The Chair of the University Hospital Morecambe Bay NHS Foundation Trust; and
  - The Chair of the Cumbria Partnership NHS Foundation Trust.

### **5. Substitution**

- 5.1 Except as provided in 5.2, 5.3 and 5.4 each member of the Health and Wellbeing Board may appoint one named substitute and must notify the County Council of the appointment.

5.2 The Leader of the Council may nominate named elected member substitutes equal in number to the number of County Council members appointed to the Board. County Council members are nominated by the Leader of the Council and appointed by the County Council.

5.3 The District Councils may between them appoint one named substitute.

5.4 Where members of the Board are officers of an organisation rather than elected members, they are permitted to nominate up to two named substitutes but only one can attend at any time.

5.5 Substitute members must comply with all the requirements of the Council's Code of Conduct, including the registration of personal interests.

5.6 A member of the Health and Wellbeing Board who is unable to attend a meeting of the Board (or one of its committees) must notify the Council in writing (which includes by email) before the start of the meeting, giving the name of the substitute member who will attend in his/her place.

5.7 A substitute member has the same voting rights and responsibilities at meetings of the Board as the member they are substituting for, provided the Board Member is not in attendance.

5.8 A substitute member will be counted for the purpose of deciding whether a quorum is present unless he/she is also attending the meeting as a Board member.

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# **Part 2G: Development Control and Regulation Committee**

## **1 Summary**

- 1.1 The Development Control and Regulation Committee deals with applications for planning permission for waste disposal and mineral extraction, developments proposed by the County Council, public rights of way and commons registration matters.

## **2 Functions of the Development Control and Regulation Committee**

- 2.1 The functions of the Development Control and Regulation Committee are to determine or exercise the following powers:
- (a) Town and Country Planning and Development Control (functions specified in Part A to Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000) (“the Functions Regulations”), including the power to make appropriate assessments under the Conservation (Natural Habitats and Conservation) Regulations 1994; such planning functions include responding to strategic consultations from district councils under paragraph 7 of Schedule 1 to the Town and Country Planning Act 1990 and to consultations on windfarm proposals under the Electricity Act 1989 and for off-shore developments.
  - (b) Powers to approve local impact reports under section 60(3) of the Planning Act 2008 in relation to nationally significant infrastructure projects.
  - (c) Following approval of local impact reports, refer these to the Cabinet to inform this Committee when considering what representations it wishes to make on behalf of the Council in respect of proposals and applications for development consent in respect of nationally significant infrastructure projects.
  - (d) Powers relating to the preservation of trees.
  - (e) Powers to make limestone pavement orders.
  - (f) Commons Registration:
    - (i) The registration of common land or town and village greens, and to register the variation of rights of common as set out in Schedule 1 to the Functions Regulations.

- (g) Public rights of way:
  - (i) Power to create footpaths and bridleways.
  - (ii) Power to stop up footpaths and bridleways.
  - (iii) Power to divert footpaths and bridleways.
  - (iv) Power to dedicate new public rights of way.
  - (v) Power to assert and protect the rights of the public to use and enjoyment of highways, including byways open to all traffic, footpaths, bridleways and/or restricted byways.
  - (vi) Powers relating to the removal of things so deposited on highways as to be a nuisance.
  - (vii) Duty to keep a definitive map and statement under review.
- (h) Public safety:
  - (i) To receive reports regarding safety of sports grounds on an annual basis and also in circumstances where the Corporate Director – Economy and Highways has taken urgent decisions under his delegated powers in respect of safety of sports grounds.
- (i) Countryside and Rights of Way Act 2000:
  - (i) Power to authorise proceedings under Section 14 (enforcement of misleading notices on access land).
  - (ii) Power to authorise procedures under Section 17 (making and enforcement of Byelaws regulating access land).
  - (iii) Power to authorise procedures under Sections 34 to 40.

### **3 Membership**

- 3.1 The membership of the Development Control and Regulation Committee comprises of between 14 and 18 members of the County Council.
- 3.2 Members need to have regard to the Code of Good Practice for Members and Officers involved in the planning process and the Code of Practice for the Delegations of Planning and Enforcement Functions.

Part 40 'Code of Good Practice for Members and Officers involved in the Planning Process' of this Constitution will also be relevant to members of the Development Control and Regulation Committee.

# Part 2H: Cumbria Pensions Committee

## 1 Summary

- 1.1 The Pensions Committee is responsible for carrying out the Council's functions as the delegated decision making body of the Administering Authority for the management of the Cumbria Local Government Pension Scheme ("the Pension Fund") which includes its involvement in the Border to Coast Pension Partnership (BCPP) as the Council's approved Pension Pool.

## 2 Functions of the Pensions Committee

2.2 The functions of the Pensions Committee are to:

- (a) Submit the Pension Fund Accounts to the Council in line with current Financial Standing Orders.
- (b) Submit reports to the Council (as a minimum three times a year) updating it on the governance, risk monitoring and performance of the Pension Fund following meetings of the Committee.
- (c) Receive and where necessary instruct corrective action, in response to both internal and external auditor reports.
- (d) Approve the formal triennial actuarial valuation of the Pension Fund, with due consideration being given to the desirability of maintaining as nearly constant a common contribution rate as possible and the requirement to secure the solvency of the Pension Fund.
- (e) Approve the investment or disinvestment in any assets of the portfolio where the assets meet the criteria set out in the Fund's asset allocation strategy.
- (f) Annually review (as a minimum) and approve any amendments to the statutory policy statements as required by Local Government Pension Scheme Regulations.
- (g) Annually review the Investment Strategy Statement and oversee the performance of all investment managers in the delivery of the Investment Strategy.
- (h) To oversee compliance by the Council in its capacity as shareholder of BCPP Limited and to determine the Council's position as shareholder on decisions of the company that are reserved to the shareholders.
- (i) Produce and maintain an Administration and Communications Policy for the Pension Scheme for the admission of employing bodies as

contributors to the Scheme; that fulfils all communication and consultation requirements with employers of the Scheme.

- (j) Prior to the commencement of the financial year to approve an annual business plan and associated budget for that year to cover all matters of expenditure to be charged to the Pension Fund. To review performance against this throughout the year.
- (k) Approve and annually review the Pension Fund's training policy to ensure those charged with the management of the Fund (members and officers of the County Council) are appropriately experienced and qualified.
- (l) Receive minutes and consider recommendations from and ensure the effective performance of the Pension Forum, BCPP Joint Committee, Pensions Investment Sub-Group and the Cumbria Local Pensions Board.
- (m) Formulate and review tolerance ranges to delegate to the Pensions Investment Sub-Group to allow them to implement tactical changes to the investment strategy or asset allocation. Maintain and review an appropriate management and governance structure of the Pensions Investment Sub-Group to achieve the effective delivery of the Pension Fund objectives.
- (n) Contribute nationally to the development of policy and regulation in regards to the Local Government Pension Scheme and wider public sector pensions policy.

### **3 Operating Structure of the Pensions Committee**

3.1 The Pensions Committee is a committee constituted under Section 101 of the Local Government Act 1972 therefore key functions and terms of the Committee, including the following, are as detailed elsewhere in the Constitution:

- (a) Appointment the chair / vice chair;
- (b) Reimbursement members allowances;
- (c) Quoracy;
- (d) Code of conduct;
- (e) Conflicts of interest; and
- (f) Publication and data protection.

- 3.2 In addition to these, to ensure compliance with pension-specific regulations and guidance, the functions and terms of reference of the Pensions Committee also include:-

### **Knowledge and Understanding**

- (a) To ensure that members involved in the governance and monitoring of the Pension Fund meet the requisite knowledge and skills requirements. A general level of attendance at meetings and training events is required.
- (b) Nominated substitutes are permitted to represent members at meetings provided that they have completed the minimum training requirement as set out in the Pension Funds training policy.

### **Creation of Working Parties / Sub-Groups**

- (a) The Committee have the delegated authority to establish working parties / sub-groups to more effectively consider matters in more detail, these working groups will have no power to make decisions.
- (b) Sub-Groups which have delegated decision making powers can only be established with the approval of Council.

### **Role of Advisors**

- (a) The Committee is required to ensure all members have access to appropriate professional advice and representation prior to making any decisions concerning the general management of the Pension Fund.
- (b) To assist in the above the Committee will be required to appoint industry specific advisors to enable it to fulfil its obligations e.g. fund actuary; tax specialists; etc. these contracts are to be awarded through the Councils normal procurement process and once appointed will be managed on behalf of the Committee by the Section 151 Officer.
- (c) The Committee may also appoint independent advisors, their role being to assist and support members in their understanding and challenge of either service providers or officers of the County Council.
- (d) Independent advisors will be appointed by the members, and thereafter report directly to the Chair of the Pensions Committee.
- (e) All members of the Pensions Committee have the right to access the support of independent advisors appointed to the Pensions Fund, however due regard has to be taken of securing value for money and as such whether in the first instance officers of the County Council could provide the assistance required.

- (f) On appointment all independent advisors will be required to sign a declaration statement outlining any potential conflicts they may have. Once appointed they must immediately report any changes of circumstance directly to the Chair of the Pensions Committee for their consideration and further action should this be necessary.

## **4 Membership**

- 4.1 The membership of the Pensions Committee comprises 8 members of the County Council plus 1 co-opted district councillor representing the 6 district councils in Cumbria and 2 non-voting employee representatives. Equal weight will be given to each members vote with the Chair having the casting vote should the need arise.
- 4.2 The Committee will meet as a minimum quarterly.

# Part 2I: Staffing Committee

## 1 Summary

- 1.1 The Staffing Committee acts as the final internal appeal body to hear and determine appeals for dismissal for misconduct and capability.

## 2 Functions of the Staffing Committee

- 2.1 The functions of the Staffing Committee are to:

- (a) Act as the final internal appeal body to hear and determine appeals, in accordance with relevant County Council procedures for:

(i) Dismissal for misconduct;

(ii) Dismissal for capability.

(iii) Action short of dismissal in respect of the Head of Paid Service, Monitoring Officer and S151 Officer (Statutory Officers)

(iv) A decision of the Chief Officer Committee in respect of grievances against the Head of Paid Service.

- 2.2 The Staffing Committee does not consider appeals from Chief Officers, or Schools and Fire and Rescue service staff where other local or national arrangements for an appeal process apply.

- 2.3 To determine or make recommendations on, as appropriate, any other matter referred to the committee by the Executive Director – Corporate, Customer and Community Services.

## 3 Membership

- 3.1 The membership of the Staffing Committee comprises 5 members drawn from a panel of 9 members of the County Council to include at least one member of the Cabinet.

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# Part 2J: Standards Committee

## 1 Summary

- 1.1 The Standards Committee will meet at least once a year and then on an ad hoc basis as required and is responsible for maintaining high standards of conducts by members, advising on the revision and operation of the member code of conduct and investigating any complaints under the code.

## 2 Functions of the Standards Committee

- 2.1 The functions of the Standards Committee are to:

- (a) Promote and maintain high standards of conduct by councillors ('members') and co-opted members.
- (b) Assist the members and co-opted members to observe the Members' Code of Conduct arranging training as necessary.
- (c) Advise the Council on the revision of the Members' Code of Conduct.
- (d) Grant dispensations to members and co-opted members from requirements relating to interests set out in the Members' Code of Conduct that have not been delegated to the County Council's Monitoring Officer. (paragraph 6.10)
- (e) Receive referrals from the Monitoring Officer in relation to urgent dispensations granted under his/her delegated powers.
- (f) Deal with written allegations that a member or co-opted member (or former member or co-opted member) of the County Council has failed, or may have failed, to comply with the Members' Code of Conduct.
- (g) Amend from time to time as it considers appropriate the arrangements to be followed in the initial consideration, investigation or hearing of any complaint of a breach of the Members' Code of Conduct (including the assessment criteria for determining whether any complaint should be investigated).
- (h) Take any of the actions set out in the next section to these delegations in respect of any member who after investigation the Committee decides has failed to comply with the Members' Code of Conduct.

- 2.2 Actions delegated to the Standards Committee on a finding that a member has failed to comply with the Code of Conduct are:

- (a) Issue a formal censure;

- (b) Recommend to Council the issue of a formal censure by the Council;
- (c) Refer its findings to Council for information;
- (d) Publish its findings by such means as the Committee thinks fit;
- (e) Recommend to the Council that the member be removed from any or all Committees or Sub-Committees (subject to the approval of the member's Group Leader if applicable);
- (f) Recommend to the Council that the member be removed from being the chair or vice –chair of any Committees or Sub-Committee;
- (g) Recommend to the Leader of the Council that the member be removed from the Cabinet, or from particular portfolio responsibilities;
- (h) Recommend to the Council (or to the Cabinet or any Committee of the Council) that the member be removed from one or more outside appointments to which she/he has been appointed or nominated by the Council; and
- (i) Instruct the Monitoring Officer to offer training to the member.

### **3 Membership**

- 3.1 The Standards Committee will be composed of five members of the County Council (excluding the Leader and Deputy Leader), and two persons who are not a member or officer of the Council (independent members).
- 3.2 No more than one Cabinet member may sit on the Standards Committee.
- 3.3 The Chair and Vice-Chair will be the independent members referred to above.

# Part 2K: Workington Harbour Board

## 1 Summary

- 1.1 Workington Harbour Board was established by the County Council as a Committee of the Council (under Section 102 of the Local Government Act 1972) to carry out the Council's functions in respect of the Port of Workington under the Harbours Act 1964 and the Workington Harbour Act 1974 (as amended).
- 1.2 The County Council, as Port Authority for the Port of Workington and as Competent Harbour Authority, operates the Port and Pilotage under the powers granted to it by the Workington Harbour Acts and Orders 1957 to 1999 and the Pilotage Act of 1987, and is a Statutory Harbour Authority under the Harbours Docks and Piers Clauses 1847 and subsequent Acts.
- 1.3 The Authority is responsible for all areas within the Harbour limits prescribed in Section 12 (Harbour limits) of the Workington Harbour and Dock (Transfer) Act 1957 and the Workington Harbour Revision Order 1999.

## 2 Functions of the Workington Harbour Board

- 2.1 The functions of the Workington Harbour Board are to:
  - (a) Exercise the County Council's functions in respect of the Port of Workington under the Harbours Act 1964 and the Workington Harbour Act 1974 (as amended).

## 3 Membership

- 3.1 The membership of the Workington Harbour Board comprises 12 members, including 4 members of the County Council, as follows:
  - Chair – independent appointment;
  - Joint Deputy Chair – County Council Councillor;
  - Joint Deputy Chair – Allerdale Borough Councillor;
  - Two Allerdale Borough Councillors;
  - Four County Councillors; and
  - Three independent members (including a member nominated by a suitable economic development body based in Cumbria, such body to be agreed by the Corporate Director – Economy and Highways following consultation with the relevant County Council Cabinet member).

## 4 Delegation of Functions to Sub-Committee

- 4.1 The functions of the Sub-Committee are to deal with any matters of urgency that cannot wait until the next meeting of the Workington Harbour Board.

4.2 The membership of the Sub-Committee comprises the Chair, the two joint Deputy Chairs, and the representative from the agreed economic development body.

# Part 2L: Chief Officers' Committee

## 1 Summary

- 1.1 The Chief Officer Committee is responsible for the recruitment of the Council's most senior officers, subject to the requirements of relevant legislation and Council procedures. The Committee is also responsible for certain grievance and disciplinary processes in respect of these officers and for agreeing any severance arrangements for them (in so far as such matters are not delegated to Officers).

## 2 Functions of the Chief Officers' Committee

- 2.1 The functions of the Chief Officers' Committee are to:

- (a) Make recommendations to the Council on the appointment of the Chief Executive ('Head of Paid Service') to approve the terms and conditions of appointment of the Chief Executive, and to agree any changes subsequently.
- (b) Appoint and determine terms and conditions of employment for the following officers ("Chief Officers"):
- The monitoring officer designated under section 5(1) of the Local Government and Housing Act 1989 ('Monitoring Officer')
  - The director of children's services appointed under section 18 of the Children Act 2004;
  - The director of adult social services appointed under section 6(A1) of the Local Authority Social Services Act 1970 ;
  - The director of public health appointed under section 73A(1) of the National Health Service Act 2006;
  - The officer having responsibility, for the purposes of section 151 of the Local Government Act 1972 ('Section 151 Officer')
  - A person for whom the head of the authority's paid service is directly responsible;
  - A person who, as respects all or most of the duties of his/her post, is required to report directly or is directly accountable to the head of the authority's paid service (but this does not include any person whose role is mainly administrative);

Subject to the executive objection procedure set out in the Employment Procedure Rules.

- (c) Consider and determine disciplinary action in relation to the Head of Paid Service, Monitoring Officer and Section 151 Officer, using the Council's disciplinary and grievance procedures and where appropriate recommend dismissal to full Council;

- (d) Consider and determine appeals against disciplinary action, dismissal and grievances in respect of Chief Officers except where other local or national arrangements for an appeal process apply;
  - (e) Consider and determine grievances raised against the Head of Paid Service using the Council's existing grievance procedure;
  - (f) Consider and determine whether the Head of Paid Service should be suspended either immediately or following a preliminary investigation into his or her conduct (and to review the suspension periodically);
  - (g) Make decisions in relation to the compulsory redundancy of the Head of Paid Service and Chief Officers.
  - (h) Consider and determine applications for voluntary redundancy/early retirement from the Head of Paid Service and Chief Officers.
- 2.2 All appointments and disciplinary action will be in accordance with the Local Authorities (Standing Orders) Regulations 2001 and Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- 2.3 Make decisions in relation to proposed voluntary redundancy/ early retirement or severance packages in line with existing policies of the Council. Where a package with a value of £100,000 or more (including any pension strain) is being considered and the Committee has discretion in respect of whether or not to allow such a package, the Committee may decide to refer the matter to Council if it considers this appropriate.

### **3 Membership**

- 3.1 The membership of the Chief Officers' Committee comprises eleven members of the County Council, in political balance including a minimum of two members of the Cabinet.
- 3.2 There will be a core membership of five members and this core membership will deal with all the functions of the committee save where paragraph 3.13 is relevant.
- 3.3 Chief Officers' Panels of three or five members will from time to time be drawn from the full membership, to include one member of Cabinet, to deal, with individual matters under the terms of reference including grievance and disciplinary issues.
- 3.4 Members should have received appropriate training and development to be appointed to this Committee.
- 3.5 In the event that the Committee hears a matter that could result in the dismissal of a Statutory Officer then the Independent Persons Panel shall be invited to meet concurrently with the relevant Panel.

# Part 2M: Constitution Review Group

## 1 Summary

- 1.1 The Constitution Review Group is responsible for making recommendations to full Council in relation to the updating and review of the County Council's written Constitution.

## 2 Functions of the Constitution Review Group

- 2.1 The functions of the Constitution Review Group are to:
- (a) Keep under review, consider and recommend amendments on the County Council's written constitution to ensure compliance with all relevant legislation and best practice.
- 2.2 It is the responsibility of the full Council to approve any amendments to the Council's Constitution except that minor changes and corrections may be made by the Monitoring Officer.

## 3 Membership

- 3.1 The membership of the Constitution Review Group comprises of 10; 9 County Councillors, which will include the Chair of the Scrutiny Management Board, and the Monitoring Officer (non-voting). Whilst this group is not a Committee within the definition of the Local Government Act 1972, the county councillors will be appointed, as far as possible, in line with the political proportionality of the Council.

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# Part 2N: Corporate Parenting Board

## 1 Summary

- 1.1 The Corporate Parenting Board is responsible for the welfare, wellbeing and promoting the best interests of all children and young people who are looked after by and care leavers of the County Council.

## 2 Functions of the Corporate Parenting Board

- 2.1 The functions of the Corporate Parenting Board are to:

- a) Consider direction and priorities in relation to children and young people who are looked after and care leavers; and lead the development of the policies and strategies of the Council, and where appropriate, partner agencies, in respect of looked after children.
- b) Monitor progress in delivering agreed policies and strategies in relation to children looked after and care leavers; and monitor and challenge performance, using a range of performance data and quality assurance information.
- c) Provide assurance that delivery is achieving desired outcomes in respect of children and young people who are looked after and care leavers. This is to include arrangements to ensure placements are appropriate to children's needs, how foster families are supported, arrangements for leaving care, the impact on outcomes for children of the Council's early help strategy, performance in respect of adoption, and achievement of timescales in relation to the planning of care.
- d) Review such policies, strategies and plans of the Council that the Board considers appropriate, to assess whether they make explicit their contribution to improving outcomes for children and young people who are looked after and care leavers, and to make recommendations to elected Members and officers as to how such plans could better meet this requirement.
- e) Monitor the implementation of the Council's Pledge to Young People in Care, ensure the participation of children and young people via the Children in Care Council, and make proposals to the Lead Member for Children's Services/Cabinet for its development.
- f) Scrutinise reports on issues raised through statutory visits and inspections relating to children looked after, and hold services to account.

- g) Seek assurances over the placement of children and young people out of county, and the placement of children and young people from out of county in Cumbria.
- h) Make representations such as the Board considers appropriate to the Lead Member for Children's Services/Cabinet and the Director of Children and Families Services.
- i) Set high expectations for, and promote the best interests of, all children and young people who are or have been looked after and care leavers. This includes ensuring services are sensitive to the culture, ethnic origin and identity of children and young people who are looked after and care leavers, and addressing any issues related to discrimination or unfair treatment.
- j) Promote the role of all county councillors as corporate parents, including identifying and meeting the development needs of elected Members, to enable them to understand and carry out their corporate parenting role.
- k) Nominate one of its members to sit on the Governance Board of the Virtual School for looked after children.
- l) Make a written report at least annually, to Cabinet, Council and Scrutiny, on the Board's activities, and to make the report available to District Councils to assist them in delivering on their Corporate Parenting role.

### **3 Scrutiny and other Boards**

- 3.1 The Board may make recommendations to the Scrutiny Management Board and Health Scrutiny Committee for scrutiny of any matter within its terms of reference. Acceptance of such recommendation shall be at the discretion of the Scrutiny Management Board or the Health Scrutiny Committee.
- 3.2 The Board may also refer matters relating to the health and wider well-being of children looked after and care leavers to the Health and Wellbeing Board and the Children's Trust Board; and may consider the strategies and priorities of those Boards in so far as they affect the lives of children looked after and care leavers.

### **4 Sub-Groups**

- 4.1 The Board may establish one or more sub-groups to carry out detailed work in respect of any aspect of its terms of reference and report to the Board.
- 4.2 The Board may invite participation in a sub-group from any of the persons or representatives of organisations that are eligible to be invited to or co-opted on to the Board.

## **5 Membership**

- 5.1 The Corporate Parenting Board will comprise 12 members, including the Chair and Vice Chair. Political proportionality does not apply but the membership must include at least 1 member of each main group.
- 5.2 The Cabinet Member Children's Services (the lead member for Children's Services) will be appointed by full Council as Chair.
- 5.3 The Vice Chair is also a full Council appointment.
- 5.4 The Board may invite to attend any of its meetings and/or co-opt as members of the Board:
  - (i) Representatives from any Council Directorate that the Board considers can usefully contribute to its work.
  - (ii) Representatives of statutory and non-statutory partner organisations.
  - (iii) Representatives of young people.
  - (iv) Carers of looked after children.

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# Part 20: Pensions Investment Sub-Group

## 1 Summary

- 1.1 The Investment Sub-Group is expected to operate within the remit of the Cumbria Local Government Pension Scheme Investment Strategy Statement (approved annually by the Pensions Committee) and any tolerance levels for the operation of the Investment Sub-Group laid down by the Pensions Committee.

## 2 Functions of the Investment Sub-Group

- 2.1 The functions of the Investment Sub-Group are to:

- (a) Provide an update report to Pensions Committee outlining activity in the preceding period, any decisions made by the Section 151 Officer and the proposed work schedule for the next period.
- (b) Carry out monitoring at an individual manager level of the performance of the Pension Fund's investment managers (including assets held by Border to Coast Pension Partnership Limited) and to escalate any matters of concern to the Pensions Committee.
- (c) Consider and continually review an investment management structure for the Pension Fund and to be responsible for assisting the Section 151 Officer in:
  - (ii) The investment or disinvestment in any assets with a value of less than 5% of the portfolio where the assets meet the criteria set out in the Fund's asset allocation strategy;
  - (ii) The appointment and termination of investment managers with holdings of less than 5% of the portfolio; and
  - (ii) The establishment and review of performance benchmarks and targets for investment.

## 3 Operating Structure of the Investment Sub-Group

- 3.1 The operating structure of the Investment Sub-Group is as follows:

- (a) The Sub-Group will meet as a minimum four times a year.
- (b) To help fulfil a function of this Sub-Group, which is to assist the Section 151 Officer to enact investment decisions more nimbly, additional meetings can be convened by any two members of the Sub-Group with five working days' notice.

- (c) As a non-decision-making body the Sub-Group has no authority to establish working parties / sub-groups.

## **4 Membership**

4.1 The membership of the Investment Sub-Group will comprise:

- (a) Three members of the Pensions Committee (including the Chair of the Committee). Members, excluding the Chair, will be selected by the Pensions Committee.
- (b) Independent advisors (or investment consultants to the Pensions Fund at the invitation of the Sub Group if the independent advisors are unable to attend).
- (c) Two senior officers of the County Council with responsibilities for the management of the Pensions Fund including the Section 151 Officer and the officer with the responsibility of senior investment officer to the Pensions Fund

4.2 At any meeting where consideration by the Sub-Group of a recommendation to invest or disinvest in assets of the fund or change an investment manager is considered the following must be available:

- (a) At least two of the three elected members.
- (b) At least one of either the Section 151 Officer or the Senior Manager with the responsibility for the Pensions Fund.
- (c) At least one external advisor.
- (d) Attendance may be by electronic media, provided that the prior approval of the Chair has been secured

# Part 2P: Cumbria Local Pensions Board

## 1 Summary

- 1.1 The Cumbria Local Pensions Board is responsible for assisting the Administering Authority of the Cumbria Local Government Scheme to comply with all relevant legislative requirements and to ensure the effective governance of the scheme.

## 2 Functions of the Local Pensions Board

- 2.1 The functions of the Local Pensions Board are to:
- (a) Assist the Administering Authority of the Cumbria Local Government Pension Scheme secure compliance with:
    - (i) The regulations covering administration of a Local Government Pension Scheme ('LGPS'); and
    - (ii) Other legislation relation to the governance and administration of the LGPS; and
    - (iii) The requirements imposed by the Pensions Regulator in relation to the LGPS; and
    - (iv) Ensure the effective and efficient governance and administration of the LGPS.
- 2.2 The Board must have a policy and framework to meet the knowledge and understanding requirements of section 248A of the Pensions Act 2004.
- 2.3 In its role in assisting the Administering Authority as described above, the Local Pensions Board shall report twice yearly to the Pensions Committee on matters reviewed and suggestions for their consideration.
- 2.4 Where the Board is concerned that due consideration has not been given to matters of non-compliance the Board may submit a report for consideration by the Audit and Assurance Committee as the body designated by the Administering Authority with the capacity to investigate such matters on its behalf.
- 2.5 The Board is constituted under the Public Service Pension Act 2013 and the Local Government Pension Scheme (Amendment) (Governance) Regulations 2014 and is therefore not subject to the requirements of S.101 of the Local Government Act 1972.
- 2.6 The Board has no remit as a decision making body but is established to assist the Administration Authority to fulfil its functions which shall be deemed to cover all aspects of governance and administration of the Pensions Fund.

### **3 Operating Structure and Codes of Conduct of the Local Pensions Board**

3.1 The operating structure and codes of conduct of the Local Pensions Board is as follows:

- (a) The Board will be quorate if 25% of designated members (i.e. two) are in attendance.
- (b) Prior to appointment to the Board all members will be required to sign up to the Board's Code of Conduct and Conflicts of Interest Policy. As a body representing the public interest the Code of Conduct and Conflicts of Interest Policy of members of the Local Pensions Board will be aligned to those applicable to members of the Pensions Committee.
- (c) The Board will meet as a minimum twice a year. Meetings will be held during normal working hours and will predominantly be held within County boundaries.
- (d) Where required, a minimum of two Board members (one from the member representatives and one from the employer representatives) or the Administering Authority can request a special meeting be convened. Notice of ten working days must be given.
- (e) As a non-decision-making body the Board have no authority to establish working parties / subgroups.
- (f) Each member shall have an equal vote and should it be required, the Chair will have the casting vote.

### **4 Commissioning of Service providers and Advisors**

4.1 All members of the Local Pensions Board have the right to access the support of the experienced Local government Pension Scheme Independent Advisors, however due regard has to be taken of securing value for money and as such whether in the first instance officers of the County Council could provide the assistance required.

4.2 Items of expenditure by the Board must have prior approval from the Section 151 Officer.

### **5 Role of Officers**

5.1 Reasonable secretarial and professional support will be provided by officers of the Administering Authority. Costs associated with this will be directly charged to the Pension Fund.

## **6 Publication and Data Protection**

- 6.1 As a general principle meetings will be open to the public.
- 6.2 Paper or electronic versions (as requested) of all agendas and papers will be provided to all members of the Local Pensions Board prior to a meeting. The Chair can accept that items be tabled on the day should such a need arise.
- 6.3 As a matter of policy the Pensions Fund has adopted the principles of paperless working, therefore as a matter of course public access to all agendas, public papers and minutes etc. will be available on the Council's website. On request alternative media versions are available.
- 6.4 The County Council as the Administration Authority is the registered data controller of the Cumbria LGPS, and as such all policies and practices in this regard applicable within the County Council are directly applicable to the Board.

## **7 Membership**

- 7.1 Equal representation between scheme employers and scheme members is required. The membership of the Cumbria Local Pensions Board will comprise three scheme member representatives and three scheme employer representatives. Substitutes are not permitted.
- 7.2 **Appointment of Board members** –To ensure an open and transparent selection process and to ensure the administering authority meets its obligation to ensure appointed members have the capacity the selection process will be through application, matching to a role profile and interview. The appointment panel will consist of the Section 151 Officer, Monitoring Officer and Portfolio Holder for Finance. Appointments will be for four years and there will be no limit on the number of times a member of the board can seek to be reappointed. The three employer representatives will be allocated 1 to the County Council; 1 to the District Councils and 1 for all other employers in the Fund. The three scheme member representatives will be selected to ensure all membership groups within the Fund are covered.
- 7.3 **Appointment of the Chair/Vice Chair** – the administering authority will appoint the Chair and the Vice Chair. The roles will be split with one being a scheme representative member rep and one being a scheme representative employer rep and this will be alternated on a two yearly cycle.
- 7.4 Reimbursement of reasonable travel expenses for attendance at meetings and training sessions will be in line with the County Council's agreed policies and rates for elected members. All such costs will be met directly by the Pension Fund.
- 7.5 **Relevant knowledge capacity** – the administering authority must ensure that each person appointed to the Local Pensions Board has the relevant knowledge and the capacity to represent the employers or members (as

appropriate) of the Pensions Fund. Initially this will be done through selection but, following appointment, it is a member's individual responsibility to ensure they attend all training etc. to enable them to continue to fulfil the knowledge and capacity requirements. Full training will be provided and all reasonable costs will be met by the Pensions Fund. To ensure compliance with the above a general level of attendance at meetings and training events is required.

# **Part 2Q: Cumbria Fire Local Pension Board**

## **1 Summary**

- 1.1 The Cumbria Fire Local Pensions Board is responsible for assisting the Administering Authority of the Cumbria Local Government Scheme to comply with all relevant legislative requirements and to ensure the effective governance of the scheme for Cumbria Firefighters Pensions.

## **2 Functions of the Cumbria Fire Local Pension Board**

- 2.1 The functions of the Cumbria Fire Local Pension Board are to:
- (a) Assist the Scheme Manager of the Cumbria Firefighters' Pension Scheme to secure compliance with:
    - (i) The regulations covering administration of the Firefighters' Pension Schemes (FPS);
    - (ii) Other legislation relation to the governance and administration of the FPS; and
    - (iii) The requirements imposed by the Pensions Regulator in relation to the FPS.
    - (iv) Ensure the effective and efficient governance and administration of the FPS.
- 2.2 The Board must have a policy and framework to meet the knowledge and understanding requirements of section 248A of the Pensions Act 2004.
- 2.3 In its role in assisting the Scheme Manager as described above, the Board shall report twice yearly to Council on matters reviewed and suggestions for their consideration.
- 2.4 Where the Board is concerned that due consideration has not been given to matters of non-compliance the Board may submit a report for consideration by the Audit and Assurance Committee as the body designated by the Scheme Manager with the capacity to investigate such matters on its behalf.
- 2.5 The Board is constituted under the Public Service Pension Act 2013 and the Fire Pension Scheme (Amendment) (Governance) Regulations 2014 and is therefore not subject to the requirements of s.101 of the Local Government Act 1972.

- 2.6 The Board has no remit as a decision making body but is established to assist the Scheme Manager fulfil its functions which shall be deemed to cover all aspects of governance and administration of the Pension Scheme.

### **3 Operating Structure and Codes of Conduct of the Cumbria Fire Local Pension Board**

- 3.1 The operating structure and codes of conduct of the Cumbria Fire Local Pension Board is as follows:

- a) The Board will be quorate if 50% of designated members (i.e. 2) are in attendance.
- b) Prior to appointment to the Board all members will be required to sign up to the Board's Code of Conduct and Conflicts of Interest Policy. As a body representing the public interest the Code of Conduct and Conflicts of Interest Policy of members of the Fire Local Pension Board will be aligned to those applicable to members of the Pension Committee.
- c) The Board will meet as a minimum twice a year. Meetings will be held during normal working hours and will predominantly be held within County boundaries.
- d) Where required, a minimum of two Board members (one from the scheme member representatives and one from the scheme employer representatives) or the Scheme Manager can request a special meeting be convened. Notice of ten working days must be given.
- e) As a non-decision-making body the Board have no authority to establish working parties / sub-groups.
- f) Each member shall have an equal vote and, should it be required, the Chair will have the casting vote.

### **4 Commissioning of Service providers and Advisors**

- 4.1 All members of the Cumbria Fire Local Pension Board have the right to access the support of independent advisors, however due regard has to be taken of securing value for money and as such whether in the first instance officers of the County Council could provide the assistance required.
- 4.2 Items of expenditure by the Board must have prior approval from the Section 151 Officer.

## 5 Role of Officers

Reasonable secretarial and professional support will be provided by Officers of the Scheme Manager. Costs associated with this will be charged to Cumbria Fire and Rescue Service.

## 6 Publication and Data Protection

- 6.1 As a general principle meetings will be open to the public.
- 6.2 Paper or electronic versions (as requested) of all agendas and papers will be provided to all members of the Board prior to a meeting. The Chair can accept that items be tabled on the day should such a need arise.
- 6.3 As a matter of policy the Pension Board has adopted the principals of paperless working, therefore as a matter of course public access to all agendas, public papers and minutes etc. will be available on the Council's website. On request alternative media versions are available.
- 6.4 The County Council as the Scheme Manager is the registered data controller of the Cumbria FPS, and as such all policies and practices in this regard applicable within the County Council are directly applicable to the Board.

## 7 Membership

- 7.1 Equal representation between scheme employers and scheme members is required. The membership of the Cumbria Fire Local Pension Board will comprise two scheme member representatives and two scheme employer representatives. Substitutes are not permitted.
- 7.2 **Appointment of Board members** - to ensure an open and transparent selection process and to ensure the Scheme Manager meets its obligation to ensure appointed members have the relevant understanding and capacity, the selection process will be through application, matching to a role profile and interview. The Appointment Panel will consist of the Section 151 Officer, Monitoring Officer and Portfolio Holder for Finance.
- 7.3 Appointments will be for four years and there will be no limit on the number of times a member of the board can seek to be reappointed.
- 7.4 The two scheme member representatives will be selected to ensure all membership groups within the Fund are covered.

- 7.5 **Appointment of the Chair / Vice Chair** – the Scheme Manager will appoint the Chair and the Vice Chair. The roles will be split with one being a scheme representative member rep and one being a scheme representative employer rep and this will be alternated on a two yearly cycle.
- 7.6 Reimbursement of reasonable expenses for attendance at meetings and training sessions will be in line with the Council’s agreed policies and rates for Elected Members. All such costs will be met directly by Cumbria Fire and Rescue Service.
- 7.7 **Relevant knowledge and Capacity** – the Scheme Manager must ensure that each person appointed to the Board has the relevant knowledge and the capacity to represent the employers or members (as appropriate) of the Scheme. Initially this will be done through selection by the Scheme Manager but, following appointment, it is a member’s individual responsibility to ensure they attend all training etc. to enable them to continue to fulfil the experience and capacity requirements. Full training will be provided and all reasonable costs will be met by Cumbria Fire and Rescue Service. To ensure compliance with the above a general level of attendance at meetings and training events is required.

# Part 2R: Pension Forum

## 1 Summary

- 1.1 The Pensions Forum meets to inform and consult the wider representation of employing organisations and employee and pensioner representatives. The dates of these meetings are synchronised with those held by the Pensions Committee to allow for Forum input.

## 2 Functions of the Pension Forum

- 2.1 The functions of the Pension Forum are to:
- (a) seek the views of the representative bodies, employees and pensioners and discuss items of common interest in relation to pensions including:
    - (i) administration of pensions and information to employees and pensioners in Cumbria;
    - (ii) discretionary benefits under the Scheme;
    - (iii) the state of the fund (the Annual Report and Accounts shall be submitted to the Forum);
    - (iv) investment policy; and
    - (v) developments in public sector pension matters and to make appropriate recommendations by the County Council.

## 3 Publication and Meetings

- 3.1 Meetings will be open to the public and invitations will be circulated as widely as practicable to employer bodies and pensioner representatives.
- 3.2 The Forum will meet at least once a year.
- 3.3 A special meeting of the Pension Forum may be called by the Chairman.
- 3.4 Three District Council's or five Employer Bodies may request in writing that a Special Meeting is convened. The Chairman must call the meeting within 21 days of receiving the request.

- 3.5 All Forum Members will have access to public Pension Committee papers and are invited to comment as appropriate.
- 3.6 Each Member will have an equal vote and should it be required the Chair will have a casting vote.
- 3.7 Membership of the Cumbria Pension Committee will be represented at each Forum meeting, including where possible the Chair and Vice Chair.

## **4 Membership**

4.1 The Forum consists of both Employer and Employee Representatives as follows:

(i) Employer Representatives:

(a) County Council: Nine Members

(b) District Councils: One member nominated by each Council (including member of the Pensions Committee)

(c) Statutory Bodies: One member nominated by each employer

(d) Admitted Bodies: One member nominated by each employer

(ii) Employee Representatives:

(a) County Council: Eight employee representatives appointed by UNISON, of whom two shall be current pensioners

(b) District Councils: One employee representative for each District appointed by UNISON, together

with one current pensioner

- (c) Statutory Bodies: Eight employee representatives appointed by UNISON, together with one current pensioner
  
  - (d) Admitted Bodies: Three employee representatives appointed by UNISON
- 4.2 Where an appointed representative is unable to attend, a substitute may attend in their place.
- 4.3 **Appointment of the Chair**
- The Chairman will be a Member of the County Council.
- 4.4 All facility time is paid by Cumbria County Council, as set out in the Trade Union Facilities Agreement.

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# Part 2S: Commissioning and Procurement Working Group

## 1 Summary

- 1.1 The Commissioning and Procurement Working Group is a formal sub-group of Cabinet, established to provide strategic oversight, political direction and scrutiny of the Council's Commissioning, Procurement & Contract Management activities.

## 2 Functions of the Commissioning and Procurement Working Group

- 2.1 The functions of the Commissioning and Procurement Working Group are to:
- (a) Undertake a fundamental review of the contracts register and explore Commissioning, Procurement & Contract Management opportunities (strategic partnerships, in/outsourcing, contracting, grant funding etc.).
  - (b) Ensure the alignment of Commissioning, Procurement & Contract Management activities with the Council's priorities and Medium Term Financial Plan.
  - (c) Consider and provide direction on options for commissioning and procurement, including approval to procure, and award of contracts.
  - (d) Monitor and scrutinise the implementation and application of the Sustainable Procurement Strategy and Contracts Procedure Rules.
  - (e) Make recommendations on amendments/revisions to the Sustainable Procurement Strategy and Contracts Procedure Rules.

## 3 Membership

- 3.1 The membership of the Commissioning and Procurement Working Group comprises the Portfolio Holder as Chair, the Leader and Deputy Leader.
- 3.2 The working group is supported by the Assistant Director – Business Services, Senior Manager Commissioning, Procurement & Contract Management, Assistant Director – Finance (Section 151 Officer) and Senior Manager – Legal & Democratic Services.

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# Part 2T: Nuclear Issues Working Group

## 1 Summary

- 1.1 The Nuclear Issues Working Group has been established by the Cabinet to advise it on issues relating to the nuclear industry within Cumbria.

## 2 Functions of the Nuclear Issues Working Group

- 2.1 The functions of the Nuclear Issues Working Group are to:

- (a) Advise Cabinet on issues relating to the nuclear industry in Cumbria, including both the decommissioning of existing facilities and the possible development of new capacity.

## 3 Membership

- 3.1 The membership of the Nuclear Issues Working Group comprises 7 county councillors to include the relevant Cabinet Member.

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# Part 2U: Member Development Group

## 1 Summary

- 1.1 The Member Development Group has overall strategic responsibility for promoting, monitoring and championing Member Development within political groups and more generally within the County Council.

## 2 Functions of the Member Development Group

- 2.1 The functions of the Member Development Group are to:
- (a) Promote member development as one means of securing continuous improvement in the County Council.
  - (b) Propose and update as appropriate a member development strategy for County Council approval and to be responsible, within the agreed budget, for the strategy's implementation, monitoring and review.
  - (c) Agree a learning and development calendar annually having regard to the Council's priorities and the development needs of individual members (through close working with the group offices for those which have them), and to make any necessary changes to the plan during the year.
  - (d) Review member feedback on training and development and to evaluate outcomes from learning and development activity to help inform future planning and organisation.
  - (e) Consider and review the arrangements and plans in place for the major member induction programme post the four yearly elections and for the induction of members elected at by-elections.
  - (f) Play a lead role in the work from a member perspective in relation to re-accreditation to the North West Charter on Member Development (Charter Level 1) on an ongoing basis.
  - (g) Act as a forum for discussion of member support arrangements generally, including the provision of IT and how members can best engage and utilise modern technologies.

## 3 Membership

- 3.1 Cabinet Member with responsibility for Member Development plus four other members appointed on a politically proportionate basis.

*Note: Members nominated should have a commitment to learning and development and be keen to act as champions for member development within their political groups.*

- 3.2 Outside formal meetings of the Group, members are asked to:

- (a) Act as champions and exemplars within their political groups;
- (b) Promote learning and development opportunities to other members;
- (c) Act as a point of contact and expertise on member development within their political group.

# Part 3A: Scheme of Delegation to Officers

## 1 Introduction

- 1.1 This part of the Constitution sets out the functions of the Council that are delegated to the Chief Executive ('Head of Paid Service'), Corporate Directors and specified senior officers of the County Council. "Functions" includes all the powers and duties of the Council, including taking decisions about those functions.

## 2 Powers of Delegation

- 2.1 Non-executive functions of the Council may be delegated to officers by the Council, Committees and Sub-Committees under Section 101 of the Local Government Act 1972.
- 2.2 Executive functions of the Council may be delegated to officers by the Leader of the Council ("the Leader"), Cabinet and Local Committees under the Local Government Act 2000.

## 3 Basis of Delegation

- 3.1 This Scheme of Delegation is set out as far as possible in terms of broad areas of responsibility rather than in specific statutory terms.
- 3.2 All functions not reserved to the full Council, Cabinet or a Committee are delegated to the appropriate Corporate Director and the Chief Executive. The exercise of delegated authority is limited by the General Conditions and Limitations set out in [section 4 below] and where specified in other sections of this Scheme of Delegation.
- 3.3 Where a decision is delegated under the Constitution or by a decision making body to an officer in consultation with a member, the law requires that the discretion of the officer is not fettered. This means that decision must be taken by the officer who has been authorised to take the decision and **may not** be joint decision, or a decision of the member in consultation with the officer.
- 3.4 Where a function of the Council has been delegated to an officer by the Council, Cabinet, a Committee or sub-committee or by the Leader, the person or body making the delegation may at any time take back responsibility for the function, either in respect of a particular matter, or the function or generally.
- 3.5 The rule in Paragraph 3.4 includes the entitlement of the Leader of the Council to decide that a Key Decision included on the Forward Plan

(Paragraph 13-17) as a Corporate Director Key Decision should be taken by Cabinet.

- 3.6 An officer to whom a function is delegated may refer the matter to the person or body making the delegation, for them to determine, notwithstanding the delegation.

#### **4 General Conditions and Limitations on Exercise of Delegated Authority**

- 4.1 In carrying out delegated functions, Officers must comply with the law and with the Council's Constitution (in this order of priority). No officer may commit the Council to a course of action that will result in a financial obligation beyond the approved budget of the Council.

##### **Referral of Executive Decisions to Cabinet**

Corporate Directors must consider prior to taking a Key Decision whether to refer the decision to the Cabinet. Relevant factors include if the decision is likely to:

- (a) Have a significant impact on the reputation of the Council
- (b) Raise significant issues of policy, which it would be appropriate for Cabinet to determine
- (c) Expose the Council to an ongoing financial commitment or major corporate risk that could not be contained within the Directorate budget.

##### **Officers authorised by the Chief Executive or a Corporate Director to exercise functions**

- 4.2 Any power conferred on the Chief Executive or a Corporate Director may be exercised by an officer authorised by him/her, generally or for a specific purpose, orally or in writing, except where the Constitution or the law specifies that the officer to whom the function has been delegated must act in person.
- 4.3 Any power conferred in the Constitution on an officer other than the Chief Executive or a Corporate Director may be exercised by an officer authorised by him/her, generally or for a specific purpose, orally or in writing, except where the Constitution or the law specifies that the officer on whom the power has been conferred must act in person.
- 4.4 Corporate Directors must personally take Key Decisions delegated to them.

##### **“Proper Officers”**

- 4.5 Where an officer who has been appointed as a statutory officer or as a proper officer under any legislation they must exercise those functions, personally, subject to any provision in the legislation for the appointment of one or more deputies.

### **Professional Advice**

- 4.6 In exercising delegated authority, officers must consult with such other officers and advisers as they consider appropriate, including the Section 151 Officer and Monitoring Officer, and officers must have regard to any advice given.

## **5 General Delegations to the Chief Executive and all Corporate Directors**

- 5.1 The Chief Executive and Corporate Directors are authorised to:

- (a) Take all lawful action consistent with Council policy to deliver approved strategies, policy and plans within their area of responsibility, and within approved budgets and service plans. This includes, (but not exhaustively):
- (i) To incur expenditure on the Council's behalf within the sums contained in the approved budget including, acting in accordance with the Contract Procedure Rules, to procure and award contracts for supplies, services and works.
  - (ii) To dispose of non-property surplus or damaged or scrap assets in accordance with the Financial Standing Orders.
  - (iii) Put in place management and staffing arrangements, including for the appointment and dismissal of staff, in their area of responsibility and carry out all functions relating to the operational management of staff, consistent with Council human resources policies, strategies and plans and legal obligations.
  - (iv) To approve budget transfers acting in accordance with the Financial Standing Orders.
  - (v) To arrange insurances, other than those insurances reserved to the Assistant Director – Finance acting in accordance with the Financial Standing Orders.

- (vi) Hear and Determine any disciplinary or grievance matter referred to them under the Council's policies and procedures.
- (vii) Enter into settlement agreements with staff, following approval from the Senior Manager Legal and Democratic Services.
- (viii) Authorise the payment of honoraria to members of staff temporarily undertaking higher graded duties within limits set by the Corporate Director – Resources and Transformation. The limit from January 2015 is set at £2,000.
- (ix) Submit bids to deliver contracts for third parties within their area of responsibility and approve the Council entering into any lawful contract to deliver such services or works.
- (x) To enter into Partnership Agreements which support the achievement of the Council's objectives
- (xi) Submit applications for external funding and enter into funding agreements, acting in accordance with the Financial Standing Orders.
- (xii) To write off debts, acting in accordance with the Financial Standing Orders.
- (xiii) Authorise staff to exercise such powers as may be appropriate to carry out their duties, including powers of enforcement, entry, inspection and survey of land, buildings or other premises, service of statutory notices to ascertain interests in land.
- (xiv) To authorise, following consultation with the Senior Manager Legal and Democratic Services the institution, or defence, settlement of, or involvement in, criminal or civil proceedings in relation to any Act, Statutory Instrument, contractual or regulatory provision which they are responsible for monitoring, enforcing or otherwise implementing on behalf of the Council.
- (xv) Authorise service or placing of any statutory notice (except where the decision is reserved to the Council, Cabinet or a Committee).

- (xvi) Seek permission for development by the County Council in respect of its functions.
- (xvii) Award payments arising from Local Government Ombudsman recommendations up to £5,000.
- (xviii) Otherwise settle or determine corporate complaints.
- (xix) Award payments arising from complaints under the Council's Corporate Complaints Procedure, up to £2,000, following consultation with the Assistant Director – Corporate Governance.

5.2 When deputising on behalf of the Chief Executive, Corporate Directors are authorised to exercise any function delegated to the Chief Executive.

5.3 A Corporate Director may exercise the functions of an officer in their line of management, except where the law prohibits a Corporate Director from exercising the functions of a specific statutory or proper officer.

## **6 Specific Areas of Responsibility**

### **Chief Executive**

6.1 The Chief Executive has delegated authority to:

- (a) Manage and co-ordinate the Council's budget process and strategic planning functions.
- (b) Act as Council's Head of Paid Service under section 4 of the Local Government and Housing Act 1989.
- (c) Act as "Proper Officer" for certain specific functions set out in the Representation of the People Act 1983 and the Local Government Act 1972 including for the purposes of section 83(1) – (4).
- (d) Act as the County Controller in the event of a major county-wide emergency.
- (e) Act as proper officer for the purposes of sections 15 – 17 of the Local Government and Housing Act 1989 and the Local Government (Committee Places and Political Groups) Regulations 1990.

- (f) Authorise action to ensure that the County Council's functions under the Civil Contingencies Act 2004 and other emergency planning legislation are carried out.
  - (g) Take any action and incur expenditure and delegate responsibility to take action and incur expenditure in the event of a civil emergency.
  - (h) Where delay in taking a decision would seriously prejudice the Council's or the public interest to the extent that it is appropriate to exercise emergency powers, take any decision on behalf of the Council in consultation with the Leader, or if he/she is unavailable, the Deputy Leader.
  - (i) Sign each certificate given under the Local Government Contracts Act 1997. **NB:** The Section 151 Officer and Corporate Director - Resources and Transformation also have this authority. Each of these officers is indemnified against any liability, claims or costs arising out the signature of any such certificate.
  - (j) Exercise responsibility for co-ordinating the discharge of the Council's functions between various Officers.
  - (k) Allocate or re-allocate responsibility for functions in this Scheme of Delegation as necessary for the effective discharge of those functions, provided that any allocation of responsibility for more than 6 months is reported to the Council as a change to the Scheme of Delegation.
  - (l) Determine disciplinary matters, grievances or other staffing matters relating to Corporate Directors unless otherwise prescribed by this Constitution.
  - (m) Determine appeals against decisions of Corporate Directors in accordance with Council procedures.
  - (n) Approve interim contracts for staff and proposals for consultant's services in respect of these posts, acting in accordance with the Financial Standing Orders.
- 6.2 The Chief Executive has authority to exercise any function exercisable by a Corporate Director but is not authorised to exercise the statutory functions of the Section 151 Officer or the Monitoring Officer.
- 6.3 For the avoidance of doubt, anything which is not covered by this Scheme of Delegation or another Part of the Constitution, including the appointment of a

“Proper Officer” for the purpose of any statutory function may be determined by the Chief Executive provided that any allocation of responsibility for more than 6 months is reported to the Council as a change to the Scheme of Delegation.

### **Chief Fire Officer**

6.4 The Chief Fire Officer has delegated authority to:

- (a) Exercise the functions of the Fire and Rescue Authority in respect of operational matters relating to:
  - (i) The Fire and Rescue Services Act 2004.
  - (ii) The Regulatory Reform (Fire Safety) Order 2005.
  - (iii) The Civil Contingencies Act 2004.
  - (iv) Any other legislation made before or after these Acts, and any Regulations, which create duties or powers for Fire and Rescue Authorities, including the Fire and Rescue National Framework.
- (b) In respect of officers employed under the NJC Scheme of Conditions of Service for Local Authority Fire and Rescue Services and the NJC Scheme of Conditions for Brigade Managers of Fire and Rescue Services to:
  - (i) Put in place management and staffing arrangements including for the appointment and dismissal of staff and carry out all functions relating to the operational management of staff, consistent with those terms and conditions and Council human resources policies, strategies and plans and all legal obligations.
  - (ii) Hear and determine any disciplinary or grievance matter referred to him/her under the Council’s policies and procedures or the relevant NJC Scheme.
  - (iii) Enter into settlement agreements with staff, following approval from the Senior Manager Legal and Democratic Services.
  - (iv) Authorise the payment of honoraria to members of staff temporarily undertaking higher graded duties within limits set by the Corporate

Director – Resources and Transformation. The limit from January 2015 is set at £2,000.

- (c) Exercise the functions of the Council as the Scheme Manager for all scheme member matters for the Fire Fighters Pension Scheme in consultation with the Assistant Director – Finance and the Senior Manager – Business Services.

### **Corporate Director – Resources and Transformation**

6.5 The Corporate Director – Resources and Transformation has delegated authority to exercise the Council's functions in relation to:

- (a) human resources (including responsibility for the maintenance of an effective employee relations and industrial relations framework across the Council); and
- (b) commissioning, procurement and contract management; and
- (c) information technology infrastructure and services; and
- (d) the Council's corporate governance.

6.6 The Corporate Director – Resources and Transformation has delegated authority to:

- (a) grant honorariums in excess of £2000;
- (b) sign, for the purposes of the Local Government and Contracts Act 1997, each certificate given under the Act;
- (c) determine any individual or collective staffing matter in consultation with the relevant Corporate Director, where the function is not reserved elsewhere in the Constitution;
- (d) approve expenditure up to £1000 on urgent welfare matters where such assistance is likely to assist the return of an employee to work or relieve substantial hardship and no alternative source of such assistance is reasonably available.
- (e) act as County Returning Officer under the Representation of the People Act 1983 for County Council elections.
- (f) act as deputy to the Chief Executive in the role of proper officer for the purposes of section 83(1) – (4) of the Local Government Act 1972,

sections 15 – 17 of the Local Government and Housing Act 1989 and the Local Government (Committee Places and Political Groups) Regulations 1990 in the absence or incapacity of the Chief Executive or a vacancy of the post.

### **Assistant Director - Finance**

- 6.7 The Assistant Director - Finance is the County Council's Chief Financial Officer under Section 151 of the Local Government Act 1972 (Section 151 Officer) and is the Officer responsible for the proper administration of the Council's financial affairs.
- 6.8 The functions, including the delegated authority of the Assistant Director – Finance are set out in Part 5G of this Constitution, the Financial Standing Order.
- 6.9 In addition to these functions, the Assistant Director has authority in respect of the Cumbria Local Government Pension Fund for the following to:
- (a) Pay pensions, gratuities, grants, etc. to members, other beneficiaries, and creditors of the Pension Fund, in accordance with the Superannuation and Pensions Acts and Regulations and the agreed policy of the Council thereunder
  - (b) In consultation with members of the Investment Sub-Group appoint investment managers to the Cumbria Local Government Pensions Scheme ('LGPS')
  - (c) Approve the procurement and award of contracts incidental to the discharge by the Pensions Committee of functions on behalf of the Local Government Pensions Scheme, including decisions relating to the management, modification and termination of such contracts. **NB** Decisions taken in accordance with this paragraph are incidental to the non-executive functions of the Pensions Committee and are not Key Decisions of the Council.
- 6.10 The Assistant Director – Finance has the authority to sign, for the purposes of the Local Government Contracts Act 1997, each certificate given under the Act.

### **Assistant Director - Corporate Governance**

- 6.11 The Assistant Director - Corporate Governance is the Council's statutory Monitoring Officer under sections 5 and 5A of the Local Government and Housing Act 1989.

6.12 The Assistant Director - Corporate Governance is the “Proper Officer” for the receipt of notices under the Local Authorities (Members’ Interests) Regulations 1992, and Regulations made under Section 81 of the Local Government Act 2000.

6.13 The Assistant Director – Corporate Governance has delegated authority to grant dispensations to members or co-opted member to allow them, where they have a disclosable pecuniary interest (DPI) in a matter to be considered at a meeting, to

(a) participate in any discussion of the matter at the meeting;

**or**

(b) participate in any vote, or further vote, taken on the matter at the meeting;

on the following grounds:

(i) That so many members of the decision-making body have DPIs that it would impede the transaction of business.

(ii) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the likely outcome of the vote.

(iii) That without a dispensation, no member of Cabinet would be able to participate in a matter before Cabinet.

(All other requests for dispensations must be agreed by the Standards Committee).

6.14 In consultation with the Constitution Review Group, the Assistant Director – Corporate Governance has delegated authority to make minor amendments to update the Council’s Constitution including to take account of legislative changes provided that it does not involve material changes to principles previously approved by full Council.

6.15 The Assistant Director – Corporate Governance has delegated authority to exercise the functions of the Senior Information Risk Officer.

6.16 The Assistant Director – Corporate Governance has delegated authority to:

(a) Take any action to implement any decision taken by or on behalf of the Council including the execution whether under hand or under seal of any document and the service of statutory and other notices

- (b) Issue, defend, settle, conduct or participate in any legal proceedings where he/she considers it appropriate to protect, promote or defend the Council's interests.
- (c) To settle any disputes that might lead to legal proceedings.
- (d) Authorise employees of the Council prosecute or defend or appear in proceedings under Section 223 of the Local Government Act 1972 and Section 60 of the County Courts Act 1984.

### **Assistant Director – Business Services**

- 6.17 The Assistant Director – Business Services has the authority under the Contract Procedure Rules to give approval in respect of specific matters, acting in accordance with the Contract Procedure Rules.

### **Officer Appointed as Shareholder's Representative**

- 6.18 The authority of any officer appointed by the Cabinet to act as shareholders representative for a company of which the Council is a shareholder or member is to:

- (a) Act as shareholders representative in accordance with the Companies Act 2006 and
- (b) Exercise all the County Council's powers as shareholder of the company concerned.

- 6.19 An officer appointed as deputy shareholder's representative in respect of a company is authorised to exercise these delegated powers in the absence of the shareholder's representative.

### **Corporate Director - Children and Families Services**

- 6.20 The Corporate Director – Children and Families Services is the County Council's statutory officer under section 18(1) of the Children Act 2004 and has delegated authority in respect of all functions relating to:

- (a) The education and training of children and young people, including the functions which relate to the Council's education functions generally and in respect of individual schools;
- (b) The safeguarding of vulnerable children;

- (c) The care of children looked after by the Council
- (d) Transport of children and young people; and
- (e) The promotion of the general wellbeing of children and families.

6.21 In addition the Corporate Director - Children and Families Services is authorised to:

- (a) Decide in consultation with the relevant Cabinet member whether to undertake a consultation on a school organisation proposal where the Council is the proposer in accordance with the decision of Cabinet dated 28 04 2011 provided that, decisions relating to school organisation proposals must be referred to the Cabinet for determination.
- (b) Determine grant applications to the Holehird Trust, for sums of £500 or less, which cannot be deferred to the next meeting of the Holehird Trust Joint Committee, such decision to be taken following consultation with all members of the Joint Committee and a list of grants approved under this urgency provision being reported to the Joint Committee's next meeting.
- (c) Appoint the Council's nominated trustee to serve on the Edmond Castle Educational Trust, following consultation with the relevant Cabinet Member.
- (d) Deal with complaints about the discharge of the Council's Social Services functions in respect of children and families in accordance with the procedures established by the Council from time to time and the relevant regulations, including the arranging of investigations and the appointment of person to serve as Panel members under those procedures.
- (e) In accordance with any relevant legislation, to appoint designated decision makers or nominated officers for functions specified in that legislation.

### **Corporate Director - Economy and Highways**

6.22 The Corporate Director -- Economy and Highways has delegated authority to discharge all County Council functions relating to:

- (a) Highways, traffic and transport
- (b) Countryside access
- (c) Vehicles and mechanical plant and equipment
- (d) Development control and regulation
- (e) Town and country planning
- (f) Nationally Significant Infrastructure Projects
- (g) Minerals and Waste
- (h) Historic environment
- (i) Economic development
- (j) Civil contingencies and emergencies
- (k) Public protection
- (l) Libraries and cultural services
- (m) Trading Standards
- (n) Safety of Sports Grounds
- (o) Weights and Measures
- (p) Registration of births, deaths, marriages and civil partnerships
- (q) The Coroners Service including appointment of Coroners at all levels including Senior, Area and Assistant Coroners)
- (r) Being a waste disposal authority
- (s) Being a flood authority
- (t) Being a traffic management authority

- (u) The Regulation of Investigatory Powers Act 2000 including the specific authority to issue authorisations along with the Assistant Director – Economy and Environment
- (v) Land and property
- (w) Port of Workington

6.23 The Corporate Director – Economy and Highways is the Duty Holder under the Marine Safety Code from time to time in force for the Port of Workington.

6.24 In addition, the Corporate Director – Economy and Highways has delegated authority to appoint members of the Cumbria Valuation Tribunal, in consultation with the President of the Tribunal and after consultation with Group Leaders and Chairs of Local Committees

6.25 The authority of the Corporate Director – Economy and Highways is limited as set out below.

- (a) The authority of the Corporate Director – Economy and Highways to exercise powers under the Road Traffic Regulation Act 1984 is limited as follows:
  - (i) In respect of functions relating to the making of speed limit orders as determined through the “Speeding in Villages” initiative, after consultation with the Chair of the relevant local committee and local member(s), to those orders where there are no objections following statutory consultation and advertisement.
  - (ii) In respect of functions relating to the issue of notices under Sections 14(2) (a) and (b) of the Road Traffic Regulation Act 1984 (or any statutory modification thereof), to circumstances where it appears necessary to the Corporate Director that the restrictions/prohibitions come into force without delay.
  - (iii) the making of Traffic Regulation Orders (TROs) which involve the introduction of on-street parking charges and those TROs which involve changes to restrictions to accommodate the on-street parking charges.

- (iv) the making of TROs which involve the introduction of charging for residents and other parking permits

Where making orders under (iii) or (iv) above the Corporate Director - Economy and Highways must consult with the Chair and Vice Chair of the relevant Local Committee prior to making the order.

- (b) The authority of the Corporate Director – Economy and Highways in respect of planning applications is limited to the following:
  - (i) Applications for new developments or to amend or remove planning conditions on extant planning permission, within existing minerals and waste sites or with a significant County Council developments, which would not have a significant impact outside of the site boundary;
  - (ii) Minor development not on existing minerals and waste sites which would not have a significant impact on the locality (for example, kiosks, pipe bridges and other minor wastewater developments, including minor changes to minor developments previously approved by the Development Control and Regulation Committee and shallow boreholes); and
  - (iii) to determine applications, for approval of reserved matters provided the planning application does not extend the time limit of a planning permission; and/or does not require an Environmental Statement and/or has not been advertised as a departure from development plan policy.
- (c) In respect of functions relating to Commons Land to determine only undisputed applications to amend the Registers of Common Land.

#### **Assistant Director - Economy and Environment**

- 6.26 The Assistant Director - Economy and Environment has delegated authority to issue authorisations under the Regulation of Investigatory Powers Act 2000.

#### **Assistant Director – Capital Programmes and Property**

- 6.27 The Assistant Director – Capital Programmes and Property may authorise virement between projects in the capital programme, acting in accordance with the provisions of the Financial Standing Orders.

## **Corporate Director – Health Care and Community Services**

- 6.28 The Corporate Director – Health Care and Community Services is the statutory officer for adult social services under Section 6(A1) the Local Authority Social Services Act 1970 and has delegated responsibility for all social services functions as specified in Schedule 1 of that Act which relate to adults over the age of 18 (excluding functions relating to aftercare under the Children Act 1989).
- 6.29 The Corporate Director – Health Care and Community Services has delegated authority to exercise the Council's functions in relation to libraries and cultural services and for the management and functions of Area Managers.
- 6.30 The Corporate Director – Health Care and Community Services has delegated authority to take any lawful decision that the Corporate Director judges to be appropriate about the services to be provided to an individual or action to be taken in respect of an individual (including the use of any discretion provided for in national or local schemes of charges to service users and assistance with legal costs of a third party) and all powers and duties of the Council under the Mental Health Act 1983 (as amended from time to time) the Mental Capacity Act 2005 and other legislation relating to health, welfare, capacity or the care of adults.
- 6.31 The Corporate Director – Health Care and Community Services has delegated authority to act as Deputy in accordance with Directions of the Court of Protection.
- 6.32 The Corporate Director – Health Care and Community Services has delegated authority to deal with complaints about the discharge of the Council's Social Services functions in respect of adults in accordance with the procedures established by the Council from time to time and the relevant regulations, including the arranging of investigations and the appointment of person to serve as Panel members under those procedures.
- 6.33 In accordance with any relevant legislation, the Corporate Director – Health, Care and Community Services can appoint designated decision makers or nominated officers for functions specified in that legislation.

## **Director of Public Health**

- 6.34 The Director of Public Health has delegated authority to discharge the Council's public health functions under the NHS Act 2006 and any Regulations made under this Act.

# Part 4A: Role Description for all Members

## 1 The Role of Members

### 1.1 The role of members is:

- (a) To deliver the highest standards of service and governance for local people.
- (b) To contribute actively to decision-making on the County Council's policies, plans and budgets, and to continuously review and improve County Council services and performance.
- (c) To work with the County Council's partners in the public, private and third sectors and with customers and service users to shape priorities and improve services.
- (d) To engage with local communities, representing their interests and championing their causes, improving service planning and delivery, and furthering the County Council's contribution to the quality of life of people in Cumbria by offering/providing community leadership.
- (e) To build collaborative working relationships with local partners, including the parish and town councils, the Clinical Commissioning Group, voluntary organisations and community groups, the police and others; to co-ordinate service development and planning, and to improve service integration and delivery.
- (f) To encourage local communities to engage and participate in meetings and decision making.
- (g) To represent the interests of their electoral divisions as a whole, and deal with constituents' enquiries, complaints and representations.
- (h) To lead by example, in accordance with the highest standards of probity in public life, in all matters relating to the Members' Code of Conduct, related protocols and supporting guidance.
- (i) To comply with this Constitution, particularly with the rules on decision-making and access to information.
- (j) To ensure that the County Council has proper arrangements for the management of its affairs and stewardship of its resources.

- (k) To develop and maintain a working knowledge of the County Council's statutory powers and duties, its services and strategies, and to develop good working relationships with County Council officers.
- (l) To participate in the activities of any outside body to which they are appointed as a County Council representative, providing two-way communication between the County Council and the outside body.
- (m) To improve their performance as a County Council member and in particular to be aware of any personal learning and development needs and liaise with members of the relevant political group and County Council officers to address such needs.
- (n) To develop effective working relationships based on mutual respect and co-operation with all County Council officers.
- (o) To participate in the activities of any political group of which they are a member.
- (p) To observe at all times the Members' Code of Conduct and the Member/Officer Protocol set out in this Constitution.

# Part 4B: Members' Code of Conduct

## Introduction

This part of the Constitution relates to both members and co-opted members of the County Council.

Part 6F 'Code of Good Practice for Members and Officers involved in the Planning to Process' of this Constitution, supplements this Members' Code of Conduct.

Cumbria County Council ("The County Council") has adopted the following Members' Code of Conduct ('the Code') dealing with the conduct that is expected of members and co-opted members of the County Council ("members") when they are acting in that capacity as required by section 27 of the Localism Act 2011 ("the Act").

The County Council has a statutory duty under the Act to promote and maintain high standards of conduct by members and the code sets out the standards that the County Council expects members to observe.

The Code is not intended to be an exhaustive list of all the obligations that are placed on members. It is the responsibility of individual members to comply with the provisions of the Code as well as such other legal obligations as may apply to them from time to time. Failure to do so may result in a sanction being applied by the County Council. Failure to take appropriate action in respect of a disclosable pecuniary interest may result in a criminal conviction and a fine of up to £5,000 and/or disqualification from office for a period of up to 5 years.

The Code is intended to be consistent with the seven principles as attached to this Code at Appendix C and applies whenever a person is acting in his/her capacity as a member of the County Council or co-opted member in the conduct of the County Council's business or acting as a representative of the County Council.

N.B. Please also see the attached Guidance to this code and flowchart.

## The Code

### 1 Behaviour

- 1.1 You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other

material benefits for yourself, your family, a friend, a close associate, an employer or a business carried on by you.

- 1.2 You must not place yourself under a financial or other obligation to outside individuals or organisations that may influence you in the performance of your duties.
- 1.3 You must not disclose any information given to you as a member in breach of any confidence.
- 1.4 You must not bring your office or the County Council into disrepute.
- 1.5 You must treat others with respect and must promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their sex, race, age, religion, gender, sexual orientation or disability.
- 1.6 You must respect the impartiality and integrity of the County Council's statutory officers and its other employees.
- 1.7 When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits on merit.
- 1.8 You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
- 1.9 You must be as open as possible about your decisions and actions and the decisions and actions of the County Council and should be prepared to give reasons for those decisions and actions.
- 1.10 You must only use the resources of the County Council in accordance with its requirements. In particular you must ensure, when using or authorising the use by others of the resources of the County Council that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 1.11 You must promote and support high standards of conduct when serving in your office.

## **2 Registration of Interests**

- 2.1 You must, within 28 days of taking office as a member or co-opted member, register with the Monitoring Officer the interests which fall within the categories set out in Appendices A Disclosable Pecuniary Interests and Appendix B Other Registerable Interests.
- 2.2 You must, within 28 days of becoming aware of it, register with the Monitoring Officer any change to interests or new interests which fall within the categories set out in Appendices A and B.

## **3 Declaration of Interests at Meetings**

- 3.1 Where a matter arises at a meeting which relates to an interest in Appendix A. Disclosable Pecuniary Interests you must declare the existence and nature of the interest even where it has been entered in the County Council's register of interests, unless the matter is a 'sensitive interest' as described by the Localism Act 2011. Unless a dispensation has been granted, you must then leave the meeting room and may not participate in any discussion, vote on, or discharge any function related to the matter. Where the matter is a 'sensitive interest' you do not need to declare the nature of the interest but must still withdraw from the meeting without participating.
- 3.2 Where a matter arises at a meeting which relates to or affects an interest in Appendix B. Other Registerable Interests you must declare the existence and nature of the interest unless it has been entered in the County Council's register of interests.
- 3.3 Where a matter arises at a meeting which relates to or affects a financial interest of you, a friend, relative or close associate (and it is not a disclosable pecuniary interest or other registerable interest) you must declare the existence and nature of the interest. Where the matter is a 'sensitive interest' you do not need to declare the nature of the interest.
- 3.4 Where the matter relates to or affects the interest under paragraph 3.3 above more than the majority of people in the area affected by the decision and a reasonable member of the public would think your view of the public interest would be so adversely affected, you must then leave the meeting room and may not vote on, or discharge any function related to the matter unless a dispensation has been granted. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Where the matter is a 'sensitive interest' you do not need to declare the nature of the interest.

## Appendix A – Disclosable Pecuniary Interests

A pecuniary interest is a “disclosable pecuniary interest” in relation to a member (“M”) if it is of a description specified in this appendix and either:

- (a) It is an interest of M’s, or
- (b) It is an interest of:
  - (i) M’s spouse or civil partner, or
  - (ii) a person with whom M is living as husband and wife, or
  - (iii) a person with whom M is living as if they were civil partners,

And M is aware that that other person has the interest.

Each category of person referred to above is described as the ‘relevant person’.

The duties to register, disclose and not to participate in respect of any matter in which a member has a disclosable pecuniary interest are set out in Chapter 7 of the Localism Act 2011.

Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as follows:

<i>Interest</i>	<i>Prescribed description</i>
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain.
<b>Sponsorship</b>	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992).
<b>Contracts</b>	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:

- (a) under which goods or services are to be provided or works are to be executed; and
- (b) which has not been fully discharged.

**Land**

Any beneficial interest in land which is within the area of the relevant authority.

**Licences**

Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

**Corporate tenancies**

Any tenancy where (to M's knowledge):  
(a) the landlord is the relevant authority; and  
(b) the tenant is a body in which the relevant person has a beneficial interest.

**Securities**

Any beneficial interest in securities of a body where:  
(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and  
(b) either:  
(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or  
(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For this purpose:

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## Appendix B – Other Registerable Interests

Other registerable interests are:

- (a) Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the authority.
- (b) Any body of which you are a member or in a position of general control or management and which:
  - (i) Exercises functions of a public nature; or
  - (ii) Is directed to charitable purposes; or
  - (iii) Is a body which includes as one of its principal purposes influencing public opinion or policy (this includes political parties or trade unions).
- (c) Any person from whom you have received a gift or hospitality with an estimated value of at least £100 (you must register any gifts and hospitality worth over £100 that you receive personally in connection with your official duties).

## Appendix C – The Seven Principles of Public Life

The principles of public life apply to anyone who is elected or works as a public office-holder. All public office-holders are both servants of the public and stewards of public services. The principles are:

- Selflessness* Holders of public office should act solely in terms of the public interest.
- Integrity* Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work.
- They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends.
- They must declare and resolve any interests and relationships.
- Objectivity* Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- Accountability* Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- Openness* Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- Honesty* Holders of public office should be truthful.
- Leadership* Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## **GUIDANCE FOR MEMBERS ON CODE OF CONDUCT**

### **INTRODUCTION**

This document has been produced to offer guidance on the revised Code of Conduct for members as adopted with effect from 13 November 2014. The Code applies to all members and co-opted members of the County Council.

The Code does not apply to the actions of the council as a whole, or to the conduct of its officers and employees.

Ultimately, it is members' responsibility to take specific advice from the Monitoring Officer where appropriate and to make a decision as to the most suitable course of action.

### **CODE OF CONDUCT**

The Code of Conduct ("the Code") is not intended to be an exhaustive list of all the obligations that are placed on members, but it is the responsibility of individual members to comply with the provisions of the Code as well as such other legal obligations as may apply to them from time to time.

The Code is intended to be consistent with the seven principles of public life as attached to the Code which define the standards that members should uphold. A failure to act in accordance with these general principles may in itself amount to a breach of the Code of Conduct. For example, by placing yourself in situations where your honesty and integrity may be questioned, your conduct may be conduct which could "bring your office or the County Council into disrepute".

#### ***When does the Code apply to you?***

The Code applies to you whenever you act in your official capacity as a member or co-opted member of the County Council. A co-opted member is a person who is not a member of the County Council but who is either a member of any committee or sub-committee of the County Council, or a member of, and represents the County Council on any joint committee or joint sub-committee of the County Council and who is entitled to vote on any question that falls to be decided at that meeting of that committee or sub-committee.

For the purposes of the Code, a “meeting” is a meeting of the County Council, any of its committees, sub-committees, joint committees or joint sub-committees.

## **GENERAL OBLIGATIONS UNDER THE CODE**

- 1.1. You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend, a close associate, an employer or business carried on by you.**

For example, your behaviour would be improper if you sought to further your private interests or that of somebody close to you through your position as a member.

- 1.2 You must not place yourself under a financial or other obligation to outside individuals or organisations that may influence you in the performance of your official duties.**

It would not be appropriate to accept favours, gifts or hospitality from someone that may, at a later date, require something from the County Council that you are in a position to influence. For example, you may be offered a discount by a business in the area which subsequently applies for planning permission and/or a licence. You may be on the relevant committee dealing with the application and, therefore, be in a difficult position.

- 1.3 You must not disclose any information given to you as a member in breach of any confidence**

As a general rule, you must not disclose confidential information, or information which you believe to be of a confidential nature, as doing so could be prejudicial to effective decision-making and could damage the reputation of your authority in the eyes of those who wish to do business with it as being a place which cannot be trusted to respect confidential or commercially sensitive information.

The courts have, however, defined exceptional circumstances where it may be in the public interest to disclose confidential information if you believe it is in the public interest to do so. However, these circumstances are very rare and you should raise your concerns with the Monitoring Officer in the first

place before you consider disclosing confidential information. These exceptional circumstances are:

- You have the consent of the person authorised to give it.
- You are required by law to do so.
- The disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person.
- The disclosure is in the public interest. This is only justified in limited circumstances.

### ***The public interest***

In considering whether disclosure would be in the public interest you should consider the following points:

- Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
- Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
- The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media or social media.
- The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
- The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
- The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to reoccur.

- Whether the disclosure involves the County Council failing in a duty of confidence owed to another person.

Disclosures which have been ruled serious enough and in the public interest to override the duty of confidentiality have related to the following matters, or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- (a) A criminal offence has been or is being committed.
- (b) The County Council or some other person has failed or is failing to comply with any legal obligation to which they are subject.
- (c) A miscarriage of justice has occurred.
- (d) The health or safety of any individual is in danger.
- (e) The environment is likely to be damaged.
- (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.

Any disclosure must also be made in good faith. This condition will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent rather than simply out of public interest.

Finally you should ensure that you have complied with all reasonable requirements of the County Council. This means that before making any disclosure you must comply with the County Council's policies or protocols on matters such as whistle-blowing and confidential information. You must therefore first raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you will need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a

criminal offence, or where the information disclosed is protected by legal professional privilege.

#### **1.4 You must not bring your office or the County Council into disrepute**

As a member, your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on your office or the County Council. Dishonest and deceitful behaviour or threatening or violent behaviour in your role as a member may bring the County Council into disrepute

#### **1.5 You must treat others with respect and must promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their sex, race, age, religion, gender, sexual orientation or disability.**

You must treat others with respect. In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the politics and actions of their opponents. Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to failing to treat someone with respect.

Whilst ideas and policies may be robustly criticised, however, individuals should not be subject to unreasonable or excessive personal attacks. This particularly applies to dealing with the public and officers. Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

Whilst there may be unreasonable demands on members, members should, as far as possible, treat people courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

In particular, you must not do anything which may cause the County Council to breach any equality laws. You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or do anything which hinders the County Council's fulfilment of its positive duties under equality laws. Such conduct may cause the County Council to breach the

law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code of Conduct.

**1.6 You must respect the impartiality and integrity of the County Council's statutory officers and its other employees.**

You should respect the impartiality and integrity of the County Council's statutory officers and its other employees.

You should not approach or pressure anyone who works for, or on behalf of, the County Council to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

**1.7 When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits on merit.**

As an elected member of the County Council you are responsible for administering resources on behalf of the public of the area that you serve. You should administer these resources fairly and in accordance with the law. It is inappropriate for the County Council's resources or powers to be used in such a way that the County Council and its members be left open to accusations that inappropriate influence played a part, for example, "it's not what you know, it's who you know!"

**1.8 You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.**

This requirement is linked to carrying out all duties in a fair and transparent manner. Members are able to be held to account for their actions and, this

being the case, you must be open to and cooperate with any legitimate scrutiny that is to be applied.

**1.9 You must be as open as possible about your decisions and actions and the decisions and actions of the County Council and should be prepared to give reasons for those decisions and actions.**

Members should have good reasons for the decisions they make and should not make decisions which are based purely on self-interest or prejudice. The public we serve has the right to have decisions which affect their day-to-day lives taken for proper reasons and need to be able to understand why we have taken a course of action and, if necessary, exercise any right of challenge that is open to them.

**1.10 You must only use the resources of the County Council in accordance with its requirements. In particular you must ensure, when using or authorising the use by others of the resources of the County Council, that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.**

Where the County Council provides you with resources (for example telephone, computer and other IT facilities, transport or support from County Council employees), you must only use these resources or employees for carrying out your local authority business and any other activity which the County Council has authorised you to use them for.

You must be familiar with the rules applying to the use of these resources made by the County Council. Failure to comply with the County Council's rules is likely to amount to a breach of the code.

If you authorise someone (for example a member of your family) to use The County Council resources, you must take care to ensure that this is allowed by the County Council rules.

You should never use the County Council resources for purely political purposes, including designing and distributing party political material produced for publicity purposes.

**1.11 You must promote and support high standards of conduct when serving in your office.**

You have a duty to promote and support high standards of conduct and to behave in a way which is consistent with the seven general principles of public life set out in Appendix C of the Code.

## **INTERESTS**

### ***Registration of interests***

You need to register your interests so that the public, County Council staff and fellow members know which of your interests might give rise to a conflict of interest. The

register is a document that can be consulted when (or before) an issue arises, and helps to ensure transparency of decision-making.

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

You must notify the Monitoring Officer of any relevant interests to be included in the County Council register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

You have two types of registerable interests -

- (a) Disclosable Pecuniary Interests; and
- (b) Other registerable interests (including gifts and hospitality)

**(a) *Disclosable Pecuniary Interests***

These are interests (set out in Appendix A of the Code) which must be notified to the authority's Monitoring Officer within 28 days beginning with the day on which you become a member or co-opted member of the County Council in accordance with the statutory requirements of the Localism Act 2011. These are enforced by criminal sanction, and failure to register or declare them is a criminal offence.

A 'disclosable pecuniary interest' is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) of the following descriptions -

- (a) Details of any employment, office, trade, profession or vocation carried on for profit or gain.

- (b) Details of any payment or provision of any other financial benefit (other than from the County Council) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. (This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (c) Details of any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the County Council under which goods or services are to be provided or works are to be executed; and which has not been fully discharged.
- (d) Details of any beneficial interest in land which is within the area of the County Council.
- (e) Details of any licence (alone or jointly with others) to occupy land in the area of the County Council for a month or longer.
- (f) Details of any tenancy where (to your knowledge) the landlord is the County Council; and the tenant is a body in which the relevant person has a beneficial interest.
- (g) Details of any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of the County Council; and either the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or if that share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For the purposes of the above the “relevant period” means the period of 12 months ending with the day on which you notify the Monitoring Officer of your disclosable pecuniary interest.

**(b) Other Registerable Interests**

In addition to any disclosable pecuniary interests, you must, within 28 days of your election or appointment to office notify the Monitoring Officer in writing of the details of your interests within the following categories (set out in Appendix B of the Code), which the County Council has decided must be included in the register of interests:

- (a) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the County Council;

- (b) any body of which you are a member or in a position of general control or management and which –
  - (i) exercises functions of a public nature,
  - (ii) is directed to charitable purposes, or
  - (iii) is a body which includes as one of its principal purposes influencing public opinion or policy (this includes political parties or trade unions);
- (c) any persons from whom you have received a gift or hospitality with an estimated value of at least £100 that you receive personally in connection with your official duties.

### ***Gifts and Hospitality***

You must register the gift or hospitality and its source within 28 days of receiving it.

You should ask yourself would I have been given this if I were not on the County Council? If you are in doubt as to the motive behind a gift or hospitality, we recommend that you register it or speak to the Monitoring Officer or your parish clerk where appropriate.

You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position or if the County Council requires you to.

You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you received from the same source over a short period that add up to £100 or more should be registered.

The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life.

### ***Changes to Registerable Interests***

You must, within 28 days of becoming aware of any new registerable interest or change to any interest already registered notify the Monitoring Officer of the details of that new interest or change.

## ***Sensitive interests***

Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, the Monitoring Officer will make a note of the interest but will not enter it into the register.

A sensitive interest may include any sensitive employment (such as certain scientific research or the Special Forces) or other interests that are likely to create serious risk of violence or intimidation against you or someone who lives with you.

You should provide this information to your Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information, including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. You do not need to include this information in your register of interests if your Monitoring Officer agrees, but you need to disclose at meetings the fact that you have a disclosable pecuniary interest in the matter concerned.

## ***Definitions***

Most of the wording above is taken from statute and therefore may not be easy to understand. The following section explains what some of the categories of registerable interests mean in practice:

If you need further information or specific advice, please contact your Monitoring Officer.

<b>“the Act”</b>	means the Localism Act 2011;
<b>“body in which the relevant person has a beneficial interest”</b>	means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;
<b>“director”</b>	includes a member of the committee of management of an industrial and provident society;

<b>“land”</b>	excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;
<b>“M”</b>	means a member of a relevant authority;
<b>“member”</b>	includes a co-opted member;
<b>“relevant authority”</b>	means the authority of which M is a member;
<b>“relevant period”</b>	means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;
<b>“relevant person”</b>	means - <ul style="list-style-type: none"> <li>(i) M,</li> <li>(ii) M's spouse or civil partner,</li> <li>(iii) a person with whom M is living as husband and wife, or</li> <li>(iv) a person with whom M is living as if they were civil partners.</li> </ul>
<b>“securities”</b>	means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.
<b>body exercising functions of a public nature</b>	Although it is not possible to produce a definitive list of such bodies, here are some criteria to consider when deciding whether or not a body meets that definition - <ul style="list-style-type: none"> <li>• Does that body carry out a public service?</li> <li>• Is the body taking the place of local or central</li> </ul>

	<p>government in carrying out the function?</p> <ul style="list-style-type: none"> <li>• Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority?</li> <li>• Is the function exercised under legislation or according to some statutory power?</li> <li>• Can the body be judicially reviewed?</li> </ul> <p>Unless you answer “yes” to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature.</p> <p>Examples of bodies included in this definition: government agencies, other local authorities, public health bodies, authority-owned companies exercising public functions, arms-length management organisations carrying out housing functions on behalf of your authority, school governing bodies.</p>
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## DECLARATIONS OF INTEREST

As well as the requirement to register interests, there will be times when you need to declare interests at meetings. This section explains when you will need to declare an interest and what steps you will need to take.

### **(a) *Disclosable Pecuniary Interests***

#### **Introduction**

Unless you have been granted a dispensation, where a matter arises at a meeting which relates to a disclosable pecuniary interest then you must declare that interest to the meeting and leave the room whilst any discussion or vote takes place.

This is in the interests of transparency so that it is known and understood by all and is a matter of public record. If a declaration is not made, other than through the register, it would not necessarily be apparent to anyone who is present at the meeting why a particular member is not participating or voting in any matter.

If a dispensation has been granted to you in relation to a disclosable pecuniary interest then, subject to the terms of the dispensation, you may be relieved from the above restrictions but will still be required to declare the interest to the meeting.

### **Dispensations**

The Monitoring Officer or Standards Committee may grant you a dispensation, but only in limited circumstances, to enable you to participate and/or vote on a matter in which you have a disclosable pecuniary interest. These circumstances are where –

- It is considered that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.
- That, without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.
- That, without a dispensation, no member of the Cabinet would be able to participate on this matter.
- That the County Council considers that the dispensation is in the interests of persons living in the authority's area
- That the County Council considers that it is otherwise appropriate to grant a dispensation.

### **Offences**

Members should be aware that it is a criminal offence to

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register

- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest.
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

**(b) *Other interests***

***Introduction***

Disclosable pecuniary interests are mandatory for all local authorities. But not all interests that the public think might influence you are covered by this criminal offence. So, in the interests of transparency, there are other categories included in your code. These are both other categories of interests that you need to register, such as membership of outside bodies, but also interests which are not directly yours or about you or your partner but clearly may influence you - for example, interests of other family members or close associates. In these cases of interests of friends and family you don't need to put them on the register but you will need to declare them if any business of the County Council relates to or affects them.

In most cases you would simply declare the interest but then carry on and participate as normal. However, in certain circumstances the interest would be so affected that you should not participate in the meeting.

***What do I need to do?***

If you have an interest in an item of business as a result of the matter affecting the financial position of yourself, a relative, friend or a close associate and it is not a disclosable pecuniary interest then you need to declare that interest.

In most circumstances, you can still participate in the meeting. However, if you or those with an interest close to you would:

- a) be affected by the outcome of the decision more than it would affect the majority of other people in the relevant area affected; and
- b) a reasonable member of the public would therefore think your view of the public interest would be adversely affected

you must not take part in the decision.

In that case, you are allowed to speak before withdrawing if the public also has the right to speak. This is to ensure that you have the same rights to advocate for a decision on behalf of somebody close to you as any ordinary member of the public would have – for example to make the case for a particular planning application – but you are not allowed to vote on the matter, nor are you allowed to take part in confidential discussions, as this would be giving the person affected an unfair advantage over other members of the public.

Clearly you cannot be expected to declare something of which you are unaware. For example, you may not know that a family member is behind a particular application. However you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

### ***Definitions***

#### **‘affecting the financial position’**

An interest can affect you, your family or close personal associates positively and negatively. So if you or they have the potential either to gain or lose from a matter under consideration, an interest would need to be declared.

#### **‘a friend, relative or close associate’**

A relative should be given wide meaning. It includes a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity), a parent, parent-in-law, a son or daughter, a stepson, or stepdaughter, the child of a partner, a brother or sister of yourself or your partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece and the partners of any of these people.

A friend or close associate is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts.

**‘the relevant area affected’**

This usually means the division which will be affected by the decision.

**‘a reasonable member of the public’**

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest would be prejudiced, then you should not be taking part in the decision.

You must ask yourself whether a member of the public – if he or she knew all the relevant facts – would think that your interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

The nature of the decision would be influential as well. For example, a reasonable member of the public would not think it right that you could not take part in a general budget or policy discussion because you or somebody close to you might have some interest in a small area of that discussion. However, if the decision was only to approve a particular application that would be very different.

Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of family or close associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.

***Bias and predetermination***

Although these concepts are not mentioned specifically in the Code of Conduct, members do need to be aware of them as the authority may be challenged if a decision has not been taken properly.

Having comprehensive rules for registration and declaration of interests which are adhered to will protect an authority from this risk but do not cover all the areas which may affect the making of a decision.

The rules against bias say that there are three distinct elements. The first seeks accuracy in public decision-making and the second seeks the absence of prejudice or partiality on the part of you as the decision-maker. An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal prejudices.

The third requirement is for public confidence in the decision-making process. Even though the decision-maker may in fact be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact, in order to ensure that 'justice should not only be done, but should manifestly and undoubtedly be seen to be done.

To varying degrees, these "requirements" might be seen to provide the rationales behind what are generally taken to be three separate rules against bias: "automatic" (or "presumed") bias, "actual" bias and "appearance" bias.

The rationale behind "automatic" or "presumed" bias appears to be that in certain situations (such as if you have a pecuniary or proprietary interest in the outcome of the proceedings) then it must be presumed that you are incapable of impartiality. Since a motive for bias is thought to be so obvious in such cases, the decisions are not allowed to stand even though no investigation is made into whether the decision-maker was biased *in fact*. **In these circumstances you should not participate in a decision.** That is why there are rules in the Code of Conduct setting out when you should and should not participate where a clear interest arises.

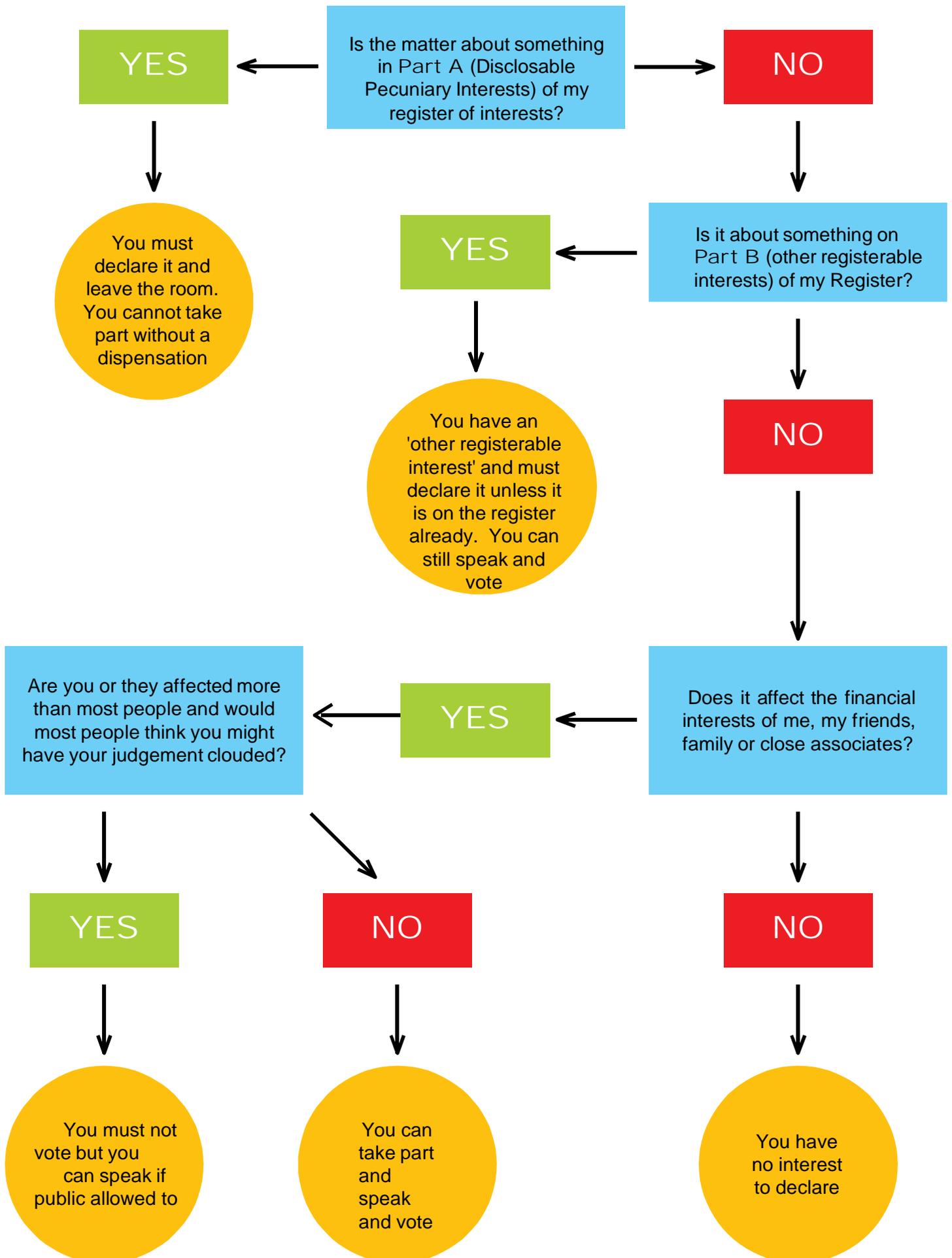
However, there are circumstances beyond the Code rules which cover the other areas of bias – where a decision is taken with a closed mind or the appearance of a closed mind.

The Localism Act 2011 has enshrined the rules relating to pre-disposition and predetermination into statute. In essence you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or in-directly indicated what view you may take in relation to a matter and that matter was relevant to the decision.

So, you are entitled to have a pre-disposition one way or another as long as you have not pre-determined the outcome. You are able to express an

opinion providing that you come to the relevant meeting with an open mind, able to take account of all of the evidence and make your decision on the day. Provided that you can demonstrate that you have an open mind and have listened to both sides of any argument fairly and considered all the evidence, you will not be seen as having predetermined an issue.

# MEMBER CODE OF CONDUCT – DECLARING INTERESTS



NB: You do not need to declare the nature of 'sensitive' interests.  
You may still speak and vote if you have been granted a dispensation

# Part 4C: Members' Allowances Scheme

## 1 Introduction

- 1.1 The Cumbria County Council, in exercise of the powers conferred by the Local Authorities (Members' Allowances) (England) Regulations 2003, hereby makes the following Scheme:

## 2 Members' Allowances Scheme

- 2.1. This Scheme may be cited as the Cumbria County Council Members' Allowances Scheme ('the Scheme'), and shall have effect from 1 April 2017.

- 2.2. In this Scheme:

"Member" means a member of the Cumbria County Council who is a councillor;

"year" means the 12 months ending with 31 March;

"Regulations" means the Local Authorities (Members' Allowances) (England) Regulations 2003.

### Basic Allowance

- 2.3 Subject to paragraphs 2.15 – 2.16 for each year a Basic Allowance of the amount specified in Part 1 of Schedule 1 to this Scheme shall be paid to each member.

### Special Responsibility Allowance

- 2.4 For each year a Special Responsibility Allowance shall be paid to those members who hold the special responsibilities that are specified in Part 2 of Schedule 1 to this Scheme.

- 2.5 Subject to paragraphs 2.15 – 2.16 the amount of such allowance shall be the amount specified against that special responsibility in that Schedule.

- 2.6 No member shall receive more than one Special Responsibility Allowance. Where a member would qualify for more than one Special Responsibility Allowance then, subject to paragraphs, the member shall be paid the higher Special Responsibility Allowance.

- 2.7 Special Responsibility Allowances shall continue to be paid from the date of the four-yearly elections to the date of the annual meeting of the Council, unless the member concerned ceases to be a councillor.

## **Renunciation**

- 2.8 A member may, by notice in writing given to the Assistant Director – Corporate Governance elect to forego any part of their entitlement to an allowance under this Scheme.

## **Part-year Entitlements**

- 2.9 The provisions of this paragraph shall have effect to regulate the entitlements of a member to Basic and Special Responsibility Allowances where, in the course of a year, this Scheme is amended or that member becomes, or ceases to be, a councillor, or accepts or relinquishes a special responsibility in respect of which a Special Responsibility Allowance is payable.

- 2.10 If an amendment to this Scheme changes the amount to which a member is entitled by way of a Basic Allowance or a Special Responsibility Allowance, then in relation to each of the periods:

- (a) beginning with the year and ending with the day before that on which the first amendment in that year takes effect; or
- (b) beginning with the day on which an amendment takes effect and ending with the day before that on which the next amendment takes effect, or (if none) with the year,

the entitlement to such an allowance shall be to the payment of such part of the amount of the allowance under this Scheme as it has effect during the relevant period as bears to the whole the same proportion as the number of days in the period bears to the number of days in the year.

- 2.11 Where the term of office of a member begins or ends otherwise than at the beginning or end of a year, the entitlement of that member to a Basic Allowance shall be to the payment of such part of the Basic Allowance as bears to the whole the same proportion as the number of days during which their term of office subsists bears to the number of days in that year.

- 2.12 Where this Scheme is amended as mentioned in paragraph 2.9, and the term of office of a member does not subsist throughout the period mentioned in paragraph 2.9 (a), the entitlement of any such member to a Basic Allowance shall be to the payment of such part of the Basic Allowance referable to each such period (ascertained in accordance with that sub-paragraph) as bears to the whole the same proportion as the number of days during which their term of office as a member subsists bears to the number of days in that period.

- 2.13 Where a member has, during part of, but not throughout, a year, such special responsibilities as entitle him or her to a Special Responsibility Allowance, that member's entitlement shall be to payment of such part of that allowance as bears to the whole the same proportion as the number of days during which he has such special responsibilities bears to the number of days in that year.

- 2.14 Where this Scheme is amended as mentioned in paragraph 2.9, and a member has during part, but does not have throughout the whole, of any period mentioned in paragraph 2.9 (a) of that paragraph any such special responsibilities as entitle him or her to a Special Responsibility Allowance, that member's entitlement shall be to payment of such part of the allowance referable to each such period (ascertained in accordance with paragraph 2.9 (a) as bears to the whole the same proportion as the number of days in that period during which he or she has such special responsibilities bears to the number of days in that period.

### **Payments and Withholding of Payments**

- 2.15 Payments shall be made on the last working day of each month, on the basis of 1/12 of Basic Allowance and, as applicable, of Special Responsibility Allowance.
- 2.16 Where a payment of 1/12 of the amount specified in this Scheme in respect of a Basic Allowance or a Special Responsibility Allowance would result in the member receiving more than the amount to which, by virtue of paragraphs 2.8 - 2.13, he or she is entitled, the payment shall be restricted to such amount as will ensure that no more is paid than the amount to which he or she is entitled.

### **Payment of Pensions**

- 2.17 No provision is made under this Scheme for the payment of a pension to any member.

### **Allowances to Co-optees**

- 2.18 With the exception of the position of Chair of the Workington Harbour Board, no provision is made under this Scheme for the payment of an annual allowance to any co-opted or appointed member who serves on any committee or sub-committee of the County Council. Such co-opted or appointed members shall, however, be entitled to claim travel expenses in connection with their attendance at officially convened meetings of any committee or sub-committee to which they have been appointed on the same basis as members under this Scheme. For the avoidance of doubt, "committee or sub-committee" shall include service on a Panel, Forum, Group or Appeals Panel or similar body.

### **Dependents' Carers' Allowance**

- 2.19 A member shall be entitled to claim an allowance ("dependents' carers' allowance") in respect of such expenses of arranging for the care of their children or dependents as are necessarily incurred in the performance of any of the approved duties set out in Schedule 2.
- 2.20 Dependent relatives shall include children aged 14 or under, elderly people or people with disabilities where there is medical or social work evidence that care is required. The amounts which may be claimed must reflect the sum incurred in employing an independent carer to enable a member to carry out the duties

specified above and shall be subject to a maximum of £6.25 per hour and a limit of £1,250 per annum. A payment shall not be made if a member already receives a carers' allowance.

- 2.21 All claims shall be accompanied by evidence that the amount claimed has been incurred in employing a carer. A carer may be any responsible adult who does not normally live with the member as part of that member's family.

### **Travel Allowances**

- 2.22 Travel allowances are payable to all members who necessarily incur expenditure in the performance of an approved duty. The mileage rates are the prevailing HM Revenue and Customs limits for tax allowance purposes. Currently these are as follows:

<b>Type of Vehicle</b>	<b>First 10,000 miles</b>	<b>Above 10,000 miles</b>
Cars and vans	45p per mile	25p per mile
Motorcycles	24p per mile	24p per mile
Cycles	20p per mile	20p per mile

- 2.23 The above rates may be increased by a sum of 5.0p per mile for each official passenger up to a maximum of four passengers, to whom a travelling allowance would otherwise be payable.

### **Subsistence Allowances**

- 2.24 Members shall be entitled to claim the following subsistence allowances for any duty approved by the County Council as set out in Schedule 2.

(a) **Day Allowance**

Absence from the usual place of residence, but not involving absence overnight	1p per day
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(b) **Overnight Allowance**

For absence overnight from the usual place of residence for a continuous period of 24 hours the maximum sums which may be claimed for accommodation and the cost of meals on production of receipts for payment are as follows. Members may not claim the cost of alcoholic drinks.

London	£140
Otherwise	£120

- 2.25 Where members attend a national or regional conference for which there is a nominated delegate hotel(s), members may claim the actual cost of stay at the hotel on production of a receipt for payment. Where they are not included in the overall cost members may also claim for meals (excluding alcoholic drinks) taken on

production of receipts for payment up to a maximum amount of £30 for breakfast, lunch and dinner. Where members do not stay in the nominated delegate hotel the maximum amounts payable will be those set out under paragraph 2.23 (b) above.

- 2.26 Where members make their own arrangements for overnight accommodation and meals and are unable to produce receipts an allowance of one-half of the amounts set out under paragraph 2.24 (b) shall be payable.
- 2.27 The actual cost of main meals taken on a train (i.e. breakfast, lunch or dinner) while travelling to or from an approved duty **outside the County** of Cumbria will be reimbursed on production of a receipt within the limits specified below. Such allowances will not be paid, however, where refreshments are included in the cost of a rail ticket.
- (a) £6.10 for breakfast for an absence of more than 4 hours before 11.00 am.
  - (b) £8.20 for lunch for an absence of more than 4 hours before 12 Noon and after 2.00 pm.
  - (c) £10.20 for dinner for an absence of more than 4 hours ending after 7.00 pm.

#### **Submission of Claims**

- 2.28 Claims under this scheme for the payment of travel and subsistence and carers' allowances shall be submitted electronically on a monthly basis on a form prescribed for the purpose to the Assistant Director – Corporate Governance by the fourteenth day of the following month.

#### **Membership of Other Local Authorities**

- 2.29 Where a member is also a member of another local authority, that member may not receive allowances from more than one local authority in respect of the same duties.

#### **Approved Duties**

- 2.30 The schedule of approved County Council duties can be found at Schedule 2 of this Scheme. Members of the County Council may claim a Travel and Subsistence Allowance and/or Dependents Carers' Allowances only in relation to these duties.

## Schedule 1 – Remuneration Allowances

### Part 1

#### Basic Allowance

An amount of £ 8,322 for each year to each County Council member from 1 April 2017.

An amount of £ 8,405 for each year to each County Council member from 1 April 2018.

### Part 2

#### Special Responsibility Allowances

The following are specified as special responsibilities in respect of which special responsibility allowances in the amounts set against them are payable to the County Council members holding those responsibilities:

<b>Position</b>	<b>Allowance with Effect from 8 May 2017</b>	<b>Allowance with Effect from 1 April 2018 1% increase</b>
Chairman of the County Council	£ 5,217	£5,269
Vice-Chairman of the County Council	£ 1,974	£1,994
Leader of the Council	£ 25,000	£25,250
Deputy Leader of the Council	£ 14,000	£14,140
Cabinet Members	£ 10,000	£10,100
Chair of Scrutiny Management Board	£ 10,000	£10,100
Chairs of Overview and Scrutiny Advisory Boards (3)	£ 6,949	£7,018
Chair of Cumbria Health Scrutiny Committee	£ 6,949	£7,018
Chairs of Local Committees (6)	£ 6,949	£7,018
Chair of Audit and Assurance Committee	£ 6,949	£7,018
Chair of Development Control and Regulation Committee	£ 6,949	£7,018
Chair of Staffing Committee	£ 1,974**	£0**

Chair of Cumbria Pensions Committee	£ 6,949	£7018
Chair of Corporate Parenting Board	£ 1,974**	£0**
Chair of Workington Harbour Board	£ 6,886	£6955
Leader of the Largest Qualifying Opposition Group*	£ 12,166	£12,288
Leader of the Second Largest Qualifying Opposition Group*	£ 5,217	£5,269

**\* A qualifying opposition group is one with a minimum of 8 members, i.e. 10% of the total number of members on the Council**

**\*\* The Allowance for the Chairs of the Staffing Committee and Corporate Parenting Board was discontinued from 18 May 2017.**

## **Schedule 2: Approved County Council Duties**

### **APPROVED DUTIES FOR THE PURPOSES OF THE PAYMENT OF TRAVELLING AND SUBSISTENCE ALLOWANCES**

1. Attendance by members at meetings of:
  - the County Council;
  - Cabinet, Cabinet Sub-Committees, Working Groups and Panels; and
  - Committees, Sub-Committees, Forums and Panels of the County Council, and Working Groups, Working Parties, Liaison and Advisory Committees established by the Council, a committee, sub-committee or panel of which the member is a member or is entitled to attend under the Articles of the Council's Constitution and its rules of procedure.

Including meetings authorised by any of the above for the purpose of:

  - inspecting sites or establishments in connection with the discharge of its functions, provided that, except for the Council and a main committee, a decision to visit a site or establishment outside the County shall be notified in advance to the Leader of the Council; and
  - formal or informal presentations or submissions about matters related to the functions and work of the Council.
2. Attendance at meetings of Joint Committees of the Council with one or more other authorities, and Joint Consultative Committees with Health Authorities.
3. Attendance at meetings of the Adoption Panel, and County Council Education Appeals Committees, and at meetings of Education Appeals Committees constituted by Voluntary Aided or Special Agreement Schools, by members who are on the Council's panel list for that purpose.
4. Attendance at meetings of:
  - Governing Bodies of Universities and Colleges (or their successors);
  - National and Provincial Negotiating bodies;
  - Regional Arts and Sports Associations; and
  - Committees or sub-committees of such bodies.
5. Attendance at meetings between representatives of the County Council and representatives of other local authorities, Government Departments and other bodies/organisations or distinguished visitors, where the holding of, or

attendance at, such meetings has been authorised by the Council or by a committee, sub-committee, forum or panel or, in cases of urgency, by the Assistant Director - Corporate Governance after consultation with the Leader of the Council.

6. Attendance at public meetings concerning a County Council service, where the holding of such meetings has been authorised by the Council or by the committee, sub-committee, forum or panel responsible for that service or, in cases of urgency, by the Assistant Director - Corporate Governance.
7. Attendance:
  - (a) in pursuance of any standing order requiring a member or members to be present while tender documents are opened;
  - (b) in connection with the discharge of any function of the County Council confirmed by or under any enactment and empowering or requiring the County Council to inspect or authorise the inspection of premises; and
  - (c) in connection with arrangements made by the Council for the attendance of pupils at a school approved for the purposes of section 342 (Special Schools) of the Education Act 1996.
8. A member visiting:
  - a Corporate Director or their authorised representative on matters concerning the work of the County Council;
  - a project, site or establishment relating to the service of the County Council with a corporate director or their authorised representative.
9. Official duties undertaken by the Chairman and the Vice-Chairman of the Council or their substitutes; and official duties undertaken by the Chair and Vice-Chair of a committee, sub-committee, forum or panel, or their substitute, or by a member in receipt of a special responsibility allowance, provided the performance of the duty has the prior agreement of the Chairman of the Council.
10. Rota visits to County Council establishments authorised by a committee, sub-committee or panel insofar as not covered by paragraph 7(b) above.
11. Meetings of political groups, subject to:
  - the meetings being concerned with the discharge of the functions of the County Council;
  - the Group ensuring that members sign an attendance record and forwarding it to the Assistant Director - Corporate Governance together with the starting and finishing times of the meeting; and
  - the Group retaining a copy of the minutes of the meetings for production to the Council's external auditor if required.

12. Visits by official Council delegations to the Council's 'twin authority' Rheinisch-Bergischer Kreis, Germany.
13. Attendance at conferences and meetings to which section 175 of the Local Government Act 1972 applies, where such attendance has been approved in advance by:
  - the committee etc. concerned; or
  - in cases of urgency, by the Assistant Director - Corporate Governance.
14. Attendance at training events for members arranged or authorised by a committee or sub-committee, or arranged through the auspices of the Member Development Group or, in cases of urgency, approved by the Assistant Director - Corporate Governance.
15. Attendance by members at a 'hospitality' function, exhibition, open day at County Council premises or similar events authorised in advance as an approved duty for these purposes by the Council, a committee, sub-committee, forum or panel or, in cases of urgency, by the Assistant Director - Corporate Governance.
16. Attendance by up to four members appointed by the Corporate Director – Economy and Environment and the appropriate local member(s) if not amongst the appointees to represent the Council at official road opening ceremonies, public launches, and other similar events associated with highways and transportation.
17. Attendance at meetings of Town Councils, Parish Councils and Parish meetings within a member's electoral division.
18. Attendance as the Council's appointee/nominee at meetings of a variety of outside bodies as agreed by Council, Cabinet and Local Committees. In the event of any query contact the Democratic Services Manager:

For the avoidance of doubt:

- (a) Performance of the above duties includes, where appropriate, performance by member representatives substituting for the appointed member representatives, and
- (b) Attendance at such meetings includes meetings of committees, sub-committees or working parties of such bodies.

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# Part 5A: Council Procedure Rules

## 1 Annual Meeting of the Council

### 1.1 Timing and Business

In a year when there is an election of all Councillors ('members'), the annual meeting will take place within 25 days of the election. In any other year, the annual meeting will be held in April and will:

- (a) Elect a person to preside at the meeting if the Chair of the Council is not present;
- (b) Elect the Chair of Council;
- (c) Elect the Vice-Chair of Council;
- (d) Receive any declarations of interest from members;
- (e) Approve the minutes of the last meeting;
- (f) Receive any announcements from the Chair;
- (g) When the meeting is taking place in the year of the whole Council elections, elect the Council Leader for a four year term of office;
- (h) Elect the Chair and Vice-Chair of the Scrutiny Management Board;
- (i) Appoint at least one Scrutiny Board, and any other Committees which the Council considers appropriate to deal with those matters which are not reserved to the Council itself or which are not executive functions;
- (j) Agree the Scheme of Delegation (excluding any executive delegations which the Leader has responsibility for)
- (k) Consider any business on the agenda for the meeting.

## 1.2 **Selection of Councillors on Committees and Outside Bodies**

At the annual meeting, the Council will:

- (a) Decide which committees to establish for the following year;
- (b) Decide the size and terms of reference of those committees;
- (c) Decide the allocation of seats and any substitutes to political groups in accordance with the political balance rules;
- (d) Appoint the Chairs and Vice-Chairs of all Committees (except for the Local Committees and the Standards Committee)
- (e) Receive nominations of members to serve on each Committee and outside body; and
- (f) Appoint to those Committees and outside bodies (except where appointment to those bodies has been delegated by the Council or are exercisable only by the Cabinet).

## 1.3 **Appointment of Leader and Other Individual Appointments**

- (a) If only one nomination is received, the Chair will declare that person is duly appointed.
- (b) If two persons are nominated, there will be a vote either by show of hands or a recorded vote at members request. The nominee with the highest number of votes will be declared as duly appointed. In the event of an equal number of votes the Chair will exercise a casting vote.
- (c) If three or more persons are nominated, there will be a vote either by show of hands or a recorded vote at members request. If one nominee has an overall majority of the votes cast, he/she will be declared duly appointed.
- (d) If not, then the nominee with the lowest number of votes will be excluded from the next round of voting. This process will be repeated, if necessary, until only two nominees are left, when the procedure is as at paragraph 1.3.1.2 above.
- (e) At all stages, any equality of votes will be resolved by the casting vote of the Chair.

#### 1.4 Appointment of Chairs and Vice-Chairs of Scrutiny

- (a) The Chair will request a motion for the appointment of the Chairs/Vice-Chairs of Scrutiny Advisory Boards. Only non-Cabinet members will be eligible to submit a motion and all nominations will be based on the principle that the Chairs and the Vice-Chairs of Scrutiny Advisory Boards are to be allocated on a basis which is proportionate to the number of seats that each group has on the Council as a whole, and in accordance with the weighting system described below.
- (b) The motion, after being seconded, may be the subject of amendment, debate and voting in accordance with these rules, but may not be amended so as to depart from the principle of political proportionality.
- (c) The following system is to be used for making appointments on a politically proportionate basis:
  - (i) Each position of Chair and Vice-Chair will be given a weighting which is then multiplied by the number of positions on the Council to give a total points score. The point scores below are included for illustrative purposes only, and the actual points scores will be calculated by reference to the number of panels the County Council decides to establish at the time of its annual meeting.

	<b>Weighting</b>	<b>Points Score</b>
Chair of Scrutiny Advisory Board (x 3)	6	18
Vice-Chair of Scrutiny Advisory Board (x 3)	3	9
Chair of Cumbria Health Scrutiny Committee	6	6
<b>TOTAL</b>		<b>33</b>

- (ii) The total points score will be divided between the political groups on the Council in proportion to the number of seats that each group has on the Council as a whole, so as to give a points score for each political group.
- (iii) Discussions will then take place between the political groups as to the positions which should be allocated to each group based on each group's points score and the weightings in the table above.
- (iv) For the avoidance of doubt, a political group may, if it wishes, nominate within its own points score a member who is not a member of a political group to a position of chair or vice-chair.

## 1.5 **Vacancies**

- (a) If a vacancy arises in the position of Chair or Vice-chair of a Scrutiny Advisory Board before the next annual meeting of the Council, then the political group holding the position immediately before the vacancy arose is entitled to fill the vacancy until the next annual meeting of the Council.
- (b) The Leader of the relevant political group should do this by giving notice of the new appointment to the Assistant Director - Corporate Governance and sending, where appropriate, a copy of the Chair or Vice-Chair's notice of resignation. The Assistant Director - Corporate Governance will report the new appointment for information to the next available meeting of the Council.

## 2 **Ordinary Meetings**

Ordinary meetings will:

- (a) Elect a person to preside if the Chair and Vice-Chair are not present;
- (b) Receive any declarations of interest from members;
- (c) Approve the minutes of the last meeting;
- (d) Receive any announcements from the Chair, Leader, Cabinet Member or the Head of Paid Service (Chief Executive). The Leader of any political group(s) not forming part of the Administration will be given an opportunity to respond to any statement made by the Leader of the Council by either making a comment or asking a question; the response time is limited to 2 minutes;
- (e) Deal with any business adjourned from the last Council meeting;
- (f) Receive petitions or questions from the public under the Public Participation Scheme.
- (g) Receive the minutes of public meetings of the Cabinet and give members the opportunity to ask any questions on the minutes in accordance with rule 11.1. The total time allowed for questions will normally be limited to 30 minutes, but this may be extended at the Chair's discretion;
- (h) Enable members to ask any relevant questions of the Leader, Cabinet Member or Committee Chair without notice in accordance with rules 11.2 to 11.5. The total time allowed for questions will normally be limited to 30 minutes, but this may be extended at the Chair's discretion;

- (i) Receive reports from the Chair of the Scrutiny Management Board (or in his/her absence the Vice-Chair of the Board) on issues relating to the work programme of either the Board or any of the Council's Scrutiny Advisory Boards or on any matter relating to their responsibilities which the Chair considers should be brought to the Council's attention. Questions on the report of Scrutiny Management Boards will normally be limited to 30 minutes but may be extended at the Chair's discretion;
- (j) Receive reports from Committees of the Council and receive questions and answers in accordance with rules 11.1 to 11.5.
- (k) Receive reports about, and receive questions and answers on, the business of joint arrangements and external organisations;
- (l) Consider any other business specified in the summons to the meeting, including consideration of proposals from the Cabinet in relation to the Council's Budget and Policy Framework and reports of the Scrutiny Boards for debate;
- (m) Consider Notice of Motions for up to a specified period of 1 hour. The Chair may extend this period at his/her discretion; and
- (n) Hear speeches (not exceeding five minutes each), for up to a specified period of 30 minutes, from individual members. At least 24 hours' notice of the topic of the speech must have been given to the Assistant Director – Corporate Governance. The Chair may extend the specified period at his/her discretion.

### **3 Special Meetings**

#### **3.1 Calling Special Meetings**

A special meeting may be requested by:

- (a) The Council by resolution;
- (b) The Chair of the Council;
- (c) The Chief Executive ('Head of Paid Service')
- (d) The Monitoring Officer;
- (e) The Section 151 Officer; and
- (f) Any five members of the Council notifying the Chief Executive in writing.

### **3.2 Business**

A special meeting may only consider the specific items set out in the summons to the meeting.

## **4 Appointment of Replacement Members of Committees and Sub-Committees**

The Assistant Director – Corporate Governance is authorised to appoint replacement members to committees, sub-committees, boards, panels, and relevant joint and outside bodies, in accordance with the expressed wishes of the political groups and within their approved allocation as agreed by Council from time to time.

The appointment of replacement members for Scrutiny Advisory Boards is limited to the list of six named substitutes for each Advisory Board.

## **5 Time and Place of Meetings**

The time and place of meetings will be determined by the Chief Executive and notified in the Summons to the meeting, unless specifically decided by Council or the committee concerned. Meetings of Council will commence at 10.00 a.m. unless the Chair of the Council agrees an alternative time.

## **6 Notice of, and Summons to, Meetings**

The Chief Executive will give notice to the public of the time and place of any meeting, in accordance with the Access to Information Procedure Rules. At least five clear days before a meeting, the Chief Executive will send a summons, signed by him/her, by post, to every member of the Council, or leave it at their usual place of residence. The summons will be accompanied by all reports which are available.

## **7 Postponement of Meeting**

The Chief Executive may postpone any meeting which has already been called as a result of inclement weather, other emergency, or exceptional reasons, after consultation with the Chair of the member body concerned. Where the meeting involves two or more political groups, the group spokesperson for each group or, in the case of their non-availability, the group leaders will also be consulted.

## **8 Chair of Meeting**

The person presiding at the meeting has the authority to exercise any power or duty of the Chair. Where these rules apply to committee and sub-Committee meetings, references to the Chair also include the Chair of committees and sub-Committees.

## **9 Minimum Attendance / Quorum**

The minimum number of members who must be present for the meeting to proceed is one quarter of the total number of members of that body, with a minimum of two members. All figures will be rounded up to the nearest whole number.

During any meeting, if the minimum number is not present, then the meeting will adjourn for 15 minutes. If, after 15 minutes, the minimum number of members is still not present the meeting will immediately adjourn. The remaining business will be considered at a time and date fixed by the Chair. If no new date is fixed then the remaining business will be considered at the next Ordinary Meeting.

## **10 Duration of Meeting**

All meetings of the Council, or any of its committees, which have commenced in the morning, will be automatically adjourned for lunch at 12:30 p.m., unless the body concerned resolves to continue or the lunch break has already commenced.

All meetings of the Council will be automatically adjourned at 6.00 p.m., to a date to be fixed by the Chair, unless the Council resolves to continue.

## **11 Questions by Members**

### **11.1 On Reports of the Cabinet or Committees**

A member of the Council may ask the Leader, a Cabinet member or the Chair of a committee, any question, without notice, on an item in any the report of the Cabinet or a committee, when that item is being received or considered by the Council.

### **11.2 Questions without Notice**

A member of the Council may ask the Leader, Cabinet member or the Chair of a committee any question, without notice, at a meeting of the Council. Questions must relate to the responsibilities of the Leader or Cabinet member or relate to the responsibilities of a committee.

### **11.3 Duration,**

Questions under rules 11.1 and 11.2 above will normally be limited to 30 minutes duration in respect of each rule but this may be extended at the Chair's discretion.

#### 11.4 **Undertakings**

Where an undertaking is given to reply to a question under rules 11.1 and 11.2 above in writing, a copy of the reply shall be made available to all members of the Council, and the press and public by making the information available on the Council's website, so long as no exempt or confidential information is disclosed as a result.

#### 11.5 **Supplementary Questions**

Where a member asks a question under rules 11.1 and 11.2 above, he/she may also ask one supplementary question related to the original question/answer, unless the Chair uses his discretion not to permit supplementary questions in view of time constraints or to facilitate the conduct of the meeting.

#### 11.6 **Response**

An answer may take the form of:

- (a) A direct verbal answer;
- (b) Where the information referred to in the question is in a publication of the Council, or other published work, by reference to the publication; or
- (c) A written answer circulated after the meeting to the questioner and copied to all members as set out in rule 11.3 above.

### 12 **Notices of Motion**

#### 12.1 **Notice Period**

Notices of Motion must be signed by at least one member of the Council and delivered to the Assistant Director – Corporate Governance not later than eight working days before the date of the meeting.

#### 12.2 **Urgency**

The Chair may agree that a Notice of Motion should be considered as a matter of urgency if he/she considers that any delay caused by the requirement to give eight working days would seriously prejudice either the Council's or the public's interest. The minutes of the Council must specify the grounds upon which the motion is considered urgent.

#### 12.3 **Agenda Item and Order**

Notices of Motion will be listed on the agenda in the order in which they are received, unless the member giving notice states, in writing, that they propose to move it to a later meeting or withdraw it.

#### 12.4 **Scope**

Notices of Motion must be about matters for which the Council has a responsibility or which affect the County of Cumbria.

#### 12.5 **Acceptability**

Any decision about the acceptability of a motion will be made by the Chair and notified to the member concerned by the Assistant Director – Corporate Governance.

### **13 Motions without Notice**

The following motions may be moved without notice:

- (a) To appoint a Chair of the meeting;
- (b) In relation to the accuracy of the minutes;
- (c) To change the order of business in the agenda;
- (d) To refer back or to an appropriate body or individual a recommendation of the Cabinet or a committee;
- (e) To appoint a committee or member arising from an item on the summons for the meeting;
- (f) To receive reports or adopt recommendations of committees or officers and any resolutions following from them;
- (g) To withdraw a motion;
- (h) To amend a motion;
- (i) To proceed to the next business;
- (j) That the question be now put;
- (k) To adjourn a debate;
- (l) To adjourn a meeting;
- (m) To continue the meeting beyond the time fixed for automatic adjournment;
- (n) To suspend a particular Council Procedure Rule;
- (o) To exclude the public and press in accordance with the Access to Information Procedure Rules; [insert hyperlink to part 4E]
- (p) To not hear further a member named, or to exclude them from the meeting; and
- (q) To give the consent of the Council where its consent is required by this Constitution.

## **14 Rules of Debate**

### **14.1 Conduct of Debate**

Unless the Chair gives permission for the member to remain seated, when a member speaks at Council, he/she must stand and address the meeting through the Chair.

If more than one member stands, the Chair will ask one to speak and the others must sit. Other members must remain quiet and seated whilst a member is speaking unless they wish to make a point of order or a point of personal explanation.

When the Chair stands during a debate, any member speaking at the time must stop and sit down, and all others present at the meeting must then be silent.

### **14.2 No speeches until Motion seconded**

Each item must be introduced (moved) by a proposer, and supported by one other person (a seconder) before it is debated further. The person introducing the item may speak for up to five minutes.

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

### **14.3 Seconders Speech**

When seconding a Motion or Amendment, a member may reserve his/her speech until later in the debate.

### **14.4 When a Member may speak again**

A member who has spoken once on a motion may not speak again while it is being debated, except:

- (a) To speak once on an amendment moved by another member;
- (b) To move a further amendment if the motion has been amended since he/she last spoke;
- (c) If his/her first speech was on an amendment moved by another member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);
- (d) In exercise of a right of reply;
- (e) On a point of order or personal explanation

### **14.5 Content and length of speeches**

All speakers must address the issue under debate. No speech may exceed 5 minutes without the consent of the Chair.

#### **14.6 Point of Order or Personal Explanation**

The debate may be interrupted by a member rising to his or her feet:

- (a) Either to seek the Chair's interpretation of these rules (a point of order). The member must state the rule and the way in which he/she considers it has been broken;
- (b) To give a short personal explanation of something he/she has already said (a point of personal explanation). A personal explanation may only relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate.

The ruling of the Chair on the admissibility of a personal explanation or point of order will be final.

#### **14.7 Members Conduct**

Members should follow the requirement of the Members' Code of Conduct to treat others with respect. Members' attention is also drawn to the principles of the Council's approved Equality and Diversity Policy with its commitment to challenge all forms of discrimination

If a member persistently disregards the ruling of the Chair by behaving improperly or offensively, or deliberately obstructs business, the Chair or any member may move that the member be not heard further. If seconded, the motion will be voted on without discussion.

If the member continues to behave improperly after such a motion is carried, the Chair may move that either the member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

#### **14.8 General Disturbance**

If there is a general disturbance, making orderly business impossible, the Chair may adjourn the meeting for as long as he/she thinks necessary.

#### **14.9 Amendments to Motions**

An Amendment to a motion must be relevant to the motion, and may either be:

- (a) To refer the matter to an appropriate body or individual for consideration or reconsideration;

- (b) To leave out words;
- (c) To leave out words and insert or add others; or
- (d) To insert or add words.

as long as the effect of (b) to (d) is not to negate the motion.

#### 14.10 **Number of Amendments**

Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of. The Chair may, however, permit 2 or more amendments to be discussed (but not voted upon) together if this would facilitate the proper conduct of the Council's business.

#### 14.11 **Further Amendments**

If an amendment is not carried, other amendments to the original motion may be moved.

If any amendment is carried then the Motion as amended takes the place of the original Motion. This becomes the substantive motion to which any further amendments are moved.

#### 14.12 **Amendment Carried**

After an amendment has been carried, the Chair will read out the amended motion before accepting any further amendments, or, if there are none, put it to the vote.

#### 14.13 **Alteration or Withdrawal of Motion**

A member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

A member may alter or withdraw a motion which he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

Only alterations which could be made as an amendment may be made.

#### 14.14 **Right of Reply**

The proposer of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.

If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.

The mover of the amendment has the right of reply at the end of the debate on his or her amendment and immediately before any reply by the mover of the original motion.

#### **14.15 Motions which may be moved during Debate**

A member may move, without comment, the following motions at the end of a speech of another member:

- (a) To go to the next business;
- (b) That the vote be taken;
- (c) To adjourn the debate or the meeting;
- (d) That the meeting continue beyond the time fixed for adjournment under rule 10.1 or 10.2;
- (e) To exclude the public and press in accordance with the Access to Information Procedure Rules; and
- (f) To not hear further a member named under rule 14.7

#### **14.16 Motion to go to Next Business**

If a motion to proceed to next business is seconded, and the Chair thinks the item has been sufficiently discussed, he or she will put the motion to the vote. If agreed the meeting will move to the next item of business immediately.

#### **14.17 Motion that the Vote be Taken**

If a motion that vote be taken is seconded, and the Chair thinks the item has been sufficiently discussed; he/she will put the motion to the vote. If it is passed, he/she will give the mover of the original motion and, if appropriate, the mover of an amendment which is being debated, a right to speak before putting the motion to the vote.

#### **14.18 Motion to Adjourn the Debate or the Meeting**

If a motion to adjourn the debate, or to adjourn the meeting, is seconded, and the Chair thinks the item has not been sufficiently discussed, and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

#### **14.19 Time Limits**

A second motion under rule 14.15 may not be made for 30 minutes, unless it is moved by the Chair.

## **15 Previous Decisions and Motions**

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

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least ten members.

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

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least ten members.

### **15.3 Time Limits**

Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

## **16 Voting**

### **16.1 Majority**

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the question was put.

### **16.2 Chair's Casting Vote**

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

### **16.3 Show of Hands**

Unless a recorded vote is demanded under rule 16.4 below, the Chair will take the vote by show of hands, or, if there is no dissent, by the affirmation of the Meeting.

### **16.4 Recorded Vote**

The vote will take place by recorded vote if one quarter of the members present at the meeting indicate by rising in their places or raising their hands. The names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

## 16.5 **Recorded Votes for Budget Meetings**

A recorded vote must take place when setting the County Council's budget and determining the level of council tax to be levied for each financial year. This rule will apply to both the substantive motion and any amendments. There is no necessity for one quarter of members present to request a recorded vote in these circumstances as this is now a legal requirement for Budget Meetings.

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

Any member may request immediately after the vote is taken, that their vote is recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

# 17 **Minutes**

## 17.1 **Signing the Minutes**

The Chair will sign the minutes of the proceedings at the next suitable meeting. The Chair will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

There is no requirement for the minutes of a meeting to be agreed at the next meeting if it is a special meeting, and the minutes will be submitted to the next ordinary meeting instead.

## 17.2 **Form of Minutes**

Minutes will contain all motions and amendments in the exact form and order the Chair put them.

# 18 **Exclusion of the Public**

Members of the public and press may only be excluded either in accordance with the Access to Information Procedure Rules, or as a result of disturbance by the public (refer to rule 19.1 below).

# 19 **Disturbance by the Public**

If a member of the public interrupts or disrupts proceedings, the Chair will warn the person concerned. If they continue to interrupt or cause a disruption, the Chair will order their removal from the meeting room.

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

## **20 Recording and Filming of Meetings**

Recording and filming of meetings of the Council, Cabinet and committees is allowed, unless this is undertaken in a disruptive manner. Where a disruption of the business of the meeting occurs the Chair of the meeting will have the right to exclude the individuals concerned from the meeting in accordance with rule 19.1 above.

## **21 Disclosures of Interest and Withdrawal from Meetings**

Members and co-opted members should disclose interests as required by the Members' Code of Conduct and withdraw from the meeting room where that is required, unless a dispensation has been granted by either the Standards Committee or the Monitoring Officer under their delegated powers.

## **22 Suspension and Amendment of Council Procedure Rules**

### **22.1 Suspension**

All of these Council Procedure Rules, except 'method of making appointments', refer to rules 1.3 and 'recorded votes for budget meetings', refer to rule 16.5 may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Council are present. Suspension can only be for the duration of the meeting.

### **22.2 Amendment**

Except where a proposal to change this Constitution is being made by the Constitution Review Group, any motion to add to, vary, or revoke these Council Procedure Rules will, when proposed and seconded, stand adjourned without discussion to the next Ordinary Meeting of the Council, to await a report from the Monitoring Officer or the Constitution Review Group.

## **23 Application to Committees and Sub-Committees**

- (a) All of these Council Procedure Rules apply to meetings of Council.
- (b) The rules applicable to Cabinet and Scrutiny Boards are set out in the Cabinet and Overview and Scrutiny Procedure Rules respectively.
- (c) Only Council Procedure Rules 1 – 10; 14; and 16- 21 will apply with any necessary modifications to meetings of committees and sub-Committees.

# Part 5B: Cabinet Procedure Rules

## 1 Operation of the Cabinet

### Making Cabinet Decisions

- 1.1 The Leader of the Council ('the Leader') may undertake any of the functions of the Cabinet himself/herself or may arrange for cabinet functions to be carried out by:
- (a) The Cabinet as a whole;
  - (b) A committee of the Cabinet;
  - (c) An individual member of the Cabinet;
  - (d) An officer of the County Council;
  - (e) A Local Committee;
  - (f) Joint arrangements; or
  - (g) Another local authority.
- 1.2 The Leader may assign specific portfolio responsibilities to any member of the Cabinet with or without authority to exercise Cabinet functions in relation to those responsibilities.

**(NB: No Cabinet functions are currently delegated to individual Cabinet members)**

### Delegation by the Leader

- 1.3 The Leader will present to the Annual Meeting of the Council his/her proposals for delegations to be made for inclusion in the Council's Scheme of Delegation.

The document presented by the Leader will contain the following information about cabinet functions in relation to the coming year:

- (a) The names, addresses, and electoral divisions of those councillors appointed to the Cabinet;
- (b) The extent of any authority to be delegated to Cabinet members individually, including details of any limitation on their authority;
- (c) The terms of reference, constitution and membership of any Cabinet committees established by the Cabinet;
- (d) The nature and extent of any delegation of cabinet functions to Local Committees, any other local authority or any joint arrangements, and the names of any Cabinet members appointed to any joint committee for the coming year; and
- (e) The nature and extent of any delegation to officers of the County Council, with details of any limitation on that delegation, and the title of the officer to whom the delegation is made.

### **Sub-delegation of Cabinet Functions**

- 1.4 Where the Cabinet, a committee of the Cabinet, or an individual Cabinet member is responsible for a cabinet function, they may delegate further to a Local Committee, joint arrangements, or an officer of the County Council.
- 1.5 If the Leader delegates functions to the Cabinet, then the Cabinet may delegate further to a committee of the Cabinet or to an officer of the County Council.
- 1.6 A committee of the Cabinet to whom functions have been delegated by the Leader may delegate further to an officer of the County Council unless the Leader has advised that this may not happen.
- 1.7 Even where Cabinet functions have been delegated, this does not prevent the taking of decisions by the person or body who delegated those functions.

### **Schemes of Delegation and Cabinet Functions**

- 1.8 The extent of any delegation by the Leader in accordance with the provisions set out above must be recorded in a Scheme of Delegation ('the Scheme'). Any amendments to the Scheme must be reported to the Council at its next scheduled meeting. Any delegation to any committees of the Cabinet must be similarly reported.
- 1.9 The Leader may make an amendment to the Scheme relating to Cabinet functions at any time during the year by giving written notice to the Chief Executive clearly setting out the extent of any amendment to the Scheme.
- 1.10 The Chief Executive will then include the Leader's proposals in the Scheme and amend the Constitution accordingly.
- 1.11 The Chief Executive must present a report to the next Ordinary Meeting of the Council setting out the changes proposed by the Leader.

**(NB the Council's scheme of delegation for non-executive functions must be adopted by the Council and may only be amended by the Council)**

### **Transitional Provisions**

- 1.12 The arrangements for the discharge of Cabinet functions set out in these Rules take effect from the election of a new Leader of the Council at the County Council's annual meeting. Until the new Leader notifies the Chief Executive of any proposals for changing the arrangements for making Cabinet decisions, the arrangements set out in the Constitution in force at the date of the County Council annual meeting shall continue to apply.

## **Cabinet Meetings**

- 1.13 The Cabinet will meet at times as agreed by the Leader. The Cabinet meets at the County Council's main offices, or at other locations to be agreed by the Cabinet.

### **Minimum Attendance/ Quorum**

- 1.14 The minimum attendance for a meeting of the Cabinet is 40% of all members of the Cabinet (with the number being rounded up to the nearest whole number). The minimum attendance must include either the Leader or Deputy Leader, or if both are absent then a specified Cabinet Member designated by the Leader or Deputy Leader.

### **How Decisions are to be taken by the Cabinet**

- 1.15 Voting at meetings of the Cabinet and its committees will be by a simple majority of those members voting and present in the room at the time the question is put; in the event of equality, the Leader or in his/her absence the Chair, will have a second or casting vote.

## **2 How Cabinet Meetings are conducted**

### **Chair**

- 2.1 The Leader, or in his/her absence the Deputy Leader, will chair any meeting of the Cabinet or its committees at which he/she is present. In the absence of both, a member of the Cabinet designated by the Leader or Deputy Leader will chair the meeting.

### **Business**

- 2.2 At each meeting of the Cabinet, the following business will be considered:
- (a) Declarations of interest, if any;
  - (b) The minutes of the last meeting (unless the next meeting is a special meeting);
  - (c) Matters referred to the Cabinet (whether by Scrutiny Board or by the Council) for reconsideration by the Cabinet.
  - (d) Consideration of reports from Scrutiny Boards;
  - (e) Matters referred to the Cabinet by a Local Committee; and
  - (f) Matters set out in the agenda for the meeting (any key decisions should be noted on the agenda).

### **Consultation**

- 2.3 All reports to the Cabinet on proposals relating to the Budget and Policy Framework must contain details of the nature and extent of consultation with stakeholders and relevant Scrutiny Boards, and the outcome of that consultation. Reports about other matters will set out the details and outcome

of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

### **Putting items on the Cabinet Agenda**

- 2.4 The Leader will decide upon the schedule for the meetings of the Cabinet. He/she may put on the agenda of any Cabinet meeting any matter which he/she wishes, whether or not authority has been delegated to the Cabinet, a committee of it, or any member or officer of the County Council in respect of that matter. The Chief Executive will comply with the Leader's requests in this respect.
- 2.5 With the agreement of the Leader any member of the Cabinet may require the Chief Executive to make sure that an item is placed on the agenda of the next available meeting of the Cabinet for consideration. If he/she receives such a request, the Chief Executive will comply.
- 2.6 The Chief Executive will make sure that an item is placed on the agenda of the next available meeting of the Cabinet where a relevant Scrutiny Board or Local Committee or the full Council have resolved that an item be considered by the Cabinet.
- 2.7 The Monitoring Officer and/or the Section 151 Officer may in exercise of their statutory duties include an item for consideration on the agenda of a Cabinet meeting and if necessary may require the Assistant Director – Corporate Governance to call such a meeting.
- 2.8 In other circumstances, where any two of the Chief Executive, Section 151 Officer, and Monitoring Officer are of the opinion that a meeting of the Cabinet needs to be called to consider a matter that requires a decision, they may jointly include an item on the agenda of a Cabinet meeting. If there is no meeting of the Cabinet soon enough to deal with the issue in question, then they may require that a meeting be convened for the matter to be considered.

# Part 5C: Overview and Scrutiny Procedure Rules

## 1. The number and arrangements for Overview and Scrutiny Boards

### Guiding Principle

- 1.1 Overview and Scrutiny should involve constructive criticism with the aim of improving decision-making. Although some work (particularly call-in) could potentially be adversarial in a political environment, the emphasis should be on making a positive contribution to the development of policy and performance.
- 1.2 Overview and Scrutiny will review Cabinet decisions through the “call-in” mechanism, but importantly, it will also assist in the development of policy by looking at existing policies and their effectiveness, and reviewing whether new policies or changes to existing policies are needed.

### Overview and Scrutiny Boards

- 1.3 The Council has a number of Scrutiny Advisory Boards and a Health Scrutiny Committee. The Boards may, appoint sub-committees, but will normally work through “Task and Finish groups” – (see paragraph 4 & 9 for more information).
- 1.4 The Scrutiny Management Board has overall responsibility for the direction and management of Overview and Scrutiny. The Board’s terms of reference are set out in paragraph 15.

### Matters within the remit of more than one Overview and Scrutiny Advisory Board

- 1.5 Where a matter falls within the remit of one or more Scrutiny Advisory Board, the decision as to which Board will consider it will be decided by the Scrutiny Management Board.

### Officer Support

- 1.6 Officers of the County Council owe a duty to support and advise all members. Although, most of the day to day work of Corporate Directors will be advising members of the Cabinet, this does not reduce the importance of their work for Overview and Scrutiny. This means that:

- (a) There is a presumption that corporate directors who have been asked to prepare papers for Scrutiny should brief the Chair before the meeting unless he/ she is to be questioned on their advice on a matter which has been called in; and
  - (b) Work on issues referred to Scrutiny by the Cabinet should be supported by the relevant corporate director.
  - (c) A nominated officer will be available to support the scrutiny role from a service perspective.
  - (d) Papers should be produced for the Scrutiny Committee, with the early involvement of the Chair and Vice-Chair.
- 1.7 Dedicated capacity to support the Scrutiny function will be provided by the Policy and Scrutiny team.

## **2 Policy Review, Policy Development and Scrutiny**

- 2.1 Overview and Scrutiny's role in the development of the Council's Budget and Policy Framework is set out in the Budget and Policy Framework Procedure Rules.
- 2.2 Three of the key roles for Scrutiny are policy review, policy development and scrutiny. In relation to these Scrutiny Boards may :
- (a) Review and scrutinise the decisions and performance of the Cabinet and/or Committees and Council Officers, both in relation to individual decisions and over time;
  - (b) Assist the Council and the Cabinet in the development of its Budget and Policy Framework by in-depth analysis of policy issues;
  - (c) Conduct research, community and other consultation in the analysis of policy issues and possible options;
  - (d) Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets, and/or particular service areas;
  - (e) Question Members of the Cabinet and/or Committees and Corporate Directors about their decisions and performance, whether generally in comparison with Service Plans and targets over a period of time, or in relation to particular decisions, initiatives, or projects;
  - (f) Review and scrutinise the performance of other public bodies in the area, and invite reports from them by requesting them to address the Scrutiny Board and local people about their activities and performance

- (g) Make recommendations to the Cabinet and/or appropriate Committees and/or Council arising from the outcome of the scrutiny process;
- 2.3 Providing the necessary budget is available, Scrutiny Boards may hold inquiries and investigate options for future policy development including:
- (a) The appointment of advisors to assist the process
  - (b) Undertaking site visits
  - (c) Conducting public surveys or holding public meetings
  - (d) Commissioning research or interview witnesses
  - (e) Any other matter which can reasonably assist their deliberations
  - (f) Pay any reasonable expenses to witnesses or and users

### **3 Membership of Scrutiny Boards**

- 3.1 All councillors, (except members of the Cabinet), may be members of a Scrutiny Board or Task and Finish group. However, no member may be involved in scrutinising a decision in which he/she has been directly involved.
- 3.2 The Scrutiny Management Board shall comprise between 11 and 14 non-executive members, including the chairs and vice-chairs of the three Scrutiny Advisory Boards and the Chair of the Cumbria Health Scrutiny Committee. Substitutes are not permitted.

### **4 Chairs of Scrutiny Advisory Boards and Task and Finish Groups**

- 4.1 Chairs and Vice-Chairs of Scrutiny Advisory Boards will be drawn from among the members sitting on the Scrutiny Advisory Board, and will be appointed by the County Council in accordance with Council Procedure Rule 1.4.
- 4.2 No member receiving Special Responsibility Allowance for a function may chair an Advisory Board or Task and Finish Group dealing with that function.

### **5 Meetings of the Scrutiny Management Board and the Scrutiny Advisory Boards**

- 5.1 Scrutiny Management Board will normally meet bi-monthly.

- 5.2 There will normally be four ordinary meetings of Scrutiny Advisory Boards in each year. Extraordinary meetings may be called from time to time.
- 5.3 A meeting of the Management Board or of one of the Advisory Boards may be called by the relevant chair, by any five members of the Board or by the Assistant Director – Corporate Governance if he/she considers it necessary or appropriate.
- 5.4 If a member of a Scrutiny Board is subject to a Party Whip, the member must declare the existence of the Whip, and the nature of it, before the commencement of the Board's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

## **6 Procedure at Scrutiny Board Meetings**

- 6.1 Scrutiny Boards shall consider the following business:
- (a) Minutes of the last meeting;
  - (b) Declarations of interest;
  - (c) Consideration of any matter referred to the Board for a decision in relation to call-in of a decision;
  - (d) Responses of the Cabinet to reports of the Overview and Scrutiny Board; and
  - (e) Any other business set out on the agenda for the meeting.
- 6.2 Where the Scrutiny Board conducts investigations (e.g. with a view to policy development), the Board may also ask people to attend to give evidence at Board meetings which are to be conducted in accordance with the following principles:
- (a) That the investigation be conducted fairly, and all members of the Board be given the opportunity to ask questions of attendees, and to contribute and speak;
  - (b) That those giving evidence be treated with respect and courtesy; and
  - (c) That the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- 6.3 Following any investigation or review, the Board shall prepare a report, for submission to the Cabinet and/or Council as appropriate, and shall make its report and findings public.

- 6.4 Cabinet Members should not attend meetings of Scrutiny as participants as a matter of course, but may request the Chair of the Scrutiny Board to allow them to attend and speak on a particular item; the final decision rests with the Chair of the Scrutiny Board.

## **7 Work Programme and Annual Report**

- 7.1 Scrutiny Advisory Boards will be responsible for contributing to one overall Scrutiny work programme, which should also take into account the wishes of members on that Committee who are not members of the largest political group on the Council.
- 7.2 The Scrutiny Management Board must report annually to full Council on the work of Overview and Scrutiny, and make recommendations for future work programmes and amended working methods if appropriate.

## **8 Agenda Items**

- 8.1 Any member of a Scrutiny Board, or any five members of the Council who are not members of a Scrutiny Board, has a right to ensure that any item relevant to the Scrutiny Board is placed on the agenda and discussed at a meeting of the relevant Board. This right should be used in a constructive way and not to challenge a decision properly taken (for example, to repeat a debate carried out at a previous meeting within the last six months) or as a means for a member to obtain information for which other methods are available.
- 8.2 Any member wishing to have an item included on an agenda must give notice of the item to the Assistant Director – Corporate Governance not later than 10 working days before the date of the next scheduled ordinary meeting. Specifying the key issues and the purpose and object of bringing the matter before the committee. The requirement 10 days' notice may be waived in exceptional circumstances where an item is urgent.
- 8.3 The Assistant Director – Corporate Governance will consult the relevant Chair who will determine which meeting the item should be considered at having regard to the weight of business, the Board's agreed programme of work and the urgency and importance of the item brought forward by the member. In determining the importance and urgency of the item the Chair shall have regard to the views of the member and to such factors as whether:
- (a) The item relates to a significant variation to the Council's budget;

- (b) The item involves a significant departure from or change to the Council's Policy Framework;
  - (c) The item involves any significant propriety or probity issues;
  - (d) Because of the urgent nature of the business, including any deadlines for decisions or action, consideration cannot be deferred to a future meeting;
  - (e) The item relates to an Education matter in respect of which Education representatives will be required to attend the meeting.
- 8.4 The item may not be deferred for longer than one scheduled meeting after receipt of the item by the Assistant Director – Corporate Governance.
- 8.5 The relevant Chair may reject items which are not relevant to the specific functions of Scrutiny. In particular items which seek to debate rather than to review or scrutinise the decisions or performance of the Cabinet, committees or officers of the County Council or which take the place of the statutory and constitutional management role of the Cabinet or seek to obtain information may be rejected. In the latter case the member will be referred to the appropriate member of the Cabinet, Corporate Director or Proper Officer. Where items are rejected under this process the Chair shall report the matter to the next meeting of the Scrutiny Board.
- 8.6 Members requesting that items be placed on a Scrutiny Board agenda do not have a right to request the preparation of detailed reports by officers. However the relevant Scrutiny Board does have the right to request the provision of information or reports to enable the item to be properly considered.
- 8.7 These provisions shall apply equally to notice seeking the inclusion of items received from five members of the Council who are not members of Scrutiny as they apply to such notice received from a member of a Scrutiny Board.
- 8.8 Each Advisory Board will normally seek to reach agreement by consensus, but if it cannot agree on one single final report to the Council or Cabinet, as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council or Cabinet with the majority report.
- 8.9 The Council or Cabinet shall consider the report of a Scrutiny Board within two months of it being submitted to the Assistant Director - Corporate Governance.

## **9 Overview and Scrutiny Task and Finish Groups**

- 9.1 Task and Finish Groups are key to enabling Overview and Scrutiny to make a positive contribution to the development and review of policy.

9.2 Task and Finish Groups are member groups set up for a specific and time limited purpose. Each advisory board will develop a work programme subject to approval by Scrutiny Management Board

9.3 The following key points shall apply to the Group:-

- (a) Any member of the Council can serve on a Group, except a Cabinet Member. Substitutes are not permitted.
- (b) The membership of a task group is not required to be politically proportionate, but will normally be multi-party and include at least one member from the commissioning Advisory Board.
- (c) Normally the Group will consist of a minimum of 3 and a maximum of 5 members, except in exceptional circumstances, the Chair and Vice-Chair of the parent Scrutiny Board may agree additional membership
- (d) If a task group is oversubscribed the Scrutiny team will summarise:
  - (i) Members' interest/experience in the subject.
  - (ii) The geographical spread of members interested in participating.
  - (iii) The number of reviews members have previously taken part in.
  - (iv) The political group the member represents.
- (e) The Chair of the parent Scrutiny Board will review this, in consultation with the Chair and Vice-Chair of the Scrutiny Management Board, and will select a balanced task group of 3–5 members.
- (f) The Chair of a Task and Finish group will be appointed by the Task Group members.
- (g) The Group is not a formal sub-committee, and can advise and recommend but not make decisions.
- (h) The Group will have clear objectives and terms of reference for a specific time-limited scrutiny review. The Group's work will be supported by a detailed project plan which has been approved by the Scrutiny Management Board.
- (i) The work undertaken will form part of a programme approved by the Scrutiny Management Board.
- (j) The Group can meet in private and informally.
- (k) The Group's completed draft final report shall be approved by Scrutiny Management Board before it goes to the Cabinet for consideration, except in cases of urgency where draft final reports can be considered by the appropriate Advisory Board Chair and Chair/Vice Chair of SMB outside the scheduled Board meetings

- (l) The completed draft report of a Task and Finish group set up by the Health Scrutiny Committee shall be approved by that Committee.
- (m) At Cabinet, the Group's report will be presented by the Chair of the Task Group or the Chair of the relevant Advisory Board.
- (n) The relevant Advisory Board, will receive monitoring reports on the implementation of any proposals agreed by the Cabinet.
- (o) The normal Access to Information Rules will apply to the Group's report.

## **10 Making sure that Overview and Scrutiny Reports are considered by the Cabinet**

- 10.1 Scrutiny Board Reports referred to the Cabinet will be considered within two months of the Scrutiny Board completing its report/recommendations.
- 10.2 Once a Scrutiny Board has completed its deliberations on any matter, it will forward a copy of its final report to the Assistant Director - Corporate Governance who will allocate it to either or both the Cabinet and the Council for consideration, according to whether the contents of the report would have implications for the Council's Budget and Policy Framework. If the Assistant Director - Corporate Governance refers a Scrutiny Board report to Council, he/she will also serve a copy on the Leader, with notice that the matter is to be referred to Council. The Cabinet will have three weeks in which to respond to the Overview and Scrutiny report, and the Council will not consider it within that period. When the Council does meet to consider any referral from an Overview and Scrutiny Board on a matter which would impact on the Budget and Policy Framework, it shall also consider the response of the Cabinet to the Overview and Scrutiny proposals.
- 10.3 Where the Cabinet proposes to adopt, or recommend adoption of, the recommendations of a Scrutiny Board, in whole or in part, it shall agree or submit to the Council for approval an action plan for implementing the Board's recommendations. The action plan shall set out clearly what action is proposed, who is responsible for implementation and the timescale within which the action(s) is/are to be taken. A copy of the Cabinet's proposals will be sent to the Scrutiny Management Board for information.
- 10.4 It shall be the Cabinet's responsibility to implement any action plan approved by them or adopted by the Council, but the Cabinet will submit regular progress reports to the Scrutiny Management Board.
- 10.5 Scrutiny Boards will have access to the Cabinet's Forward Plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from an Overview and Scrutiny Board following a

consideration of possible policy/service developments, the Board will at least be able to respond in the course of the Cabinet's consultation process in relation to any key decision.

## **11 Members and Officers giving account**

11.1 Any Scrutiny Board may scrutinise and review decisions made, or actions taken, in connection with the discharge of any Council functions. As well as reviewing documentation, it may require any member of the Cabinet, the Head of Paid Service, Corporate Director or Assistant Director to attend before it to explain, in relation to matters within their remit:

- (a) Any particular decision or series of decisions;
- (b) The extent to which the actions taken implement Council policy; and/or
- (c) Their performance;

and it is the duty of those persons to attend if so required.

11.2 Where any member or officer of the County Council is required to attend a Scrutiny Board under this provision, the Assistant Director - Corporate Governance, will inform the member or officer in writing, giving at least 14 working days' notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend, and whether any papers are required to be produced for the Board. Where the matter would require the production of a report, then the member or officer concerned will be given sufficient notice to allow for its preparation.

11.3 If, in exceptional circumstances, the member or officer is unable to attend on the required date, then the Scrutiny Board will, in consultation with the member or officer, arrange an alternative date for attendance.

11.4 Where someone requested to attend is genuinely unable to be at the meeting and an alternative date is not practicable, then in the case of a Cabinet member, another Cabinet member nominated by the Leader shall attend in his or her place, and in the case of an officer, another officer who is able to speak on the topic under consideration shall attend. The Chair of a Scrutiny Board may seek the advice of the Council's Monitoring Officer on whether the requirements of Rule 11.1 are met in the event of the member or officer requested giving notice that they are unable to attend.

11.5 Papers submitted by speakers will become public documents once they have presented their evidence and shall be cited as background papers to the Scrutiny Board's published report.

11.6 When Cumbria County officers appear to answer questions their evidence should, as far as possible, be confined to questions of fact and explanation relating to policies and decisions. Officers may be asked to explain and justify

advice they have given to members of the Cabinet prior to decisions being taken, and they should also be asked to explain and justify decisions they themselves have taken under delegations from the Cabinet. Officers shall not be required to give personal opinion on any Cabinet decision taken following advice from officers.

- 11.7 All speakers will be treated with courtesy and respect, and all questions to witnesses will be made in an orderly manner as directed by the Chair of the meeting.

## **12 Attendance by Others**

- 12.1 An Overview and Scrutiny Board may invite people other than those people referred to in paragraph 11 above to address it, discuss issues of local concern, and/or answer questions. It may, for example, wish to hear from residents, stakeholders, and members and officers in partner organisations as well as other parts of the public sector. Any such individual cannot however, be required to attend a meeting.

## **13 Call-In**

- 13.1 Overview and Scrutiny should only use the power to refer matters to the Council in exceptional circumstances where members of the appropriate Scrutiny Management Board have evidence which suggests that the Cabinet did not take the decision in accordance with the decision making principles set out in Part 2 of the Constitution.
- 13.2 When a decision is made by the Cabinet, or a Local Committee, or under joint arrangements, or a key decision is made by an officer, the decision shall be published, and shall be available at the main offices of the Council normally within three clear working days of being made. All Members of the Council will be sent copies of the records of all such decisions, by the person responsible for publishing the decision.
- 13.3 The notice will include its date of publication and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless the decision is called in.
- 13.4 During that period, any three or more non-Cabinet members may notify the Assistant Director - Corporate Governance in writing that they wish to call in a decision for scrutiny. If a valid request to do so is received Cabinet and the decision taker will be notified of the call-in. The Assistant Director - Corporate Governance will then call a meeting of the Scrutiny Management Board where possible after consultation with the Chair of the Board. The call-in meeting shall normally be held within 14 working days of receipt of notification of the decision to call in (but, exceptionally, following consultation with the call-in members, and provided the relevant Cabinet Member agrees that such delay

would be reasonable in all the circumstances and would not prejudice the County Council's interests, the call-in meeting may be held within 17 working days. If the Cabinet Member does not so agree, the meeting must take place within 14 working days).

- 13.5 If, having considered the decision, the Scrutiny Management Board is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns, or, if it considers the decision to be contrary to the Budget or Policy Framework, refer the matter to full Council (see paragraph 7 of the Budget and Policy Framework Procedure Rules in Part 5E of this Constitution). If referred to the decision maker, they shall then reconsider within a further 14 working days, (or, exceptionally, such longer period not to exceed 17 working days, as may be agreed by the decision making person or the Chair of the decision making body). The decision maker shall then reconsider the decision, amending or not, before reaching a final decision.
- 13.6 If, within 14 days, the Scrutiny Management Board does not meet, or does meet but does not refer the matter back to the decision maker, then the decision will take effect on either the date of the Scrutiny meeting, or the expiry of the 14 working day period.
- 13.7 If the matter was referred to full Council, and the Council does not object to a decision which has been made, then no further action is necessary, and the decision will be effective on the date of the Council meeting. However, if the Council does object, it has no authority to make decisions in respect of an Cabinet decision unless it is contrary to the Policy Framework, or contrary to, or not wholly consistent with, the Budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Cabinet as a whole, or a committee of it, a meeting will be convened to reconsider within 14 working days of the Council request. Where the decision was made by an individual, the individual will reconsider within 14 working days of the Council request.
- 13.8 If the Council does not meet, the decision will become effective on the expiry of the period in which the Council meeting should have been held.
- 13.9 The role of Scrutiny Management Board in calling-in a decision before it is finalised, is:
  - (a) To test the merits of the decision.
  - (b) To consider the process followed in reaching a decision.
  - (c) To make recommendations (to support the decision, change aspects of the decision or to invite the decision maker to re-consider).

- (d) To suggest further steps before a decision is made (but not to try to carry out those steps in place of the decision maker).
- (e) To recommend to the decision making committee or body the matter be dealt with at full County Council, or to recommend directly to full County Council if the Committee believe the matter to be contrary to the Budget and Policy Framework.
- (f) To come to a view in a relatively short time scale, so as not to compromise the speed and efficiency of the decision-making process.

13.10 The call-in mechanism is an important part of the decision-making process, and is designed to test the merits of the decision and to ensure that members have an opportunity to recommend change, reconsideration or deferral. The call-in mechanism is not:

- (a) A judicial or quasi-judicial process, or a public inquiry;
- (b) An extended examination of areas only remotely connected to the actual decision;
- (c) An open house for anyone to attend and make representations.

13.11 The three or more non-Cabinet members requesting the call-in must submit their joint request in writing or by e-mail to the Assistant Director - Corporate Governance, giving reasons for requesting that the matter be called in and identifying a Lead Member. It is not sufficient for the call-in notice simply to state that the members concerned wish to test the merits of a decision. The notice must specify which aspect or aspects of the decision the members wish to question or challenge. This is important because it will allow those summoned to the call-in meeting the opportunity to prepare adequately beforehand and to provide further information as necessary to clarify or explain the reasons for the decision.

13.12 The Assistant Director - Corporate Governance may rule that a call-in request is not valid only in the limited circumstances below:

- (a) That the call-in request has not been made within five working days of publication (or three days in relation to final decisions on school organisation proposals).
- (b) That the call-in request has not been made by at least three members.
- (c) That it is not clear which Cabinet decision is being called in.
- (d) That the decision is exempt from call-in on account of the urgency provisions.

13.13 A call-in may only be withdrawn with the agreement of the three members submitting the request in the first instance.

13.14 A decision can only be called in once. If, however, the Cabinet substantially amends the original proposal in a way which the Scrutiny Management Board has not considered nor could reasonably have foreseen, to the extent that in reality it is a different decision, the Board has the right to call it in again.

### **Call-in: in the role of the Chair of Scrutiny Management Board**

13.16 The Chair of the Board should undertake preliminary enquiries and/or consultations before the meeting in order to:

- (a) Clarify the matters to be examined by the Board;
- (b) Consider the recorded views of those who have already been consulted or involved before the decision was taken;
- (c) Form an opinion as to what further papers, if any, should be made available to the Board;
- (d) Decide who should be invited to explain the decision.
- (e) Decide whether the call in letter requires additional detail or clarification

13.17 In most circumstances the Chair of the Scrutiny Management Board should meet the lead call-in member and the Cabinet Member with appropriate officers before the meeting to clarify if an informal resolution is possible without the need to hold a formal call in meeting. During this meeting if it is clear that informal resolution is not possible the Chair should come to a view on the matters above. This is to ensure that so far as possible any areas of disagreement are discussed fully beforehand and valuable time is not spent at the meeting itself on matters of process and procedure. If the meeting does not result in agreement between the Chair, the lead call-in member and the Cabinet Member then the Chair will propose a course of action to the Board at the beginning of the call in meeting for them to consider and decide the way forward.

### **Call-in: Arrangements for the Scrutiny Management Board**

13.18 The representative of the Assistant Director - Corporate Governance will confirm attendance and the arrangements with those invited to attend. It will be the responsibility of the relevant Cabinet Member or the Chair or Vice-Chair of the Local Committee as appropriate to attend the Scrutiny Management Board to explain the reasons for the decision. The relevant Corporate Director (or the lead one, if two or more are involved) will be responsible for co-ordinating officers to explain the advice given to the Cabinet or the Local Committee and to provide further background information.

13.19 Papers will be despatched as soon as possible with notice of the date and time when the matter is to be considered. An agenda with a full set of papers will be despatched no less than five working days before the meeting.

13.20 The agenda should include:

- (a) The proposal and supporting papers submitted to the decision-taker.
- (b) A list of background papers to the proposal.
- (c) The minute of the decision.
- (d) The request for the call-in.
- (e) The reasons given by the requestors for the call-in.
- (f) Any other papers that the members requesting the call-in identify. Background papers listed in the report to the decision-taker will not routinely be included in the agenda unless requested.
- (g) The issues to be considered, unless those have not been decided by the time the agenda is despatched, in which case a supplementary note will be sent out as soon as possible. (N.B. The Board will not be restricted to this list of issues, but care will need to be taken at the meeting in allowing other matters to be raised, if there is a likelihood that further work will be needed). An indication as to whether further papers are likely (e.g. from the Cabinet member or third party)
- (h) The persons to be invited to attend to answer questions on the issues before the Board and the order in which they will appear.

13.21 If, late papers become available after the normal agenda despatch date, they must be made available to all members of the Board as far in advance of the meeting as possible. Where papers become available on the day of the meeting, the Board will decide whether to accept them and, if they do accept them, whether to adjourn to read them.

13.22 Any other issues concerning the conduct of the meeting arising between the date of the call-in and the date of the Scrutiny Management Board will be dealt with by the Chair of the Board in consultation with the Lead Member requesting the call-in, with any necessary officer advice/support.

### **Call-in: The Meeting**

13.23 In most circumstances it will be appropriate to hold an informal meeting at least thirty minutes before the meeting. With the Scrutiny Officer and representatives of the Assistant Director - Corporate Governance present, members will:

- (a) Read any last minute papers;
- (b) Consider relevant issues;
- (c) Consider how sensitive issues should be managed, and how any new issues, might be handled;

- (d) Note how the Chair intends to conduct the meeting;
- (e) Consider questions to be asked of witnesses.

The purpose of the pre-meeting is purely to discuss and arrange procedural matters, not to discuss the merits of the issue.

13.24 The Board meeting should start promptly at the publicised time.

13.25 The three call-in members will have a maximum period of 15 minutes to present their arguments, (which may be extended at the Chair's discretion). How the 15 minute period (or any extension) is allocated between the three members is a matter for the lead call-in member to determine. He/she may wish to speak for the whole period or allow colleagues to contribute.

13.26 In most circumstances the meeting and all papers submitted to the Board should be open to the press and public. It may be necessary however to exclude the press and public to deal with "exempt" or confidential matters. This may be important not only on the day, to stop the disclosure to the press and public of exempt material but also to stop subsequent access to files on such matters. Any time spent in private session should be kept to a minimum. Exempt material in reports should be organised if possible into an appendix, so that the rest of the report can be available to the press and public.

13.27 Even though the press and public may have to be excluded, it may not be necessary to exclude all those invited to attend. Normally they should all be allowed to remain, to ensure the transparency of the process carried out in confidential session. Exceptionally it may be necessary to invite parties to advise the Scrutiny Management Board one at a time, if that is the only way in which the confidentiality of the material can be properly protected. That will usually mean officers who have advised the decision maker on this issue remaining to answer questions from the Board, in the absence of other parties. It will be important however:

- (a) for this to be carefully explained to others, preferably in public before the resolution to exclude the press and public is passed;
- (b) to limit the scope of that advice strictly to the confidential material, and not to allow it to range into advice on the general merits of the issue when others could properly have been allowed to be present.

13.28 Members may wish to adjourn in order to have the opportunity to pause to review papers and evidence in hand. It will be quite proper in those circumstances to adjourn. It will be important to explain carefully the reasons for the adjournment in public and that no one will be given an unfair advantage. If during that time members of a Board wish to reconsider or clarify any point, then the Board should reconvene in public or (if in Part II) with everyone present who has been invited to attend.

13.29 During an adjournment the Board may wish to have assistance in formulating their view for announcement in public. If so, they should invite the representative of the Assistant Director - Corporate Governance to assist in that process.

### **Call-in: The Scrutiny Management Board's View, Recommendations to the Cabinet, or to County Council**

13.30 The Scrutiny Management Board has to balance the need on the one hand for decisions not to be unreasonably delayed and, for matters called-in to be properly discussed and debated. Normally consideration of a call-in will be dealt with at a single meeting but, exceptionally, there may be circumstances where this is not possible. If the Board agrees that further investigation or information is required, the Cabinet may agree to extend the time in which a final view may be expressed if, in their opinion, delay would not be prejudicial to the County Council's interests.

13.31 Where the Scrutiny Management Board refers a matter back to Cabinet for further consideration, and the Cabinet reaffirms its original decision, the Cabinet shall give reasons to the Board for its decision.

### **EXCEPTIONS**

13.32 The power to call-in should not be abused nor cause unreasonable delay. A small number of limitations have therefore been agreed on its use. These are:

- (a) The call-in procedure shall not apply where the decision being taken by the Cabinet is urgent that is any delay caused by the call-in process would seriously prejudice the Council's or the public's interests. The record of the decision, must state whether, in the opinion of the decision maker, the decision is an urgent one, and therefore not subject to call-in. The Chair of the relevant Scrutiny Board must agree that the decision proposed is reasonable in all the circumstances, and to it being treated as a matter of urgency. In the absence of the Chair of that Board, the consent of the Chair or Vice-Chair of Council shall be required. In the absence of both, the Head of Paid Service or his/her nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- (b) The call-in timescales have been shortened for final decisions in relation to school organisation matters only, at the stage at which the Cabinet considers representations made following publication of a statutory notice setting out the Council's proposals and makes a final decision as to whether to implement the proposals. The timescales have been shortened specifically to ensure that the Council is able to take this final decision within the two month statutory timescale. The normal timescales continue to apply to the consideration of school organisation matters at earlier stages. For the final decision only

therefore the timescales are:

- (i) the Cabinet's decision notice or minute be issued to all members no later than three working days after the Cabinet's meeting;
- (ii) the period during which the decision may be called in be three working days after the issue of the decision notice or minute;
- (iii) a Scrutiny Management Board meeting convened to consider the call-in of the decision be held within seven working days of the receipt of the call-in notice;
- (iv) where the Scrutiny Management Board refers the decision back to the Cabinet for further consideration the Cabinet's meeting be held within a further seven working days.

## **14 Councillor Call for Action**

- 14.1 Members have the right to call for debate and discussion at a Board on a topic of neighbourhood concern. This power is known as the Councillor Call for Action (CCfA) and is limited to issues affecting single council divisions.
- 14.2 Members have a right to refer a local government matter not just to the scrutiny committee of their authority, but in the case of a two-tier area like Cumbria, to the committees of the relevant district/borough or County overview and scrutiny committee, irrespective of whether they are a member of that authority.
- 14.3 CCfA is designed to sit alongside existing member channels for resolving local issues. However, before an issue of concern can be submitted to a scrutiny board certain criteria have to be met which ensures that existing channels for resolution have been fully tested. These criteria are set out in a joint County/District Protocol for Cumbria.

## 15 Terms of Reference for Overview and Scrutiny Boards

Committee/ Panel	Scope
<p><b>Scrutiny Management Board</b></p>	<p><b>Functions</b></p> <p>The Scrutiny Management Board has strategic responsibility for the Overview and Scrutiny function. The Board has overall responsibility for the direction and management of Overview and Scrutiny so as to ensure that non-executive members make an effective contribution to the improvement and development of Council and other public services for the benefit of the people of Cumbria. Within this context the Board has the following specific responsibilities:</p> <ol style="list-style-type: none"> <li>(1) to oversee and manage the Council's scrutiny process;</li> <li>(2) to take an overview of use of resources, policy development and performance;</li> <li>(3) to have responsibility to approve one overall scrutiny work programme (except for the Health Scrutiny Committee);</li> <li>(4) to monitor the County Council's Forward Plan of Key Decisions;</li> <li>(5) to have overall responsibility for the commissioning of task and finish work (except for joint scrutiny committees and the Health Scrutiny Committee);</li> <li>(6) to undertake regular dialogue at Scrutiny Management Board meetings with corporate directors and cabinet members;</li> <li>(7) to consider scrutiny referrals from county councillors, local committees and other sources at service and community level;</li> <li>(8) to oversee the co-ordination of scrutiny members learning and development;</li> <li>(9) to undertake quality control of scrutiny procedures including outputs and added value;</li> <li>(10) to consider any Councillor Calls for Action which do not fall within the terms of reference of one of the Scrutiny Advisory Boards;</li> <li>(11) to consider any call-in of a decision made by the Cabinet, or a Committee of the Cabinet, or a Local Committee, or under joint arrangements, or a key decision made by a Corporate Director.</li> </ol> <p><b>Membership</b></p> <p>Between 11 &amp; 14 Members excluding Members of the Cabinet, including the Chairs &amp; Vice Chairs of the three Scrutiny Advisory Boards and the Chair of the Cumbria Health Scrutiny Committee. Substitutes are not permitted.</p>

<p><b>Children and Young People's Scrutiny Advisory Board</b></p>	<p>All the powers and duties of the County Council relating to children and young people.</p> <p><b>Membership</b></p> <p>Between 11 and 13 members, excluding members of the Cabinet.</p> <p>The Scrutiny Advisory Board for Children and Young People shall include in its membership the following voting representatives:</p> <p>(a) Church of England diocese representative (1);</p> <p>(b) Roman Catholic diocese representative (1); and</p> <p>Parent Governor representatives (3).</p> <p>If the Scrutiny Advisory Board deals with other than Education matters, these representatives shall not vote on those other matters, though they may stay in the meeting and speak.</p>
<p><b>Adults Scrutiny Advisory Board</b></p>	<p>All the powers and duties of the County Council relating to adults.</p> <p><b>Membership</b></p> <p>Between 11 and 13 members, excluding members of the Cabinet</p>
<p><b>Communities and Place Scrutiny Advisory Board</b></p>	<p>All the powers and duties of the County Council relating to safer/stronger and inclusive communities and planning, highways, the environment and economic regeneration.</p> <p><b>Membership</b></p> <p>Between 11 and 13 members, excluding members of the Cabinet</p>
<p><b>Cumbria Health Scrutiny Committee</b></p>	<ul style="list-style-type: none"> <li>• To discharge the functions conferred on the Authority by Section under Section 244 of the National Health Service Act 2006 and any regulations thereunder, matters relating to the planning, provision and operation of health services in Cumbria.</li> <li>• To make reports and recommendations on matters relating to the health service in Cumbria to local NHS bodies and to the Council (including the health and wellbeing of Cumbria's population).</li> <li>• To act as consultee as required by the relevant regulations in respect of those matters on which local NHS bodies must consult the Authority.</li> <li>• To report annually on its work to the County Council and all the</li> </ul>

	<p>district councils.</p> <ul style="list-style-type: none"> <li>• To consider and respond to referrals from the Cumbria Health Watch on health matters under the Local Government and Public Involvement in Health Act 2007 as amended by the Social Care Act 2012.</li> </ul> <p><b>Membership</b></p> <p>7 County Council and 6 District Council Members</p>
<p><b>Cumbria and Lancashire Joint Health Scrutiny Committee</b></p>	<p><b>Overall function of the Joint Committee</b></p> <p>To discharge the health scrutiny functions of Cumbria and Lancashire County Councils in relation to any proposals made by the University Hospitals of Morecambe Bay NHS FT (UHMBT) regarding any cross boundary substantial variations in service provision as they arise.</p> <p><b>Specific functions and powers of the Joint Committee</b></p> <p>Taking account of the Department of Health Guidance on Health Overview and Scrutiny:</p> <ol style="list-style-type: none"> <li>1. To scrutinise proposals of UHMBT regarding any cross boundary substantial variations in services, including their evidence base.</li> <li>2. To ensure that the evidence and views of service users, carers and public interests have been considered in the proposals.</li> <li>3. To consult with, and take evidence from witnesses as appropriate.</li> <li>4. To prepare, agree and publish the findings of the Joint Committee, setting out the evidence examined and any recommendations considered appropriate. This report will be taken to each of the main Cumbria and Lancashire Health Overview and Scrutiny Committees for information.</li> </ol> <p><b>Membership</b></p> <p>The Joint Committee shall consist of 8 members, of whom:</p> <ul style="list-style-type: none"> <li>• 4 shall be elected representatives on the Cumbria Health Scrutiny Committee <ul style="list-style-type: none"> <li>○ of these 1 shall be the South Lakeland District Councillor representative on the Cumbria Health Scrutiny Committee</li> <li>○ 1 shall be the Barrow Borough Councillor representative on the Cumbria Health Scrutiny</li> </ul> </li> </ul>

## Committee

- 4 shall be elected representatives of Lancashire County Council
  - Of these at least one shall be a County Councillor representing a division in the Lancaster City Council area
  -

### **Chair and Vice Chair**

The Committee shall elect its own chair and vice chair.

### **Voting**

Each of the eight representatives on the Committee shall have equal voting rights.

### **Substitutes**

Substitution shall be permitted according to the arrangements in force within the Cumbria County Council (for Cumbria members) and Lancashire County Council (for Lancashire members).

### **Quorum**

A quorum shall comprise 3 members of the Joint Committee, of whom at least one shall be from the Cumbria Scrutiny Committee and one from Lancashire County Council.

### **Frequency of meetings**

The Joint Committee shall meet in public on an ad hoc basis to consider substantial variations in service provision as they occur, the frequency of which shall be agreed by members of the Joint Committee. On conclusion of the review the Joint Committee shall cease to meet. It will be reinstated as and when further cross boundary substantial variations in service are being proposed.

### **Referral to the Secretary of State**

In the case of contested NHS proposals for substantial service changes or any NHS proposal which the Joint Committee feels has been the subject of inadequate consultation, by majority agreement, the Joint Committee to have delegated authority to directly refer the matter to the relevant Secretary of State.

That in relation to the function described above, any Joint Committee decision on whether or not a referral should be made to the relevant Secretary of State is not required to be approved by the individual Overview and Scrutiny Committees at those local authorities that may be directly affected by the decision. However the Joint Committee's power of referral does not remove, supersede

	<p>or negate the power and authority of each individual Overview and Scrutiny Committee to make a referral to the Secretary to State should they wish to do so.</p> <p><b>Support</b></p> <p>Administrative and research support will be provided by the Scrutiny Units of Cumbria and Lancashire County Councils, working together.</p>
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## **16 Cumbria Health Scrutiny Committee**

- 16.1 The Committee is an Overview and Scrutiny Committee appointed by the Council but which includes a co-opted Scrutiny member from each District Council in Cumbria.
- 16.2 The County Council will appoint:-
- Seven members from the County Council. (Each political group to name a pool of additional members, any of whom may substitute for an appointed member from the same group. The number of members in the pool to be twice the number of that group's proportional allocation of members on the Committee).
  - Six District Council members, one co-opted from each District Council in Cumbria. (Each District Council to nominate one of its members for appointment and name two other members, either of whom may act as a substitute for the appointed member).
- 16.3 All the above appointed members or a member substituting for an appointed member at a meeting shall be entitled to vote. No member may act as a substitute unless he/she has been named in accordance with the above arrangements.
- 16.4 The Committee shall be entitled to co-opt non-members as non-voting co-optees as it thinks fit for a particular matter that is subject to scrutiny.
- 16.5 The Chair shall be drawn from the County Council members and shall be elected annually only by those members appointed by the County Council.
- 16.6 The Vice-Chair shall be drawn from the District Council members and shall be elected annually only by those members appointed by the district councils.
- 16.7 Nothing in Rules 16.5 or 16.6 above shall prevent the election of a Chair for a meeting by all members present in the absence of the Chair and Vice-Chair.
- 16.8 The Committee may appoint one or more sub-committees of County and District members and may arrange for the discharge of its functions by any such Sub-Committee, provided that the scope of the Sub-Committee's remit is clearly defined. This may be appropriate for single issues affecting the County as a whole or a more local issue affecting only a part of the County. In any such case the Committee will require a report from the Sub-Committee at the conclusion of its work. The Committee will determine the appropriateness and extent of co-option of non-local authority members to Sub-Committees when it defines the Sub-Committee's remit.
- 16.9 The Committee may set up task and finish groups.

- 16.10 The arrangements as to voting and chairmanship that apply to the main Committee shall apply to any Sub-Committee. Potential substitute members named for the purpose of the main Committee may substitute for an appointed member of any Sub-Committee.
- 16.11 The Overview and Scrutiny Procedure Rules shall apply to the work of the Committee with any necessary amendments.

# Part 5D: Access to Information Procedure Rules

## 1 Scope

- 1.1 These rules apply to all meetings of the Council, Scrutiny Boards Local Committees, and all other committees and public meetings of the Cabinet (together called meetings).

## 2 Additional Rights to Information

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

## 3 Rights to Attend Meetings

- 3.1 Members of the public may attend all meetings subject only to the exceptions set out in these rules.
- 3.2 Where the Cabinet meets to consider a key decision, the meeting must be held in public, unless exempt or confidential information is to be discussed.
- 3.3 While the meeting is open to the public, any person attending the meeting for the purpose of reporting the proceedings is, so far as practicable, to be afforded reasonable facilities for taking their report.

## 4 Notice of Meeting

- 4.1 The County Council will give at least five clear days' notice of any meeting by posting details of the meeting at Cumbria House, Carlisle, at County Offices, Kendal, and at the venue for the meeting (the designated offices).
- 4.2 A notice of meetings will also be published on the County Council's web site. The County Council also publishes its agenda for meetings on the Internet, accessible via [www.cumbria.gov.uk](http://www.cumbria.gov.uk)

## 5 Access to Agenda and Reports before the Meeting

- 5.1 The County Council will make copies of the agenda and reports open to the public available for inspection at the designated offices at least five clear days before the meeting.
- 5.2 Where a meeting is convened at shorter notice a copy of the agenda and associated reports will be open to inspection from the time the meeting is convened. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda.

- 5.3 Where reports are prepared after the summons has been sent out, the Assistant Director - Corporate Governance shall make each such report available to the public as soon as the report is completed and sent to councillors ('members')

## **6 Supply of Copies**

- 6.1 The County Council will supply copies of:

- (a) Any agenda and reports which are open to public inspection;
- (b) Any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) If the Assistant Director - Corporate Governance thinks fit, copies of any other documents supplied to members in connection with an item;

to any person on payment of a charge for postage and any other costs.

- 6.2 A reasonable number of copies of the agenda and of the reports will be made available at the meeting.

## **7 Access to Minutes etc. after the Meeting**

- 7.1 The County Council will make available copies of the following for 6 years after a Meeting:

- (a) The minutes of the meeting, or records of decisions taken, together with reasons, for all meetings of the Cabinet, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) A summary of any proceedings not open to the public, where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) The agenda for the meeting; and
- (d) Reports relating to items when the meeting was open to the public.

## **8 Background Papers**

### **List of Background Papers**

- 8.1 The relevant Corporate Director will set out in every report a list of those documents (called background papers), relating to the subject matter of the report, which in his/her opinion:

- (a) Disclose any facts or matters on which the report, or an important part of the report, is based; and

- (b) Which have been relied on to a material extent in preparing the report; but does not include published works, or those which disclose exempt or confidential information (as defined in rule 10 of these Procedure Rules)

### **Public Inspection of Background Papers**

- 8.2 The County Council will make available for public inspection, for four years after the date of the meeting, one copy of each of the documents on the list of background papers.
- 8.3 In respect of meetings of the Cabinet and Local Committees, when a report is made available for inspection by members of the public in accordance with rule 5 of these Procedure Rules then at the same time at least one copy of each background paper will be made available for inspection by the public at the offices of the Council and on the Council's web site.

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

- 9.1 A written summary of the public's rights to attend meetings, and to inspect and copy documents, must be kept at, and be available to the public at the Legal and Democratic Services Unit, Cumbria House, 117 Botchergate, Carlisle CA1 1RD

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

### **Confidential Information - Requirement to exclude Public**

- 10.1 The public must be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that confidential information would be disclosed.

### **Exempt Information - Discretion to exclude public**

- 10.2 The public may be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that exempt information would be disclosed. Such reports will be marked "not for publication", together with the category of information likely to be disclosed. Where possible any exempt information will be contained in an appendix to enable discussion of the main item to be held in public.
- 10.3 Any resolution to exclude the public due to disclosure of exempt information must identify the part of the proceedings to which it applies and the description of exempt information being used.
- 10.4 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

## Meaning of Confidential Information

- 10.5 Confidential information means information given to the County Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

## Meaning of Exempt Information

- 10.6 Exempt information means information falling within the following seven categories (subject to any qualification):

### General Note

In all categories information is not exempt if it relates to development for which the local planning authority may grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

Subject to this, and the qualification in Category 3, Information in Categories 1 to 7 is exempt if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing it.

Category	Condition
1. Information relating to any individual.	<i>See General Note above.</i>
2. Information which is likely to reveal identity of an individual.	<i>See General Note above.</i>
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information). <i>N.B. "Financial or business affairs" includes contemplated, as well as past or current, activities.</i>	Information in Category 3 is not exempt if it is required to be registered under the Companies Act 1985, the Friendly Societies Acts 1974 and 1992, the Industrial and Provident Societies Acts 1965 to 1978, the building Societies Act 1986, or the Charities Act 1993. <i>Also see General Note above.</i>
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.	"Labour relations matters" are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute. <i>Also see General Note above.</i>
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	<i>See General Note above.</i>

Category	Condition
<p>6. Information which reveals that the authority proposes:</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment.</p>	<p><i>See General Note above.</i></p>
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	<p><i>See General Note above.</i></p>

## 11 Exclusion of Access by the Public to Reports

- 11.1 If the Assistant Director – Corporate Governance thinks fit, the Council may exclude access by the public to reports which, in his or her opinion, relate to items during which, in accordance with rules 10.1 to 10.5 the meeting is likely not to be open to the public. These reports will be marked “Not for publication”, together with the category of information likely to be disclosed.

## 12 Application of Rules to the Cabinet

- 12.1 Rules 13 – 23 below apply to the Cabinet and its Committees, including Local Committees when they make executive decisions. If the Cabinet or its Committees, or a Local Committee, meet to take a key decision then they must also comply with Rules 1 – 11, unless Rule 15 ‘General Exception’ or Rule 16 ‘Special Urgency’ apply. A key decision is defined in Part 2 of this Constitution.
- 12.2 If the Cabinet, or a Local Committee, meet to discuss a key decision to be taken collectively, with an officer of the County Council within 28 days of the date according to the Forward Plan by which it is to be decided, then it must also comply with rules 1 – 11 of these Procedure Rules, unless rule 15 ‘General Exception’ or rule 16 ‘Special Urgency’ apply [insert hyperlinks to sections 15 and 16]. This requirement does not include meetings whose sole purpose is for officers of the County Council to brief members.

### Procedure Prior to a Private meeting of Cabinet

- 12.3 Subject to rule 12.4, a decision by Cabinet to hold a meeting or part of a meeting, in private may not be taken unless:
- (a) A notice has been published in the Forward Plan at least 28 clear days before the meeting in question and made available on the council’s

website. This notice is to include a statement of the reasons for the meeting being held in private; and

- (b) A further notice is included on the agenda and published on the County Council's website 5 clear days before the meeting. This notice is to include:
  - i) A statement of the reasons for the meeting to be held in private;
  - ii) Details of any representations received by the Cabinet about why the meeting should be open to the public; and
  - iii) A statement of its response to any such representations.

12.4 If a matter has not been included in accordance with rule 12.3 above then the decision to hold a meeting, or part of a meeting, in private may still be taken if the Cabinet obtains the agreement of the Chair of the relevant Scrutiny Board (or in that person's absence the Chair of the Council and in the Chairman's absence the Vice-Chairman) that the meeting is urgent and cannot reasonably be deferred. As soon as it is practicably possible a notice will be published on the Council Council's website setting out the reason why the meeting is urgent and cannot be reasonably deferred.

### **13 Procedure Before Taking Key Decisions**

- 13.1 Subject to rule 15 'General Exception' and rule 16 'Special Urgency' of these Procedure Rules a key decision may not be taken unless:
- (a) A document has been published in connection with the matter in question in accordance with Rule 14; or
  - (b) Where the decision is to be taken at a meeting of the Cabinet or a Local Committee, notice of the meeting has been given in accordance with rule 4 'Notice of Meetings'.

### **14 The Forward Plan of Key Decisions**

- 14.1 The Forward Plan will contain details of key decisions to be taken by the Cabinet, Local Committees or a Corporate Director. It will give the following details:
- (a) That a key decision is to be made on behalf of the County Council;
  - (b) The matter in respect of which the decision is to be made;
  - (c) Where the decision maker is an individual, that individual's name, and title, if any, and, where the decision maker is a decision-making body, its name and a link to its list of its members;
  - (d) The date on which, or the period within which, the decision is to be made;

- (e) The identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (f) The means by which any such consultation is proposed to be undertaken;
- (g) The steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken;
- (h) A list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made;
- (i) The address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
- (j) That other documents relevant to those matters may be submitted to the decision maker; and
- (k) The procedure for requesting details of those documents (if any) as they become available.

14.2 At least 28 clear days before a key decision is made, the document referred to in rule 14.1 above must be made available for inspection by the public:

- (a) At the offices of the Council; and
- (b) On the County Council's website.

14.3 Where, in relation to any matter:

- (a) The public may be excluded under rule 10 of these Procedure Rules from the meeting at which the matter is to be discussed; or
- (b) Documents relating to the decision need not be disclosed to the public because they contain confidential or exempt information,  
the Forward Plan referred to in rule 14.1 above must contain particulars of the matter but may not contain any confidential, exempt information.

14.4 The Forward Plan will include details of all key decisions to be made for a two month period beginning 28 clear days after the document is made available for public inspection in accordance with rule 14.2 above.

## **15 General Exception**

15.1 Subject to rule 16 'Special Urgency' below, where the publication of the intention to make a key decision under rule 14 is impracticable, that decision may only be made when:

- (a) Notice of the matter about which the decision is to be made and the reasons why it has been impracticable to apply rule 14 above has been given in writing to the chairman of the relevant Scrutiny Board Committee or in their absence where written notice has been sent to each member of that Committee and made available at the offices of the County Council and published on the County Council's website; and
- (b) At least five clear days have elapsed since the notice given in point (a) above was made available.

15.2 Where rule 15.1 above applies to any matter, rule 14 above need not be complied with in relation to that matter.

## **16 Special Urgency**

16.1 Where the date by which a key decision must be made, makes compliance with rule 15 impracticable, the decision may only be made where the decision maker has obtained agreement from:

- (a) The Chair of the relevant Scrutiny Board; or
- (b) If there is no such person, or if the Chair of the relevant Scrutiny Board is unable to act, the Chair of the Council; or
- (c) Where there is no Chair of either the relevant Scrutiny Board or of the Council, the vice-chairman of the Council,

that the making of the decision is urgent and cannot reasonably be deferred.

16.2 As soon as reasonably practicable after the decision maker has obtained agreement under rule 16.1 that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must:

- (a) Make available at the offices of the County Council a notice setting out the reasons that the matter is urgent and cannot reasonably be deferred; and
- (b) Publish that notice on the County Council's website.

## **17 Report to Council**

### **When a Scrutiny Board can require a report**

17.1 Where an executive decision has been made and:

- (a) Was not treated as being a key decision; and
- (b) A relevant Scrutiny Board are of the opinion that the decision should have been treated as a key decision,

that Scrutiny Board may require the Cabinet to submit a report to the Council within such reasonable period as the committee may specify.

- 17.2 A report under rule 17.1 above must include details of:
- (a) The decision and the reasons for the decision;
  - (b) The decision maker by which the decision was made; and
  - (c) If the Cabinet are of the opinion that the decision was not a key decision, the reasons for that opinion.

### **Cabinet's Report to Council**

17.3 The Leader of the Council ('Leader') must submit to the Council a report containing details of each Cabinet decision taken during the period since the last report was submitted to Council where the making of the decision was agreed as urgent in accordance with rule 16 of these Procedure Rules.

17.4 A report submitted for the purposes of rule 17.3 must include:

- (a) Particulars of each decision made; and
- (b) A summary of the matters in respect of which each decision was made.

17.5 The Leader must submit at least one report under rule 17.4 above annually to the Council.

### **Regular Reports on Special Urgency decisions**

17.6 In any event, the Leader will submit reports to each Ordinary Council meeting on the Cabinet decisions taken in the circumstances set out in rule 16 'Special Urgency' since the last Council meeting. The report will include the number of decisions so taken, and a summary of the matters in respect of which those decisions were taken.

## **18 Record of Decisions**

18.1 After any meeting of the Cabinet or a Local Committee, whether held in public or private, the Chief Executive or, where no officer of the County Council was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record will include the following information:

- (a) A record of the decision including the date it was made;
- (b) A record of the reasons for the decision;
- (c) Details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made;

- (d) A record of any conflict of interest relating to the matter decided which is declared by any member of the decision-making body which made the decision; and
- (e) In respect of any declared conflict of interest, a note of dispensation granted by the Standards Committee/Monitoring Officer.

## **19 Cabinet Meetings relating to matters which are not Key Decisions**

- 19.1 The Cabinet will hold all meetings in public except where exempt reports are to be considered. Where exempt reports are to be considered, the press and public will only be excluded during the consideration of those specific items.

## **20 Notice of Meeting of the Cabinet**

- 20.1 Members of the Cabinet will be entitled to receive five clear working days' notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

## **21 Attendance at Meetings of the Cabinet**

- 21.1 All members of the Council are entitled to attend all meetings of the Cabinet. Non-Cabinet members may be allowed to address meetings of the Cabinet with the Leader's approval in advance.
- 21.2 The Chief Executive ('Head of Paid Service'), the Section 151 Officer and the Monitoring Officer, together with any Corporate Director who is a signatory to a report being considered by the Cabinet, and their nominees, are entitled to attend meetings of the Cabinet.

## **22 Scrutiny Boards' Access to Documents**

- 22.1 Subject to rule 22.3 below a member of a Scrutiny Board is entitled to a copy of any document which is in the possession or under the control of the Cabinet and contains material relating to:
  - (a) Any business that has been transacted at a meeting of the Cabinet; or
  - (b) Any decision that has been made by an officer of the County Council in accordance with Cabinet arrangements.

- 22.2 Subject to rule 22.3 below, where a member of an Scrutiny Board requests a document which falls within rule 22.1 above this must be provided as soon as reasonably practicable and in any case no later than 10 clear days after the Cabinet receives the request.
- 22.3 No member of a Scrutiny board is entitled to:
- (a) Any report that is in draft form;
  - (b) Any document or part of a document that contains exempt or confidential information unless that information is relevant to:
    - (i) An action or decision that they are reviewing or scrutinising; or
    - (ii) Any review contained in any programme of work of that Scrutiny Board; or
- 22.4 Where the Cabinet determines that a member of a Scrutiny Board is not entitled to a copy of a document or part of any such document for a reason set out in rules 22.1 or 22.3 above, it must provide the Scrutiny Board with a written statement setting out its reasons for that decision.

## **23 Additional Rights of Access for Members**

- 23.1 Subject to rules 23.4 and 23.5 below, any document which is in the possession or under the control of the Cabinet and contains material relating to any business to be transacted at a public meeting, must be available for inspection by any member at least 5 clear days before the meeting. Where the meeting is convened at shorter notice the document must be available for inspection when the meeting is convened and where an item is added to the agenda at shorter notice, the document must be available for inspection when the item is added to the agenda.
- 23.2 Subject to rules 23.5 and 23.6 below, any document which:
- (a) Is in the possession or under the control of the Cabinet; and
  - (b) Contains material relating to:
    - (i) Any business transacted at a private meeting;
    - (ii) Any decision made by an individual member in accordance with executive arrangements; or
    - (iii) Any key decision made by an officer in accordance with executive arrangements;
- must be available for inspection by any member when the meeting concludes or where a decision is made by an officer of the County Council immediately after the decision has been made.
- 23.3 Any document which is required by rule 23.2 above to be available for inspection by any member must be available for such inspection, in any event, within 24 hours of the conclusion of the meeting or the decision being made, as the case may be.

- 23.4 Rules 23.1 and 23.2 above do not require a document to be available for inspection if it appears to the Proper Officer that it discloses exempt information of a description falling within Part 1 of Schedule 12A to the 1972 Act (descriptions of exempt information: England).
- 23.5 Notwithstanding rule 23.4, rules 23.1 and 23.2 nothing in these rules requires any documents to be made available for inspection if it discloses exempt information as set out in rule 23.4 unless the document contains exempt information of a description falling within:
- (a) Paragraph 3 of Schedule 12A to the 1972 Act (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract); or
  - (b) Paragraph 6 of Schedule 12A to the 1972 Act.
- 23.6 The rights conferred by rules 23.1 and 23.2 above are in addition to any other rights that a member may have.

## **24 Key Decisions by Corporate Directors**

**Before taking a key decision a Corporate Director must comply with rule 14 'The Forward Plan of Key Decisions' subject to rule 15 'General Exception' and rule 16 'Special Urgency'**

### **Reports**

- 24.1 Where a Corporate Director receives a report which she/he intends to take into account in making a key decision then she/he will not make the decision until at least five clear days after the report has been sent to the Chair of every relevant Scrutiny Board, the Leader, and the report has been made publicly available by publishing it on the County Council's website.
- 24.2 If the Leader considers that the proposed decision should be taken by Cabinet and not the Corporate Director then the Leader will, before the five day period referred to in rule 24.1 above has expired, notify this in writing to the Corporate Director and the Assistant Director - Corporate Governance. Where a decision is urgent and the Corporate Director is not able to comply with rule 15 'General Exception' of these Procedure Rules and it is therefore not possible to give the Leader five days' notice then Leader must be notified of the intention to take the decision as a matter of urgency and given at least 24 hours to decide whether the decision should instead be taken by the Cabinet.

### **Record of Individual Officer Decisions**

- 24.3 Where a key decision has been taken by a Corporate Director, she/he will prepare a record of the decision which includes the following information:
- (a) The detail of the decision including the date it was made;

- (b) The reasons for the decision;
- (c) Details of any alternative options considered and rejected when the decision was made.

The Assistant Director – Corporate Governance will publish and circulate the record of the decision to all members within 3 working days of the date of the decision for the purposes of call in. This does not require the disclosure of confidential or exempt information as defined in rule 10 of these Procedure Rules.

### **Inspection of documents following Key Decisions**

- 24.4 Where a request on behalf of a newspaper is made for a copy of any of the documents available for public inspection, those documents must be supplied for the benefit of the newspaper by the Council on payment by the newspaper of postage, copying or other necessary charge for transmission.

## **25 Non-Executive Decisions taken by Officers**

- 25.1 Where an officer takes a decision in relation to a Council function delegated to them under an express delegation from the Council, its Committees, Sub Committees or any Joint Committee or under the existing scheme of delegation and the decision:

- (a) Grants a permission or licence;
- (b) Affects the rights of an individual; or
- (c) Awards a contract or incurs' expenditure which materially affects the Council's financial position.

then as soon as possible after the decision has been taken, the officer will produce a written record of the decision and publish it on the County Council's website together with the relevant report. The record will include;

- (a) The details of the decision including the date it was made;
- (b) The reasons for it;
- (c) Details of any alternative options considered and rejected by the officer at the time of making the decision;, and
- (d) A record of any interest declared by any Cabinet Member consulted by the officer who made the decision together with a note of any dispensation granted in respect of that interest.

- 25.2 The written record will be retained and made available for inspection by the public for period of six years beginning with the date of the decision to which it relates.

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# Part 5E: Budget and Policy Framework

## Procedure Rules

### 1 The Framework for Executive Decisions

- 1.1 Full Council is responsible for the approval of the annual Budget and also the individual policies and strategies which form the statutory Policy Framework as set out in Part 2A of this Constitution.
- 1.2 It is the responsibility of the Cabinet to implement the Budget and Policy Framework once it has been formally approved by Council.
- 1.3 These rules are made in accordance these with the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001, the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and Local Government Finance Act.

### 2 Process for Developing the Framework

- 2.1 The Cabinet will:
  - (i) publicise in the Forward Plan the 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
  - (ii) make arrangements for an appropriate consultation period on the initial proposals  

(NB Consultation time vary and may be statutory or non-statutory. For non-statutory consultation the “Cumbria Compact” an Agreement between the Public, Community and Voluntary Sectors in Cumbria normally requires a consultation period of 12 weeks on relevant issues)
  - (iii) notify the Chairs of all Scrutiny Boards of the initial proposals to enable Scrutiny Boards to investigate and respond to the proposals during the consultation period
- 2.2 At the end of the consultation period, the Cabinet will draw up final proposals, having regard to the responses to the consultation, including responses from Scrutiny Boards.
- 2.3 Once Cabinet has approved the proposals, it will recommend them to Council for a decision.
- 2.4 The report to Council will reflect the comments made by consultees and Cabinet’s response.

- 2.5 In reaching a decision in respect of the Annual Budget (as defined by Part 5G Financial Standing Orders section FR1 the Council will follow the procedure set out in the Protocol for Budget Debate.
- 2.6 In approving the Budget, the Council will also specify the extent of amendments of approved budgets and budget transfers (virements) within the approved Budget in accordance with Part 5G Financial Standing Orders FR2.
- 2.7 In reaching a decision to approve an individual policy or draft strategy, which forms part of the Policy Framework, full Council may:
- (i) Approve the policy or strategy as drafted, or
  - (ii) Inform the Leader of any objections and instruct him or her to require the Cabinet to reconsider the policy or draft strategy in the light of the Council's objections
- 2.8 The Leader will have 5 working days (or a longer period if the Council agrees) to consider the Council's objections and submit his/her response
- 2.9 The Cabinet will meet during that period, following which the Leader may:
- (i) Submit to Council a revised draft plan or strategy with reasons for the amendments; or
  - (ii) Inform the Council of any disagreement with the Council's objections and proposed amendments and the reasons why
- 2.10 In amending, approving or adopting any policy or draft strategy full Council must take into account the Leader's response on behalf of the Cabinet.
- 2.11 When approving a policy or draft strategy Council will specify the degree of in-year changes to the Policy Framework which may be undertaken by Cabinet, in accordance with rule 6 of these Procedure Rules.
- 2.12 Any other changes to the Policy and Budget Framework are the responsibility of full Council.

### **3 Decisions outside the Budget and Policy Framework**

- 3.1 Any executive decision by the Cabinet, Officers, Local Committees, or under joint arrangements, must be in accordance with the Budget and Policy Framework. (unless rule 5 of these Procedure Rules applies).
- 3.2 The Monitoring Officer and/or Section 151 Officer will advise whether any executive decision is in accordance with the Budget and Policy Framework.
- 3.3 Any decision outside the approved Budget and Policy Framework may only be taken by full Council ( unless the decision is urgent in which case the procedure at rule 4 must be followed)

## **4 Urgent Decisions outside the Budget and Policy Framework**

- 4.1 An executive decision which is not in accordance with the Policy Framework and/or approved budget may be taken if the decision is urgent and:
- (i) it is not practical to convene a quorate meeting of the Council; and
  - (ii) the Chair of the relevant Scrutiny Board agrees that the decision needs to be taken as a matter of urgency.
- 4.2 The decision record must state why it is not practical to convene a quorate meeting of Council and also set out the Chair of the relevant Scrutiny Board's consent to the decision being taken as a matter of urgency.
- 4.3 In the absence of the Chair of a relevant Scrutiny Board then the consent of the Chair of the Council or (in the absence of both) the Vice-Chair of Council will be sufficient.
- 4.4 The decision taker must report to the next available Council meeting explaining the decision, the reasons for it, and why the decision was treated as a matter of urgency.

## **5 Amendment of Approved Budgets and Budget Transfers (Virement)**

- 5.1 The Council's scheme for the amendment of approved budgets including budget transfers (virements) is included in the Part 5G Financial Standing Orders FR2.

## **6 In-Year Changes to Policy Framework**

- 6.1 The approval of the Policy Framework is the responsibility of full Council.
- 6.2 No changes to any policy and/or strategy which make up the Policy Framework may be made by Cabinet, Officers, Local Committees, or under joint arrangements, except;
- (a) any changes in accordance with any authorisation made in Rule 2.11.
  - (b) a Corporate Director may make any changes required to give effect to the requirements of the secretary of state or a minister of the Crown in relation to a plan or strategy submitted to him/her for approval.
  - (c) a corporate director may make any changes recommended by a person under section 20 of the Planning and Compulsory Purchase Act 2004, an independent examination of a development plan document.

## **7 Call-In Decisions outside the Budget and Policy Framework**

- 7.1 Where a Scrutiny Board is of the opinion that an Executive decision is, or if made would be contrary to the Policy Framework and/or approved Budget, it will seek advice from the Monitoring Officer and/or Section 151 Officer.
- 7.2 If the function is the responsibility of the Cabinet, the Monitoring Officer and/or Section 151 Officer will report to the Cabinet, with a copy provided to every member of the Council.
- 7.3 Regardless of whether the decision is delegated or not, the Cabinet will decide what action to take in respect of the Monitoring Officer's and/or Section 151 Officer's report and will:
- (i) If advised that the decision was a departure prepare a report to full Council
  - (ii) If advised that the decision was not a departure prepare a report to the relevant Scrutiny Board
- 7.4 If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Section 151 Officer is that the decision is, or would be, contrary to the Policy Framework and/or approved Budget, the Scrutiny Board may refer the matter to Council.
- 7.5 No further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter.
- 7.6 The Council will meet within 21 days of the request by the Scrutiny Board. At the meeting, it will receive a report on the decision or proposals, and the advice of the Monitoring Officer and/or the Section 151 Officer. The Council may either:
- (i) Endorse the decision or proposal of the Executive decision taker as falling within the existing Budget and Policy Framework. In this case, no further action is required; or
  - (ii) Amend the Council's financial regulations or policy concerned to encompass the decision or proposal of the body or individual responsible for that executive function, and agree to the decision with immediate effect. In this case, no further action is required; or
  - (iii) Where the Council accepts that the decision or proposal is not in accordance with the Policy Framework, and/or approved Budget, and does not amend the existing Framework to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of either the Monitoring Officer or the Section 151 Officer.

# Part 5F: Procedure for Budget Debate at Budget Council

## Explanatory Note:

This procedure sets out how the full Council will deal with the debate on the budget proposed by the Cabinet and also what happens if any objections to the draft budget are proposed or carried.

There is a statutory dispute resolution procedure set out in the Local Authorities (Standing Order) Regulations 2001 that the Council must go through if it wishes to raise any objections to the Cabinet's budget proposals.

In order to ensure that there is sufficient time for the Cabinet to consider any objections, the regulations provide that this procedure only applies where the Cabinet has met on or before the 8 February and made formal recommendations on the budget to the full Council.

In simple terms, under the dispute resolution process if an objection to the Cabinet's draft budget is voted upon as an amendment and carried, Council can only reach an "in principle" decision. Any such objections must be referred back to the Cabinet who must reconsider the budget proposals and report back to the Council meeting provisionally scheduled to take place the following week.

**The County Council must set a lawful budget on or before 28 February in respect of the following financial year's budget.**

## 1. Procedure for Budget Debate

1.1 The following procedure for the debate on the budget will apply:

- a) The Leaders of the Labour, Conservative and Liberal Democrat Groups may speak for up to 15 minutes each
- b) All other members have up to 5 minutes.
- c) The Deputy Leader of the Council (as the Cabinet member with responsibility for Finance) will introduce the report and move the Cabinet's recommendations;
- d) The motion will be seconded by the Leader of the Council. He or she may reserve the right to speak.

- e) The Leader of the Opposition will reply and may move any objections to the motion.
- f) Any objection moved by the Leader of the Opposition will be seconded and must be circulated in writing. The seconder may reserve the right to speak.
- g) The Chair will ask if there are any further objections and may require that any objection is put in writing and handed to him/her;
- h) The Chair will, if necessary, propose that the meeting adjourns for a short time to allow consideration of any motions or amendments before the Council. Private rooms will be available for the Groups to meet.
- i) In accordance with Council Procedure Rule 14.10 the Chair will exercise his discretion to permit two or more objections to be discussed together, but not voted upon.
- j) As far as possible the Chair will try to alternate speakers from the different groups
- k) At the close of the debate the Leader of the Opposition will exercise his/her right of reply;
- l) The Deputy Leader of the Council will exercise his/her right of reply;
- m) Any objections will be put to the vote in the order in which they were moved.
- n) If any objection is carried then the procedure at paragraph 2 and 3 (below) will apply.
- o) If any objections put to the vote are lost then the original motion will be put to the vote.
- p) If the original motion is agreed then the Cabinet's draft budget will be agreed as the Council's budget;
- q) A recorded vote must take place in accordance with Council Procedure Rule 16.6 on all objections and on the original motion.

**2. If Cabinet's Budget is Not Agreed and has been submitted prior to 8 February.**

- 2.1 This procedure applies if the Cabinet has met on or before 8 February and made formal recommendations on its budget to full Council.
- 2.2 If the Cabinet's proposed budget is not agreed, either with or without any objections proposed by the other groups, the meeting will be adjourned initially for 1 hour.

- 2.3 Discussions will take place between the Group Leaders with a view to reaching possible agreement on a draft budget which can be put before Council. Private rooms will be made available for the Political Groups to use.
- 2.4 If there is a reasonable likelihood that a budget can be proposed which is acceptable to the Cabinet and the Council, the Leader will waive Cabinet's rights to object and for a reference back to a further meeting of the Cabinet.
- 2.5 The Chair will advise Council as soon as an agreement has been reached.
- 2.6 If the budget is approved then that decision will take effect immediately and a further meeting of the Council will not be required.
- 2.7 If the Chair is advised that there is no likelihood of an agreement being reached on the day, he/she will call the meeting to order to notify members of the intention to adjourn the Council meeting.
- 2.8 If agreement has not been reached and the Leader does not waive his right to object then the Council must inform the Leader of its objections and instruct him/her to require the Cabinet to reconsider its budget proposals in the light of the Council's objections.
- 2.9 The Leader will then have 5 working days (or a longer period if the Council agrees) to consider the Council's objections and proposals and submit his/her response.
- 2.10 The Cabinet will meet within that period and following the meeting the Leader may submit a revised budget and/ or inform the Council that he/she disagrees with the Council's objections and the reasons why.
- 2.11 When the matter comes back to Council it must take into account the Cabinet's response before reaching a decision.
- 2.12 The Leader will move the Cabinet's budget again, either with the Council's objections incorporated into the budget or without them.
- 2.13 If Cabinet have not accepted the Council's objections then they will need to be voted on in turn and dealt with in the usual way.
- 2.14 If they are carried, they will be incorporated into the budget. If they are not carried then they will fall.
- 2.15 The budget must be approved at the reconvened Council meeting.
- 2.16 In the event that agreement is not reached at the reconvened meeting then the s151 Officer will consider the necessity to exercise his/ her statutory responsibilities in order to secure a balanced budget.

- 3. If Cabinet's Budget is Not Agreed and has been submitted after 8 February**
- 3.1 A different procedure applies if the Cabinet has not met before 8 February and made formal recommendations on its budget to full Council.
- 3.2 In these circumstances the statutory dispute resolution under the 2001 Regulations procedure does not apply.
- 3.3 This means that there is no right for Cabinet to have the opportunity to convene a further meeting to consider any objections submitted by the Opposition Groups.
- 3.4 Accordingly the Council may amend, approve or adopt the Cabinet's proposals without requiring the Cabinet to reconsider them.
- 3.5 The procedure at paragraph 2 above will therefore be amended accordingly.

# Part 5G: Financial Standing Orders

## (‘Financial Regulations’)

### Glossary of Terms

In the context of these Financial Regulations generic terms are included to avoid the need for regular amendment.

- “**Accountable body**” the arrangement whereby the County Council has agreed to accept responsibility for the obligations set out in the terms of any funding granted to a third party organisation. .
- “**Amendment of approved budgets**” in respect of the revenue budget is the transfer of resources; to or from contingencies, to or from general reserves, and, to or from earmarked reserves. In respect of the capital budget it is the inclusion of a new scheme in the capital programme. Amendments to the revenue and capital budgets involve a formal process of approval.
- “**Assets**” include land, buildings, vehicles, furniture and equipment, computer systems, stocks and materials, money and investments, data and information.
- “**Budget**” means plan for revenue and capital expenditure and income, and financing relating to activities of the County Council.
- “**Budget line**” is the lowest level of detail at which approval of the original budget takes place, as included in the medium term financial plan.
- “**Budget Manager**” means accountable budget manager and devolved budget manager.
- “**Capital Programme**” means the overall five year programme of schemes approved by Council.
- “**Director**” means the County Council’s Chief Executive and all senior officers designated as Corporate Directors, or reporting to Corporate Directors and with delegated financial responsibilities nominated by the Corporate Director.
- “**Financial Regulations**” means financial standing orders.
- “**Financial Year**” is the County Council’s accounting period which runs from 1<sup>st</sup> April to 31<sup>st</sup> March.
- “**Head of Paid Service**” means the Chief Executive.
- “**Internal Audit**” means the Audit Unit of the Council.
- “**Medium Term Financial Plan**” incorporates the revenue budget and capital programme approved by Council for the forthcoming financial year together with indicative figures for the subsequent two financial years.

- “**Project**” where a scheme comprises more than one project, a Project is an individual element of the scheme.
- “**Section 151 Officer**” is the officer with the statutory responsibility for the proper administration of the County Council’s financial affairs. These responsibilities are assigned to the Assistant Director – Finance.
- “**Scheme**” means the level at which capital items are approved for inclusion in the capital programme by Council when approving the budget or by Cabinet/Council during the year (according to value). A scheme may comprise a single project or a collection of projects delivered as one overall scheme of activity, for example priority maintenance for schools.
- “**The Corporate Management Team**” is the group comprising the Directors of the County Council.
- “**The County Council**” means Cumbria County Council.
- “**Trading Accounts**” are County Council services/activities which are financed by either trading income, funding partners or by direct government finance.
- “**Virement**” is the transfer of resources between budget headings (lines), as published in the medium term financial plan each year, involving a formal process of approval.

# CONTENTS

These rules are divided into the following sections:

Overview

FR1 Financial Planning and Budgeting

FR2 Control of Resources

FR3 Asset Management

FR4 Treasury Management

FR5 Risk Management

FR6 Internal Audit

FR7 Accounting and Final Accounts

FR8 Taxation

FR9 Systems and Procedures

FR10 External Arrangements

## **OVERVIEW**

### **1. Introduction**

1.1 To conduct its business efficiently the County Council needs to ensure that it has sound financial management. Part of this process is the establishment of financial regulations which set out the County Council's financial rules. Good financial management secures value for money, controls spending, ensures due probity of transactions and achieves objectives on time, and decisions are informed by accurate accounting information.

1.2 As part of the County Council's governance arrangements, there is a statutory requirement to appoint an officer to be responsible for its financial affairs. For the County Council, the Assistant Director - Finance (S151 Officer) has been appointed to undertake their role.

1.3 In approving the financial regulations, the County Council has sought to provide a strong corporate framework for conducting the financial affairs of the County Council, incorporating appropriate controls and providing those responsible for delivering services with financial responsibility. The financial regulations provide clarity about the financial accountabilities of officers and members including those managing resources where the County Council is acting as Trustee, accountable body or where services are provided by a third party on behalf of the County Council.

1.4 All members and officers have a responsibility for taking reasonable action to provide for the security and use of the resources and assets under their responsibility and control, and for ensuring that the use of such resources and assets is legal, is consistent with the County Council's policies, is properly authorised, provides value for money and achieves best value.

1.5 Failure to comply with the financial regulations may result in disciplinary action.

1.6 The financial regulations are subject to the provisions of Part 5E of this Constitution, which allows urgent decisions to be taken which are outside the Budget and Policy Framework.

1.7 The financial regulations do not apply to schools.

1.8 The 'Cumbria LA scheme for the financing of schools' (including the detailed schools financial regulations) provide the requirements for schools, relating to those matters where decisions have been delegated to school governing bodies.

### **2 Status of Financial Regulations**

2.1 The following financial regulations provide the framework for managing the County Council's financial affairs. They apply to every member and officer of the County Council and anyone contracted to act on its behalf.

2.2 The financial regulations identify financial responsibilities of individuals - Members, Assistant Director - Finance (S151 Officer) and Directors. Directors should maintain a written record (scheme of delegation) for their area of responsibility clearly stating where decision making has been delegated to them or their staff, including seconded staff.

2.3 Where such decisions are delegated, the Officer to whom the decision has been delegated will provide sufficient information to the Director on request, in order to give assurance that tasks or decisions have been performed in accordance with financial regulations. Where decisions have been delegated or devolved to other responsible officers, references to the Director in the regulations should be read as referring to them.

2.4 The Assistant Director - Finance (S151 Officer) is responsible for maintaining a continuous review of the financial regulations and submitting any proposed amendments to the Audit and Assurance Committee before their adoption by Council. The Assistant Director - Finance (S151 Officer) is also responsible for reporting, where appropriate, breaches of the rules to Council and/or to Cabinet. The Assistant Director - Finance (S151 Officer) is also authorised to temporarily suspend financial regulations in exceptional circumstances.

2.5 The Assistant Director - Finance (S151 Officer) is responsible for issuing advice and guidance to underpin the financial regulations that members, officers and others acting on behalf of the County Council are required to follow.

2.6 Any person charged with the use or care of the County Council's resources and assets should inform themselves of the County Council's requirements under the following financial regulations, with any queries being referred to the Assistant Director - Finance (S151 Officer).

2.7 Directors should ensure that any financial procedures/guidelines produced by their departments are fully compliant with the financial regulations and the agreement of the Assistant Director - Finance (S151 Officer) or her delegated representatives should be obtained where such financial procedures are developed.

2.8 Any proposals for changes or amendments to the financial regulations will be forwarded to the Assistant Director - Finance (S151 Officer) for consideration.

2.9 All employees will report to their manager, supervisor or other responsible senior officer, any illegality, impropriety, breach of procedure or serious deficiency discovered in the following of financial regulations. Managers and members will notify immediately and confidentially the Assistant Director - Finance (S151 Officer), or if not appropriate the Head of Paid Service (the Chief Executive) or the Monitoring Officer (the Assistant Director – Corporate Governance), where it appears that a breach has occurred.

### **3 Rights of External Bodies**

3.1 The Assistant Director - Finance (S151 Officer) will be the first contact within the County Council for the External Auditor who has rights of access to all documents and information necessary for audit purposes.

3.2 The County Council may, from time to time, be subject to audit, inspection or investigation of its financial systems by other external bodies such as OFSTED, and HM Revenue and Customs who have statutory rights of access to financial records. The Assistant Director - Finance (S151 Officer) will be the principal contact within the County Council on such financial matters.

### **Main Responsibilities of the Section 151 Officer (the Assistant Director – Finance)**

#### ***4 Proper Administration of the County Council's Financial Affairs***

4.1 The Assistant Director - Finance (S151 Officer) is the Officer responsible for the proper administration of the County Council's financial affairs under Section 151 of the Local Government Act 1972, and Sections 112-114 of the Local Government Finance Act 1988.

4.2 The Assistant Director - Finance (S151 Officer) has a duty under Section 114(2) of the Local Government Act 1988 to make a report if it appears that Council, Cabinet, or any Committee is about to or has already carried out either:

- (a) A decision which involves or would involve the County Council in incurring expenditure which is unlawful; or
- (b) A course of action which if pursued would be unlawful and likely to cause a loss or deficiency to the County Council.

4.3 The Assistant Director - Finance (S151 Officer) has a duty under Section 114(3) of the Local Government Finance Act 1988 to make a report (in consultation with the Head of Paid Service and the Monitoring Officer) to every Member where it appears that the expenditure incurred or likely to be incurred in a financial year exceeds resources available to meet the expenditure. It is the duty of Directors to notify the Assistant Director - Finance (S151 Officer) of any situations that might be considered:

- (a) Unlawful; and/or
- (b) Might exceed available resources in light of the above responsibilities.

In discharging this responsibility, the Assistant Director - Finance (S151 Officer) will ensure that arrangements for financial and accounting matters and the security of financial assets are efficient and effective.

4.4 The Assistant Director - Finance (S151 Officer) can require Directors to provide any timely and relevant information that enable them to carry out their functions and to give proper advice.

4.5 All financial systems, procedures, records and controls and changes to them will be agreed in advance with the Assistant Director - Finance (S151 Officer), who may issue formal instructions or guidance from time to time.

4.6 Section 25 of the Local Government Act 2003 places a duty on the Assistant Director - Finance (S151 Officer) to report to Council about:

- (a) Whether the proposed reserves will be enough for the Council's purposes; and
- (b) How robust the budget is.

## **5 Financial Advice**

5.1 The Assistant Director - Finance (S151 Officer) will advise Council, Cabinet or any other relevant Committee on any matter containing financial implications. Such advice may be included in the reports of other officers.

5.2 Directors will ensure that the Assistant Director - Finance (S151 Officer) has the opportunity to comment on all proposals containing financial implications at the earliest practical stage before the dispatch of a report.

5.3 Members and officers carrying out functions under delegated powers will ensure that they seek and receive such financial and legal advice as may be necessary on the consequences of a course of action before taking a decision on such action.

5.4 The Assistant Director - Finance (S151 Officer) is responsible for advising Directors where relevant on the financial implications of guidance and relevant legislation issued by appropriate bodies as it applies.

5.5 The Assistant Director - Finance (S151 Officer) is responsible for advising Directors on relevant taxation issues (including other funds such as the Pension Fund) and liaising, negotiating and where necessary taking appropriate action to promote and protect the County Council's financial position.

5.6 The Assistant Director - Finance (S151 Officer) will be entitled to attend and report on financial matters directly to Council, Cabinet, and any committees or working groups the Council may establish and to the Corporate Management Team.

5.7 The Assistant Director - Finance (S151 Officer) is responsible for monitoring standards and giving advice on financial management and administration throughout the County Council. They are responsible for guiding the training and professional development of all staff employed in posts designated as requiring a qualified accountant, accounting technician, or auditor, wherever located and will be responsible for the appointment of such staff and will be consulted on any proposal to create or delete a post requiring such a qualification for appointment.

## **6 Accounting**

6.1 The Assistant Director - Finance (S151 Officer) will determine the format and maintain the County Council's principal accounting records and will be the County Council's adviser on all accounting and financial matters. Directors are responsible for making sure that financial records are maintained in a manner determined in advance by the Assistant Director - Finance (S151 Officer).

6.2 The Assistant Director - Finance (S151 Officer) will ensure that the County Council's accounting records are kept in accordance with appropriate accounting standards and mandatory guidance and that the statement of accounts is prepared in line with the Code of Practice on Local Authority Accounting in the United Kingdom.

6.3 The Assistant Director - Finance (S151 Officer) will ensure that the County Council's statement of accounts is prepared and made available in accordance with the statutory timetable.

- (a) The Assistant Director - Finance (S151 Officer) will issue procedures and a timetable for the closure of the accounts in accordance with good accounting practice.
- (b) Directors are responsible for making sure that the timetable referred to in (a) above is complied with.
- (c) The Audit and Assurance Committee (Part 2E of this Constitution) is responsible for approving the statement of accounts by the statutory date following the end of the financial year on 31<sup>st</sup> March.

## **7 Providing Information and Financial Returns to Statutory External Bodies**

7.1 The Assistant Director - Finance (S151 Officer) will make arrangements for completing the County Council's tax returns and other statutory financial returns and providing relevant information to external bodies on the financial activities of the County Council as a whole.

## **8 Internal Audit and Control**

8.1 The Accounts and Audit (England) Regulations 2011 specifically requires that a '*...relevant body must undertake an adequate and effective internal audit of its accounting records and of its system of internal control in accordance with proper practices in relation to internal control*'. The Assistant Director - Finance (S151 Officer) will commission on behalf of the Council a suitable internal audit of its accounting records and of its system of internal control in accordance with the proper practices in relation to internal control.

## **9 Application of Financial Regulations and Procedures**

9.1 Directors are each accountable to the County Council for the financial management and administration of those services and activities allocated to them in

accordance with County Council policy, including effective ongoing budgetary control, with appropriate support and advice from the Assistant Director - Finance (S151 Officer).

9.2 Directors are responsible for ensuring that Cabinet are advised of the financial implications of all proposals and that the financial implications have been agreed by the Assistant Director - Finance (S151 Officer).

9.3 Directors are responsible for ensuring and monitoring compliance with financial regulations by their staff and for reporting to the Assistant Director - Finance (S151 Officer) any known or suspected breaches of the financial regulations.

9.4 Directors are responsible for ensuring that all staff in their departments are aware of and understand the existence and content of the financial regulations and other internal regulatory documents and related guidelines and procedures and that they comply with them.

## **10. Financial Scheme of Delegation**

10.1 The following should be read in conjunction with Part 3 'Scheme of Delegations to Officers' of this Constitution.

10.2 Directors will maintain a written record where decision making has been delegated to members of their staff, including seconded staff, in the form of a scheme of delegation. The scheme of delegation will include authorised limits in respect of payments, income collection, placing orders, payroll and staffing changes.

10.3 The record will clearly specify the extent of, and limits of the powers delegated to each individual and the circumstances in which matters must still be referred to higher management for decision. As a minimum it will contain a register of posts, names, specimen signatures and the extent of the responsibility involved. This record will include delegations related to electronic authorisation. The scheme of delegation will be reviewed by each Director at least annually.

10.4 The Director will communicate such authorisation in writing to the individuals concerned.

10.5 The content of such register, and selected extracts from it, will be provided to the Assistant Director - Finance (S151 Officer) as and when requested. It is the duty of Directors to promptly notify any changes to the scheme of delegation to the Assistant Director - Finance (S151 Officer).

## **FR1: FINANCIAL PLANNING AND BUDGETING**

**NB** Please also refer to the Cabinet, Council and Budget & Policy Framework Procedure Rules.

### **1 Budgeting**

1.1 The budget can be defined as ‘a representation in financial terms of an organisation’s plans for a given period of time at a given price base’. It is therefore essential that the budget is constructed to reflect policies and strategies agreed by the Council in the Policy Framework (see Part 2A of this Constitution).

1.2 The Council Plan and service plans will be key parts of the resource allocation process.

#### *Resource Allocation*

1.3 The Assistant Director - Finance (S151 Officer) is responsible for developing and maintaining a resource allocation process which ensures due consideration of the County Council’s policy framework and also reflects agreed service priorities in the Council Plan.

#### *Budget Preparation*

1.4 The Assistant Director - Finance (S151 Officer) in conjunction with Directors a responsible for ensuring that a medium term financial plan is prepared for consideration by Cabinet before submission to Council.

1.5 Strategic planning and budgeting will be owned by Directorates. It is the responsibility of Directors to ensure that budget estimates are submitted to Cabinet and:

- (a) Represent and are consistent with the County Council’s Policy Framework, Council Plan and Service Plans;
- (b) Total to the County Council’s budget; and
- (c) Are prepared in line with guidance issued by the Assistant Director - Finance (S151 Officer).

1.6 The Assistant Director - Finance (S151 Officer)) will submit an overall budgetary report to Cabinet to consider:

- (a) The revenue and capital budgets (including financing arrangements) that are proposed for the County Council’s services;

- (b) The results of the consultation with the public and appropriate Committees; and
  - (c) Precepts and levies, the need for reserves and contingencies, the level of balances, and the grants available from Government.
- 1.7 The report will include comments from the Assistant Director - Finance (S151 Officer) on how robust the budget is and whether the level of reserves are in line with section 25 of the Local Government Act 2003.
- 1.8 Cabinet will recommend to Council the proposed revenue and capital budget and the council tax to be levied for the forthcoming financial year. Council will consider these and must approve, amend or replace Cabinet's proposal and give its decision not later than 28<sup>th</sup> February each year. Following approval the budgets will be recorded in the County Council's financial systems.
- 1.9 Council may approve the draft budget previously considered by Cabinet or ask Cabinet to reconsider it before approving it (see Budget and Policy Framework Procedure Rules and Procedure for Budget Debate at Council).

*Preparation of the Capital Programme*

- 1.10 The Assistant Director – Capital Programmes and Property is responsible for developing the capital programme. The Assistant Director - Finance (S151 Officer) is responsible for ensuring that the capital programme is affordable and reflected in the County Council's Treasury Management Strategy. The Assistant Director – Capital Programmes and Property, in consultation with the Assistant Director - Finance (S151 Officer) is responsible for ensuring that the capital programme is prepared at least on an annual basis for consideration by Cabinet, before submission to Council.
- 1.11 Directors, in consultation with the Assistant Director – Capital Programmes and Property and Assistant Director - Finance (S151 Officer) will prepare annually a proposed five year forward capital programme in accordance with the criteria, format, timetable and targets determined by the Assistant Director - Finance (S151 Officer). This programme will have regard to the County Council's priorities as set out in the Council Plan, and the availability of resources.
- 1.12 In preparing items for the capital programme Directors will prepare for each scheme:
- a) An estimate of the cost of the scheme; and
  - b) An estimate of any consequential expenditure or income, whether capital or revenue.
- 1.13 The capital programme will distinguish between committed expenditure from schemes already approved, those not yet approved, and proposals for potential new projects.

- 1.14 Where capital contracts are being procured, the budget for which has been approved in the Capital Programme, the minimum procurement and process and rules must be applied in accordance with Part 5H 'Contract Procedure Rules' and the Key Decision requirements as defined in Part 2 ' Guide to Decision Making'. Directors will evaluate whether any such work needs to be covered by indemnity insurance (to be arranged via the Assistant Director - Finance (S151 Officer)).

## **FR2: CONTROL OF RESOURCES**

### **2 Budget Monitoring and Control**

The following should be read in conjunction with Part 5E 'Budget and Policy Framework Procedure Rules' of the Constitution.

- 2.1 It is the responsibility of Directors and budget managers, advised by the Finance team, to control income and expenditure within their area of responsibility and control, and to monitor performance using financial information derived from corporate financial systems maintained by the Assistant Director - Finance (S151 Officer).
- 2.2 For capital this will include keeping under review the County Council's agreed capital programme for services under their control covering schemes and projects in progress, schemes and projects commencing in the current and forthcoming financial years and the revenue implications of those schemes and projects.
- 2.3 Budget monitoring data should be maintained at a level which enables effective monitoring of financial trends to be carried out, and to provide action plans to ensure adverse budget problems can be managed.
- 2.4 Cabinet will ensure that the budget approved by Council is implemented and will receive reports from the Assistant Director - Finance (S151 Officer) and Directors to enable it to discharge this responsibility.
- 2.5 The Assistant Director - Finance (S151 Officer) in consultation with Directors will establish an appropriate format and frequency for monitoring the County Council's financial performance (to Directors, budget managers and Cabinet) in compliance with regulations and best practice.
- 2.6 Directors and budget managers, with advice from Finance, will control and manage capital and revenue spending and income to ensure that each is contained within their approved budget. Directors and budget managers will investigate any variations and take appropriate action to deal with them.
- 2.7 The Assistant Director - Finance (S151 Officer) will support and advise Directors and budget managers in ensuring that financial management information is adequate for management purposes and that they have appropriate access to financial information via the corporate financial systems to enable budgets to be monitored effectively.
- 2.8 The Assistant Director - Finance (S151 Officer) will report monthly to the Corporate Management Team, and quarterly to Cabinet on the overall likely outturn position and any significant variances.
- 2.9 The financial information submitted by each Director for reporting to the Corporate Management Team, Cabinet and relevant Committees, will be supported by non-financial performance relating to those aspects of services

regarded as the major drivers of expenditure impacting on future levels of service activity.

- 2.10 Directors will provide the Assistant Director - Finance (S151 Officer) with any information required to enable effective monthly monitoring and reporting to the Corporate Management Team, Cabinet and relevant Committees of expenditure and income against approved budgets, and will report on variances within their own areas of responsibility. They will take any action necessary to ensure that expenditure does not exceed their budget allocations and income does not fall below the budget allocations and will inform the Assistant Director - Finance (S151 Officer) where they are unable to take action to keep expenditure and income within their budget allocations, as soon as these are identified. Directors and budget managers will document decisions and actions adequately.
- 2.11 Where additional significant savings and/ or increased income (excluding grants), in excess of £250,000 and below £500,000 have been delivered and were not included in the revenue budget agreed by Council, these new resources will be reported to Cabinet for a decision to be taken on their utilisation. Where the additional significant savings and/or increased income (excluding grants) is above £500,000 these new resources will be reported to Council for a decision to be taken on their utilisation.

### **3 Amendment of Approved Budgets**

- 3.1 The approval of Council will be sought for any proposal that involves a change to the Budget and Policy Framework such that this would have a financial effect on the County Council's forward planning of resources or significantly limit the discretion of Council in the future allocation of its resources.

#### *Revenue Budget*

- 3.2 Subject to paragraph 3.3 below, the approved revenue budget may be amended by:
- (a) The Cabinet approving transfers to or from contingencies, and to an earmarked reserve;
  - (b) The Council approving transfers to or from general reserves; and
  - (c) The Assistant Director - Finance (S151 Officer) (in consultation with relevant Director) approving budget transfers from an earmarked reserve for its designated purpose.
- 3.3 In making amendments to the approved revenue budget, the Cabinet, Assistant Director - Finance (S151 Officer) and Directors will:
- (a) have regard to the Budget and Policy Framework approved by Council, and resolutions of Council; and

- (b) be satisfied that an amendment to the revenue budget can be offset by additional income, contingencies, earmarked and general reserves within the revenue budget.

3.4 Annex A of these Rules provides a summary of the amendment of approved budgets – revenue.

3.5 Any proposed amendments to revenue budgets will be subject to the advice of the Assistant Director - Finance (S151 Officer). Following approval the amendment of revenue budgets will be recorded in the corporate financial systems.

*Capital Budget (new schemes)*

3.6 Directors have no power to approve new capital schemes to the capital programme. All capital schemes need Cabinet or Council approval as indicated below.

3.7 Cabinet may approve the inclusion of a new scheme in the capital programme, of up to £500,000 where it can be funded by additional government grants, and grants and/or contributions from external bodies.

3.8 Council is required to approve a new scheme in the capital programme of up to £500,000 if it will be funded from capital receipts, prudential borrowing and/ or revenue contributions.

3.9 The approval of Council is required for any new scheme of sums greater than £500,000.

3.10 Cabinet may approve the inclusion of scheme specific capital feasibility work in the capital programme up to £250,000. Scheme specific capital feasibility work of a value £250,001 or above will require the approval of Council.

3.11 If subsequently the capital scheme for which the capital feasibility work was undertaken is not approved the capital expenditure incurred will be charged to revenue.

3.12 In making amendments to the approved capital programme, Council and Cabinet will:

- a) Have regard to the Budget and Policy Framework approved by Council, and resolutions of Council;
- b) Be satisfied that an amendment to the approved capital programme can be financed; and
- c) Be satisfied that any revenue budget consequences of the amendment can be offset by additional income, contingency, or earmarked reserves or reserves, within the revenue budget.

3.13 Any proposed amendments to capital programme will be subject to the advice of the Assistant Director - Finance (S151 Officer).

3.14 Annex A a summary of the amendment of approved budgets – capital.

## **4 Spending of Revenue Budgets**

4.1 A revenue budget approved by Council may be spent without further reference to Council, the Cabinet (including a Committee appointed by Cabinet) or Committees appointed by Council.

4.2 No power is delegated to any Director to spend above the approved budget for their area of responsibility unless or until the relevant rules for amendment of approved budgets at section 3 and budget transfers at section 6 have been followed.

## **5 Spending Capital Budgets**

5.1 No power is delegated to any Director to incur expenditure on any scheme not included in the capital programme or to spend above the approved capital budget unless or until the relevant rules for amendment of approved budgets at section 3 and budget transfers at section 6 have been followed.

## **6 Budget Transfers (virements)**

The following should be read in conjunction with Part 5E 'Budget and Policy Framework Procedure Rules', of this Constitution.

### *Revenue Budgets*

6.1 In consultation with the Assistant Director - Finance (S151 Officer), Directors (or budget managers with the appropriate Director(s) approval) may transfer (vire) any revenue budget within their responsibility and control for any lawful purpose relating to the Directorate for which they are responsible providing that:

- (a) The budget transfer is within the estimate approved by Council for the relevant Directorate;
- (b) The reason for the transfer is within the Budget and Policy Framework;
- (c) No commitment to a higher overall level of expenditure in future financial years is entered into;
- (d) The amount in question does not exceed **£250,000**, and

- (e) No other Directorate is affected, subject to where a budget transfer between budgets is controlled by more than one Director, the transfer is agreed by all the Directors concerned.
- 6.2 Cabinet may transfer any revenue budget within its control for any lawful purpose for which they are responsible providing that:
- (a) The transfer is within the estimate approved by Council for the relevant Directorate;
  - (b) The reason for the transfer is within the Budget and Policy Framework;
  - (c) No commitment to a higher overall level of expenditure in future financial years is entered into; and
  - (d) The amount in question does not exceed **£500,000**.
- 6.3 Any transfer of revenue budget not falling within the criteria detailed in paragraphs 6.1 and 6.2 as set out above will require approval of Council.
- 6.4 Any proposed virement to revenue budgets will be subject to the advice of the Assistant Director - Finance (S151 Officer). Following approval the virement of revenue budgets will be recorded in the corporate financial systems.
- 6.5 Approval of virements will not be anticipated or assumed in advance. Directors should not present to Cabinet or Council requests for virement to meet commitments already entered into; proper monitoring routines should identify the need for virement (and/or adjustments to expenditure) sufficiently in advance for options to be identified and planned and appropriate action to be taken.
- 6.6 Annex B provides a summary of the transfer of budgets (virement) – revenue.

#### *Capital Budget*

- 6.7 Cabinet may transfer any budget between schemes within the capital programme within its control for any lawful purpose for which it is responsible, providing that: -
- (a) The reason for the budget transfer is within the Budget and Policy Framework;
  - (b) Be satisfied that any revenue budget consequences of the budget transfer can be offset by additional income, earmarked or general reserves or savings elsewhere within the capital programme; and
  - (c) The amount in question does not exceed **£500,000** at any one occasion.

- 6.8 Any transfer of budget between capital schemes not falling within the criteria detailed in paragraph 6.7 as set out above, but subject to paragraph 6.9 below, will require approval of Council.
- 6.9 The Assistant Director – Capital Programmes and Property or other identified accountable Director may authorise a virement between projects within a scheme of an amount up to **£250,000**
- 6.10 Any proposed virement to the capital programme will be subject to the advice of the Assistant Director - Finance (S151 Officer).
- 6.11 Annex B provides a summary of the transfer of budgets (virement) – capital.

## **7 Treatment of Unspent/Overspent Budgets - Revenue**

- 7.1 The treatment of all unspent (or overspent) revenue budgets at the financial year end will be taken to (from) general reserves Subject to Cabinet consideration and Council approval.

## **8 Reprofiting of Capital Schemes**

- 8.1 Council will approve the reprofiling of spend on approved capital schemes across financial years. Council will approve the carry forward of slippage/accelerated spent into future financial years.

## **9 Reserves**

- 9.1 Section 25 of the Local Government Act 2003 places a duty on the Assistant Director - Finance (S151 Officer) to report to Council about whether the proposed reserves will be enough for the County Council's purposes and support the budget. This includes general reserves and reserves earmarked for specified purposes.
- 9.2 Cabinet has the authority to agree transfers to/from contingency and transfers to earmarked reserves. Transfers from earmarked reserves are agreed by the S151 officer providing the transfer is for the purpose which earmarking was agreed by Cabinet.
- 9.3 Requests for earmarked reserves and provisions will be submitted by Directors to the Assistant Director - Finance (S151 Officer) for consideration before recommending to Cabinet.
- 9.4 When requested and in any event, always at the financial year end, Directors will provide the Assistant Director - Finance (S151 Officer) with a statement of earmarked reserve balances held and movements therein. The Assistant Director - Finance (S151 Officer) will consider the continuing relevance and adequacy of reserves (earmarked reserves and General Fund balances), and make recommendations to the Cabinet and Council.

## **10 Local Committee Budget Transfers**

The following should be read in conjunction with Part 2D of this Constitution.

- 10.1 Each Local Committee may transfer budgets over the various services within its delegated responsibility, within the limitations of the guidance issued by Cabinet.

## **FR3: ASSET MANAGEMENT**

### **11 Assets**

The following should be read in conjunction with Part 3 of the Constitution, which sets out the Corporate Director – Economy and Highways responsibility for the use of land and buildings.

- 11.1 Directors will be responsible for the safe custody of all County Council assets under their responsibility and control.
- 11.2 Assets will not be purchased using loans, leases or hire purchase agreements except with the agreement of the Assistant Director - Finance (S151 Officer).
- 11.3 Directors will ensure that contingency plans for the security of assets and continuity of service in the event of disaster or system failure are in place and are regularly tested.
- 11.4 Directors will be authorised to dispose of non- property surplus, damaged or scrap assets on the best possible terms.

### **12 Review of Capital Assets**

- 12.1 Having regard to the County Council's Strategic Asset Management Plan Directors will regularly review the use of capital assets to determine whether they continue to provide value for money and remain essential to service provision. Property assets identified as surplus to Directorate requirements will be promptly declared as such to the Assistant Director – Capital Programmes and Property who will review alternative uses of surplus assets, and recommend the future use or disposal of such assets to the relevant Portfolio Holder and Leader of the Council.
- 12.2 The Council's Disposals Policy sets out how the Council identifies properties for disposal and appropriate disposal routes. It makes clear when the Council can consider, under section 123 of the Local Government Act 1972 and Circular 06/03 General Disposal Consent (England) 2003, the power to promote and improve the well being of the area by disposing of its surplus properties at less than market value, provided the difference between the actual value and the disposal price is less than £2m.
- 12.3 Assets that are disposed of through Community Asset Transfers (CAT) comply with the Council's Disposals Policy and Community Asset Transfer Policy The CAT policy provides the opportunity to transfer an asset to a community for a nominal cost. Each transfer is considered on a case by case basis; involving an assessment of any proposals being made against the well being benefits to the community and whether it presents value for money.
- 12.4 Cabinet will decide, in relation to individual Community Asset Transfers, whether to agree with the disposal at less than market value.

- 12.5 Where assets are not disposed of through Community Asset Transfers assets will be disposed of through an open market sale. The Assistant Director - Finance (S151 Officer) and Assistant Director – Capital Programmes and Property will be consulted on any alternative method of disposal.
- 12.6 The Assistant Director - Finance (S151 Officer) will be notified of the intention to dispose of any item which might be regarded as capital, for example, land and buildings or capital assets obtained via a leasing agreement.
- 12.7 The Assistant Director - Finance (S151 Officer) will maintain an asset register for purposes of financial accounting which will record capital assets when they are acquired by the County Council and ensure it is kept up to date, in consultation with Directors.

### **13 Inventories**

- 13.1 In accordance with arrangements made or agreed by the Assistant Director - Finance (S151 Officer), Directors will maintain appropriate inventories (includes stocks and stores) and ensure procedures are operated for the safe custody, issue and disposal of inventory assets. The inventory will include any items that Directors consider to be vulnerable to loss or are of significant replacement value (over £1,000). It is not necessary to include office furniture or fittings, and IT equipment.
- 13.2 Directors will arrange regular physical checks asset against the relevant inventory records. Any significant surplus, deficiency or deterioration revealed as a result of such checks will be investigated and reported to Internal Audit for their advice and/or assistance. The rules for write-offs are included in FR 9 Systems and Procedures.

### **14 Security Against Assets**

- 14.1 Except as agreed by Council, no officer may raise money by securing any legal charge or claim upon the buildings, land or any other asset or interest of the County Council. Any contract or legal agreement involving a charge upon assets (of the County Council or a contractor) will be forwarded to the Monitoring Officer and the Assistant Director - Finance (S151 Officer) for approval and signature on behalf of the County Council

### **15 Banking and Cash Handling**

- 15.1 The Assistant Director - Finance (S151 Officer) will be responsible for all arrangements relating to the operation of the County Council's bank accounts. The Assistant Director - Finance (S151 Officer) is authorised to open subsidiary bank accounts as are necessary.
- 15.2 Directors will ensure that the collection and banking of monies is undertaken in accordance with any instructions issued by the Assistant Director - Finance (S151 Officer).

- 15.3 Directors will inform the Assistant Director - Finance (S151 Officer) when £500,000 or more cash is expected to be received.

*Petty cash and imprest accounts*

- 15.4 Petty Cash and imprest accounts will be operated in accordance with instructions issued by the Assistant Director - Finance (S151 Officer). Maximum limits for cash holdings will be agreed with the Assistant Director - Finance (S151 Officer), and will not be exceeded except as authorised by the Assistant Director - Finance (S151 Officer).
- 15.5 Petty cash should not be used to make payments to suppliers for goods / services that should be paid through the formal purchase ordering processes including the e-proc system.
- 15.6 The Assistant Director - Finance (S151 Officer) will maintain a record of all imprest accounts and the approved current level. Any cash holding can be removed by the Assistant Director - Finance (S151 Officer) at any time.

## **FR4: TREASURY MANAGEMENT**

### **16 Treasury Management**

- 16.1 All money of the County Council (except the externally held assets of the Pension Fund) will be aggregated for the purposes of treasury management and is under the control of the Assistant Director - Finance (S151 Officer), subject to the constraints of delegated powers given to schools.
- 16.2 The Council will adopt the key recommendations of CIPFA Code for Treasury Management in Public Services.
- 16.3 Accordingly, the Assistant Director - Finance (S151 Officer) will annually prepare for Cabinet to recommend to Council a Treasury Management Statement including an Annual Investment Strategy, Prudential Indicators and Minimum Revenue Provision (MRP) Policy statement.
- 16.4 Cabinet has delegated responsibility for the implementation and monitoring of the County Council's treasury management policies and practices. All Cabinet decisions on the execution and administration of treasury management decisions including all borrowing, investment or financing decisions, and the use of external specialists in cash management where required, are delegated to the Assistant Director - Finance (S151 Officer) who will act in accordance with the County Council's Treasury Management Statement, Treasury Management Practices, and CIPFA's Standard of Professional Practice on Treasury Management.

- 16.5 The Assistant Director - Finance (S151 Officer) will report to Cabinet during the financial year on the treasury management activities, including an annual report for the previous financial year. The frequency of reporting will be set out in the treasury management practice statement 'Reporting requirements and management information arrangements'.
- 16.6 Only the Assistant Director - Finance (S151 Officer) (or person specifically authorised by the Assistant Director - Finance (S151 Officer)) will enter into any agreement or contract involving the borrowing of funds or credit (including leasing arrangements), or the investment of County Council monies; or the authorising of any direct debit to be charged against the County Council's bank accounts.

## **FR5: RISK MANAGEMENT**

### **17 Risk Management**

- 17.1 Cabinet is responsible for approving the County Council's risk management strategy. Cabinet is responsible for approving the County Council's strategic risk assessment and for ensuring that proper insurance exists where appropriate.
- 17.2 The Corporate Management Team will update the corporate risk register on a quarterly basis. The Assistant Director – Corporate Governance is responsible for preparing the County Council's Risk Management Strategy and for promoting it throughout the County Council. Directors are responsible for promoting and implementing the risk management strategy.
- 17.3 It is the responsibility of each Director to assess annually all risks within the areas under their control, and to record them in an annual risk management plan.
- 17.4 All risks will be recorded in the corporate risk register together with an action plan to show how the risks are owned, monitored, and mitigated.
- 17.5 The management of risks must be reported to the Corporate Management Team and Cabinet. The format and frequency of reporting will be set out in the County Councils risk management strategy
- 17.6 The Audit and Assurance Committee will monitor the effective development and operation of risk management framework in the County Council.

### **18 Insurance**

- 18.1 The Assistant Director - Finance (S151 Officer)) will arrange all insurances (and levels of cover; both internal and external) falling within the framework of insurable risks agreed by Cabinet. The provision of the insurance policy will be subject to proper procurement practices and the Assistant Director - Finance (S151 Officer) will seek the advice of the Corporate Procurement

function when procuring the policy. The Assistant Director - Finance (S151 Officer) will deal with all material claims\*, in consultation with the Assistant Director - Corporate Governance in respect of any legal matter arising, and in consultation with the other Directors where necessary.

\*Material being all claims which either:

- Are above a monetary value determined by the Assistant Director - Finance (S151 Officer)
- Have potentially significant reputational implications for the Council

- 18.2 Other risks may be covered by insurance or carried by the directorate(s) involved at the discretion of the relevant Director having regard to advice from the Assistant Director - Finance (S151 Officer).
- 18.3 Where appropriate, costs and losses not insured externally and not covered by the Council's internal insurance reserve/ policy will fall as a charge upon the budget of the Directorate to which the item relates. Directors are responsible for taking effective preventive measures against all risks. The Annual Governance Group will be informed of any insurance matters at least annually.
- 18.4 Each Director will give prompt notification to the Assistant Director - Finance (S151 Officer) of all new risks for which insurance may be required; and any material changes in existing risks or assets as they arise and of any other changes in insurance cover required.
- 18.5 Directors will notify the Assistant Director - Finance (S151 Officer) immediately in writing and without delay of any loss, liability or damage or any event likely to lead to a material claim, and will provide such information and explanations required by the Assistant Director - Finance (S151 Officer) or the County Council's insurers.
- 18.6 For those risks not covered by external insurance policies, and as determined by Cabinet, the Assistant Director - Finance (S151 Officer) will operate an internal insurance reserve/ provisions. The balance of these reserves / provisions will be considered by the Assistant Director - Finance (S151 Officer) upon receipt of advice from the Council's external insurance advisors and reported as part of the Council's annual budget setting and Statement of Accounts processes.

## **19 Indemnities**

- 19.1 As set out in Part 5H 'Contract Procedure Rules' of this Constitution, Directors will consult and seek approval from the Assistant Director - Finance (S151 Officer) and the Monitoring Officer concerning the terms of any indemnity which they are requested to give on behalf of the County Council.
- 19.2 Before entering into any arrangement involving a legal relationship, the Director involved will ensure that the County Council has adequate legal powers and where appropriate that there is adequate professional indemnity

insurance to cover and minimise any risk to the County Council and to those individuals involved. Advice should be obtained from the County Council's Insurance Officer and the Assistant Director - Corporate Governance where necessary before proceeding.

## **20 Legal Documents and Contracts**

- 20.1 The Assistant Director - Corporate Governance will have custody of the original documents for all contracts, leases, deeds and agreements, and similar legal documents made under seal. Part 5H 'Contract Procedures Rules' in this Constitution provides more detailed rules that must be followed in relation to contract formalities (including when contracts must be completed under seal).

## **21 Confidentiality, Security and Protection of Information**

- 21.1 The Corporate Director – Resources and Transformation will ensure the County Council has an effective information management strategy, infrastructure and capability in place. All 'officers' of the County Council have a personal responsibility with regard to the protection and confidentiality of information, whether held in manual or computerised records, including on portable storage devices.
- 21.2 Directors will ensure that all officers are familiar with the County Council's information governance policies, including the Information Governance Acceptable Use Policy and that adequate and effective controls and security routines are operated to protect data and facilities against the unauthorised access, loss or abuse.
- 21.3 Directors are responsible for ensuring that all computerised and manual systems and records within their responsibility are operated in accordance with the requirements of data protection, freedom of information, and other legislation, and that they are operating within the County Council's policies and procedures in this respect.

### *Retention of Records and Documents*

- 21.4 Directors will ensure that financial records, vouchers and documents will be preserved in accordance with the County Council's data retention policy prescribed by the County Council's arrangements under the Freedom of Information Act and other regulations. In addition Directors will ensure that document retention requirements specified by bodies providing external funding are met to ensure that funding is not jeopardised. Financial records will not be disposed of other than in accordance with arrangements approved by the Assistant Director – Business Services.

## **22 Irregularities, Fraud and Corruption**

The following section should be read in conjunction with Part 6D 'Anti-Fraud, Bribery and Corruption Policy' and Part 6E 'Whistle Blowing Policy'.

- 22.1 The Assistant Director - Finance (S151 Officer) is responsible for the development and maintenance of a counter fraud and corruption policy with the Assistant Director – Corporate Governance (Monitoring Officer) responsible for the development and maintenance of the whistle blowing policy. Cabinet is responsible for approving these policies and Directors are responsible for promoting and implementing the policies. Cabinet is responsible for approving these policies and Directors are responsible for promoting and implementing the policies. Audit and Assurance is responsible for receiving assurances over the implementation and effectiveness of the policies.
- 22.2 All Directors are responsible for ensuring their systems are properly controlled against fraud. Directors will ensure that controls are in place to prevent or detect fraud being carried out within their areas. Directors will also seek regular assurances from their managers that these controls continue to work effectively.

## **FR6: INTERNAL AUDIT**

### **23 Internal Audit**

- 23.1 The Assistant Director - Finance (S151 Officer) is responsible for carrying out a continuous internal audit in line with the Accounts and Audit (England) Regulations 2011. The internal audit section will be independent in its planning and operation. An approved internal audit charter is in place which ensures that the Chief Internal Auditor has direct access to the Chief Executive, all levels of management, and to any Member of Cabinet and the Audit and Assurance Committee. The responsibilities of the Chief Internal Auditor are assigned to the Group Finance Manager –Audit.
- 23.2 Internal audit staff will conform with the United Kingdom Public Sector Internal Audit Standards (PSIAS) and associated guidance on PSIAS published by CIPFA.
- 23.3 All officers and elected Members of the authority are required to co-operate with, and provide all necessary information required by internal audit in order to carry out its role.
- 23.4 The Assistant Director - Finance (S151 Officer) will ensure that a report on internal audit activity from the Group Finance Manager – Audit is presented to the Audit and Assurance Committee at agreed intervals reporting on progress in respect of implementation of key audit recommendations.

### **24 Corporate Governance/Internal Control**

- 24.1 The Assistant Director – Corporate Governance is responsible for advising on effective corporate governance across the County Council. The Group Finance Manager – Audit is responsible for advising on the effective systems of internal control.
- 24.2 It is the responsibility of Directors to ensure that internal controls and governance arrangements are adequate and effective, and to take all necessary action to secure this on an ongoing basis.
- 24.3 Directors must consult the Assistant Director - Finance (S151 Officer) about any proposed changes or developments to financial procedures, records, systems and accounts, and any changes are subject to the Assistant Director - Finance (S151 Officer)'s agreement.
- 24.4 Directors will consider and respond to recommendations in audit reports within the agreed timeframe, setting out what action is proposed. Audit recommendations will be implemented within the agreed timeframe and Directors are responsible for monitoring and tracking the implementation of internal audit recommendations within their service area and reporting on these in line with the council's performance reporting framework.
- 24.5 Internal audit will undertake follow up of agreed actions within agreed timescales. The purpose of this follow up is to provide independent assurance that management actions have been implemented and that controls are working effectively. This follow up process does not in any way remove management's responsibilities for monitoring and reporting on the implementation of their agreed actions. Directors will respond to requests for information on the progress against agreed internal audit recommendations within agreed timescales.

*Annual governance statement*

- 24.6 At least annually as part of the Governance Statement, Directors will undertake a review of internal control and governance arrangements. The Chief Executive and Leader of the Council are responsible for ensuring that an annual governance statement is produced in accordance with the County Council's local code of corporate governance and regulation(s). The Monitoring Officer is responsible for ensuring that information on governance is accurate and reflects the position at the time of the statement.
- 24.7 Where it appears that internal control or governance arrangements are not operating effectively Directors will notify the Assistant Director - Corporate Governance immediately.
- 24.8 The Audit and Assurance Committee will oversee the production of and approve the County Council's annual governance statement and obtain assurances about performance systems and data quality.

## **FR7: ACCOUNTING AND FINAL ACCOUNTS**

### **25 Closure of Accounts**

- 25.1 The Assistant Director - Finance (S151 Officer) will issue closure of accounts guidance, which will include the timetable and process for achieving closure of the County Council's accounts for each financial year, and each Director will ensure that any information which is required by the Assistant Director - Finance (S151 Officer) is supplied accurately in accordance with accounting conventions and any deadlines which are prescribed.
- 25.2 The Assistant Director - Finance (S151 Officer) will ensure that accounting entries are processed according to the specified timetable and deadlines.

#### *The annual statement of accounts*

- 25.3 The Assistant Director - Finance (S151 Officer) is responsible for ensuring that the annual statement of accounts (including Pension Fund Accounts) is prepared in accordance with proper practices as set out in the Code of Practice on Local Authority Accounting in the United Kingdom, and regulations. The Assistant Director - Finance (S151 Officer) will sign and date the statement of accounts, stating that it gives a 'true and fair' view of the financial position and transactions of the County Council, including group financial statements where the County Council has material interests in subsidiaries, associates or joint ventures.
- 25.4 The Audit and Assurance Committee is responsible for approving the annual statement of accounts by the statutory deadline, and to receive reports from the external auditor relating to any material issues relating to the Accounts.

### **26 Accounting Records and Returns**

#### *Accounting Systems and Records*

- 26.1 The Assistant Director - Finance (S151 Officer) is responsible for determining the accounting systems, procedures and records for the County Council, and providing guidance and advice on all accounting matters.
- 26.2 The Assistant Director - Finance (S151 Officer) will ensure that the financial data held within the County Council's corporate financial systems are maintained accurately and reliably and updated in accordance with agreed timescales and deadlines; and that Directors are provided with appropriate access to systems/information or reports as may be agreed.
- 26.3 Directors will adhere to accounting systems, procedures and adopt the form of financial records and statements as determined by the Assistant Director - Finance (S151 Officer).

## *Returns*

- 26.4 The Assistant Director - Finance (S151 Officer) is responsible for certifying financial returns, grant claims and other periodic financial reports required of the County Council.

## **FR8: TAXATION**

### **27 Taxation**

- 27.1 The Assistant Director - Finance (S151 Officer) is responsible for ensuring that appropriate advice is available to Directors on all taxation issues (excluding payroll) that affect the County Council, having regard to guidance issued by appropriate bodies and relevant/applicable legislation.
- 27.2 The Payroll Manager is responsible for ensuring that appropriate advice is available to Directors on all payroll taxation issues that affect the County Council, having regard to guidance issued by appropriate bodies and relevant/ applicable legislation.
- 27.3 The Assistant Director - Finance (S151 Officer) is responsible for ensuring that the County Council's tax records are maintained and that all tax payments are made, tax credits received, and tax returns submitted by their due date as appropriate, and tax transactions are properly accounted for.
- 27.4 Tax related documentation will be stored and be readily accessible for examination in accordance with the County Council's data retention policy and/or as directed by the Assistant Director - Finance (S151 Officer).

## **FR9: SYSTEMS AND PROCEDURES**

### **28 Income Control**

- 28.1 The Assistant Director - Finance (S151 Officer) is responsible to make safe and efficient arrangements for the receipt and collection of monies paid or due to the County Council.
- 28.2 Directors will ensure that all income due to the County Council is identified and charged correctly, in accordance with the County Council's approved charging policies (see rule 31) will seek the prompt collection of all income due to the County Council, using the correct procedures and the appropriate stationery/systems. All sums due will be recorded, collected, held securely and banked in accordance with the directions issued by the Assistant Director - Finance (S151 Officer).
- 28.3 Directors will ensure that, where applicable, VAT is charged in calculating any income due.in accordance with FR8 Directors will seek advice on VAT

from the Assistant Director - Finance (S151 Officer) when required. The Assistant Director - Finance (S151 Officer) is responsible for ensuring income is recorded in the County Council's corporate financial systems. Directors will ensure that all income is accurately recorded against the correct budget.

- 28.4 Records of all income transactions will be maintained by Directors as required by the Assistant Director - Finance (S151 Officer). Directors will seek advice from the Assistant Director - Finance (S151 Officer) on proposals to amend any records or income collection systems. All controlled stationery associated with income collection will be held in a controlled environment.

## **29 Income Collection**

- 29.1 The Assistant Director - Finance (S151 Officer) is responsible for maintaining records of debts raised and notified by Directors for collection, and is also responsible (together with Directors where such tasks may have been delegated), for subsequent recovery of debts.
- 29.2 Directors will provide the Assistant Director - Finance (S151 Officer) and/or the Monitoring Officer with all information required for the collection of debts. The Monitoring Officer in consultation with the relevant Director, will institute, defend, settle or compromise on behalf of the County Council, any legal proceedings.
- 29.3 Directors will provide the Assistant Director - Finance (S151 Officer) with information required to report on the collection of income and debt, in the format and timescales agreed by the Assistant Director - Finance (S151 Officer).

## **30 Write - Offs**

- 30.1 Directors, in consultation with the Assistant Director - Finance (S151 Officer) and Monitoring Officer will write off debts greater than £50 for any one item in respect of:
- a) Losses arising when property of the County Council is lost, stolen, damaged or destroyed and the loss is not recoverable from insurance or other sources;
  - b) Losses upon disposal of stock at a price less than the book value at the time of disposal; and
  - c) Money due to the County Council which has become irrecoverable or is thought no longer cost effective to recover.

Provided in each case that proper steps have been taken to mitigate the loss in accordance with the Debt Recovery Policy and steps taken to prevent a recurrence.

- 30.2 For all debts less than £50 the Assistant Director - Finance (S151 Officer) will approve the write off of debts in respect of a), b) and c) above.
- 30.3 Directors, in consultation with the Assistant Director - Finance (S151 Officer) and Monitoring Officer, will automatically write off all debts, from an accounts perspective, that exceed 365 days to the service cost centre unless in exceptional circumstances agreed with the Assistant Director - Finance (S151 Officer). The pursuit of the debt through legal processes and debt recovery will continue. Only when all legal avenues have been exhausted would the pursuit of the debt cease.
- 30.4 Directors will keep records of all such write-offs in a form approved in advance by the Assistant Director - Finance (S151 Officer).
- 30.5 The Assistant Director - Finance (S151 Officer) will make appropriate accounting adjustments in the County Council's corporate financial systems, following write-off and VAT recovery action.
- 30.6 Directors and their staff do not have the authority to write off salary or allowances overpayments without going through the formal write-off procedure as stated above.
- 30.7 Audit and Assurance Committee will be informed annually of significant debts (>£10,000) that have been written off for accounts purposes as part of the Annual Accounts process.

## **31 Review of Charges**

- 31.1 Scales of charges for sales, fees and charges for County Council services will be reviewed at regular intervals (minimum annually) by the appropriate Director in consultation with the Assistant Director - Finance (S151 Officer) and in accordance with any policy from Council, and in line with relevant legislation, seeking advice where necessary from the Monitoring Officer.
- 31.2 Trading accounts will normally operate within a full trading account approach and will not receive any allocation of resources directly as part of the revenue budget. The financial regulations which refer to amendment of approved budgets at section 3 *and* budget transfers (virement) at section 6 will therefore not be applicable to trading accounts.
- 31.3 It is the responsibility of the Director to seek advice from Assistant Director - Finance (S151 Officer) on the establishment and operation of trading accounts.

## **32 Ordering of Goods and Services and Payment of Invoices**

The following section should be read in conjunction with Part 5H 'Contract Procedure Rules' of this Constitution.

- 32.1 The Assistant Director - Finance (S151 Officer) is responsible to make safe and efficient arrangements for the issue of monies payable by the County Council.
- 32.2 The ordering of and payment for goods and services will be undertaken using the correct procedures and the appropriate stationery/systems, and in accordance with procedures and guidance issued by the Assistant Director - Finance (S151 Officer).
- 32.3 Before entering into purchasing commitments Directors will ensure that the estimated cost is covered by financial provision in the budget, the goods are appropriate and represent value for money.
- 32.4 Payment will only be made on a proper VAT invoice (not a photocopy or statement). The Assistant Director - Finance (S151 Officer) is responsible for ensuring expenditure is recorded in the County Council's corporate financial systems. Directors will ensure that all expenditure is accurately recorded against the correct budget.
- 32.5 Directors will ensure arrangements are made for the prompt certification and payment of invoices, whether electronic or physical in accordance with procedures and guidance issued by the Assistant Director - Finance (S151 Officer).

### **33 Staffing**

The following section should be read in conjunction with Part 3 'Scheme of Delegations to Officers' of this Constitution.

- 33.1 The Chief Executive is responsible for ensuring there is effective leadership and management for all staff. The Chief Executive is responsible for ensuring that there is proper use of the evaluation or other agreed systems for determining the remuneration of a post.
- 33.2 Directors are responsible for controlling total staff numbers within their areas of responsibility and control in line with issued guidance.

#### *Competence of Finance Staff*

- 33.3 The Assistant Director - Finance (S151 Officer) is responsible for the appointment of appropriately experienced, trained and qualified staff that are competent to perform financial management and administration effectively.

### **34 Payments to Employees and Members**

- 34.1 The Corporate Director – Resources and Transformation is responsible for paying employees and members securely, accurately and timely, to maintain appropriate systems and records, and to ensure that a proper allocation of

those costs, deductions and related employer's contributions and payments is provided (as required by the Assistant Director - Finance (S151 Officer)) for updating the County Council's corporate financial systems.

- 34.2 Directors will establish procedures for the management and administration of workforce and payroll matters, ensuring that these procedures follow the corporate systems and procedures, and have regard to advice from the Corporate Director - Resources and Transformation, Assistant Director – Business Services and the Assistant Director - Finance (S151 Officer).
- 34.3 Directors will ensure that all payroll transactions are submitted accurately, in the form required, and according to established deadlines. Employees of the Council will only be paid through the official payroll system.
- 34.4 Directors, supported by the County Council's human resources ('HR') service and designated directorate HR managers, are responsible for ensuring that adequate and effective systems and procedures are operated for workforce and payroll matters.
- 34.5 Directors will ensure that all payroll costs are accurately recorded against the correct budget.
- 34.6 The Chief Executive (in consultation with the relevant Director) will approve all interim contracts for staff and will approve any proposals for consultancy services in relation to these posts.
- 34.7 Directors are responsible for ensuring that their employees' taxable benefits are notified to the Assistant Director – Business Services, having regard to advice and guidance.
- 34.8 The Assistant Director – Business Services will regularly review the payroll systems and will identify any system changes and developments required to meet changing needs of the County Council and service users, and to comply with statutory requirements.

## **FR10: EXTERNAL ARRANGEMENTS**

### **35 Voluntary Funds and Trust Funds**

- 35.1 Voluntary funds and trust funds will be managed and administered in accordance with relevant statutory requirements and the requirements of the other parts of these financial regulations.
- 35.2 The responsible Director and/or trustee/fund managers will ensure that the Assistant Director - Finance (S151 Officer) is notified of the establishment of any fund which the County Council is to act as trustee or otherwise manage. The processes and information to be notified will be determined by the Assistant Director - Finance (S151 Officer).

- 35.3 If it is not apparent from the trust deeds or approved otherwise by the trustees, the Assistant Director - Finance (S151 Officer) will act as Treasurer of that voluntary fund or trust fund.
- 35.4 Where the funds are external to the County Council and the operating and/or provision of services and/or facilities involve the County Council or its officers, Directors will ensure that in advance of such arrangements that legal (from the Monitoring Officer) and financial advice (from the Assistant Director - Finance (S151 Officer)) is obtained, and the respective responsibilities of the County Council and the trust are clarified and formally agreed.

## **36 External Funding/Accountable Body Arrangements**

- 36.1 Cabinet is responsible for the approval of the County Council to take on accountable body responsibilities. Accountable Body arrangements involve the Council accepting responsibility for the obligations set out in terms of any funding granted to a third party. Accountable Body arrangements are different to those where the Council acts as grant recipient of funding for an activity it is solely responsible for.
- 36.2 The following are the minimum requirements for the Cabinet to make a decision about taking on accountable body responsibilities:
- Terms of the funding agreement (where known)
  - Description of arrangements for allocation of funding
  - Description of applicable financial and audit procedures
  - Risk assessment/management plan relevant to the County Council acting as Accountable Body.
  - Recovery of costs incurred by the County Council acting as accountable body
- 36.3 Where the accountable body arrangements involve the County Council accepting responsibility for a contingent liability, in respect of future payments or stewardship of assets, a report will first be made by the relevant Director in liaison with the Assistant Director - Finance (S151 Officer), to Cabinet for its approval and Council will be informed of these liabilities.
- 36.4 Where the Council bids for revenue or capital external funding (either directly or as the accountable body) the decision to apply / bid for the funding is the responsibility of the Director in consultation with the relevant Portfolio Holder, Leader of the Council, Finance Portfolio holder and Assistant Director - Finance (S151 Officer).
- 36.5 Successful applications/bids will be reported to Cabinet and associated expenditure will be included in the revenue budget and/ or capital programme subject to paragraphs 36.6 – 36.10

- 36.6 Where the Council is providing match funding to support projects / funding applications by other organisations, and these organisations request the County Council's support for a project which they are pursuing, the responsibility for approving the County Council's support is the relevant Director in consultation with the relevant Portfolio Holder, Leader of the Council, Finance Portfolio holder and Assistant Director - Finance (S151 Officer).
- 36.7 In respect of any external funding arrangements, whether the County Council is the accountable body or not, it is the responsibility of the relevant Director, in consultation with the Assistant Director - Finance (S151 Officer) to ensure that adequate financial management arrangements are in place prior to entering the County Council into an external funding arrangement. The processes to ensure adequate financial management arrangements will be determined by the Assistant Director - Finance (S151 Officer) and must be consistent with the terms and conditions of the funding agreement.
- 36.8 All claims for grant (both final and interim) will be certified by the Assistant Director - Finance (S151 Officer) in accordance with the County Council's financial procedures. The Assistant Director - Finance (S151 Officer) will maintain a grant register recording all grant income due to the County Council.
- 36.9 The Assistant Director - Finance (S151 Officer) is responsible for ensuring that all funding notified by external bodies is received and properly recorded in the County Council's corporate financial systems, and Directors are responsible for providing the Assistant Director - Finance (S151 Officer) with all necessary information to enable this to be achieved.
- 36.10 Where the Council receives grants (revenue or capital) or external funding from outside bodies (usually, but not restricted to government departments) in the absence of a bidding process, the requirements of paras 36.4 to 36.7 do not apply. This grant income / external funding is usually subject to clear grant notifications and directions and will be included in the annual Budget Report to Council or reported in year to Cabinet through the regular budget monitoring reports as applicable.
- 36.11 Where external organisations bid for resources from the County Council, in addition to the above, it is essential to ensure that the County Council's resources are not committed to pursue the priorities of another body (which may not coincide with the County Council's aims and priorities, approved by the policy framework) unless the matter has first been properly evaluated, considered and approved. Part 3 'Scheme of Delegation to Officers' of this Constitution includes reference to the delegation of approval of grants to voluntary bodies.
- 36.12 If any Elected Member or Officer is involved with an external organisation that is bidding for Council funding, they must declare their interest and withdraw from any involvement in the decision making process.

36.13 It is the responsibility of Directors, in consultation with Finance, to ensure that adequate financial management arrangements are in place prior to entering the County Council into a strategic and commercial contract or partnership arrangements. The processes to ensure adequate financial management arrangements will be determined by the Assistant Director - Finance (S151 Officer).

36.14 Part 4P 'Partnerships' [insert hyperlink to part 4P] of this Constitution sets out the governance arrangements when the County Council proposes to carry out any of its activities through a non-commercial arrangement with one or more external body.

36.15 Part 5H 'Contract Procedure Rules' of this constitution should also be read in conjunction with this section.

## Annex A - Amendment of Approved Budgets

### *Revenue:*

<b>Actions</b>	<b>Responsibilities</b>
Transfer to/from contingencies	Cabinet
Transfer to earmarked reserves	Cabinet
Transfer to/from general reserves	Council
Transfer from earmarked reserves	Assistant Director - Finance (S151 Officer) (in consultation with relevant Director)

### *Capital:*

<b>Actions</b>	<b>Responsibilities</b>
New scheme up to £500,000*	Cabinet
New scheme above and including £500,001	Council

\* Where the new scheme can be funded by additional government grants, and grants and/or contributions from external bodies.

Note: Directors have no power to introduce new schemes to the capital programme.

## Annex B – Budget Transfers (virement)

### *Revenue:*

<b>Actions</b>	<b>Responsibilities</b>
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Up to and including £250,000 in same Directorate*	Same Director (or budget manager with the appropriate Director approval)
Up to and including £250,000 across Directorate*	Relevant Directors (or budget managers with the appropriate Directors' approval)
Between £250,001 & £500,000	Cabinet
£500,001 and above	Council

\* In consultation with the Assistant Director - Finance (S151 Officer).

*Capital:*

<b>Actions</b>	<b>Responsibilities</b>
Between projects: £250,000	Assistant Director – Capital Programmes and Property, or other identified accountable Director
Between schemes < £500,000	Cabinet
Between schemes £500,001 and above	Council

*Additional savings / increased Income:*

<b>Actions</b>	<b>Responsibilities</b>
Additional savings / increased income (excluding grants) : £250,000	Corporate Director
Additional savings/ increased income (excluding grants) £250,001 - £500,000	Cabinet
Additional savings / increased income (excluding grants) £500,001 and above	Council

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# Part 5H: Contract Procedure Rules

## 1 Introduction

- 1.1 This part of the Constitution sets out the Council's ('Council') rules for buying goods, services and works on behalf of the Council and disposing of some types of property. In this document they are referred to as the "Contract Rules".
- 1.2 The Council must have contract rules under section 135 of the Local Government Act 1972.
- 1.3 There is a glossary of terms at paragraph 8 of these rules.
- 1.4 Officers of the County Council ('officers') must have regard to the Council's Commissioning/Procurement Cycle and Process Mapping Guidance (including relevant internal mini gateway review procedures, where required) or any replacement of such Guidance from time to time in force. In these Rules this is referred to as "the Guidance."

## 2 Scope of the Contract Procedure Rules

- 2.1 The Contract Rules apply whenever the Council is commissioning or procuring Supplies, Services or Works, or disposing of Assets.

### Officer Responsibilities

- 2.2 Subject to any overriding legal obligation, officers must comply with the Contract Rules when commissioning and/or procuring Supplies, Services or Works, disposing of Assets and making decisions about these matters.
- 2.3 Officers responsible for commissioning, procurement and disposal of Assets must in addition comply with other relevant parts of the Constitution, such as the Access to Information Procedure Rules and the Financial Standing Orders, and with all applicable laws.
- 2.4 Officers must ensure that any person or organisation acting on behalf of the Council within the scope of the Contract Rules also complies.
- 2.5 Officers must take all legal, procurement, financial, technical and other advice that they need to ensure they comply with the law and the Council's rules and policies and that the procurement method and contract are fit for purpose.
- 2.6 Officers must comply with measures put in place by the Council to prevent, identify and remedy conflicts of interest which arise during the conduct of procurement. In particular:

- 2.7 Officers must comply with the Officers' Code of Conduct when conducting procurement
- 2.8 Officers must comply with section 117 of the Local Government Act 1972 by declaring in writing any personal interest in a contract to the Assistant Director - Finance.
- 2.9 Officers must not accept any gift or hospitality from any Candidate for any contract being procured by the Council and to do so is a disciplinary offence. Officers must inform the Assistant Director - Business Services if offered a gift or hospitality during a tender process.

### **Application of these Rules**

- 2.10 These Contract Rules apply to all Relevant Contracts. A Relevant Contract is any arrangement, including Framework Agreements and other arrangements permitted under the Regulations, made by or on behalf of the Council for the carrying out of Works or for the supply of Supplies or Services, or the disposal of an Asset, unless the arrangement is subject to an Exception in these Rules – see below.
- 2.11 A Relevant Contract includes a contract for the appointment of consultants.
- 2.12 A contract procured on behalf of or by any organisation which is in receipt of funding for which the Council is the Accountable Body is also a Relevant Contract under these Rules.
- 2.13 Local Authority Maintained Schools are expected to comply with these Contract Rules.

### **Exceptions to these Contract Rules**

- 2.14 The Contract Rules **do not** apply to the following arrangements, to the extent that this complies with the law:
  - (a) Contracts of employment which make an individual a direct employee of the Council.
  - (b) Agreements for the acquisition, disposal or transfer of land/buildings which do not form part of a wider transaction under which the Council also procures Supplies, Services or Works.
  - (c) Grants which the Council may receive or award, except as otherwise provided in the Contract Rules.
  - (d) Contracts for an educational or care placement for a specific individual where the relevant Corporate Director considers such placement to be in the best interests of the individual.
  - (e) Contracts for care services to be provided to a specific individual household where the Corporate Director considers such a contract to be in the best interests of an individual.

- (f) Contracts with a third party where sections 184 and 278 of the Highways Act 1980 apply.
- (g) Contracts for representation by a lawyer in arbitration, conciliation, or judicial proceedings; legal advice given by a lawyer in the preparation of any such proceedings, or where there is a clear indication and high probability that the matter will become subject of proceedings and any other legal services which are exempt from the Regulations
- (h) Contracts for financial services in connection with the issue, sale or transfer of securities or other financial instruments within the meaning of EU Directive 2004/39/EC as amended from time to time.

For the purposes of paragraphs (d) and (e) contracts are only exempt from these Contract Rules if the aggregate value of contracts awarded to a single provider does not exceed the relevant EU threshold

2.15 In addition to the above, the Contract Rules do not apply to:

- (a) contracts below the relevant EU Threshold which are required in circumstances of extreme emergency such as an immediate danger to life or property and
- (b) contracts above the relevant EU Threshold which are procured using the negotiated procedure without prior publication under Regulation 32 (2) (c) of the Regulations, except insofar as to require compliance with the Regulations.

In both these circumstances Corporate Directors are authorised to take appropriate action and must report such action and the expenditure incurred to the next meeting of the Cabinet.

### **3 Record Keeping**

- 3.1 The Responsible Officer must keep records pertaining to the procurement of any Relevant Contracts, including any contract for which an Exemption (see above) has been approved.
- 3.2 Where the Total Value of the Relevant Contract is less than £50,000 the following records must be kept for the contract:
  - (a) A unique reference number for the contract, the title of the contract and the parties;
  - (b) The method for obtaining quotes or tenders;
  - (c) Criteria for the award of the contract;
  - (d) The Contracting Decision and the reasons for it;
  - (e) Records of all communications with the Candidates; and
  - (f) The Contract.

- 3.3 Where the Total Value of the contract is £50,000 or more the following records must be kept in addition to those specified above:
- (a) Business case (including details of pre-tender market research, options appraisal and risk assessments);
  - (b) Tender documents sent to and received from Candidates;
  - (c) The records of the evaluation of the tender;
  - (d) Records of all clarification and post tender discussion (including minutes of any meetings); and
  - (e) Record of consideration of the public sector equality duty, the (Public Contracts) Social Value Act 2012 and consultation.
- 3.4 The above records required under this Rule must be retained in compliance with the Council's corporate document retention policy.
- 3.5 In addition to the above requirements, within 30 days of award of the contract, the Responsible Officer must arrange for details of the award of any contract with a Total Value over £50,000 to be included in the Contracts Register. The details that must be included are:
- (a) Start date and duration of the contract;
  - (b) Supplier;
  - (c) Title of the contract;
  - (d) Any contractual provision for extension; and
  - (e) Internal contact name and email address.

## **4 Key Decisions**

- 4.1 Part 2 'Decision Making' of this Constitution defines a Key Decision.
- 4.2 The decision to commence a procurement exercise is not deemed to be a Key Decision unless the decision forms part of and is taken at the same time as a decision that will result in a change to service provision which will have a significant effect on two or more divisions of the Council.
- 4.3 The decision to award a Relevant Contract is a Key Decision if the total value of the contract exceeds the financial threshold for a Key Decision. The award of a Relevant Contract which is a Key Decision must adhere to the Access to Information Procedure Rules relating to Key Decisions set out in Part 5D of this Constitution.

## **5 Steps Prior to Procurement**

### **Common Requirements**

- 5.1 The Responsible Officer must check whether there is a suitable existing contract, Framework Agreement or collaborative agreement before seeking

to procure another contract. Where a suitable arrangement exists this must be used unless there is a compelling legal or financial reason not to.

- 5.2 Subject to [5.1] the Responsible Officer may use any appropriate procurement procedure which is permitted by these Contract Rules or by the Regulations. Where the Regulations applies, the Responsible Officer must use a procurement procedure which complies with the Regulations.
- 5.3 The Responsible Officer must consider the implications of the public sector equality duty under the Equality Act 2010; and (in respect of Services ) of the Public Contracts (Social Value) Act 2012; and whether the proposed contract requires prior consultation under the “best value” requirements of the Local Government Act 1999 or for any other reason.
- 5.4 The Responsible Officer must consider whether, and if so how, social, economic or environmental issues could be addressed through the contract. Social, economic and environmental issues may be addressed through procurement where what is sought to be achieved is relevant and proportionate to the subject matter of the contract.

### **Market Consultations**

- 5.5 Before commencing a procurement exercise, the Responsible Officer may consult with the market with a view to preparing the procurement exercise and informing contractors of the Council’s procurement plans and requirements.
- 5.6 In carrying out market consultations, the Responsible Officer may seek advice from independent experts, authorities or from market participants and use this in planning and conducting the procurement exercise provided that it does not have the effect of distorting competition, result in discrimination or breach the principle of transparency. The prior written approval of the Assistant Director – Business Services, must be sought before seeking advice from anyone who may have a commercial interest in the contract to which the procurement exercise relates.

### **Approved Lists**

- 5.7 Approved Lists are lists of suppliers who meet the Council’s minimum technical and financial standards for the types of contract.
- 5.8 The Corporate Director – Resources and Transformation, following consultation with the Assistant Director - Business Services and the Senior Manager Legal and Democratic Services, may establish an Approved List of suppliers of Supplies, Services or Works, where the Council requires to make recurrent, low value, transactions of a similar type which must be priced individually and cannot be aggregated into a single procurement exercise.
- 5.9 Any request for approval must specify:  
(a) The business case for establishing an Approved List;

- (b) The proposed duration of the Approved List;
  - (c) The maximum spend using the Approved List; and
  - (d) The method of procurement of and from the Approved List.
- 5.10 In line with 'Identifying Potential Contracts' rule 5.4 above, all Approved Lists must be openly advertised to potential suppliers and must remain open for their duration to permit new suppliers to join.
- 5.11 An approved list may not be used to procure Supplies, Works or Services with an aggregated value in excess of EU Threshold.

### **Framework Agreements**

- 5.12 Framework Agreements are agreements with one or more suppliers for the provision of Supplies, Services or Works on agreed terms for a specified period, for estimated quantities against which orders may be placed if and when required. Once established "Call Offs" from the Framework Agreement may be conducted by mini competition or by direct call off, according to the terms of the Framework Agreement.
- 5.13 Where a framework is established with a Total Value exceeding the EU Threshold the Regulations must be followed to establish the Framework Agreement and the maximum term of the Framework Agreement may not exceed four years, except in exceptional circumstances, following consultation with the Assistant Director - Business Services and the Senior Manager - Legal and Democratic Services, with full reasoning for the recommendation provided in the report seeking authorisation to start a procurement exercise.

### **Collaborative Procurement Arrangements**

- 5.14 The Council may enter into collaborative procurement arrangements with other local authorities, government departments, public bodies or public service purchasing consortia and may use framework agreements or lists of pre-qualified contractors established by such bodies.
- 5.15 Responsible Officers proposing to use such arrangements must ensure that they have been established in a way which complies with the law. In particular where the Regulations apply the collaborative agreement must comply with them, the Council must be among the bodies named in the OJEU notice as having access to the arrangements and there must be scope in the arrangement to permit its lawful use for the purposes proposed.

### **Partnership Arrangements including Shared Services and Joint Commissioning**

- 5.16 Where the Council enters into a Partnership Arrangement with another organisation or other organisations, agrees to act as Accountable Body, or enters into a shared service arrangement, the governance arrangements

must include procurement and contract arrangements if any procurement will be undertaken.

- 5.17 Where the Council is the Lead Body or the Accountable Body for any arrangements, these Contract Rules should be included in the arrangements and followed as a minimum.
- 5.18 Before the Council agrees to enter into a contract on behalf of another organisation, the Responsible Officer must obtain written agreement from that organisation that it will provide sufficient funding and take any other action necessary for the Council to meet its obligations under the contract on behalf of that organisation.
- 5.19 Where the Council is not the Lead Body or the Accountable Body, the other organisation's tendering rules should be followed provided that they comply with the law.

### **Rolling Contracts**

- 5.22 Where it is proposed to procure a Relevant Contract on terms which will provide for renewal on a "rolling" basis, the Responsible Officer must make a reasonable estimate of the term of the contract in order to estimate the Total Value.
- 5.23 If during the term of the contract it appears that the estimated Total Value may be exceeded by anticipated further renewals of the contract, the officer responsible for managing the contract must refer the matter to the Assistant Director - Business Services, who must review the position in consultation with the Senior Manager - Legal and Democratic Services.

### **Exemptions from these Contract Rules**

- 5.24 The Assistant Director - Business Services is authorised to approve Exemptions from the Contract Rules, following consultation with the Senior Manager - Legal and Democratic Services.
- 5.25 The Assistant Director - Business Services may not approve a request for an Exemption that would result in a breach of the Regulations in respect of a contract to which the Regulations apply.
- 5.26 The Exemption must be approved before any alternative procedure not wholly in accordance with these Contract Rules is followed.
- 5.27 The request for Exemption must state from which of the requirements of the Contract Rules Exemption is requested and give reasons for the request.
- 5.28 Examples of circumstances in which it may be appropriate to request an Exemption include but are not limited to:

- (a) Supplies of goods where the Council's best interests will be served by purchase through auction and the Corporate Director has agreed an upper limit for bids.
- (b) There is only one contractor in the market relevant to the Supplies, Services or Works who is suitable to provide the Supplies, Services or Works required.
- (c) The Council's need for the Supplies, Services or Works is so urgent that compliance with these Rules would in the judgement of the Corporate Director prejudice the Council's interests. (Rule 2.15 automatically dis-applies these Contract Rules in circumstances of extreme emergency such as an immediate danger to life or property).

5.29 The Assistant Director - Business Services will keep a record of all Exemptions approved.

### **Authorisation to Start Procurement**

5.30 The persons or bodies authorised to approve the start of a procurement exercise are set out in the table below

<b>Estimated Total Value</b>	<b>Decision Maker</b>
£0 - £500,000	Corporate Director
£500,001 and above	Corporate Director, written consultation with the relevant Cabinet Member
Call offs of any value from an approved Framework Agreement	Corporate Director
Contracts the budget for which has been wholly included in the Capital Programme	Corporate Director
Establishment of an Approved List	Corporate Director
Procurement from an Approved List	Corporate Director

The Responsible Officer must ensure authorisation to procure is obtained and is responsible for ensuring that the Contract Procedure Rules have been complied with and that the proposed procurement documents (business case, advertisement, invitation to tender, contract terms and conditions, etc.) have been approved by the Assistant Director with commissioning responsibility in respect of the contract.

## 6 Procurement of Contracts

### Common Requirements

- 6.1 In conducting any procurement exercise, the Council must treat all Contractors equally and without discrimination, and must act in a transparent and proportionate manner.
- 6.2 Electronic procurement using the e-tendering portal must be used for all tenders and quotations unless authorisation to use an alternative method has been given by the Assistant Director - Business Services.
- 6.3 The Responsible Officer must consult the Corporate Commissioning, Procurement and Contract Management Team on the appropriate procurement procedures. The Responsible Officer must have regard to the Guidance.

### Identifying Potential Candidates

- 6.4 Where a Relevant Contract is being procured the minimum procurement process and rules for inviting Candidates are as follows. The table is subject to the requirement that a contract of any value which is likely to have “cross – border” interest (i.e. to be of interest to Contractors in other member states) in the European Community must be advertised.

Estimated Total Contract Value	Minimum Process	Method of Invitation
Up to £2,000	Responsible Officer must use a process which obtains best value for money.	One oral quotation (confirmed in writing where the quotation exceeds £500)
£2,001 - £50,000	2 written quotations	Invitation to submit a quotation in writing to at least 2 candidates

£50,001 - £100,000	3 written quotations	Invitation to submit a quotation in writing to at least 3 Candidates
Exceeding £100,000 but below relevant EU Threshold	Written Tender	Open advertisement of contract appropriate to the relevant market
EU Threshold and above	Written Tender	Open advertisement of the contract in accordance with the Regulations
“Call offs” from relevant framework or Collaborative agreement  Procurement from an Approved List	In accordance with the terms of the Framework Agreement, Collaborative agreement or Approved List	In accordance with the terms of the Framework Agreement, Collaborative agreement or Approved List
Contracts the budget for which has been approved in the Capital Programme	Quotes or Tenders as described above depending on the estimated Total Value; or  Call off from an approved a Framework Agreement/Collaborative agreement	As appropriate to the procurement method used
Establishment of an Approved list	In accordance with the terms of approval under rules 5.5 to 5.8 [insert hyperlink]	Open advertisement

- 6.5 Where a contract with a value above £25,000 is advertised the Responsible Officer must also publish information on Contract Finder, in accordance with the procedure in Part 2 Chapter 8 of the Public Contracts Regulations 2015.

### **Selection and Award Criteria for Tenders**

- 6.6 The Responsible Officer must use appropriate criteria to select Candidates (where a two stage tender process is used) and award the contract. Where the Regulations apply, these must comply with the Regulations.
- 6.7 The Responsible Officer must ascertain the standards necessary to properly define the subject matter of the contract, having regard to any relevant British, European or international standards. The Corporate Commissioning, Procurement and Contract Management Team must be consulted if it is proposed to use any standards other than European Standards.
- 6.8 The Responsible Officer must define the award criteria that are appropriate to the procurement in order to secure value for money. The criteria must be one of the following:
- (a) Lowest Price;
  - (b) Highest Price: where payment is to be received by the Council); or
  - (c) MEAT (Most Economically Advantageous Tender): where considerations other than price also apply. This is the only award criteria permissible under the Regulations.

### **Invitations to Tender**

- 6.9 An invitation to tender must state that the Council reserves the right to reject a tender that is not received by the date and time stipulated in the invitation to tender. A tender which contravenes the requirements as to date and time for submission must not be considered without the prior approval of the Assistant Director - Business Services and Senior Manager - Legal and Democratic Services and must not be considered in any circumstances if it is received after the other tenders have been opened.
- 6.10 All invitations to tender must include the following:
- (a) A specification to describe the Council's requirements in clear sufficient detail to enable the submission of competitive offers.
  - (b) The contract terms and conditions unless emphatic market practice is that supplier's terms are used, in which case the requirement is that they are supplied as part of the tender.
  - (c) A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the Candidate to any other party (except where the disclosure is made in confidence for a necessary purpose).

- (d) A requirement for Candidates to complete fully and sign all tender documents including a form or tender and certificates relating to canvassing and non-collusion.
- (e) Notification that tenders are submitted to the Council on the basis that they are compiled at the Candidate's expense.
- (f) A description of the Award Procedure and unless defined in a prior advertisement a definition of the Award Criteria. Where the criterion of MEAT is used, it must be further defined by reference to sub-criteria which may only refer to considerations relevant to the award of the contract. Award criteria must be defined in objective terms and wherever possible in descending order of importance.
- (g) Unless the tender is sought in accordance with an electronic procurement process approved by the Corporate Commissioning, Procurement and Contract Management Team, a statement that tenders submitted by fax or other electronic means will not be considered.
- (h) A notice stating that the Council is not bound to accept any tender.
- (i) A notice stating that the Council is not obliged to enter into a contract as a result of a tender.

### **Contract Documents**

6.11 All Relevant Contracts must be in writing.

6.12 All Relevant Contracts must as a minimum specify in writing:

- (a) The Works, Supplies or Services to be supplied.
- (b) The price and when it will be paid, including any arrangements for additional expenditure, disbursements etc.
- (c) The time or times within which the contract is to be performed.
- (d) The provisions for the Council to terminate the contract.
- (e) A clause prohibiting the Supplier from transferring or assigning, directly or indirectly, any portion of his/her contract without the written permission of the Council, or sub-letting any portion of his/her contract other than that which is customary in the trade or profession concerned.
- (f) A clause empowering the Council to terminate the contract and requiring the Supplier to provide an indemnity to the Council to cover all losses suffered by the Council resulting from fraud or an offence under the Bribery Act 2010 (or any statutory modification or replacement of this Act) in relation to a contract, committed by a Supplier or one of his/her employees or agents
- (g) A clause providing for payment of undisputed invoices within 30 days by the Council, Contractors and Sub-Contractors which complies with Regulation 113 of the Regulations

- (h) For Contracts procured using the Regulations any specific terms required to be included in the Contract under the Regulations.
- 6.13 All transactions must use an appropriate form of contract approved by a suitably qualified officer in Legal Services.
- 6.14 Legal Services must be instructed prior to the start of a tender exercise to produce an appropriate form of contract where:
  - (a) The Total Value exceeds £100,000; or
  - (b) The arrangement is for leasing arrangements; or
  - (c) The Responsible Officer is proposing to use a Contractor's own terms; or
  - (d) The contract is unusual or complex in any other way.
- 6.15 Legal Services must also be consulted on the terms of any Collaborative agreement or external framework agreement in which the Council is proposing to participate with a view to procuring Supplies, Works or Services.

### **Bonds and Parent Company Guarantees**

- 6.16 The Responsible Officer must in consultation with the Assistant Director - Finance, determine whether any additional security such as a bond or parent company guarantee may be required from the contractor who is awarded the contract.  
If additional security may be required, this must be highlighted in the tender documents, using an appropriate form of words approved by Legal Services.

### **Shortlisting**

- 6.17 Any shortlisting must have regard to the financial and technical standards relevant to the contract. For contracts above the EU Threshold the Regulations must be followed.
- 6.18 Where Approved Lists are used the Responsible Officer must shortlist in accordance with the shortlisting criteria approved for procurement from the Approved List.

### **Submission, Receipt, and Opening of Tenders**

- 6.19 Candidates must be given an adequate period in which to prepare and submit a proper quotation or tender consistent with the complexity of the contract requirement and the law. Officers should have regard to policy commitments made in relation to procurement including the Third Sector Compact. Where the Regulations lay down minimum timescales these must be complied with.

- 6.20 The Responsible Officer is responsible throughout the procurement process for safeguarding its security, confidentiality and integrity.
- 6.21 The Responsible Officer is authorised to open tenders that have been received on the Chest or by other authorised electronic method.
- 6.22 Where the Responsible Officer is carrying out a procurement using a physical tender document, Officers must not disclose the names of Candidates to any staff involved in the receipt, custody or opening of tenders.
- 6.23 The Responsible Officer is responsible for the safe keeping of tenders where they are submitted in hard copy until the appointed time of opening. Each tender must be:
  - 6.24 Suitably recorded so as to subsequently verify the date and precise time it was received.
  - 6.25 Adequately protected immediately on receipt to guard against amendment of its contents.
  - 6.26 Recorded immediately on receipt in a Tender Receipt Log.
- 6.27 The Responsible Officer must ensure that all tenders are opened at the same time when the period for submission has ended. Tenders must be opened in the presence of one officer independent of the Responsible Officer.
- 6.28 Tenders and quotations received after the specified closing date should be held unopened until the award has taken place. Once an award has taken place the Responsible Officer must inform the Candidate that their tender or quotation was disqualified for being received after the closing date or time.

### **Evaluation**

- 6.29 Apart from the debriefing required or permitted by these Contract Rules the confidentiality of tenders and quotations and the identity of Candidates must be preserved at all times.
- 6.30 Tenders must be evaluated strictly in accordance with the Award Criteria. During this process the Responsible Officer must ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies in tenders are examined and resolved satisfactorily.
- 6.31 The arithmetic in compliant tenders must be checked. If arithmetical errors are found they should be notified to the Candidate. A Candidate who has made an arithmetical error must be permitted to correct the error if they choose to. A Candidate who has made an error of omission must not be permitted to amend their tender and must be asked to confirm their tender or withdraw it.

### **Clarification of Tenders**

- 6.32 These Contract Rules permit officers to provide clarification in writing of an invitation to tender to potential or actual Candidates.
- 6.33 Where a Candidate raises a question about an invitation to tender any response should be provided to all Candidates provided that the anonymity of the Candidate who raised the query is protected.

### **Post Tender Discussions**

- 6.34 Discussion with Candidates after the submission of tenders with a view to obtaining adjustments in price, delivery or content must only take place in exceptional circumstances and with the approval of the Assistant Director - Business Services, following consultation with the Senior Manager Legal and Democratic Services. Discussion must be conducted by a team of at least two officers.
- 6.35 Post tender discussion of a contract procured under the Regulations may only be undertaken on the grounds permitted in the Regulations.
- 6.36 Where any post tender discussion would result in a material modification to a Relevant Contract (including to the specification) the contract must not be awarded but must be re-tendered.

### **Authorisation to Award a Contract**

- 6.37 The Persons and bodies authorised to award Contracts are set out in the table below.

<b>Total Value</b>	<b>Decision Maker</b>
£0 - £500,000	Corporate Director
£500,001 - £5000,000	Corporate Director in consultation with the relevant Cabinet Member (written record to be kept)
£5,000,001 and above	Cabinet except as provided below
Call offs of any value from an approved Framework Agreement	Corporate Director
Contracts the budget for which has been wholly included in the Capital Programme	Corporate Director
Utilities Contracts	Corporate Director
Award of contracts procured from an Approved List	Corporate Director

- 6.38 With the exception of Call Offs from Framework Agreements the award of any contract which is a Key Decision must include within the report to the decision maker the following information:
- (a) The price and details of the budgetary provision.
  - (b) The number of tenders received.
  - (c) The tendering process used.
  - (d) The award criteria.
  - (e) A risk assessment and risk management arrangements.
  - (f) TUPE implications.
  - (g) Recommendation of award.
  - (h) Contract monitoring and management arrangements.
  - (i) Any impact on the local economy, suppliers based in Cumbria and the third sector.
- 6.39 Where a number of similar contracts are recommended to be awarded on or around the same time a composite report may be used.

#### **Contracts for Legal Advice and/or Services**

- 6.40 Contracts for the instruction of counsel or the procurement of external legal advisers may only be awarded by the Senior Manager Legal and Democratic Services or a solicitor authorised by the Monitoring Officer to award such a contract.

#### **Providing Services to Other Organisations**

- 6.41 Where a Corporate Director proposes to apply to provide services to another organisation Legal Services must be consulted about the terms and conditions on which the services are to be provided and regard had to the advice received.
- 6.42 As set out in Part 5G 'Financial Standing Orders' of this Constitution, any indemnity required to be provided by the Council must be approved by the Monitoring Officer and Assistant Director - Finance before a contract is entered into.

#### **Notification of Award**

- 6.43 All contract award decisions taken by Cabinet and Key Decisions taken by Corporate Directors are subject to scrutiny under the Council's procedures for call in set out in Part 5C 'Overview and Scrutiny Procedure Rules of this Constitution.
- 6.44 The successful Candidate must be notified that contract award is subject to call in and award must not be confirmed until the call in period has expired, or if the decision is called in the procedures following call in have been completed.

- 6.45 Where the award of a contract or Framework Agreement is subject to the Regulations the procedures for notification of Candidates and a standstill period must be followed in respect of the award.
- 6.46 If an award decision is challenged in any way the Responsible Officer must not proceed with the award the contract and must refer immediately to Legal Services.

## 7 Contracts and Contract Management

### Contract Formalities

7.1 Contracts must normally be completed as follows:

Total Value	Method of Completion	Authorised Officer
£0 - £50,000	Signature	Officer authorised by relevant Corporate Director
£50,001 - £250,000	Signature by two officers  Sealing (strategically or politically important contracts or those requiring a 12 year limitation period)	Officers authorised by relevant Corporate Director  Officer authorised by the Senior Manager Legal and Democratic Services to witness the seal
£250,001 and above	Sealing	Officer authorised by the Senior Manager Legal and Democratic Services to witness the seal

7.2 Any arrangement which is strategically or politically important or requires the Council to have the benefit of a twelve year limitation period for taking legal action on the contract must be completed under seal regardless of value.

### Nominated Sub-Contractors

- 7.3 Where a sub-contractor or supplier is to be nominated by the Council to a main contractor the Responsible Officer must invite tenders for the nomination in accordance with these Contract Rules. The invitation to tender should include the requirement for the sub-contractor to enter into a collateral warranty in favour of the Council.
- 7.4 It must be a condition of the engagement by the Council of any person (not an employee of the Council) to supervise a contract that in relation to such

contract he shall comply with the Contract Rules as if he were an officer of the Council.

### **Contract Management**

- 7.5 Corporate Directors are responsible for ensuring that all contracts relating to functions for which they are responsible are managed in accordance with a risk and contract management framework appropriate to the risk, value and impact of the contract. Corporate Directors are responsible for ensuring that these arrangements are kept up to date for the life of the contract.
- 7.6 For every contract managed in their directorate Corporate Directors are responsible for appointing a Responsible Officer, at an appropriate level for the risk, value and impact of the contract, to manage the contract.
- 7.7 In preparing the risk and contract management arrangements for a contract, and managing the contract, the Responsible Officer should follow the procedures set out in the Guidance.
- 7.8 Corporate Directors are responsible for identifying significant contracts in their Directorate and ensuring that they are maintained in a corporate register of significant contracts.

Significant Contracts are defined as those few, but important contracts critical to the Council's business objectives, financial stability and/or reputation, such as:

- contracts critical to the Council's delivery of statutory duties;
  - contracts that pose significant risk (reputation and/or financial) and/or would have a significant impact in the event of relationship breakdown or supplier failure;
  - contracts that, in the context of the Directorate budget and its ordinary contracts, are of significant value.
- 7.9 Corporate Directors are responsible for ensuring that Significant Contracts managed in their Directorate are regularly reviewed in the Directorate Management Team and for making an exception report with an action plan to the Corporate Management Team on at least a quarterly basis.
- 7.10 The Assistant Director – Finance is responsible for making a report at least annually to the Corporate Management Team of the issues raised with Significant Contracts during the year and an assessment of the implementation of actions included in Directorate exception report action plans.

## Modification of Contracts during their term

- 7.11 On the application of a Corporate Director, the Assistant Director - Business Services in consultation with the Senior Manager - Legal and Democratic Services is authorised to approve modifications to contracts during their term. For the avoidance of doubt, a modification includes an extension to the term or any other variation to the contract that has been provided for in the terms and conditions.
- 7.12 Where the contract has been procured under the Regulations a contract may only be modified if the modification may be made under the Regulations and is made in compliance with the Regulations.
- 7.13 All modifications of contract must:
- (a) Be recorded in writing and a record retained in line in accordance with the Corporate document retention policy;
  - (b) Be signed or sealed in accordance with the terms of the contract. Modifications of contracts where the Total Value of the contract exceeds £100,000 must be referred to Legal Services.

## 8 Glossary of Terms

Accountable Body	The arrangement whereby the County Council has agreed to accept responsibility for the obligations set out in the terms of any funding granted to a third party organisation.
Asset	Refers to any property of the County Council, but does not include, for the purposes of the Contract Procedure Rules, land and buildings or rights relating to land and buildings.
Award Criteria	Has the meaning given in the Public Contracts Regulations 2015
Candidate	Has the meaning given in the Public Contracts Regulations 2015.
Consultant	An individual or firm (not being a firm of solicitors or a solicitor or barrister) procured to provide professional services, including advice.
Contractor	Has the meaning given to the definition "economic entity" in the Public Contracts Regulations 2015
Contracts Register	The County Council's database of contracts.
EU Threshold	The financial threshold at which contracts must be procured using the

	Regulations.
Exemption	A disapplication of the Contract Procedure Rules.
Framework Agreement	Has the meaning given in the Public Contracts Regulations 2015 (notwithstanding that a framework arrangement can be established for Supplies, Services and Works below the threshold applicable to the Regulations).
Guidance	The County Council's Commissioning/ Procurement Cycle and Process Mapping Guidance (including relevant internal mini gateway review procedures, where required) or any replacement of such Guidance.
Lead Body	The arrangement whereby the County-Council is the applicant and/or recipient of an external grant or other funding for a special purpose.
Partnership Arrangements	Non-contractual arrangements between the County Council and one or more third parties to deliver common functions in collaboration with each other.
The Regulations	Means the Public Contracts Regulations 2015 as modified from time to time including by decisions of the Courts. For public concessions contracts Regulations means the Public Contracts Regulations 2006 as modified from time to time or replaced.
Relevant Contract	Any arrangement, including Framework Agreements made by or on behalf of the County Council for the carrying out of Works or for the supply of Supplies or Services, or the disposal of an Asset, unless the arrangement is subject to an Exception in these Rules.
Responsible Officer	The Officer who has the lead responsibility for the commissioning, procurement and/or management of a Relevant Contract.
Services	Has the meaning given in the Public Contracts Regulations 2015
Social and Other Specific Services	Has the meaning given in the Public Contracts Regulations 2015
Supplies	Has the meaning given in the Public Contracts Regulations 2015

Tender Receipt Log	The formal record of tenders received by the County Council.
Total Value	<p>Is the financial value of a Relevant Contract as more particularly defined in the Public Contracts Regulations 2015</p> <p>The Total Value of a Relevant Contract always includes the value of any modification to a Relevant Contract.</p>
Works	Has the meaning given in the Public Contracts Regulations 2015

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# Part 5 I: Officer Employment Procedure Rules

## 1 General Recruitment and Appointment

- 1.1 To ensure a fair and credible recruitment and appointment process any job applicant must state, as part of the County Council's recruitment process, if they are related in any way (partner, nephew, aunt/uncle, stepchild etc.) to an existing councillor ('member') or officer of the County Council ('officer').
- 1.2 If successful no applicant can be appointed without the independent authority of a Corporate Director or an officer nominated by them.
- 1.3 Any applicant who directly, or indirectly, lobbies and seeks the support of any member or officer for any appointment with the County Council will be automatically disqualified.
- 1.4 No Member will seek support for any person for any appointment with the County Council.

## 2 Recruitment of the Chief Executive ('Head of Paid Service') and other Chief Officers

- 2.1 Where the County Council proposes to appoint a Chief Officer, defined as those list of officers in part 2L, the County Council will:
  - (a) Draw up a current job profile specifying:
    - (i) The duties of the officer concerned; and
    - (ii) Any qualifications or qualities to be sought in the person to be appointed.
  - (b) Make arrangements for the post to be advertised openly and using appropriate channels that will attract the best, most qualified, candidates and ensure that there is a clear recruitment process in place to support a successful application process.

## 3 Appointment of Head of Paid Service

- 3.1 Council will approve the appointment of the Head of Paid Service following a recommendation from the Council's Chief Officers' Panel. This Panel must include at least one member of the Cabinet.

- 3.2 Council may only approve the appointment of the Head of Paid Service where there is no material or 'well-founded' objection made by any other member of Cabinet .

#### **4 Appointment of Chief Officers**

- 4.1 The Chief Officers' Panel will appoint those Chief Officers specified in part 2L in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001. The Panel must include at least one member of Cabinet.
- 4.2 An offer of employment as a Chief Officer shall only be made where there is no material or 'well-founded' objection from any other member of the Cabinet.

#### **5 Other Appointments**

- 5.1 Recruitment of officers at, and below, Assistant Directors are the responsibility of the relevant Corporate Director or his/her nominee, and may not be made by Members. The only exception to this is the Chief Officer posts specified in part 2L.

#### **6 Disciplinary Action and Dismissal**

- 6.1 No disciplinary action or procedure likely to involve dismissal of the Chief Executive (Head of Paid Service), Monitoring Officer or s151 Officer may be taken except in accordance with the provisions of the Local Authority (Standing Order) (England) (Amendment) Regulations 2015.
- 6.2 Accordingly any decision to dismiss any of these officers must be taken by full Council after consideration of:
- (a) any advice, views or recommendations from the Chief Officer Panel sitting as an Independent Panel
  - (b) the conclusions of any independent investigation into the proposed dismissal
  - (c) any representation from the Officer him/herself
- 6.3 Members will not be involved in the disciplinary action against any other Chief Officer, specified in part 2L, except:
- (a) Where such involvement is necessary for any investigation or inquiry into alleged misconduct; or
  - (b) Where the Council's disciplinary, capability, and related procedures, as adapted from time to time, allow a right of appeal to members in respect of disciplinary action.

- 6.4 Members will not be involved in the dismissal of any officer below Chief Officer level , except:
- (a) Where such involvement is necessary for any investigation or inquiry into alleged misconduct; or
  - (b) Where the Council's disciplinary, capability, and related procedures, as adapted from time to time, allow a right of appeal to Members in respect of disciplinary action.

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# Part 6A: Public Participation Scheme

## 1 Introduction

- 1.1 Cumbria County Council ('the County Council') is committed to the people of Cumbria having a say on its services and its decisions.
- 1.2 There are many ways for the public to get involved such as attending community meetings, public events, commenting on the council's website or submitting comments through the council's 'have your say' scheme.
- 1.3 There are also a number of regular County Council meetings where the public are invited to have their say, either by:
  - (a) Asking a question;
  - (b) Presenting a petition; or
  - (c) Making a statement.
- 1.4 The County Council's Public Participation Scheme explains how members of the public may do this

## 2 Public Participation Scheme

- 2.1 This scheme applies to the following County Council meetings:
  - (a) *Council* – this meets on average seven times a year. For full details about full Council and the decisions it makes please go to Part 2A of this Constitution; and
  - (b) *Cabinet* – this meets monthly. For full details about Cabinet and the decisions it makes please go to Part 2B of this Constitution; and
  - (c) *Local Committees* - for full details about the six Local Committees and the decisions they make, please go to Part 2D of this Constitution.
- 2.2 The public participation arrangements for Council, Cabinet and Local Committees are the same. However arrangements for the County Council's Development Control and Regulation Committee ("Planning Committee") are different and are set out below in Section 3.
- 2.3 For more information about when and where council meetings take place visit the Council Meetings page on [cumbria.gov.uk](http://cumbria.gov.uk). The time set aside for public participation at the formal meetings is normally limited to 30 minutes.

- 2.4 If you would like to have a say at one of the formal meetings (as listed above), please follow the guidance below for asking a question, presenting a petition, or making a statement. Chairs of meetings understand that members of the public may not be accustomed to addressing formal meetings, and will help you feel comfortable and able to make your voice heard.

Please note that Council meetings are public, and a summary of your contribution, including your name, will appear in the published minutes of the meeting. Minutes are publicly available, including via the Council's website.

NB Please note that the Council treats all participants in meetings with respect and does expect similar standards of behaviour from all attendees. The Council Procedure Rules contain guidance at paragraphs 19 and 20 on the standards which are expected.

## 2.5 Asking a Question

2.5.1 Asking a question - if you will be attending the meeting:

- (a) The question must be provided to the council at least three working days before the date of the meeting. You can submit your question either online at [www.cumbria.gov.uk](http://www.cumbria.gov.uk); in writing to Democratic Services, Cumbria House, 117 Botchergate, Carlisle CA1 1RD; or via email to [democratic.services@cumbria.gov.uk](mailto:democratic.services@cumbria.gov.uk).
- (b) Prior to the meeting you will be contacted by the County Council to confirm your attendance and be given a time that you need to attend.
- (c) On the day you need to arrive in plenty of time. When it is your turn to speak you will have a few minutes to introduce yourself and then ask your question. You may be asked follow on questions by Members attending the Committee, normally this session will be limited to approximately five minutes. Following this you will receive an answer from the Committee. You may also ask one supplementary question to clarify a particular point relating to your original question.

2.5.2 Asking a question - if you won't be attending the meeting:

- (a) Your question must be submitted to the County Council at least three working days before the date of the meeting. You can submit your question either online at [www.cumbria.gov.uk](http://www.cumbria.gov.uk); in writing to Democratic Services, Cumbria House, 117 Botchergate, Carlisle CA1 1RD; or via email to [democratic.services@cumbria.gov.uk](mailto:democratic.services@cumbria.gov.uk).
- (b) Following the meeting you will be contacted and given an update of the discussion and an answer to the question you asked.

## 2.6 Submitting a Petition

Anyone can submit a petition to the County Council on any County Council related topic. Petitions can be submitted either online at [www.cumbria.gov.uk](http://www.cumbria.gov.uk) or as a hard copy by sending it to Democratic Services, Cumbria House, 117 Botchergate, Carlisle CA1 1RD.

2.7 To submit a petition to one of the meetings listed under 2.1 above, please follow this guidance:

(a) Petitions must be sent to the County Council at least three working days before the date of the meeting. Petitions must include a clear and concise statement covering the subject of the petition. It should state:

- (i) What action the 'petitioners' wish the County Council to take; and
- (ii) The name, address and signature of any person supporting the petition (the address can be an address where person lives, works or studies).
- (iii) Your name and contact details (the person submitting the petition).

(b) Prior to the meeting you will be contacted by the County Council to confirm your attendance and be given a time that you need to attend. When presenting a petition you will be expected to attend. If you can't attend you should arrange for someone else to attend on your behalf.

(c) On the day you need to arrive in plenty of time. When it is your turn to speak you will have a few minutes to introduce yourself and then present your petition. You may be asked follow on questions by members attending the Committee, normally this session will be limited to approximately five minutes.

2.8 You may want to just submit a petition to the County Council about a specific issue and it may not be aimed at any particular meeting – if this is the case then the petition should clearly state:

- (i) What action the petitioners (i.e. 'you') want the County Council to take; and
- (ii) The name, address and signature of the person submitting the petition/petition organiser. These petitions will be acknowledged within ten working days together with confirmation of what the

County Council will do with the petition and confirm when you can expect to hear from the County Council.

2.9 The County Council response to a petition will depend on what the petition asks for and how many people have signed it, but may include one or more of the following:

- (a) Taking the action requested in the petition;
- (b) Considering the petition at a County Council meeting;
- (c) Holding an inquiry into the matter;
- (d) Undertaking research into the matter;
- (e) Holding a public meeting;
- (f) Carrying out consultation;
- (g) Holding a meeting with the petitioners;
- (h) Referring the petition for consideration by one of the County Council's Scrutiny Boards ; and
- (i) Writing to the petition organiser setting out our views about the request in the petition.

2.10 Before submitting a petition we recommend that you check with your local councillor ('member') to see if the County Council is already acting on your concerns and to ensure that the County Council is the most appropriate body to receive your petition.

## 2.11 **Making a statement**

2.11.1 Making a Statement - if you will be attending the meeting:

- (a) Your statement must be provided to the County Council at least three working days before the date of the meeting. You can submit your statement either online at [www.cumbria.gov.uk](http://www.cumbria.gov.uk); in writing to Democratic Services, Cumbria House, 117 Botchergate, Carlisle CA1 1RD; or via email to [democratic.services@cumbria.gov.uk](mailto:democratic.services@cumbria.gov.uk)
- (b) Prior to the meeting you will be contacted by the County Council to confirm your attendance and be given a time that you need to attend.
- (c) On the day, you need to arrive in plenty of time. When it is your turn to speak you will have a few minutes to introduce yourself and then read out your statement. You may be asked follow on questions by members attending the Committee. Normally this session will be limited to

approximately five minutes. Following this you will receive an answer from the Committee.

#### 2.11.2 Making a statement - when you don't wish to attend the meeting:

- (a) Your statement must be submitted to the County Council at least three working days before the date of the meeting. You can submit your statement either online at [www.cumbria.gov.uk](http://www.cumbria.gov.uk); in writing to Democratic Services, Cumbria House, 117 Botchergate, Carlisle CA1 1RD, or via email to [democratic.services@cumbria.gov.uk](mailto:democratic.services@cumbria.gov.uk) Following the meeting you will be contacted and given an update of the discussion.

### 2.12 Exclusions

The County Council really does want to hear from the public on matters they feel strongly about. However there are exclusions to this and questions cannot be asked about the following:

- (a) Circumstances of an individual or a member of County Council staff;
- (b) Matters covered by legal or other proceedings;
- (c) Party political matters or confidential information;
- (d) A statutory petition (for example requesting a referendum on having an elected mayor);
- (e) A matter where there is already an existing right of appeal or a separate complaints process;
- (f) Anything the County Council considers to be vexatious, abusive or otherwise inappropriate; or
- (g) Where a person, organisation or someone on their behalf has submitted a petition or asked a question which is the same or substantially the same as one submitted within the previous 12 months.

### 3 Public Participation at Cumbria's Development Control and Regulation Committee ("Planning Committee")

- 3.1 This Committee normally meets every six weeks in Kendal and considers four main areas of business:

- (a) Planning Applications for mineral workings and waste management facilities such as quarries, landfill sites and/or waste incinerators;
  - (b) Planning applications by the County Council for its own development proposals;
  - (c) Changes to any Public Rights of Way in Cumbria, and
  - (d) The registration of common land and town and village greens, and to register the variation of rights of common.
- 3.2 Applicants, any supporters and opponents of the application (or their representatives) and representatives of organisations consulted as part of the determination process may apply to speak at the Committee.

### **3.3 Procedure for Public Participation**

- 3.3.1 If you wish to speak at the Committee you, (or a representative appointed to act on your behalf, including a legal representative) must notify the County Council's Democratic Services Team, submitting at the same time a written note of the points you wish to make, at least three working days before the meeting where the application is to be considered.
- 3.3.2 Requests received less than three working days before the meeting will only be accepted at the discretion of the Chair of the Committee.
- 3.3.3 You will be given details of the Committee meeting.
- 3.3.4 The County Council member who represents the division affected by the application will also be notified of any requests to speak and from whom they have been received.
- 3.3.5 At the Committee, people who have validly applied to speak will be allocated seats in the committee room before the meeting starts.
- 3.3.6 Speakers will be invited to address the Committee following the presentation of the report on the relevant application by officers of the Council. You will be allowed up to five minutes for your presentation. What you say must be relevant to the application.
- 3.3.6 Normally, any person who has validly requested to speak at the Committee will have the opportunity to speak. However, the Chair may exercise his/her discretion to prevent repetition of submissions which the Committee has heard or points which are not material to the application under consideration.

- 3.3.7 The applicant will be invited to speak after those speakers who are opposing the application.
- 3.3.8 At the Chair's discretion, any speaker may be questioned, immediately after their presentation, by members of the Committee or by Council officers, on matters of fact relating to the application, to clarify any points raised in their presentation.
- 3.3.9 If the Committee decide to defer their decision on the application for any reason, you will not be invited to speak at a subsequent meeting, but your views will be considered.

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# Part 6B: Officers' Code of Conduct

## 1 Introduction

- 1.1 The Nolan Committee identified seven principles which apply to all aspects of public life, and therefore to all County Council employees ('officers'). These general principles are:

### **Selflessness**

Holders of public office should take decisions solely in terms of the public interest.

### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work.

They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends.

They must declare and resolve any interests and relationships.

### **Objectivity**

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

### **Accountability**

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

### **Openness**

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

### **Honesty**

Holders of public office should be truthful.

### **Leadership**

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

This Officers' Code of Conduct ('Code') incorporates these principles.

- 1.2 The public is entitled to expect the highest standards of conduct from all officers. An officer's role is to serve the County Council in delivering services to the people of Cumbria, providing advice and implementing its policies. In

performing their duties, officers must act with integrity, honesty, impartiality and objectivity.

- 1.3 Officers work for the County Council and serve the whole of the Council; they are accountable to, and owe a duty to the County Council. Officers must act in accordance with the principles set out in this Code, and recognise the duty of all public sector officers to discharge public functions reasonably and according to the law.
- 1.4 This Code applies to all Council employees. It also applies to staff in schools where the Code has been adopted by the Governing Body as the employer.
- 1.5 Certain elements of the Code deal with matters which can constitute a criminal offence, an example being the section on corruption. Not complying with this, and certain other aspects of the Code, could amount to a disciplinary offence which could result in disciplinary action. Officers should read this Code carefully and, if they have any queries or are uncertain about its content, they contact their immediate supervisor for advice.
- 1.6 This Code supplements, and does not replace any code or recognised standards of conduct endorsed by any professional body of which an officer is a member.

## **2 The Code**

### **Standards**

- 2.1 All officers of the County Council are expected to give the highest possible standard of service to the people of Cumbria and, where it is part of your duties, to provide appropriate advice to Councillors ('members') and fellow officers with total impartiality.
- 2.2 The aim of this Code is to lay down guidelines for you that will help maintain and improve standards and protect you from misunderstanding or from criticism.
- 2.3 Officers are expected to display the following behaviours:
  - (a) Communicate in a clear and constructive way.
  - (b) Act with honesty and respect for others.
  - (c) Demonstrate a positive flexible attitude.
  - (d) Take responsibility for our actions.
  - (e) Be committed to 'One Team'.
- 2.4 These are the agreed employee behaviours that have been developed through a process of staff engagement and are used across the council to promote positive behaviours amongst staff.
- 2.5 All officers have an important role in relation to protection against fraud and corruption and you should report to your manager or supervisor any

concerns you may have associated with the council's finances, resources and responsibilities.

- 2.6 The Council's Anti-Fraud, Bribery and Corruption Policy and Employee Whistle Blowing Policy are set out in Parts 6D and 6E of this Constitution. The County Council will ensure that all officers making such reports in good faith will be protected from victimisation.
- 2.7 You should at all times try to avoid any occasion for suspicion and any improper conduct which would bring the reputation of the County Council into disrepute.

### **Disclosure of Information**

- 2.6 The law requires that certain types of information must be available to members, auditors, Government Departments, service users, and the public. If you are in any doubt as to whether you can release any particular information, you should assume that it is confidential and seek permission before releasing it.
- 2.7 You must not use any confidential information obtained in the course of your work for personal gain or benefit; nor should you pass it on to others who might use it in such a way.
- 2.8 You must not communicate confidential information or documents to others who do not have a legitimate right to know. You must follow the provisions of the Data Protection Act regarding the disclosure of information and this continues to apply after you leave the employment of the County Council.
- 2.9 You must not pass on any personal information relating to a member without the prior approval of that member unless legally you are required to disclose it (for example in litigation)

### **Political Neutrality**

- 2.10 You serve the County Council as a whole and must serve all members equally and ensure that the individual rights of members are respected.
- 2.11 Where you are required to advise political groups you must do so in ways which do not compromise your political neutrality. All officers, whether holding politically restricted posts or not, must not allow their own personal or political opinions to interfere with their work.

### **Relationships**

#### *Members*

- 2.12 Mutual respect between officers and members is essential to good local government and working relationships should always be kept on a professional basis. You should avoid close personal familiarity with

individual members as this could prove embarrassing to other officers and members.

#### *The Local Community*

- 2.13 You should always remember your responsibilities to the community you serve, and ensure courteous, efficient, and impartial service delivery to all groups and individuals within that community as defined by the policies of the County Council. You should deal with the public, members and other officers sympathetically, efficiently and without bias.

#### *Contractors and Suppliers*

- 2.14 All relationships of a business or personal nature with external contractors, potential contractors or suppliers must be declared to the appropriate manager. Orders and contracts must be awarded on merit, by fair competition and in accordance with the Contracts Procedure Rules and no special favour should be shown to businesses run by, for example, friends, partners or relatives.

### **Recruitment and Other Employment Matters**

- 2.15 Officers involved in appointments should ensure that these are made on merit.
- 2.16 In order to avoid any possible accusation of bias, you must not be involved in any appointment, or any other decisions relating to discipline, promotion or pay and conditions for any officer or prospective officer where you are related or have a close personal relationship outside work.

### **Outside Commitments**

- 2.17 You should not allow official duties and private interests to conflict. No officer should take up any outside employment or appointment which conflicts with the County Council's interests.
- 2.18 Officers paid above Grade 9 must not engage in any other business or take up any additional appointments without the agreement of their manager. The County Council will not unreasonably stop you from taking additional employment, but such employment must not, in the view of the County Council, conflict with the Council's interest or bring the Council into disrepute.

### **Personal Interests**

- 2.19 You must declare to your Corporate Director any financial or non-financial interests which you consider could bring about conflict with the County Council's interests.
- 2.20 You must make a formal declaration about contracts with the County Council in which you have a pecuniary or financial interest. Such declarations should

be sent to the Assistant Director - Corporate Governance. It is a criminal offence to fail to comply with the provision.

- 2.21 You must not make official professional decisions about matters in which you have a personal involvement. You must not misuse your official position or information acquired in the course of your employment to further your private interests, or the interests of others.

### **Equality**

- 2.22 All members of the local community and other officers of the County Council have a right to be treated with fairness and equity. You should ensure that all policies relating to equality issues as agreed by the County Council are complied with.

### **Tendering Procedures**

- 2.23 Officers involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the County Council.
- 2.24 Officers in commissioning, procurement, contract management roles, or in client units, must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors, and sub-contractors.
- 2.25 Officers who are privy to confidential information on tenders, or costs relating to either internal or external contractors, should not disclose that information to any unauthorised party or organisation.
- 2.26 Officers contemplating a management buyout should, as soon as they have formed a definite intent, inform the appropriate manager and withdraw from the contact awarding process.

### **Corruption**

- 2.27 You must be aware that it is a serious criminal offence for you corruptly to receive or give any gift [insert hyperlink to 'gifts' section below], loan, fee, reward, or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in your official capacity. Allegations of this nature will be investigated and dealt with in accordance with the County Council's disciplinary procedure.

### **Financial Standing Orders**

- 2.28 All employees involved in financial activities and transactions on behalf of the County Council, including budget management, payment of accounts, payment of salaries and wages, petty cash, and orders for works, goods, or services, must follow the Part 5G 'Financial Standing Orders' in this Constitution, as approved by the Council.

- 2.29 You must ensure that you use public funds in a responsible and lawful manner. You should strive to ensure value for money to the local community, and to avoid legal challenge to the County Council.

### **Gifts**

- 2.30 A potential source of conflict between private and public interests is the offer of gifts, hospitality, or benefits in kind to officers in connection with their official duties.
- 2.31 With the exceptions listed below, you should refuse any personal gift offered to you, or to any family member, by any person or organisation who has dealings with the County Council. Any such offer should be reported to the appropriate senior manager. In the event of receiving a gift, legacy, or bequest in circumstances where services have been provided by the County Council, you should inform your senior manager and seek advice. If you try to influence or put pressure on a client to leave you a bequest in their will this will be regarded as serious misconduct.
- 2.32 When a gift has to be refused, this should be done with tact and courtesy, because the offering of gifts is common practice in the commercial world, particularly at Christmas time. If the gift is simply delivered to your at your place of work, there may be a problem returning it, in which case it should be reported to the appropriate senior manager and the agreed course of action should be clearly documented.

### **Exceptions**

- 2.33 Gifts of a promotional nature through attendance at relevant conferences or on the conclusion of any courtesy visit to a factory or firm of a sort normally given by that firm and where it is clear that the gift is corporate rather than personal.
- 2.34 Gifts of a token value, often given at Christmas time, such as diaries, calendars, pens etc. (in general, any isolated gift of up to £10 in value).

### **Hospitality**

- 2.35 You should only accept offers of hospitality if there is a genuine need to impart information or represent the County Council in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community and where the County Council should be seen to be represented. In such cases they should be authorised by a senior manager and recorded.
- 2.36 Where hospitality is offered you should be particularly sensitive as to its timing in relation to decisions which the County Council may be taking that may affect those providing the hospitality. It is important to avoid any suggestion of improper influence and you should speak to senior managers

to decide whether a gift or an offer of hospitality should be accepted or tactfully rejected.

- 2.37 In general terms, it will often be more acceptable to join in hospitality offered to a group than to accept something unique to yourself. There may be times when an offer of hospitality should be rejected, when normally it would be regarded as acceptable. An example would be if the body or person offering the hospitality is in a contract dispute with the county council.
- 2.38 All offers of hospitality, whether accepted or not, should be reported to the senior manager concerned, who shall keep a record of such offers and the decision taken on acceptance or refusal.

### **Sponsorship**

- 2.39 Where an outside organisation wishes to sponsor a County Council activity, whether by invitation, tender, negotiation, or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 2.40 Where the County Council wishes to sponsor an event or service, neither an officer nor any partner, spouse, or relative, must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager of any such interest.
- 2.41 Similarly, where the County Council, through sponsorship, grant-aid, financial or other means, gives support in the community, officers should ensure that impartial advice is given, and that there is no conflict of interest involved.

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# Part 6C: Member / Officer Protocol

## 1 Introduction

- 1.1 The purpose of this Protocol is to guide both Elected members and 'officers' of the County Council in their relations with one another on some of the issues that most commonly arise and to assist with their working relationship generally.
- 1.2 The majority of the Protocol is a written statement of our current practice and conventions. However, where greater clarity would be helpful it tries to provide it.
- 1.3 Underpinning the Protocol are the rules of conduct which apply to both members and officers and which emphasise the high standards of personal conduct which the public have a right to expect. This Constitution also includes Part 4B 'Member Code of Conduct' and Part 6B 'Officers' Code of Conduct' which set out the obligations placed on members and officer, respectively.
- 1.4 Both members and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the County Council and the Chief Executive as the Head of Paid Service. Their job is to carry out the County Council's work under the general policies and overall strategic direction which has been approved by members.
- 1.5 Mutual respect between members and officers is essential to good local government. Close personal familiarity between individual members and officers can damage this relationship and may prove embarrassing to other members and officers.
- 1.6 It is important that the relationship works well without compromising the ultimate responsibilities of all officers to the County Council as a whole, and with having regard to any technical, financial, professional and legal advice that officers provide to members.

## 2 Roles of Members

- 2.1 Members undertake many different roles. Broadly these are:
  - (a) Members express political values and support the policies of the party or group to which they belong (if any).
  - (b) Members represent their electoral division and all those citizens who live in that area.

- (c) Members are often involved with other organisations as community leaders.
- (d) Members contribute to the decisions taken in Council and the various bodies on which they serve, as well as joint committees, outside bodies and partnership organisations.
- (e) Members help develop, monitor and review policy strategy and service quality.
- (f) Members are involved in quasi-judicial work such as considering planning applications, through their membership of regulatory committees.

### **3 Roles of Officers**

3.1 Briefly, officers have the following main roles:

- (a) Managing and providing the services the Council has given them responsibility for.
- (b) Providing advice to both the Council and its various bodies and to individual Members in respect of the services provided.
- (c) Initiating and implementing policy proposals.
- (d) Ensuring that the Council always acts in a lawful manner.

### **4 Respect and Courtesy**

4.1 For the effective conduct of County Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between members and officers. This plays an important part in the County Council's reputation and how it is seen by the public.

4.2 It is very important that both members and officers remember their respective obligations to enhance the County Council's reputation and to do what they can to avoid criticism of other members, or other officers, in public places.

### **5 Undue Pressure**

5.1 It is important that, in any dealings between members and officers, neither should seek to take unfair advantage of their position.

5.2 When dealing with both Corporate Directors and officers (especially junior officers), members need to be aware that it is easy for officers to be overawed and feel at a disadvantage.

- 5.3 A member should not apply undue pressure on an officer to do anything that he or she is not authorised to do, or to do any work which is outside their normal duties or outside normal hours. Particular care needs to be taken in connection with the use of County Council property and services.
- 5.4 A member should not raise matters relating to the conduct or capability of an officer in public or act in a way which does not reflect the principles set out in this Protocol, especially since an officer has no means of responding to such criticism in public.
- 5.5 Similarly, an officer must not seek to use undue influence on an individual member to make a decision in his or her favour, or raise personal matters to do with their job, or make claims or allegations about other officers. The County Council has formal procedures for consultation, grievance, and discipline. The one exception to this rule is the right of staff to report possible wrongdoing under the Council's Employee Whistle Blowing Policy.
- 5.6 Reports to Committees should be written by the Corporate Director or another officer authorised by him or her. It is likely that a sensitive report would be discussed with senior members at a briefing meeting held with the Corporate Director, and members may make suggestions to the Corporate Director as to the contents of the report. However, the report is the Corporate Director's, and any amendments can only be made by the Corporate Director. Obviously Members may move any amendments to any recommendations within a report at the formal meeting to consider the report.

## **6 Familiarity**

- 6.1 Close personal familiarity between individual members and officers can damage the principle of mutual respect. It could also intentionally or accidentally, lead to the passing of confidential information, such as personal details.
- 6.2 Such familiarity could also cause embarrassment to other members and/or other officers and even give rise to suspicions of favouritism.
- 6.3 For the above reasons close personal familiarity must be avoided.
- 6.4 If a member considers that he or she has not been treated with proper respect or courtesy, he or she should try to resolve it by direct discussion with the officer initially, however if this is impractical or does not resolve it, then the matter should be raised as soon as possible with the officer's line manager or Corporate Director. If the issue still remains unresolved, appropriate disciplinary action may be taken against an officer by the Corporate Director in accordance with the County Council's normal procedures.
- 6.5 If an officer feels the same way about a member, and a direct discussion is impractical or does not resolve the matter, he or she should raise the matter with their line manager or Corporate Director as soon as possible. The Corporate Director will deal with it, depending on the circumstances, either by approaching the individual member and/or Party Group Leader. The Chief Executive should be notified if the Party Group Leader becomes involved, or in

any other case where that is appropriate. Feedback should be given to the officer on the outcome.

## **7 Provision of Information/Advice**

- 7.1 Any member is entitled to apply to the Chief Executive or to any Corporate Director, for information and/or advice required in connection with his/her work as an elected member. Except where the information involves, particularly in the Social Services field, the divulging of exempt information as defined in Section 100F of the Local Government Act 1972, it is the responsibility of the Corporate Director approached to give that information and/or advice, within the limits of his/her Department's resources and to the best of his/her ability. Members should seek to act reasonably in the number and content of the applications they make.
- 7.2 If any member asks for specific information relating to the work of a particular County Council directorate, and it appears possible or likely that at a subsequent meeting issues will be raised or questions asked on the basis of the information provided, then the relevant Cabinet member should be informed.
- 7.3 The Leader or Spokesperson of each minority Group, recognised as such by the County Council, is entitled, for his/her own purposes as a Leader or Spokesperson, to apply to the Chief Executive and/or to the appropriate Corporate Director(s) for general background information on, or for further information in respect of, an item of business coming before the next meeting of a Committee or Sub-Committee of the Council. The appropriate Chair or Council Spokesperson, as appropriate, should be informed of any new/additional information which has been supplied by the Corporate Director.
- 7.4 Technical/procedural information may be supplied, in confidence, to any Group Leader, to enable a budget to be presented by that Group which is in the legally correct form.
- 7.5 Information requested by a member to address a constituency issue may be supplied to that member in confidence.
- 7.6 If a request is made for routine factual information regarding a service, then, in addition to being supplied to the member concerned, it will normally be made available to all members through the members' Information Bulletin.
- 7.7 Any member of the Council may apply privately to the Chief Executive and/or to the appropriate Corporate Director for advice, in confidence, on information supplied by that member to the officer.

## **8 Political Activity**

- 8.1 Senior officers, except those politically exempted, cannot be local authority members or members of Parliament, nor can they "speak or publish written

work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party".

- 8.2 Officers are employed by the County Council as a whole. They serve the County Council through Committees and are responsible to the Chief Executive ('Head of Paid Service') and their respective Corporate Directors, and not to individual members of the Council, whatever office they might hold.
- 8.3 It is obviously important, though, for there to be regular contact between the Chief Executive, Corporate Directors, senior officers, and the Leaders of Political Groups on matters affecting the County Council, and between Corporate Directors, other senior officers, and Committee Chairs on matters affecting their respective Committees.

## **9 Employee Advice to Party Groups**

- 9.1 It is common practice for the Cabinet and Party Groups to give preliminary consideration to matters of County Council business before those matters are considered by the relevant Council decision making body.
- 9.2 It is possible that a Corporate Director or other senior officer may be asked to attend Cabinet or any Party Group Meeting.
- 9.3 Any request for an officer to attend a Political Group meeting should be made to the Chief Executive outlining the name of the individual, the topic or information required and the reason it is necessary.
- 9.4 The Chief Executive after consultation with the relevant Corporate Director and the individual officer(s) concerned will decide whether permission can be given for the officer(s) concerned for them to attend the meeting provided they are willing to do so. The decision will be notified to the relevant Group Leader, together with the Leaders of the other Groups, advising that similar arrangements will be made for them if they wish.
- 9.5 Since legally officers (including the Chief Executive and Corporate Directors) serve the whole County Council, and not individual Political Groups, their attendance at Political Group Meetings is entirely voluntary.
- 9.6 Officers are entitled to have their political neutrality respected should they agree to attend the Group Meeting, and to be treated in a fair and proper way. Officers must not be placed in a position where they feel at a disadvantage or their political impartiality or integrity are put at risk. Normally officers should leave the meeting having given information on the issue in question and before the Group decide what view to take on it as a Political Group.
- 9.7 To safeguard both officers and members, officers must not be asked to provide information and except where it relates to matters of County Council business. Officers should not be expected to be present when matters of Party business are discussed. Officers must be reminded on each occasion that they should leave a meeting if there is any suggestion that they are to be asked to comment on matters beyond the brief agreed in advance, or if they feel vulnerable or that their integrity was being put in question.

- 9.8 Any breach of these arrangements by either members or officers will be viewed seriously and appropriate action taken by Group Leaders or the Chief Executive respectively.
- 9.9 Special care needs to be exercised whenever officers are involved in providing information and advice to a Party Group Meeting that includes persons who are not members of the County Council. Such persons may be bound by the rules of the Group, but will not be bound by the Members' Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality). For this and other reasons officers may not be able to provide the same level of information and advice as they would to a "members-only" meeting.
- 9.10 Officers must respect the confidentiality of any Party Group discussions at which they are present, in the sense that they should not relay the content of any such discussion to another Party Group.
- 9.11 Any particular cases of difficulty or uncertainty in this area of officer advice to Party Groups should be raised with the Chief Executive who will discuss it with the relevant Group Leader(s).

## **10 Confidentiality**

- 10.1 In accordance with the Members' Code of Conduct a member must not disclose any information given to him or her as a member in breach of any confidence.
- 10.2 Confidential Committee papers are to be treated as confidential information unless the relevant Committee resolves not to exclude press and public. Members are reminded that the author of the report makes the initial decision as to whether or not the papers are to be treated as confidential. The decision as to whether they remain confidential is for the Committee.
- 10.3 Other information may be confidential because to disclose it would be against the County Council's or the public interest. Information may also be confidential because of the circumstances in which it was obtained.
- 10.4 Information and correspondence about an individual's private or business affairs will normally be confidential.
- 10.5 Officers should make it clear to members if they are giving them confidential information. If a member is not sure whether information is confidential, he or she should ask the relevant officer, but treat the information as confidential in the meantime.
- 10.6 Any County Council information provided to a member must only be used by the member in connection with the proper performance of the member's duties as a member of the County Council.
- 10.7 If a member receives confidential information and considers it should be disclosed to another person because it is reasonable and in the public interest to do so then he or she must first consult with the Monitoring Officer and shall

not disclose the information without having regard to any advice given by that officer.

## **11 Preparation of Agenda and Minutes**

- 11.1 Each Council and Standing Committee etc. agenda will be prepared by the Assistant Director – Corporate Governance.
- 11.2 Normally a pre-agenda meeting will be held, and the Chair will be consulted at that stage.
- 11.3 The Chair will, in any event, be consulted once the draft agenda is available.
- 11.4 If there is disagreement between the Chair and the Assistant Director – Corporate Governance over the inclusion of a particular item on the agenda, the Chief Executive (‘Head of Paid Service’) will decide if the item should appear on the agenda.
- 11.5 Minutes of Committees, Sub-Committees, and of the Council will continue to be prepared by the Assistant Director – Corporate Governance, after consultation with the appropriate Corporate Director.
- 11.6 Once draft minutes are in being, the Assistant Director – Corporate Governance will consult the relevant Chair (Vice-Chair in his/her absence) for comment.
- 11.7 If, in the exceptional event of a disagreement arising between the Chair and the Assistant Director – Corporate Governance as to the accuracy and/or content of a particular minute, and the Assistant Director – Corporate Governance is satisfied that his/her version is correct, then that version will appear in the minutes. Subsequently, at the next meeting of the Committee, Sub-Committee, or the Council, as the case may be, it would be for members to adopt or amend that minute as they may decide.

## **12 Support Services to Members and Party Groups**

- 12.1 The only basis on which the County Council can lawfully provide support services (e.g. stationery, typing, printing, photocopying, transport, etc) to members is to assist them in discharging their role as members of the County Council. Such support services must therefore only be used on County Council business. They should never be used in connection with Party political or campaigning activity or for private purposes.

## **13 Correspondence**

- 13.1 Official letters on behalf of the County Council should be sent out in the name of the appropriate officer, rather than in the name of a member. It may be appropriate in certain circumstances for a letter to be sent in the name of a Member, for example in response to a letter of complaint sent direct to that member. But this should be the exception rather than the norm and should only be done following consultation with the Chief Executive or appropriate Corporate Director.

- 8.10 Letters which create obligations or give instructions on behalf of the County Council should never be sent out over the name of a member.

## **14 Conclusion**

- 14.1 By following good practice and maintaining sensible and practical working relationships between members and officers, where each understands and respects each other's role, we will enhance not only the reputation of the Council but also the delivery of high value quality services to the people of Cumbria.

# Part 6D: Anti-Fraud, Bribery and Corruption Policy

## 1. Introduction

- 1.1 Cumbria County Council takes its responsibility for safeguarding public monies seriously and does not tolerate fraud, bribery, corruption or abuse of position for personal gain in any area of Council activity. Fraud and corruption reduce the resources available to deliver services to those people who depend on us and undermine the Council's reputation. This is particularly important in the current climate of reduced funding in local government.
- 1.2 The people of Cumbria are entitled to expect the Council to operate with integrity, honesty and openness. They rightly expect the highest standards from all those connected with the Council in any official capacity. The Council is therefore committed to combating fraud and taking action against anyone who does attempt to commit fraud against it.
- 1.3 In addition, the Council may be held liable for an offence under the Bribery Act 2010 if it **fails to prevent** a person (who could be a senior manager, other officer, elected Member, or any contractor or sub-contractor who provides services on the Council's behalf) from committing bribery.
- 1.4 Having and adhering to adequate procedures to prevent bribery provides the Council with a defence against liability under the Bribery Act 2010.

## 2. Definitions

- 2.1 Fraud is defined within the 2006 Fraud Act which sets out three categories of fraud:
  - a. False representation – where a person makes a false representation in order to cause a gain for themselves or a loss to another person
  - b. Failure to disclose information – where there is a legal duty to do so
  - c. Abuse of position – where a person abuses the position they hold to cause a gain to themselves or a loss to another person.
- 2.2 Crucially, under the Fraud Act, the gain or loss does not have to have materialised for fraud to have been committed; it is the action and intent that creates the offence of a fraud.
- 2.3 Bribery means offering or giving someone a financial or other advantage to encourage them to perform their functions or activities improperly, or rewarding someone for having already done so. This includes:

- Offering or giving a bribe to another person;
  - Receiving or agreeing to receive a bribe from another person;
  - Facilitation payments (unlawful payments demanded by officials to perform or expedite the performance of their normal duties).
- 2.4 The Council commits an offence if a person associated with it bribes another person for the Council's benefit. An "associated person" includes officers, elected Members, service providers and other partners.
- 2.5 Officers and elected Members involved in planning and procurement should be especially aware of the possibility that they may be targeted for attempted bribery.
- 2.6 Corruption is defined by the Audit Commission as:
- The offering, giving, soliciting or acceptance of an inducement or reward which may influence any person to act inappropriately.

### **3. Policy Statement**

- 3.1 The aim of this policy is to make clear to all employees (including permanent, temporary and agency staff), elected Members, contractors, consultants, other bodies and the public, Cumbria County Council's approach to fraud, bribery and corruption.
- 3.2 The Council is committed to the prevention, deterrence and detection of fraud and has a zero tolerance approach. Robust arrangements are in place to deal with any instances of fraud committed against the council including both disciplinary and criminal proceedings where appropriate.
- 3.3 The Council's policy aims to ensure that all appropriate action is taken to prevent the Council and its members and officers being exposed to bribery and sets out what officers and members are expected to do if they suspect bribery.
- 3.4 The Council opposes all corruption and will support its employees at all times in acting ethically.

### **4. Scope of the Policy**

- 4.1 The policy applies to elected Members and all officers of the Council. The term 'officers' includes all staff working for the Council whether full-time or part-time, paid or voluntary, temporary or casual and staff employed through an agency.
- 4.2 Where Council services are delivered by other organisations, the Council is still responsible for safeguarding the interests of service users and tax payers and therefore expects the same high standards of conduct and behaviour

from all individuals working with and on behalf of the Council. Where appropriate, we will build clauses into our contracts covering actions that will be taken in the event that fraud is identified.

- 4.3 We commend the policy to our partner organisations and County Council schools with the expectation that it is either adopted in full or used as a basis for their local arrangements.
- 4.4 Where it is suspected that fraud has been committed against the Council by staff from 3<sup>rd</sup> party organisations, we will report the matter to the employing organisation and will support them fully in dealing with the issues under their respective organisational policies and procedures.
- 4.5 Contractors and sub-contractors acting on the Council's behalf are responsible through contractual arrangements put in place during the tender process and through contracts, for compliance with the Bribery Act 2010.
- 4.6 The Council will adhere to provisions in procurement law requiring the exclusion of contractors convicted of active corruption.
- 4.7 The Council will also include clauses in tender documents and contracts which permit exclusion of contractors, termination of contracts and recovery of losses by the Council in the event of an act of corruption by a tenderer or contractor (including sub-contractors).

## **5. Corporate culture and frameworks**

- 5.1 Cumbria County Council is committed to creating an environment where the risk of fraud, bribery and corruption is minimised. Responsibility for an anti-fraud culture is the joint duty of all those involved in giving political direction, determining policy and management. Elected Members and senior management are committed to creating a culture that is resilient to the threats of fraud and corruption and which aligns to the standards of good governance.
- 5.2 Managers at all levels are required to acknowledge and identify the risks of fraud occurring within their service areas and implement controls to mitigate these fraud risks.
- 5.3 Senior management is expected to deal swiftly and firmly with those who defraud the council. The Council will be robust in dealing with financial irregularities.
- 5.4 The council expects that elected Members and officers will lead by example in ensuring adherence to all legal requirements, contract and financial procedure rules, codes of conduct and best practice. There is a framework of interrelated policies and procedures that provide a corporate framework to

counter fraudulent activity. These have been formulated with regard to the relevant legislative requirements and include:

- Codes of conduct for officers and members
- The Council behaviours
- Appointment of statutory officers
- Financial Standing Orders
- Contracts Procedure Rules
- Effective Recruitment & Selection Policy
- Disciplinary Procedure
- Whistleblowing policy
- Information Security policy
- Acceptable use policy

5.5 The Council also fully supports the seven Nolan principles that apply to anyone who serves the public:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty; and
- Leadership

5.6 As employees or elected Members of the Council, we all serve the public and therefore must abide by these principles in every aspect of our working lives.

5.7 Line managers are responsible for ensuring that all their staff are aware of and understand their responsibilities within this policy and for periodically reminding staff of these.

## **6. Responsibilities in relation to fraud, bribery and corruption**

6.1 The Chief Executive, Corporate and Assistant Directors are responsible for communicating the Anti-Fraud, Bribery and Corruption Policy to elected Members and employees, and for promoting awareness of the commitment to eliminating all forms of corruption.

6.2 The Chief Executive, Corporate and Assistant Directors are responsible for ensuring that any risk of fraud, bribery and corruption is identified, documented and managed at the appropriate level in the Council. Managers are responsible for ensuring there are appropriate controls within their systems to prevent fraud.

- 6.3 All managers are responsible for ensuring that if they receive an allegation under this policy, they:
- deal with the matter promptly in line with this policy;
  - Record, preserve and secure all evidence received;
  - Implement the Council's disciplinary procedures where appropriate.
- 6.4 Each officer and elected Member is responsible for their own conduct and for performing their functions with honesty and integrity, in the public interest.
- 6.5 Officers are expected to follow and abide by the Council's Code of Conduct for Employees, in addition to any Code of Conduct of their professional or trade body.
- 6.6 Members are expected to comply with the Member Code of Conduct.
- 6.7 Officers and elected Members involved in (town and country) planning are expected to comply with the Code of Practice for Members and Officers involved in the Planning Process.
- 6.8 All employees and elected Members are required to be vigilant to the possibility that fraud may occur and have a responsibility to report any suspicions of fraud, bribery and corruption through the arrangements described within this policy. Where an employee fails to report suspicions, they themselves become implicated in the wrongdoing and the Council will treat failure to report concerns as a serious matter which may in the case of a person employed by the council, amount to a disciplinary matter and in the case of elected Members, to a breach of the Code of Conduct.
- 6.9 The Council will seek to ensure that companies of which it is a member/shareholder and major partnerships in which it participates or for which it is accountable body have in place arrangements to prevent fraud, bribery and corruption in respect of their activities
- 6.10 The Council has established an Audit and Assurance Committee. Its terms of reference are set out within the Constitution and include oversight of the Council's risk management activities and monitoring the Council's anti-fraud, bribery and corruption arrangements.
- 6.11 The Standards Committee oversees the Members' Code of Conduct.

## **7. Prevention**

- 7.1 The Council's main aim is to prevent fraud, bribery and corruption from occurring. This is done through a combination of an effective ethical culture and behaviours whereby wrongdoing is seen as unacceptable by everyone and maintaining well-controlled systems that do not allow wrongdoing to succeed.

- 7.2 A key element in fraud prevention is the regular checks undertaken by managers to confirm that their anti-fraud, bribery and corruption controls continue to work effectively. Internal audit can advise on appropriate controls to mitigate risk but it is managers' responsibility to ensure controls are implemented and continue to work effectively.
- 7.3 A key stage in upholding the Council's ethical culture is through recruitment of appropriate staff. Managers are responsible for ensuring that all appropriate checks are undertaken to establish, as far as possible, the honesty and integrity of potential employees, whether for permanent, temporary or casual posts, or agency staff. All recruitment must therefore be conducted in accordance with the Council's Recruitment & Selection policy and associated procedures.

## **8. Gifts, Hospitality and Donations**

- 8.1 Under the Bribery Act 2010, the provision of genuine hospitality is not an offence, so businesses are, for example, able to provide tickets to sporting events, offer gifts to clients, take clients to dinner, and offer other hospitality if that is reasonable and proportionate expenditure for their business.
- 8.2 Council officers and members may only receive gifts and hospitality in accordance with the Council's Member Code of Conduct and Officer Code of Conduct.

## **9. Data Matching for the Purpose of Fraud Prevention**

- 9.1 The council participates fully in the National Fraud Initiative (NFI) which is a data matching exercise co-ordinated by the Audit Commission for the purpose of identifying potential frauds against local authorities. It is the council's policy that items flagged through the NFI will be investigated and action taken as appropriate in line with this policy.
- 9.2 The Council may also use internal data matching between its own systems for the purposes of preventing and detecting fraud. Any such arrangements will be in full compliance with relevant legislation covering information governance.

## **10. Reporting concerns**

- 10.1 Any person who suspects that fraud, bribery or corruption may be taking place must report their suspicions.
- 10.2 The report should be made to your line manager in the first instance, unless there are reasons why you are unable to report to your line manager. In this case, the report should be to the Group Audit Manager or your Senior Manager / Assistant Director. The Council has a Whistleblowing Policy which

enables individuals to make disclosures in the public interest where they feel unable to report under other policies.

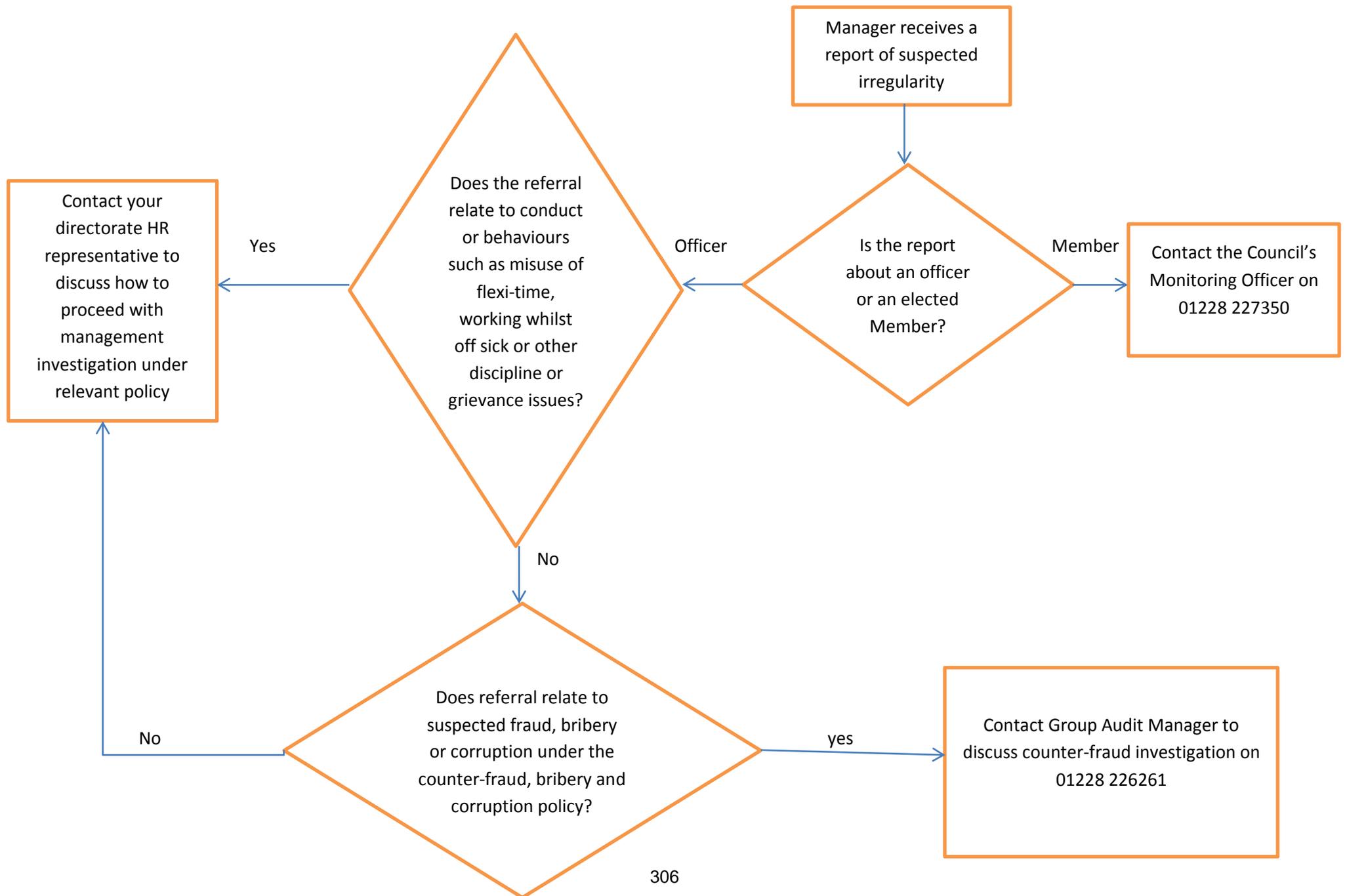
- 10.3 Suspected frauds or irregularities may also be reported through the Council's fraud hotline number which is 0800 028 277.
- 10.4 Where any concerns should arise regarding the conduct of an elected Member within the context of this policy, this should be reported to the Monitoring Officer who will determine the appropriate approach to investigating in discussion with the S151 Officer and Group Audit Manager.
- 10.5 If you suspect that a fraud has taken / is taking place you should not attempt to investigate the matter yourself nor confront any person suspected of being involved. You should note as much detail as possible to allow the matter to be investigated, but you should not go looking for evidence or take any action that may alert the individuals to your suspicions. You should not attempt to find information by switching on the person's computer as this can seriously prejudice further investigation.

## **11. Investigation, sanctions and recovery of losses**

- 11.1 Managers receiving referrals of suspected fraud must contact the Group Audit Manager who will discuss the most appropriate arrangements for investigating. Internal audit may advise that a management investigation should be undertaken or may consider that internal audit involvement is necessary depending on the circumstances.
- 11.2 It is the council's policy that all suspected irregularities will be investigated and where fraud, bribery or corruption is found to have been committed, action will be taken. Consideration will be given in all cases to referral to the police where criminal activity is suspected. Where fraud, bribery or corruption has been committed by a member of Council staff, the disciplinary procedures will be invoked together with a referral to the police as appropriate.
- 11.3 The council will pursue recovery action to recover misappropriated assets. This may involve using the proceeds of crime act (POCA), as well as civil sanctions including recovery from the individual's pension contributions.
- 11.4 We will publicise actions taken against anyone found to have committed fraud against the council as part of our strategy to reduce fraud risk.

## **12. Review of this Policy**

- 12.1 This Policy will be subject to review in line with the provisions for review of ethical policies within the Constitution. It will be reviewed in addition should a change of law require changes to be made.



## **Cumbria County Council - Anti Money Laundering Policy**

### **1. Introduction**

- 1.1 Cumbria County Council is committed to ensuring we have effective arrangements to prevent, detect and report suspected money laundering activities in line with the legislation governing this area. The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007 set out a range of activities and offences covered under the definition of Money Laundering. They also set out the requirements for reporting of suspected money laundering attempts and the penalties for failing to do so.
- 1.2 Local authorities do not have a statutory obligation to comply with the Money Laundering Regulations as they generally do not deliver ‘relevant services’ under the terms of the Act<sup>1</sup>. However, Cumbria County Council believes that it is right to take a firm stance against money laundering in line with its responsibilities for the proper administration of public funds and its duty to uphold high standards of ethics.
- 1.3 The council’s policy is to ensure that all appropriate action is taken to prevent the council and its staff being exposed to money laundering including and that actual or suspected incidences of money laundering are reported in line with the requirements of the Money Laundering regulations.

### **2. Scope of the Policy**

- 2.1 This policy applies to all Members and staff of the Council including temporary and agency staff. The policy is part of the council’s suite of ethical policies designed to ensure that the highest standards of governance and conduct are upheld.

### **3. What is Money Laundering?**

- 3.1 In general terms, money laundering is the process by which criminally obtained money or other criminal property are exchanged for “clean” money or other assets with no obvious link to their criminal origins.
- 3.2 The formal definitions within the Money Laundering Amendment Regulations 2012 are set out below:
- 3.3 Money Laundering is defined as:
  - a. The process by which the proceeds of crime are; concealed, disguised, converted, transferred or removed from England, Wales, Scotland or Northern Ireland.

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<sup>1</sup> There is an exception where Legal Services may provide professional services to external organisations.

- b. Being involved in an arrangement which a person knows or suspects facilitates the acquisition, retention, use or control of criminal property.
- c. Acquiring, using or possessing criminal property.

3.4 There are also secondary offences of:

- d. Failure to disclose money laundering offences.
- e. Tipping off a suspect, either directly or indirectly.
- f. Prejudicing an investigation.

#### **4. Reporting concerns of Money Laundering**

4.1 The Council's Money Laundering Reporting Officer (MLRO) is Julie Crellin, Assistant director, Finance (S151 Officer). You should report any suspicions of money laundering to the MLRO. In the absence of the MLRO, the deputy MLRO is the Group Audit Manager, Niki Riley.

4.2 If you suspect that money laundering has taken place, you should make a referral to the MLRO. This should contain as much detail about the transaction(s) as possible, including:

- The nature of the transaction and the reasons for your suspicion
- The value and date(s) of the transaction(s)
- Names, addresses, dates of birth, company names of all those involved
- Any supporting documentation you may have

4.3 If you have suspicions about money laundering before a transaction has taken place, you should contact the MLRO for advice before the transaction is completed.

#### **5. Examples of situations most likely to give risk to suspicions of Money Laundering**

- Transactions involving unusually high volumes of cash. This would be of particular concern if the value of the payment exceeded the amount due, including paying double. Money Laundering often involves making an overpayment on a legitimate debt and then requesting the overpayment refunded by cheque (a local authority cheque being a legitimate source of funds for placing back into the financial system).
- A transaction or trade that makes no commercial or economic sense on the part of the other party. Money Launderers' main objective is to get the money back into the financial system, not necessarily to make

a profit. They may therefore be prepared to take a loss in order to clean up the money.

- Payments received from third parties. Money Launderers will often make payments on behalf of a legitimate third party business in order to clean criminal funds.
- Transactions where the identity of the party is undisclosed or is difficult to establish.
- Transactions where the party is evasive about the source or the destiny of funds.
- Transactions with companies in offshore jurisdictions. Some jurisdictions can provide money launderers with the opportunity to hide their true identity.
- Changes to payment instructions to the use of offshore funds. Payments are usually made to or from a UK bank to establish a business relationship and then changed to a bank in an offshore jurisdiction.
- The cancellation or reversal of an earlier transaction.

## **6. Client Identification Procedure**

6.1 This is required where the Council is carrying out relevant business under the Regulations and the bullets below also apply.

- An ongoing business relationship with a client;
- A one-off transaction with a client involving a payment by or to a client of an agreed amount or more;
- A series of linked transactions with a client involving payments to or from the client to an agreed amount or more;
- There is a suspicion that a transaction or series of transactions is linked to money laundering.

6.2 Where Council staff are conducting relevant business under the Act, you will have been advised of this by your service management and you should refer to your internal procedures for client identification.

## **7. Review of this policy**

- 7.1 This policy will be subject to regular review in line with the wider policies within the constitution. It will also be reviewed should a change in legislation require changes to be made.

# Part 6E: Whistleblowing Policy

## 1 Introduction

- 1.1 The Council is committed to the highest standards of honesty, integrity and accountability in carrying out its functions.
- 1.2 The Council recognises, however, that wrong doing, though rare, may occur and that the vigilance of employees, other staff and contractors is vital to maintain high standards of conduct.
- 1.3 The Council expects employees and other workers to report suspected wrong doing, as we believe that the best deterrent is for everyone to know that wrong doing will be reported, will be thoroughly and swiftly investigated and that wrong doers will be held accountable for their conduct.
- 1.4 This Policy is intended to make a clear statement that any wrong doing by Cumbria County Council members; employees or third parties associated with the Council that is reported to the Council will be thoroughly investigated and appropriate action taken when wrong doing is found to have occurred.
- 1.5 This Policy sets out how concerns about wrong doing can be reported and what the Council will do.

## 2 Application of this Policy

- 2.1 This Policy applies to Council employees and other workers, including freelance staff, temporary and agency staff, consultants, contractors (and their staff), volunteers and employees in organisations which work in partnership with the Council.
- 2.2 In this Policy the term “employee” refers to employees of the Council and other workers to whom the Policy applies.
- 2.3 Elected Members are also encouraged to use the Whistleblowing Policy to report concerns and except where the Policy refers to rights applying only to employed persons, the term “employee” in this Policy also refers to elected Members.

## 3. Application of this Policy to Schools

- 3.1 It is expected that governing bodies of all community and voluntary controlled schools would adopt this Policy and the procedures contained in it. Foundation and voluntary aided schools are encouraged to do the same.

- 3.2 Where this Policy has been adopted by a school, references to “the Council” should be read to mean the school and references to “the Corporate Director” should be read to mean the Head Teacher of the school.
- 3.3 Schools are encouraged to provide an alternative person, such as the Chair of Governors, to whom concerns may be reported if the employee believes the Head Teacher is involved in the wrong doing or has failed to take appropriate action when the matter has been raised previously.
- 3.4 Employees may seek advice from the Council’s Monitoring Officer if they feel unable to report their concerns to the Head Teacher or Chair of Governors.
- 3.5 It is expected that community and voluntary controlled schools which adopt this Policy will notify the Council’s Monitoring Officer in accordance with sections 11.1 and 11.17 of this Policy. All schools are encouraged to maintain their own records of the report, investigation and outcome.

## **4 Scope of this Policy**

- 4.1 This Policy provides all employees with:
- (a) avenues to raise concerns; and
  - (b) reassurance that they will be protected from victimisation and dismissal as a result of reporting their concerns.
- 4.2 The list below provides examples of the types of wrong doing that can legitimately be reported under the Whistleblowing Policy:
- (a) Any unlawful conduct, whether criminal or a breach of civil law, failure to comply with a legal obligation, or where a miscarriage of justice has occurred or is likely to occur
  - (b) Maladministration as defined by the Local Government Ombudsman
  - (c) Breach of any statutory Code of Practice
  - (d) Breach of, or failure to implement or comply with, any policy or procedure rules determined by the Council, Cabinet or a Committee of the Council;
  - (e) Misuse of assets including stores, equipment, vehicles, buildings computer hardware and software;
  - (f) Failure to observe health and safety legislation or endangering the health and safety of any individual;
  - (g) Failure to take reasonable steps to report and rectify any situation which is likely to give rise to a significant avoidable cost, or loss of income, to the Council or would otherwise seriously prejudice the Council;
  - (h) Causing damage to the environment;

- (i) Corrupt practices, abuse of power, or the use of the Council's powers for any unauthorised or ulterior purpose;
- (j) Deliberate falsification of data or information;
- (k) Any other cases of malpractice, negligent, unprofessional or unethical conduct;
- (l) The deliberate concealment of any information in relation to any of the above.

## **5 Relationship with other policies**

- 5.1 The Whistleblowing Policy is intended for employees to raise concerns that it is in the public interest to report and where the interests of others or of the Council are at risk.
- 5.2 The Council has in place policies and procedures for employees to raise issues relating to their own personal circumstances or treatment at work. In those cases employees should use the Grievance Procedure or other appropriate Human Resources Procedure
- 5.3 The Council has in place policies and procedures for reporting suspected fraud, money laundering, bribery and other financial crime and employees should report those concerns under the relevant policy.
- 5.4 The Whistleblowing Policy is intended to be used in circumstances where the person reporting the matter feels that, for any reason, existing policies and procedures are inappropriate.

## **6 Safeguards for employees reporting concerns**

- 6.1 In many cases, it is an employee who will be the first to become aware of any wrong doing within the Council. If an employee becomes aware of any wrong doing, the Council therefore expects employees to report their suspicions.
- 6.2 The Council recognises that individuals may sometimes be reluctant to express their concerns, because they fear that this would be disloyal to managers, colleagues and others in the Council or because they fear reprisals, such as harassment or victimisation.
- 6.3 The Council will not tolerate any attempt on the part of any employee or Member to take reprisals against any person who has reported a concern. The Council will treat any such harassment or victimisation as a serious matter which, in the case of a person employed by the Council may be a

disciplinary matter and in the case of a Member may be a breach of the Code of Conduct.

- 6.4 Whistleblowers may also have additional legal protection if they make certain disclosures of information in the public interest and are then victimised in their employment. Those who victimise a whistleblower can be held personally liable for their conduct. In addition, the Council could be held liable if it has not taken all reasonable steps to prevent such victimisation occurring.
- 6.5 If an employee or Member who has made a genuine complaint feels they have been victimised as a result of raising a concern they may raise the matter with the Council's Monitoring Officer. If the complaint relates to the Monitoring Officer they should raise it with the Chief Executive.
- 6.6 The Council will ensure that the necessary resources are put into investigating any reports it receives.

## **7 How to report a concern**

- 7.1 An employee who wishes to report a concern under the Whistleblowing Policy should contact their Corporate Director in the majority of cases. It will be the responsibility of the Corporate Director to initially investigate the complaint in accordance with this Policy.
- 7.2 It is recognised that at times an employee may feel unable to report their concerns to their Corporate Director, for example if the employee believes their Corporate Director is involved in the wrong doing or has failed to take appropriate action when the matter has been raised previously.
- 7.3 In these circumstances, the employee should report their concerns to the Monitoring Officer who will investigate the complaint in accordance with this Policy.
- 7.4 Elected Members should report concerns to the Monitoring Officer.
- 7.5 Where concerns have been reported to the Monitoring Officer, he/she will apply the Policy in place of the Corporate Director or in the case of a school, the Head Teacher.
- 7.6 A concern should be reported in writing (including by email), or followed up in writing as soon as possible after the initial verbal report.
- 7.7 Any evidence relating to the concern should be recorded, preserved and secured, and supplied to the Corporate Director at the time that concerns are reported, or as soon as possible afterwards.

## **8 Anonymous reports**

- 8.1 Anonymous allegations are those which are unsigned and unidentifiable. All reports will be investigated, but employees should be aware that anonymous allegations are more difficult to act upon and so may not be effective in remedying the wrong doing alleged.
- 8.2 In considering what action to take in response to an anonymous allegation, the person to whom the report is made will consider:
- (a) The seriousness of the allegation;
  - (b) The credibility of the allegation;
  - (c) The likelihood of obtaining information from other sources to confirm the allegation.
- 8.3 The confidentiality of people who report concerns will be protected where it is possible to do so. Please refer to Section 12 of this Policy for more information about reporting concerns and confidentiality.

## **9 How the council will respond to a report of concerns**

- 9.1 If urgent action is required to safeguard individuals or property or to preserve evidence the Corporate Director will immediately take such action as is required.
- 9.2 All officers involved in investigating a report of concerns will take action without delay and in accordance with any timescales set out in this Policy.
- 9.3 Once a report of concerns has been received, it will be the duty of the Corporate Director to pursue the matter if he/she believes it may be true.
- 9.4 It will not be possible for an employee to prevent a matter from being investigated by subsequently withdrawing their concerns.

## **10 Lead managers**

- 10.1 The Corporate Director is the Lead Manager for reports of concerns about wrong doing in their directorate and is responsible for overseeing the effectiveness of the Whistleblowing Policy in their Directorate.

- 10.2 A Corporate Director may if appropriate assign the role of Lead Manager in respect of a particular report of concerns to a senior manager in their Directorate.

## **11 Procedural steps following a report of concerns**

- 11.1 The Lead Manager must register the report with the Monitoring Officer within 5 working days of receipt by the Corporate Director. The details to be provided are:
- (a) Date report of concern received
  - (b) Name of person reporting concerns
  - (c) Details of the concerns reported
  - (d) Proposed action and by whom.
- 11.2 In order to protect both individuals and the Council the Lead Manager will (unless in their judgement it is inappropriate to do so) make initial enquiries to decide whether an investigation is appropriate and if so what form it should take.
- 11.3 This Policy acknowledges that in some circumstances, the Lead Manager may be able to resolve the reported concerns informally, without the need for a detailed investigation.
- 11.4 The Lead Manager will normally refer concerns which fall within the remit of specific procedures (such as child or adult safeguarding, disciplinary matters or employee grievances) for investigation under those procedures. The Lead Manager will need to make a judgement about whether the concern reported should be dealt with under other procedures or under the Whistleblowing Policy. In making this decision, the Lead Manager may wish to consult with the Monitoring Officer and/or with the officer responsible for the operation of the procedures they think might be more appropriate to follow.
- 11.5 In exceptional circumstances the Lead Manager may decide not to investigate a complaint further. The Lead Manager may make such a decision if the facts on which the complaint is based have already been investigated and dealt with under the Whistleblowing Policy or other policies and procedures. If, following consultation with the Monitoring Officer and their Corporate Director, a Lead Manager determines that a complaint should not be further investigated, they will write to the complainant giving their reasons.
- 11.6 The Lead Manager is responsible for commissioning an appropriate senior manager or external investigator as Investigating Officer. If the allegation involves or may involve wrong doing by an employee, the Investigating Officer must be senior to the person under investigation.

- 11.7 The Lead Manager will identify an individual who will be available to provide support and advice to the person who reported concerns during the investigation and afterwards.
- 11.8 The Lead Manager will also identify a contact person for any employee who is under investigation under the Whistleblowing Policy.
- 11.9 Within 10 working days of receiving the complaint the Lead Manager will write to the person who reported concerns:
- (a) Acknowledging that the report of concerns has been received
  - (b) Indicating how the Lead Manager proposes to deal with the matter
  - (c) An estimate of how long it will take to provide a final response
  - (d) Stating what action has been taken and what action will be taken and by whom, including the name of the Investigating Officer appointed.
  - (e) Explaining the reason if the Lead Manager has decided not to investigate further.
- 11.10 The Investigating Officer will conduct an investigation to establish the facts of the reported wrong-doing and will make a written report, appending witness statements and other evidence to the Lead Manager.
- 11.11 All employees are required to co-operate with any investigation carried out under this Policy. Any employee who attends a meeting in connection with an investigation of alleged wrong doing is entitled to be accompanied by a trade union representative or a colleague who is not involved in the area of work to which the investigation relates.
- 11.12 The Investigating Officer will keep the person who reported a concern informed of progress with the investigation. If the person has any concerns about the investigation they may raise these with the Lead Manager or if the concerns are about the Lead Manager, with the Monitoring Officer.
- 11.13 If the investigation is taking longer than estimated, the Investigating Officer will provide a written update to the employee and to the Lead manager at least every month.
- 11.14 Once he/she has received the report of the Investigating Officer, the Lead Manager will take any necessary action. If the investigation reveals circumstances in which disciplinary action against an employee, or action to enforce a contractual obligation, is appropriate, the Lead Manager will be responsible for ensuring that the necessary steps are taken.
- 11.15 In some circumstances, the Lead Manager may consider it appropriate to report a matter to the Police or other regulatory authority. This decision should be taken in consultation with the Monitoring Officer (Assistant Director -

Corporate Governance) or the Section 151 Officer (Assistant Director - Finance).

- 11.16 If an allegation is found to be groundless the Council will take reasonable steps to remedy any adverse consequences arising from the investigation.
- 11.17 In all circumstances the Lead Manager must update the register at the conclusion of the process by notifying the Monitoring Officer of:
- (a) Any resolution of the complaint without the need for investigation
  - (b) any referral for investigation under another policy
  - (c) or, any decision not to investigate a complaint.
  - (d) Where investigated, the date of completion of the investigation.
  - (e) The findings of the investigation;
  - (f) Action taken by the Lead Manager.
- 11.18 All information relating to the report of concerns and its investigation must be retained by the Corporate Director in accordance with the Council's document retention policy.

## **12 Confidentiality**

- 12.1 The Council will be sensitive both to persons reporting concerns and to persons under investigation following a report under this Policy.
- 12.2 Investigations will be carried out as confidentially as possible. There will, however, be circumstances where information relating to a report of concerns will have to be disclosed by the Council, for example if there is a legal obligation to disclose the information or if the wrong doing is serious and is to be reported to the Police or External Auditor.
- 12.3 The Investigating Officer will not disclose the identity of the person who reported concerns unless they agree or it is necessary for the purpose of the investigation or for reasons described in 12.1.
- 12.4 The Investigating Officer will advise the person who reported concerns if it becomes necessary to disclose their identity against their wishes. The person will have the opportunity to raise the issue with the Lead Manager who will without delay review the necessity of the disclosure before the investigation continues.

## **13 How concerns can be taken further**

- 13.1 If an employee is not satisfied with how the Council has addressed issues they have reported under this Policy, they may contact:
- (a) The Chair of the Audit and Assurance Committee
  - (b) The External Auditor, Grant Thornton on 0141 223 0891
  - (c) The relevant professional body or regulatory body, for example, The Health and Safety Executive, Care Quality Commission, Ofsted. The details of relevant bodies are available on the Government Website Direct.Gov
- 13.2 An employee who discloses confidential information, or concerns relating to the Council, its business or other employees, outside the procedures set out in this policy may, if the law does not permit such disclosure, lose their entitlement to the protection against adverse consequences available to them under this policy or under the law. Employees are therefore advised always to follow the procedures under this Policy if they have concerns about wrong doing in the Council. This does not affect the legal right of employees to disclose concerns to outside bodies where this is legally prescribed.

## **14 Independent advice to Employees**

- 14.1 Free confidential advice about wrong doing at work can be sought from the independent charity Public Concern at Work on 020 7404 6609 or from an employee's Trade Union.

## **15 Contractors and Partners**

- 15.1 The Council will include a clause into contracts with suppliers to the Council highlighting that this Policy applies to their staff while working on Council business. It will place a requirement on contractors to publicise the Whistleblowing Policy to their staff involved in the contract with the Council.
- 15.2 The Council will include a clause in agreements with partner organisations where the Council is acting as accountable body applying this policy to the partnership arrangements.
- 15.3 The Council will encourage the directors of its controlled companies to adopt this Policy for themselves and their subsidiaries.

## **16 The responsible Officer**

- 16.1 The Responsible Officer for the operation of the Whistleblowing Policy corporately is the Monitoring Officer, who will ensure that the effectiveness of the Policy is monitored, reviewed and updated at appropriate intervals.

## **17 Failure to report concerns**

- 17.1 Where an employee fails to report concerns, they themselves may become implicated in the wrong doing and the Council will therefore also treat failure to report concerns as a serious matter which may, in the case of a person employed by the Council amount to a disciplinary matter and in the case of elected members to a breach of the Code of Conduct.

# Part 6F: Code of Good Practice for Members and Officers Involved in the Planning Process

This Code of Practice ('The Code') supplements the County Council's Member's Code of Conduct and where appropriate members should refer to the Members' Code of Conduct which is set out in Part 4B of this Constitution. The County Council's Monitoring Officer's advice may be sought on the interpretation of the Members' Code of Conduct or this Code.

## 1 Introduction

- 1.1 Planning affects land and property interests, including the financial value of land and the quality of their settings. It is not an exact science. It is often highly contentious because decisions affect the daily lives of everyone and the private interests of members of the public, landowners and developers. Opposing views are often strongly held by those involved. A key role of the planning process is balancing the needs and interests of individuals and the community.
- 1.2 The planning system can only function effectively if there is trust among those involved. There must be trust between members and officers and between the public and the County Council. The Third report of the Committee on Standards in Public Life (the Nolan Committee) (1997) recommended that each local authority's practices and procedures were set out in a local code of planning conduct to avoid allegations of malpractice in the operation of the planning system.
- 1.3 The general principles that underlie the County Council's Members' Code of Conduct and apply to this Code are:
  - (a) Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
  - (b) Members should not place themselves in situations where their honesty or integrity may be questioned.
  - (c) Members should make decisions on merit.
  - (d) Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
  - (e) Members may take account of the views of others but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

- (f) Members should respect the impartiality and integrity of officers.
- 1.4 The County Council is committed to open, fair and transparent decision-making. Planning decisions should be made impartially, with sound judgement and for justifiable reasons.
- 1.5 This Code sets out practices and procedures that members and officers of the County Council shall follow when involved in planning matters. Planning matters include the consideration of planning applications, the preparation of development plans and other planning policy and the enforcement of planning control.
- 1.6 Failure to follow this Code without good reason, could be taken into account in investigations into possible maladministration against the County Council, or have implications for the position of individual members and officers. Breaches of this Code may also amount to breaches of the Council's Members' Code of Conduct. If in doubt about what course of action to take, a member or officer should seek the advice of the County Council's Monitoring Officer.
- 1.7 This Code sets out principles to guide members and officers in determining planning applications and making other decisions within the terms of reference of Development Control and Regulation Committee ('the Committee'). Although of particular relevance to members of this Committee it applies to all members of the County Council who may become involved in planning and development matters.

## **2 The Role and Conduct of Members and Officers**

- 2.1 Members and officers have different, but complementary roles. Both serve the public but members are responsible to the electorate, while officers are responsible to the County Council as a whole.
- 2.2 The role of a member of the Committee is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 2.3 Whilst members have a special duty to their electoral division constituents, including those who did not vote for them, their overriding duty is to the whole community. This is particularly pertinent to members involved in making a planning decision. A key role of the planning system is the consideration of development proposals against the wider public interest.
- 2.4 Members' decisions shall not discriminate in favour of any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Members must, therefore, consider all of the material issues in the light of Development Plan policies, Government advice and their own individual judgement and make a decision in the interests of the County of Cumbria as a whole.

- 2.5 Whilst members should take account of all views expressed, they shall not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 2.6 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's ('RTPI') Code of Professional Conduct. Breaches of that code may be subject to disciplinary action by the Institute.
- 2.7 Officers in their role of advising members shall provide:
- (a) Impartial and professional advice;
  - (b) Consistency of interpretation of planning policy; and
  - (c) Complete written reports covering all necessary information for a decision to be made.
- 2.8 The County Council endorses the statement in the RTPI code that, '*RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions*', and extends it to apply to all officers in the County Council advising on planning matters.
- 2.9 That the County Council may not always follow the advice of their professional planning officers is perfectly proper. The professional officer too, may have a change of opinion, but this must be on the basis of professional judgement, and not because the County Council whether by its members or other officers, have prevailed upon the officer to put forward his or her professional view as something other than it really is. If the Committee is minded to refuse or grant an application contrary to officer recommendation, it should consider whether to defer the application to the next available Committee, before making the final decision. This will allow members to obtain further legal advice on the proposed reasons for acting contrary to the recommendation based on material planning considerations. If such a decision is made it must be clearly minuted, expressed clearly and be based upon sound planning reasons supported by evidence.
- 2.10 The County Council shall have a designated Head of the Planning Service, who is qualified for election to membership of the RTPI and who has direct access to members as their professional adviser on planning matters. A superior officer shall not have the power to overrule the professional advice of the Head of the Planning Service.
- 2.11 Officers shall follow the guidance on their standards of conduct as set out in the Officers' Code of Conduct in Part 6B of this Constitution and any National Code of Conduct for Local Government Officers issued by the Secretary of State under Section 82 Local Government Act 2000.
- 2.12 Members shall follow the advice in the Member's Code of Conduct about accepting gifts and hospitality. Members should treat with extreme caution any offer which is made to them personally; the normal presumption should be that such offers must be courteously declined. Similarly, officers shall politely

decline offers of hospitality from people with an interest in a planning proposal. If receipt of hospitality is unavoidable, officers shall ensure it is of a minimal level and declare it in the hospitality book as soon as possible.

### 3 Interests of Members

3.1 The conduct of all members in dealing with planning matters needs to be guided by:

- (a) The Members' Code of Conduct; and
- (b) The legal rules which apply to participation on local authority decision making.

3.2 The principles that apply can sometimes be complex and are interrelated but are summarised below.

3.3 The Members' Code of Conduct sets out the standards of conduct that members are expected to observe. It also provides guidance as to disclosable pecuniary and other registerable interests which may affect a member's ability to take part in the decision-making process. These interests are summarised as follows:

- (a) **Disclosable Pecuniary Interests ('DPIs')** – where a member of the Committee has a DPI as defined in the Members' Code of Conduct in any matter to be considered or being considered at a meeting of the committee then the existence and nature of this must be disclosed at the meeting. Having disclosed a DPI a member must not participate in any discussion or vote and must leave the meeting room.
- (b) **Other Registerable Interests** - where a member of the Committee has other registerable interest as defined in the Members' Code of Conduct in any matter to be considered or being considered at a meeting of the Committee then the existence and nature of this must be disclosed at the meeting ***unless it has been previously registered***. A Member with other registerable interests may still participate in any discussion and vote on the matter in which he/she has such an interest.
- (c) **Other Interests** – The Members' Code of Conduct also contains seven important general principles of conduct which member must observe when acting in an official capacity. Therefore members may still have other interests which may influence their decision which will not amount to disclosable or registerable interests for the purposes of the Code. In order to maintain the integrity of the planning system, members should be careful to ensure that such interests do not unduly influence their decisions.
- (d) Where a matter arises at a meeting which relates to or affects a financial interest of you, a friend, relative or close associate (and it is not a DPI or other registrable interest) you should declare the existence and nature of the interest. If the matter is such that it affects you or the

individual concerned more than the majority of people in the area and a reasonable member of the public would think your view of the public interest would be adversely affected you must leave the room and may not vote. You may speak if members of the public are able to speak.

- 3.4 Where any interest is such that members of the public may feel that the member will not be able to approach matters with an open mind and consider the application on its planning merits, members should consider withdrawing from the committee for that item.
- 3.5 These principles apply equally to members who are not members of the Committee. Members who have such interests should consider whether it is appropriate for them to participate in the planning process, and in any event, should declare such interest at any meeting which they may attend or in any letter which they may write.
- 3.6 Members should seek guidance from officers.
- 3.7 **Pre-Determination**- a member may become involved with a planning application before the matter comes before the Committee. Such involvement need not on its own debar a member from participating in making the planning decision when the matter is considered by the Committee providing that the member has not already decided how they will vote on the matter before the Committee. Members should, however, always consider carefully whether in any particular case they could reasonably be seen to approach the planning merits of the application with an open mind. If the member considers that this is not possible, the member should withdraw from consideration of that item.
- 3.8 As a minimum, the integrity of the planning system requires openness on the part of members; it must operate fairly and be seen to operate fairly.

#### **4 Development Proposed by the County Council or a County Council owned Company**

- 4.1 Planning legislation allows the County Council to submit and determine proposals for development that it proposes to carry out itself. County Council owned companies also submit proposals that are decided by the County Council.
- 4.2 Proposals submitted by the County Council or a County Council owned company shall be considered in the same way as those by private developers.
- 4.3 Members of the Committee who sit on the board of a County Council owned company which has submitted a planning proposal shall declare an interest and take no part in the discussion and determination of that proposal, except where they are the local member when they may speak on matters of local concern but shall not vote.
- 4.4 Officers who are involved in the preparation of development proposals shall not advise on, or take any part in the consideration of, and/or the assessment of planning applications in respect of such proposals.

## 5 Statutory Duties

5.1 The County Council is also subject to a number of statutory duties which it must comply with when carrying out its statutory functions. These will apply to the planning function except when such matters are clearly immaterial because they are not capable of relating to the use of development land. Examples of these duties include:

(a) **Equality Act 2010**, Section 149 provides that:

(i) A council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a protected characteristic and persons who do not share it.

(ii) The above powers relate to the following protected characteristics:

- Ages;
- Disability;
- Gender reassignment;
- Marriage and civil partnership;
- Pregnancy and maternity;
- Race (including colour, nationality and ethnic or national origins);
- Religion or belief;
- Sex; or
- Sexual orientation.

(b) **Human Rights**, Section 6(1) of the Human Rights Act 1998 provides that:

(i) “It is unlawful for a public authority to act [or fail to act] in a way which is incompatible with a Convention right.”

(c) **Best Value**, Section 3(1) of the Local Government Act 1999 provides that:

(i) “A best value authority must make arrangements to secure continuous improvement in the way in which its functions are

exercised, having regard to a combination of economy, efficiency and effectiveness.”

(d) **Crime and Order**, Section 17(1) of the Crime and Disorder Act 1998 provides that:

(i) “Without prejudice to any other obligation imposed on it, it shall be the duty of a [local authority] to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”

## **6 Lobbying Of and By Members**

6.1 Lobbying is a normal and proper part of the political process. The applicant, supporters or those who may be affected by a proposal will often seek to influence the decision by an approach to their local member or members of the Committee. However, reacting to lobbying can lead to the impartiality of a member being called into question and require that member to declare an interest.

6.2 The information provided by lobbyists is likely to represent an incomplete picture of the relevant considerations in respect of a planning matter. The views of consultees, neighbours and the assessment of the case by the planning officer all need to be considered before a member is in a position to make a balanced judgement on the merits of the case. Members should provide officers with copies of any lobbying material they may have received, whether in favour or against a proposal.

6.3 The time for individual members of the Committee to make a decision on a proposal is at the committee meeting when all available information is to hand and has been duly considered.

6.4 A member of the Committee shall be free to listen to a point of view about a planning proposal and to provide procedural advice (in particular referring the person to officers). Even though they may agree with a particular view, the Committee members should take care about expressing an opinion indicating they have made up their mind before the decision-making meeting. To do so, without all the relevant information and views, would be unfair and prejudicial. A decision is at risk of being challenged if members do not retain open minds and are not genuinely susceptible to persuasion at the decision-making meeting. Members who are lobbied should:

- (a) Make clear that they reserve their final decision on a proposal until the committee meeting;
- (b) Only give procedural advice (if appropriate);
- (c) Consider referring those lobbying to the relevant officer who can provide further advice; and

- (d) Not seek to meet an applicant or potential applicant alone.
- 6.5 Members of the Committee shall not, in general, organise support or opposition for a proposal, or lobby other members (other than when addressing the Committee). Members shall not put improper pressure on officers for a particular recommendation.
- 6.6 The local member who is not a member of the Committee will be allowed to attend and speak at the decision-making meeting (either presenting their own views if they are an affected party or representing the views of their electoral division members) but not vote. A local member who has a disclosable pecuniary interest in an application, within the meaning of the Members' Code of Conduct should seek prior advice from the Monitoring Officer about his or her position.
- 6.7 Members of the Committee must be free to vote as they consider appropriate on planning matters. A member cannot be instructed how to exercise their vote on a planning matter.
- 6.8 Members should inform the Monitoring Officer where they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers.

## **7 PRE- AND POST - APPLICATION DISCUSSIONS AND NEGOTIATIONS**

- 7.1 Discussions between an applicant and the County Council, prior to the submission of an application can be of considerable benefit to both parties and is encouraged. Continued discussions and negotiations between the parties, after the submission of proposals, is a common and important facet of the planning process. However, they should take place within clear guidelines, as follows:
  - (a) It should always be made clear at the outset that the discussions will not bind the County Council to making a particular decision and that any views expressed are those of the officer only, and are provisional and impartial.
  - (b) Advice should be consistent and based upon the Development Plan and any other material considerations. There should be no significant difference of interpretation of planning policies by individual planning officers.
  - (c) A written note should be made of all potentially contentious meetings. Two or more officers should attend potentially contentious meetings. A clear note should also be taken of potentially contentious telephone conversations.
- 7.2 Members need to preserve their role as impartial decision makers and should not take part in pre- or post- submission discussions and negotiations with

applicants regarding development proposals. Should there be occasions when members are involved, it should be part of a structured arrangement with officers, including the Head of the Planning Service. Members must avoid indicating the likely decision on an application or otherwise committing the County Council during contact with applicants.

- 7.3 Members may receive information from applicants and give information to applicants and members of the public but, to safeguard their impartiality, they should maintain a clear distinction between receiving information and negotiating. Any information received by members should be provided to the officers dealing with the application. Members who are approached for planning, procedural or technical advice should refer the applicant to the relevant officer.

## **8 Officers Reports to Committee**

- 8.1 The officer will submit written reports to the appropriate Committee on planning applications to be determined by the County Council. The reports will give the background to the application including any relevant planning history of the site, a description of the proposals and their likely effects, and the relevant Development Plan and Government policy considerations, together with any other material considerations. Where a planning application requires an environmental impact assessment the officer shall include in his/her report a summary of the environmental statement. For all applications, comments by bodies consulted and representations from members of the public together with his/her own comments will be included in the reports. The reports will include a summary of representations made about the application. The officer in his/her report will give a reasoned assessment of the proposals and a justified recommendation.
- 8.2 Oral reports (except to present and update a report) should be extremely rare and fully minuted when they do occur. A publically available written update on late representations and any changes to the report shall be circulated to members of the Committee on the morning of the meeting prior to the meeting commencing.
- 8.3 The officer will have available for inspection by members the full planning application, environmental statement (where required) and representations from bodies consulted and members of the public.

## **9 Planning Considerations**

- 9.1 Planning decisions should be made on planning considerations and should not be based on immaterial considerations.
- 9.2 Members and appointed substitutes of the Committee should attend training sessions which may be organised from time to time. All other members are encouraged to attend.
- 9.3 Planning legislation, as expanded by Government Guidance and decided cases, defines which matters are material considerations for the determination

of planning decisions. There is much case law on what are material planning considerations. The consideration must relate to the use and development of land.

9.4 Briefly, at the date of the preparation of this Code, material planning considerations include:

- (a) The Development Plan;
- (b) Government Guidance (contained in such documents as Circulars, Planning Policy Guidance Notes, Mineral Policy Guidance Notes, Planning Policy Statements and Ministerial announcements, the National Planning Policy Framework and Planning Practice Guidance);
- (c) Supplementary Planning Documents adopted by any related Committee;
- (d) Non-statutory planning policies adopted by the County Council;
- (e) The statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas;
- (f) The statutory duty to pay special attention to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses;
- (g) Representations made by statutory consultees and other persons making representations in response to the publicity given to applications, to the extent that they relate to planning matters;
- (h) Planning obligations (given unilaterally or by way of agreement) under Section 106 of the Town and Country Planning Act 1990 (as amended);

9.5 It should, however, be noted that the risk of costs being awarded against the County Council on appeal is not itself a material planning consideration.

9.6 It is the responsibility of officers in preparing reports and recommendations to members to identify the material planning considerations and highlight to members those matters which are immaterial planning decisions.

9.7 Personal considerations and purely financial considerations are not on their own material; they can only be material in exceptional situations and only in so far as they relate to the use and development of land – such as, the need to raise income to preserve a listed building which cannot otherwise be achieved.

9.8 The planning system does not exist to protect private interests of one person against the activities of another or the commercial interests of one business against the activities of another. The basic question is not whether owners and occupiers of neighbouring properties or trade competitors would experience financial or other loss from a particular development, but whether

the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.

- 9.9 Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is founded upon valid planning reasons which can be substantiated.
- 9.10 It will be inevitable that all the considerations will not point towards granting or refusing planning permission. Having identified all the material planning considerations and put to one side all the immaterial considerations, members must come to a carefully balanced decision which can be substantiated, if challenged on appeal.

## **10 Public Speaking at Committee**

- 10.1 The County Council has a public participation scheme for the Committee which sets out the procedure for members of the public and applicants to speak at the Committee meeting. A copy of this procedure shall be sent to all those who submit written representations to a planning application and can be found at part 6A.

## **11 The Decision Making Process**

- 11.1 Members shall recognise that the law requires that where the Development Plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise.
- 11.2 Where an environmental impact assessment is required, the Committee shall take the information provided in the report into consideration when determining the application.
- 11.3 If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.
- 11.4 Where the Committee decide to adopt the recommendation of the officer, the reasons contained in his/her report will be minuted, together with any additional reasons determined by the Committee.
- 11.5 Where the Committee is minded to refuse a planning application, contrary to the recommendation of the officer, or the Development Plan, a final decision on the application shall be deferred until the next meeting.
- 11.6 This deferral of the decision will allow time for confirmation that clear and convincing reasons for refusal of the application can be made, based on material planning considerations. Legal representation to advise members will be provided when the application is reconsidered.
- 11.7 Where the Committee resolve to grant planning permission contrary to the officer's recommendation, agreement shall be reached at the meeting on the

reasons for the decision. These reasons should be clear and convincing and shall be minuted.

- 11.8 The reasons for the Committee's decision to defer any proposal should also be recorded.

## **12 Site Visits**

- 12.1 A site visit (to which all members of the Committee will be invited) may be held where a proposal is contentious or particularly complex, the impact is difficult to visualise or assess from the plans and supporting information or there would otherwise be a substantial benefit from a visit because of the scale or nature of the proposal. A request by the district or parish council for a site visit will usually be acceded to, provided the application is contentious or there is a substantial issue that needs to be seen at first hand.

- 12.2 Site visits shall be organised in accordance with the following site visit procedures:

- (a) To minimise delays, the Committee shall seek to identify in advance those applications which justify a site visit.
- (b) The officer shall invite the local district council and parish council to site visits in respect of planning applications determined by the County Council. Where the proposal would have a significant direct impact upon an adjacent parish, district, national park or county, they too shall be invited. Invited councils and authorities may send the number of representatives they wish.
- (c) The site visit shall be conducted in accordance with the procedure set out in Appendix 1 to this Code.
- (d) Representatives from other councils and authorities shall not be invited to site visits arising from strategic planning application consultations by other bodies.
- (e) The officer shall invite the local member to all site visits. Where a proposal would have a significant direct impact upon an adjacent electoral division, the adjacent division's county councillor shall be invited.
- (f) The applicant, objectors and other interested parties shall not be permitted to participate in the site visit meeting, other than in exceptional circumstances agreed by the Committee and where equal representation is allowed to all parties. Where attendance of other parties is required for health and safety reasons they shall remain out of earshot of the meeting.
- (g) The Head of the Planning Service shall obtain the landowner's permission to enter the site whenever possible.

## **13 Review of Decisions**

- 13.1 The Audit Commission's Report, 'Building in Quality', recommended that members should visit a sample of implemented planning permissions to assess the quality of decisions. This can improve the quality and consistency of decision-making and help with reviews of planning policy.
- 13.2 Visits to application sites previously considered by the County Council shall be organised in tandem with visits to current application sites, as appropriate. Briefing notes shall be prepared in each case.
- 13.3 Attendance at the review site visits shall be restricted to members of the Committee and the local member.

## **14 Protocol for Group Meetings**

- 14.1 Political Groups may wish to hold pre-meetings prior to formal meetings of the Committee. It is important to bear in mind that decisions on Planning Matters may only be made at the Committee meeting once all relevant information has been made available for members full consideration and all representations, either for or against the application, have been heard.
- 14.2 Accordingly it is important to stress that the purpose of any Group Meeting is for Group Spokespersons to feed back to the members of their Group on the Committee (or official substitutes) on relevant issues arising from the Chairman's Briefing with Officers. Group Meetings must not be used to determine how members should vote and members must never use the political whip on a planning matter. This would leave the decision open to challenge and could give rise to a finding of maladministration by the Local Government Ombudsman.

## **APPENDIX 1**

### **CONDUCT OF SITE VISITS FOR PLANNING APPLICATIONS TO BE DETERMINED BY THE COUNTY COUNCIL**

1. Chair/Vice Chair introduces himself/herself and welcomes all to the site visit meeting.
2. Chair advises that only members of the County Council and invited District/ Borough Council and Town/Parish Councils should be at the meeting. Chairman asks that anyone who is not such a member should leave the meeting immediately.
3. Chair/Vice Chair explains that the purpose of the site visit is to look at the application site and to hear the views of members of the Town/ Parish Council(s) and the District/ Borough Council(s). No decision will be made by the County Council members today. It is a fact-finding visit and the application will be considered at a future Committee meeting.
4. Chair explains that he/she will ask for the Town/ Parish Council(s) and District/ Borough Council(s) views after the County Council's officer has outlined the proposal.
5. Chair introduces the County Council officer who outlines the proposal and then makes a written note of the meeting and also circulates attendance list.
6. Borough/ District Council's Planning Officer asked if he/she wishes to say anything.
7. Views and questions of Town/ Parish Council(s) invited.
8. Views and questions of Borough/ District Council members invited.
9. Views and questions of the County Council local member(s) invited.
10. Questions from the County Council members invited.
11. Chair closes meeting by thanking all for their attendance and reiterating that the views expressed will be taken into account when the application is considered.

## **CONDUCT OF SITE VISITS FOR PLANNING APPLICATIONS UPON WHICH THE COUNTY COUNCIL HAS BEEN CONSULTED**

1. Chair/Vice Chair introduces himself/herself and welcomes all to the site visit meeting.
2. Chair/Vice Chair explains that the purpose of the site visit is to look at the application site. No decision will be made by the County Council members today. It is a fact-finding visit and the application will be considered at a future Development Control and Regulation Committee meeting or by an officer with delegated authority to make the decision.
3. Chair introduces the County Council officer who outlines the proposal and then makes a written note of the meeting and also circulates attendance list.
4. Views and questions of the County Council local member(s) invited.
5. Questions from the County Council members invited.
6. Chair closes meeting by thanking all for their attendance and reiterating that the views expressed will be taken into account when the application is considered.

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# **Part 6G: Code of Practice for the Delegation of Planning and Enforcement Functions**

This Code of Practice sets out the process to be followed when a matter falls to be determined under the delegation scheme by a Case Officer. The procedure ensures that local members affected by the application and members of the Development, Control and Regulation Committee are informed of the matter and have the opportunity to request that an application is determined by the Committee.

## **1 Code of Practice**

- 1.1 On receipt of a planning application, the Case Officer will decide whether it falls within a category on which a delegated decision is appropriate. Those matters which have been delegated to the Director of Environment and Community Services are set out in the Scheme of Delegation to Officers at Part 3A paragraph 6.20 (b).
- 1.2 Members of the Development Control and Regulation Committee ('the Committee') will receive (by e-mail or post as appropriate) a weekly list of new planning applications with an indication of those to be dealt with under the delegation scheme and the name of the Case Officer.
- 1.3 Consultations and publicity will be undertaken as required by planning regulations with particular regard to ensuring that consultees and the public are made aware of the deadlines for response and that applications may be dealt with under delegated powers. (Local members will be consulted as now under this procedure. The member for an adjoining electoral division will also be consulted where proposals are close to the division boundary and for the purpose of this Code of Practice they will be treated as a local member, see paragraph 1.4 below).
- 1.4 The local member and members of the Committee may request that an application is determined by the Committee. Requests should be made in writing within 28 days of receiving notification of the application and set out the grounds on which the request to call in the application is based. (It is strongly recommended that before making a formal request members should contact the Case Officer and discuss the issues of concern as it may be possible that they can be resolved or covered by planning conditions on any permission). A written request from a local member or a member of the Committee for a referral of an application to Committee will mean that the application will be referred to Committee.
- 1.5 Applications to which a consultee has raised objection or there has been a representation raising a relevant planning objection within the specified response period will be referred to the Committee unless the matter raised can be resolved or dealt with by appropriate and enforceable planning

conditions on any permission. In the case of applications where a member of the public has asked to make representations in person they shall be referred to the Committee.

- 1.6 At the end of the period allowed for representations and consultations the Case Officers shall prepare a report describing the development, identifying the relevant development plan policies and other material considerations taken into account, having regard to the Human Rights Act 1998, and making a recommendation either that the application be approved, setting out the reasons for that decision and the conditions to which it would be subject, or that it be refused, giving reasons in full. (In the case of refusal there would be a strong possibility that the application would be referred to the Committee unless grounds were clear and well established).
- 1.7 The report shall be passed to the Assistant Director – Economy and Environment or an officer nominated by him/her. If the recommendation is agreed the decision shall be issued.
- 1.8 All reports and documentation relating to a decision shall be retained on the application file and be available for public inspection.
- 1.9 Delegated planning decisions shall be included in a schedule reported to the next available Committee meeting setting out the decision taken.
- 1.10 Any delegated matter may be referred to the Committee at the discretion of the Assistant Director – Economy and Environment.
- 1.11 Any application submitted by a member or officer of the County Council shall be presented to the Committee. This is necessary to demonstrate transparency and probity.
- 1.12 Enforcement action shall be reported to the first Committee following the service of any notice. A schedule of all current enforcement action will be provided, setting out the timescale for action and with updates to show progress against those timescales.
- 1.13 The scheme of delegation shall be subject to annual review by the Committee to ensure that it remains appropriate and operates effectively.

# Part 6H: Protocol for Notifying Local Members of Key Issues

## 1 Introduction

- 1.1 County Council Councillors' ('members') carry out a number of different roles, but it is their role in their local community that is arguably the most important. Members are often the first point of contact, especially if local people, stakeholders and other community groups are concerned about an issue, or have queries about services or plans for the area.
- 1.2 It is critical that members are informed about all significant developments affecting their electoral division before other groups and always before the County Council makes public announcements.
- 1.4 The purpose of this Protocol for Notifying Local Members of Key Issues ('Protocol') is to help County Council officers make sure that members are kept properly informed about local issues. Responsibility for implementing the Protocol rests with Corporate Directors and Assistant Directors, and the specific arrangements to do this are the responsibility of individual Directorates.
- 1.5 Existing arrangements already require local members to be consulted before Cabinet or a Local Committee takes a formal decision. However, many issues of great importance to local members do not require formal decisions, are taken by officers under delegated powers as part of their management responsibilities, or are initiated by residents/local groups. This protocol should be applied in these circumstances.
- 1.6. The principle of "no surprises" for members underpins the Protocol. Officers must aim to avoid situations where a member is contacted by a resident or by the press, for a comment/assistance on a County Council issue affecting their electoral division of which they were unaware. Wherever possible, members should be the first to know of events and issues affecting their constituents.
- 1.7 Whilst much information is made available electronically through the County Council's intranet and through the monthly members' briefing; officers must not rely on this as the primary method of informing a member of a matter that specifically affects a member's electoral division. Contact must be made directly with the member.
- 1.8 The following paragraphs describe more fully how the arrangements should work in practice.

# Protocol

## **2 The Local Member Role**

- 2.1 Members have been elected to represent their electoral divisions and have a detailed knowledge of the local area. Members will act on behalf of individual constituents on specific issues or may represent the County Council on local bodies in their division, such as school governing bodies. Members will monitor the quality and effectiveness of service provision and are an important communication link between the County Council and local people.
- 2.2 The local press will often contact local members for their views on local issues, particularly where County Council or partners' proposals are likely to be controversial or have a major impact locally. The views of local members are a key dimension of policy-making and it is important that their views are heard and taken into account by decision-makers, whether that be Cabinet, Local Committees or officers.
- 2.3 Members need to be kept fully informed and briefed on significant issues affecting the locality so that there are "no surprises" at formal meetings and in members' dealings with constituents, partners and other stakeholders.
- 2.4 Members are also encouraged to inform the relevant officers of significant issues of which they become aware and which will have an impact on the County Council and its services.

## **3 Definition of significant issues**

- 3.1 A "significant issue" is deemed to be something that is likely to result in a member being approached by the press or a constituent. It is not possible to cover everything in a list but the following are examples of the kinds of issues which are usually regarded as significant. This applies whether or not the matter will come before members under the County Council's formal decision-making process.
  - (a) **Changes to services** provided or maintained by the County Council (directly or by commission/in partnership) such as:
    - (i) Changes to opening hours/admission arrangements
    - (ii) Changes to the type of service provided
    - (iii) Introduction of or changes to fees and charges
    - (iv) Closures - partial, temporary or permanent
    - (v) Expansions of facilities
    - (vi) Planned or programmed highways works
    - (vii) Planned or programmed building/maintenance works
    - (viii) Changes to 'catchment' areas/service areas
    - (ix) Changes to rules on financial or professional assistance
    - (x) Communications with parish, town, district or borough councils
    - (xi) School closures or amalgamations

- (b) County Council **decisions** on:
  - (i) Planning applications
  - (ii) Traffic management
  - (iii) Trading standards
  - (iv) Aspects of social care (subject to exclusions below).
  - (v) Local transport matters
  
- (c) **Sensitive** issues such as:
  - (i) Certain planning applications, not just those determined by the County Council
  - (ii) Where a local campaign is developing
  - (iii) Where multiple letters on the same subject have been received
  - (iv) Where you are responding to an article or letter in the press or media
  - (v) Where the local MP(s) has become involved
  - (vi) Issues where there are concerns about the performance of a County Council service, especially where externally assessed
  
- (d) **Corporate** issues such as:
  - (i) Formal representations on the part of the County Council on significant issues, that are regional, national and/or European
  - (ii) Formal responses to consultations from government at regional, national or European levels or from quangos and other public bodies

## **4 Cross divisional involvement of local members**

- 4.1 Most notifications will relate to a matter within a specific area and generally will only affect a single electoral division. However, some proposals will be more broadly based and officers will exercise judgement in these cases as to which local members should be consulted or informed. The closure of a secondary school, for example, will clearly affect more than one electoral division because of the wide catchment area of the school. Road closures, bus routes and library opening times are other examples where more than one electoral division may be affected.
  
- 4.2 Consideration should also be given to whether a proposal which on the face of it would only affect a single electoral division would actually have implications for a wider area.

## **5 Local member involvement in official visits and formal events**

- 5.1 Local members should be involved in, or at least informed of, official visits or formal openings of premises or facilities in their electoral division. Consideration should be given at the outset to whether local members should

be invited to events and, if not, officers should be in a position to explain the adopted course of action if asked by the local member. Where the event or function involves the Chair or Vice-Chair of the County Council, the Communications Team will advise on protocols.

## **6 Particular Requirements in relation to Agenda Despatch and Democratic Services' role**

- 6.1 Relying solely on formal agenda papers as the method for notification is not acceptable as this is unlikely to provide information sufficiently in advance of an issue being discussed. Local members must be told about an issue much earlier so that they are able to deal with constituents' concerns, influence through appropriate channels, and advise constituents, for example on the County Council's Public Participation Scheme.
- 6.2 The responsibility for notifying local members rests with the relevant directorate before the formal processes are reached. Although earlier notification may have been given, Democratic Services will notify local members when an agenda is despatched (sending them a copy of the report) based on the advice given by your directorate or service as to the areas affected. This will be the electoral divisions listed under the "Implications" Section of reports.

## **7 Responsibility for notifying local members**

- 7.1 Identifying issues that affect local members is the responsibility of the relevant directorate or service dealing with the matter. This refers not only to items coming before the Cabinet, a Local Committee, or other bodies; but also significant issues that arise outside the formal processes. If officers are unsure about notifying a local member at an early stage on a particular matter advice should be sought from their Senior Manager or Assistant Director before approaching the member.
- 7.2 Each directorate may have its own arrangements in place about who is authorised to contact members and at what stage in relation to specific proposals and issues. Some services may have an agreed notification procedure which follows the spirit of this Protocol but is designed for the service's particular circumstances.
- 7.3 Officers should consider carefully whether the Cabinet member with responsibility for the service should also be advised of a particular local proposal or issue as they too might be asked by the press or others to comment.
- 7.4 How contact is made with members will depend to a large extent on the importance of the issues and the urgency. Usually it is better to email, or write to the member so that members have a clear description of the issue but in urgent cases members can be contacted by telephone. Numbers are given on the Council's intranet.

- 7.5 Area Managers are often able to support the process of notifying local members of issues, and as a point of focus for council services in each local area should also be kept informed of significant issues; however the lead should come from the directorate/ service to instigate notification and responsibility for notification does not lie with the relevant Area Manager(s).

## **8 Information and advice about local members and their divisions**

- 8.1 Details of members and electoral divisions are available on the intranet. Where the information is not clear, the Democratic Services team can be contacted for advice.

## **9 Monitoring and Review of the Protocol**

- 9.1 Where a member believes that this Protocol is not being followed they should inform the Assistant Director – Corporate Governance of their specific concerns. The matter will be registered and referred to the appropriate Corporate Director/Assistant Director for investigation. The Corporate Director will advise the local member and the Assistant Director – Corporate Governance of the outcome of the investigation and any action taken. This will be recorded to show that the matter has been resolved.

## **10 Data Protection**

- 10.1 The present law on data protection allows personal data to be disclosed to members, without having to obtain the consent of the data subject, where disclosure is necessary for the member to carry out their official duties. As a major part of a member's role is to represent the interests of the local community and individuals, there should be no reason in law why members should not have access to information within the County Council but, if in doubt, officers should contact the Assistant Director – Corporate Governance for advice.

## **11 Confidentiality**

- 11.1 Members are required by the Member Code of Conduct not to breach confidentiality. Therefore, the fact that an issue is confidential does not in itself prevent the sharing of it with the local member, but the confidentiality must be made clear to the local member.
- 11.2 **Exceptions:**
- (a) Where the issue is about the provision of a personal service from the County Council to the individual or a dependent, unless the individual or person in receipt of the service has expressly asked for the

involvement of the local member and has agreed that correspondence can be shared, or where the issue is already public, such as in the press or media.

- (b) Where it involves the personal circumstances of a member of staff.
- (c) Politically sensitive corporate issues, such as communication with Members of Parliament, Government, Local Government Association etc on provisional or early draft proposals.
- (d) Corporate issues of a sensitive nature such as commercially sensitive information relating to issues of procurement and contracts; or confidential legal advice

## **12 Monthly Members' Briefings**

- 12.1 Where an issue is of interest to all 84 members of the County Council, the monthly Members' Briefings can be used to draw attention to significant corporate issues, or matters which affect all members. Providing information through this route does not remove the requirement on directorates to notify local members directly of issues which relate to their electoral division.

# Part 6I: Partnerships

## 1 Introduction

- 1.1 This part of the Constitution sets out the governance arrangements when the County Council proposes to carry out any of its activities through a non-commercial arrangement with one or more external body.

## 2 Arrangements not Governed by this Part of the Constitution

- 2.1 This Part of the Constitution does not apply to the following types of arrangements, which require specific governance relevant to the type of arrangement proposed:
- (a) Formation and transfer of business to an external legal entity, such as a council owned company, community interest company, public sector mutual or other recognised entity, with or without charitable status.
  - (b) Agreements between the Council and the National Health Service to operate a pooled fund to deliver health and social care activities.
  - (c) Commercial arrangements which may be described as partnerships, for example, joint venture arrangements, including legal partnerships and contractual arrangements with third sector bodies
  - (d) Arrangements for the County Council to establish a Joint Committee are set out by the Local Government Act (1972) and Local Government Act (2000). Specific pieces of legislation set out the governance arrangements for Joint Committees.
  - (e) Arrangements for the County Council to act as an Accountable Body.

## 3 Arrangements Governed by this Part of the Constitution

- 3.1 Arrangements made by the County Council to:
- (a) To deliver a programme of externally funded activities in co-operation with one or more external bodies.
  - (b) To form joint arrangements with other bodies in accordance with another statutory power or duty to form a joint board or panel.
  - (c) To work strategically with one or more external bodies.
  - (d) To work informally with one or more external bodies, for example, to share knowledge or information.
  - (e) Non-commercial arrangements which the County Council is invited to participate in by an external body.

## **5 Arrangements for Partnership Governance**

- 5.1 All reports seeking a decision about the Council's participation in a partnership arrangements must describe how the minimum requirements specified below have been met, or will be met before the Council conducts activities through the partnership.
- 5.2 The following are the minimum requirements for the Council to make a decision about participation in a partnership:

### *All Partnerships*

- (a) The Business Case for participation in the partnership (including risk assessment)
- (b) Authority to be delegated to the body (where the law permits delegation)
- (c) Authority to be delegated to individuals to act on behalf of the County Council.

### *Operating Arrangements*

Partnerships established by the County Council must have in place governance arrangements which meet the following minimum standards:

- (a) A governing document appropriate to the legal structure of the partnership
  - (b) Operational arrangements.
- 5.3 Where the County Council has agreed to participate in a partnership established by a third party, the relevant Corporate Director must be satisfied that the governance arrangements of the partnership meet the standards required by the County Council.
- 5.4 The County Council's Partnership Toolkit sets out the detailed governance arrangements required of partnership arrangements of high significance as defined in the toolkit.

## **6 Delegated Authority of Officers and Members**

- 6.1 Corporate Directors and other officers who represent the County Council on an external partnership or other body are authorised to act within their delegated powers recorded in the Scheme of Delegation or Directorate Scheme of Delegation.
- 6.2 If additional authority is required this should be sought from the person or committee which authorised the County Council's participation in the partnership.

6.3 The County Council has not made provision for individual members to make decisions on behalf of the County Council.

## **7 Partnership Register**

7.1 All decisions to participate in a partnership arrangement governed by this section of the Constitution must be recorded on the Partnership Register. Examples of the type of Partnership included are Safer Cumbria and the LEP.

7.2 It is the responsibility of the Directorate that sought the decision to participate in the partnership arrangement to ensure that the entry is maintained and removed when partnership activities cease.

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## Part 7: Glossary of Terms

This glossary of terms incorporates the separate glossary of terms included in Part 4H 'Financial Standing Orders' and Part 4I 'Contract Procedure Rules'. Where terms are unique to these Parts of the Constitution these have been indicated below.

- “**Accountable body**” the arrangement whereby the County Council has agreed to accept responsibility for the obligations set out in the terms of any funding granted to a third party organisation.
- “**Amendment of approved budgets**” in respect of the revenue budget is the transfer of resources; to or from contingencies, to and from general reserves, and, to and from earmarked reserves. In respect of the capital budget it is the inclusion of a new scheme in the capital programme. Amendments to the revenue and capital budgets involve a formal process of approval.
- “**Assets**” include land, buildings, vehicles, furniture and equipment, computer systems, stocks and materials, money and investments, data and information.
- “**Award Criteria**” has the meaning given in the Public Contracts Regulations 2006 or any statutory replacement thereof.
- “**Budget**” means plan for revenue and capital expenditure and income, and financing relating to activities of the County Council.
- “**Budget line**” is the lowest level of detail at which approval of the original budget takes place, as included in the medium term financial plan.
- “**Budget Manager**” means accountable budget manager and devolved budget manager.
- “**Cabinet**” means the Leader of the Council and such other members of the Council as the Leader may appoint, and is the main decision making body of the County Council.
- “**Candidate**” Has the meaning given in the Public Contracts Regulations 2015.
- “**Capital Programme**” means the overall five year programme of schemes approved by Council.
- “**Corporate Director**” means the officer posts of Corporate Director - Children’s Services, Corporate Director - Health and Care Services, Corporate Director – Resources, and Corporate Director - Environment and Community Services.
- “**Consultant**” an individual, firm or company (not being a firm of Solicitors, a Solicitor or a Barrister) procured to provide professional services, including advice.
- “**Contractor**” has the meaning given to the definition “economic entity in the Public Contract Regulations 2015.
- “**Contracts Register**” the County Council’s database of contracts.
- “**Council**” means full Council.
- “**County Council**” means Cumbria County Council.

- “**Director**” (in the context of Part 4H only) means the County Council’s Chief Executive and all senior officers designated as Corporate Directors, or reporting to Corporate Directors and with delegated financial responsibilities nominated by the Corporate Director.
- “**EU Procedure**” the procedure set out in the Public Contracts Regulations 2015 applicable to the procurement exercise being undertaken.
- “**EU Threshold**” the financial threshold at which contracts must be procured using the EU Procedure.
- “**Executive Decision**” means a decision taken by the Leader and Cabinet and also certain Local Committees and officer decisions which have been delegated to them by the Leader.
- “**Executive Function**” means those functions of the council which the Local Government Act 2000 states are to be the responsibility of the Leader and Cabinet. These are the vast majority of the council’s functions, some of which the Leader has delegated to Local Committees and Officers.
- “**Executive Member**” means any member of the Cabinet.
- “**Exemption**” (in the context of Part 4I only) a disapplication of the Contract Procedure Rules.
- “**Financial Regulations**” means financial standing orders.
- “**Financial Year**” is the County Council’s accounting period which runs from 1<sup>st</sup> April to 31<sup>st</sup> March.
- “**Framework Agreement**” has the meaning given in the Public Contracts Regulations 2015.
- “**Guidance**” (in the context of Part 4I only) the County Council’s Commissioning/ Procurement Cycle and Process Mapping Guidance (including relevant internal mini gateway review procedures, where required) or any replacement of such Guidance
- “**Head of Paid Service**” means the Chief Executive.
- “**Internal Audit**” means the Management Audit Unit.
- “**Lead Body**” the arrangement whereby the County Council is the applicant and/or recipient of an external grant or other funding for a special purpose.
- “**Leader**” means the Leader of the Council.
- “**Main Group**” is a group with a minimum of eight members (i.e. 10% of the total membership of the Council).
- “**Medium Term Financial Plan**” incorporates the revenue budget and capital programme approved by Council for the forthcoming financial year together with indicative figures for the subsequent two financial years.
- “**Members**” means the elected Councillors of Cumbria County Council.
- “**Monitoring Officer**” is the officer with the statutory responsibility for ensuring the council acts within its legal powers

- **“Non-Executive Decision”** means a decision taken by any other committee apart from the Leader and cabinet (NB: Local Committees may make both executive and non-executive decisions but the differences are clearly marked in the Terms of Reference).
- **“Non-Executive Function”** means those functions which regulations made under the Local Government Act 2000 specify are not to be the responsibility of the Leader and Cabinet.
- **“Non-Executive Member”** means any elected member who is not a member of the Cabinet.
- **“Officers”** mean the employees of Cumbria County Council.
- **“Scrutiny Boards”** means to the County Council’s Scrutiny Management Board, Scrutiny Advisory Boards, and the Cumbria Health Scrutiny Committees.
- **“Partnership Agreements”** Legally unenforceable arrangements between the County Council and one or more third parties to deliver common functions in collaboration with each other.
- **“Relevant Contract”** any arrangement, including a Framework Agreement made by or on behalf of the County Council for the carrying out of Works or for the supply of Supplies or Services, unless the arrangement is subject to an Exception in these Rules.
- **“Responsible Officer”** in Part 4I the Officer who has the lead responsibility for the commissioning, procurement and/or management of a Relevant Contract.
- **“Section 151 Officer”** is the officer with the statutory responsibility for the proper administration of the County Council’s financial affairs.
- **“Scheme”** means the level at which capital items are approved for inclusion in the capital programme by Council when approving the budget or by Cabinet/Council during the year (according to value). A scheme may comprise a single project or a collection of projects delivered as one overall scheme of activity, for example priority maintenance for schools.
- **“Services”** (in the context of Part 4I only) has the meaning given in the Public Contracts Regulations 2015.
- **“Social and other specific Services”** has the meaning given in the Public Contracts Regulations 2015.
- **“Statutory Officer”** means the officers’ posts that the County Council is required to have under relevant legislation, for example; *Head of Paid Service* (appointed under Section 5 of the Local Government and Housing Act 1989).
- **“Supplies”** (in the context of Part 4I only) has the meaning given in the Public Contracts Regulations 2015.
- **“Tender Receipt Log”** the formal record of tenders received by the County Council.
- **“The County Council”** means Cumbria County Council.

- **“Total Value”** Is the financial value of a Relevant Contract as more particularly defined in the Public Contracts Regulations 2015. The Total Value of a Relevant Contract always includes the value of any extension to a Relevant Contract.
- **“Trading Accounts”** are County Council services/activities which are financed by either trading income, funding partners or by direct government finance.
- **“Virement”** is the transfer of resources between budget headings (lines), as published in the medium term financial plan each year, involving a formal process of approval.
- **“Works”** has the meaning given in the Public Contracts Regulations 2015.

# Corporate Governance Framework and Toolkit for Partnership Working

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## **Section 1 Partnership Framework**

### **The purpose of this toolkit**

This framework sets out the Council's approach to partnership working. In particular it covers definitions, minimum governance requirements, evaluation of partnership significance and how to enter, monitor and end partnerships.

In line with the general reduction of the Council, the aim is to set thresholds for partnership working that enable the Council to focus on those partnerships which have a strategic and organisational significance.

This framework and toolkit should be read alongside the relevant sections of the Council's Constitution.

This toolkit will ensure that for each partnership:

- The Council is clear about its purpose and expected outcomes for the people of Cumbria when entering into partnerships
- The Council's own agreed priorities and objectives are being met
- There is clarity about accountability and responsibility for outcomes
- Partnership activity and outcomes are monitored, reviewed and evaluated to make best use of resources
- Risks for the Council, and for the partnership are assessed and agreed
- Each partnership maintains a relevance to its agreed purpose during its lifespan and has in place an effective exit strategy
- Partnerships are properly empowered and their legal status understood
- Reviews are undertaken to evaluate success and further challenge progress and improve effectiveness

### **Who will use this Toolkit?**

Both officers and elected members will have access to this toolkit. The council will also share this toolkit with partners and prospective partners ensuring that the procedure and guidance are understood and the need for them accepted.

### **Defining a partnership**

The Audit Commission describes partnerships as a joint working arrangement where the partners:

- are otherwise independent bodies;
- agree to cooperate to achieve a common goal;
- create a new organisational structure or process to achieve this goal separate from their own organisations;
- plan and implement a jointly agreed programme, often with joint staff or resources;
- share relevant information; and pool risks and rewards.

Partnerships cover arrangements made by the Council to:

- deliver a programme of externally funded activities in co-operation with one or more external bodies;
- form joint arrangements with other bodies in accordance with another statutory power or duty to form a joint board or panel;
- work strategically with one or more external bodies;
- work informally with one or more external bodies, for example, to share knowledge or information;
- Non-commercial arrangements which the Council is invited to participate in by an external body.

The following arrangements between two or more bodies are **not** covered the definition above:

- Council committees, including committees that have co-optees from other organisations.
- commercial arrangements which may be described as partnerships, for example, joint venture arrangements, contractual arrangements with third sector bodies;
- grant programmes;
- formation and transfer of business to an external legal entity, which requires a specific Cabinet decision. This could include entities such as a Council owned company, community interest company, public sector mutual or other recognised entity, with or without charitable status;
- public finance initiatives;
- informal networks;
- task and finish groups and project teams.

Also not covered are agreements between the Council and the National Health Service to operate a pooled fund to deliver health and social care activities. These arrangements are governed by the relevant legislation and require a specific decision by Cabinet which addresses all the issues relevant to the activity proposed.

In terms of membership of Outside Bodies, there is an overlap with partnerships, though not all outside bodies would meet the definition of partnerships set out in this framework.

This framework is applicable to:

- strategic alliances (formal forums, joint committees, management committees);
- partnerships required or covered by law (Crime and Disorder Act 1998, Health Act 1999, Local Government Act 2000);

- partnerships where the Council acts as accountable body for European, national and or regional funding;
- not for profit organisations that are conducted for the benefit of the community (charities; trusts; companies limited by guarantee).

## **Levels of Significance: Categorising Partnerships**

Partnerships vary in terms of their significance for the Council. Key criteria for establishing significance include links to corporate priorities, statutory requirements, complexity of the partnership, level of authority, funding arrangements, the Council's financial contribution, consequences of failure and risks.

In order to evaluate the level of significance a self-assessment tool has been developed which enables the Council to score existing and prospective partnerships. The tool evaluates partnerships according to the following levels of significance:

- **High:** Partnerships that are of strategic importance to the Council and require a corporate overview and adequate support. These are referred to in this framework as strategically significant partnerships.
- **Medium:** Partnerships that have significance for the working of a specific Directorate and can be managed internally as part of the Directorate's service planning process.
- **Low:** Partnerships that are ad hoc bodies requiring low maintenance and where the Council could decide to withdraw.

The self-assessment tool scores partnerships along a number of indices to establish the level of significance, which then determines the partnerships that populate the Partnership Register. The self-assessment tool can be found on page 9.

## **Mapping partnership activity: The Partnership Register**

The Partnership Register provides a record of all of the Council's strategically significant partnerships. The register covers the following: purpose, key organisations, officer and member leads, date of beginning of partnership, potential end date, total financial commitment, finances the Council is responsible for and implications of relinquishing the partnership.

The following exclusions to the central Partnership Register apply:

- All partnerships that are evaluated as of low significance using the partnership categorisation tool.
- All partnerships that are evaluated as of medium significance and can be managed directly by a Directorate as part of its business.
- Standing groups that manage an aspect of the work of a larger partnership.

Directorates will be directly responsible for managing partnerships at this level as part of their business.

The Partnership Register is refreshed annually to feed into the Council's annual audit statement.

Responsibility for refreshing the register sits with Directorates co-ordinated by the Corporate Governance service in Resources.

## **Decision Making, Delegations and the Constitution**

Decisions to enter or continue a partnership will be made in accordance with the constitution, and for the purposes of the guidance the following scheme of delegation applies:

- **Chief Officers and Cabinet:** Strategically significant partnerships will need agreement by the Director, s151 Officer and Monitoring Officer and recommendation to Cabinet for their consideration. This includes agreement to join or establish a new strategically significant partnership; agreement to withdraw a strategically significant partnership.
- **Corporate Governance Group:** Annual review of existing strategically significant partnerships, where no major change is being proposed.
- **Directorate Management Team:** Agree all arrangements in relation to participation in partnerships ranked as medium or low in levels of significance.

Corporate Directors and other officers who represent the Council on a partnership are authorised to act within their delegated powers recorded in the Scheme of Delegation or Directorate Scheme of Delegation.

If additional authority is required this should be sought from the person or body which authorised the Council's participation in the partnership.

The Council has not made provision for individual Members to make decisions on behalf of the Council. If authority is required for a Member to make decisions on behalf of the Council, when participating in a partnership, this should be sought from the body which authorised the Council's participation in the partnership.

### **Minimum requirements for the Council to participate in high significance partnerships**

Where the Council is invited by an external body to participate in a strategically significant partnership, the report recommending a decision on the Council's participation must address the following matters:

- Written Terms of Reference;
- Description and diagram of the governance structure:

- Description of working arrangements of the Partnership, including standing groups that are carrying out a portion of the Partnership's business:
- Authority to be delegated to the body (where the law permits delegation);
- Authority to be delegated to individuals to act on behalf of the Council;
- Risk assessment/management plan relevant to the Council's participation in the partnership.

## Part 2: Partnership Toolkit

### Business Case Checklist

The following checklist of items should be considered when developing a business case.

Heading	Information required
Nature of the business case	1.This is concerned with: <ul style="list-style-type: none"> <li>• Setting up a Partnership</li> <li>• Joining an existing Partnership</li> <li>• Reviewing an existing Partnership</li> </ul>
	2. Name of the Partnership
	3. Is the Partnership Statutory?
Reasons for the Partnership	1. What are the key aims & objectives of the Partnership?
	2.How do these fit with the strategic outcomes of the: <ul style="list-style-type: none"> <li>• Council Plan</li> <li>• Community Strategy</li> <li>• Local Area Plans</li> </ul>
	3. To whom is the Partnership accountable?
	4.What is the role of the Council?
	5.Which organisations make up the Partnership?
	6.Are there any key players NOT in the Partnership that should be?
Other options considered	1.What other working arrangements have been considered?
	2.Why were these rejected?
Benefits of the Partnership	1.How is this Partnership offering value for money?
	2.Give specific examples of how the partnership is delivering added value
	3.Attach the SMART outcome, benefits and targets of the Partnership
Risk and Opportunities	1.Attach the completed risk assessment for this Partnership
	2.Attach the completed Equality Impact Needs Assessment (EINA) for the Partnership
	3.Is there the potential for reputational damage if the Council does not join the Partnership or if it leaves the Partnership? If yes, then what is the risk and how will it be managed?
	4.If the Council does not join the Partnership or if it leaves the Partnership will any funding be lost? If yes then provide detail.
Costs & Timescales	1.What Resources is the Council providing in terms of: <ul style="list-style-type: none"> <li>• Finance</li> <li>• Staff</li> <li>• Accommodation</li> <li>• Legal</li> <li>• ICT</li> <li>• Administration</li> <li>• Training</li> <li>• Insurance</li> <li>• Recruitment</li> <li>• Payroll</li> <li>• Health &amp; Safety</li> <li>• Advice</li> <li>• Others</li> </ul>

	2.When is funding for the Partnership due to end?
	3.What is the intended lifespan of the Partnership?
	4.What is the exit strategy?
Authorisation	The business case must be authorised by: Name Date Job Title Contact telephone number Contact email address

## Self-Assessment Levels of Significance

The following assessment method is used to determine the category of partnership – whether it is a High Significance, Medium Significance or Low Significance partnership. The categorisation of partnerships is used to determine the level of controls or governance that is proportionate to the risk exposure to the Council.

IMPACT	Quantum of Impact		
	1	2	3
<b>Corporate priorities</b> To what extent does the partnership contribute to the achievement of corporate priorities in the corporate plan	Indirect links to successful achievement of a corporate priority	Moderate contribution to the successful achievement of a corporate priority	Significant contribution to the successful achievement of at least one corporate priority
<b>Statutory Requirement</b>	No statutory requirement to participate	No statutory requirement but Council expected to act as Accountable Body	Statutory requirement and Council expected to act as Accountable Body
<b>Complexity</b> The partnership has complex governance arrangements, a large number of partners from various sectors and a number of subgroups	The partnership has between undefined membership, with limited internal governance arrangements	The partnership is a defined membership involving at least 4-6 bodies, and has clear governance arrangements.	The partnership has more than 6 partners; has clear governance arrangements with sub-groups.
<b>Authority</b> The partnership takes decisions on behalf of or which are binding on the council	The partnership does not take decisions on behalf of the Council - but Council representatives feedback/lobby the council/discuss issues/share best practise	The partnership does not take decisions on behalf of the Council but Council representatives with decision-making authority attend the partnership and consider and agree to be bound by its decisions	The partnership has decision making responsibilities directly delegated to it from the council
<b>Funding arrangements</b> Is the council required to set up/participate in the partnership in order to receive additional funding?	No requirements	Funding is required for the Council to draw down <£250k per annum, or the Council receives 0-250k for participating	Funding is required for the Council to draw down >£250k per annum, or the Council receives >350k for participating
<b>Financial contribution</b> The council directly contributes money or resources (including	<b>&lt; £100k</b> <b>(per annum)</b>	<b>£100-£250</b> <b>(per annum)</b>	<b>&gt;£250k</b> <b>(per annum)</b>

officer time) to the partnership or is directed through the Council's accounts			
<b>Consequence of failure</b> What are the consequences of Partnership failure to the council (financial /political/reputational)?	Minor significance/ short term	Moderate significance/ medium term	Major significance/ long term
<b>Risk</b> Does the partnership contribute to the management of risks identified on corporate or operational risk registers?	The partnership directly contributes to the management of a low/medium risk on an operational risk register (threat or opportunity)	The partnership contributes to the management of high priority risks identified on an operational risk register (threat or opportunity)	The partnership directly contributes to the management of a high priority risk on the corporate risk register (threat or opportunity)

NB. With 8 separate categories the highest score that could be achieved would be 21 (8x3=24)

**High Significance Partnerships** - Those Partnerships scoring above 20

**Medium Significance Partnerships** - Those Partnerships scoring between 14-19

**Low Significance Partnerships** - Those Partnerships scoring below 14

## Partnership development and review checklist

The following checklist provides a list of the issues that require to be considered when establishing a Partnership, joining an existing Partnership or reviewing and evaluating Partnerships.

Issues for consideration	Information requirements
<b>Governance and Finance</b>	
Formal Status	1. Is there clarity on the legal status of the Partnership? 2. Is there an agreed Memorandum of Understanding or constitution, which sets out a clear purpose and clarity of expectation of the Partnership members?
Composition	1. Is the partnership realistically sized and resourced? 2. Does it contain the right mix of skills and knowledge to get the work done?
Auditing & scrutiny arrangements	1. Are internal auditing arrangements for the Partnership clear? 2. Are there agreed rights of audit access for each constituent member? 3. Does the partnership have any external review or monitoring mechanisms?
Finance & resources	1. Where does accountability lie for managing the spending of funds? 2. Are financial monitoring arrangements robust, clear and understood? 3. Have procedures for managing and monitoring pooled budgets and resources been developed? 4. Is there clarity over ownership and responsibilities?
Risk assessment and management	1. Are systems in place to assess and manage Partnership risk? 2. Are Business Continuity Plans in place?
Conduct & behaviour	1. Is there an agreed Code of Conduct for Partners that is signed by all members and enforced by the Chair?
Staffing	1. Are roles, responsibilities and expected behaviours clear and agreed?
	2. Are there opportunities for training partnership staff and members, including: <ul style="list-style-type: none"> <li>• Appraisal and approval procedures</li> <li>• Equality and diversity</li> <li>• Code of conduct</li> </ul>
Equality & diversity	1. Has the Partnership carried out an Equality Impact Needs Assessment (EINA) on the way that it functions, on its policies and on what it delivers? 2. If not, an action plan needs to be drawn up to do this.
Communication	1. Is the Partnership communicating well with its partner agencies, stakeholders and communities?
<b>Outcome-focused planning &amp; performance management</b>	
	1. Does the Partnership have a credible evidence-base to inform its objectives, outcome focussed planning and SMART targets?

	2.Are there action plans in place to deliver theses?
	3.Do partners share information so that they can effectively: <ul style="list-style-type: none"> <li>• Monitor performance, and</li> <li>• Appraise options</li> </ul>
	4.Are there sufficient joint mechanisms in place for effective monitoring/appraisal?
	5.Are findings and recommendations owned and acted upon?
	6.Are arrangements in place to tackle issues of non-performance?
<b>Performance &amp; delivery</b>	
Accountability	1.Does the partnership have an officer accountable for monitoring it's performance?

## **Partnership Memorandum of Understanding Checklist**

### **Introduction and Terms of Reference**

State that this is a partnership agreement between (name each partner).

State the Terms of Reference (the purpose of the partnership)

### **Aims and objectives of the partnership**

List the aims and objectives of the Partnership here.

Objectives should be SMART (specific, measurable, achievable, realistic and time bound) where possible and practical so that you know what you want to achieve and whether you are achieving it. They should focus on outcomes and results rather than activities i.e. what you will accomplish rather than how you will work or what you will do.

### **Outcome indicators and measures of success**

These are measures based on the actual outcomes the partnership is aiming to deliver i.e. they define what success will look like and can be used to determine the partnership's effectiveness and impact in achieving its strategic objectives. Outcome indicators or clear measures of success should be defined for each strategic objective.

### **Running the partnership**

As a minimum this section should define arrangements for the following:

- general principles of conduct;
- partners' roles / duties / responsibilities & accountabilities
- resource commitment for each partner;
- the ownership of assets;
- decision making procedures;
- how the partnership will monitor and evaluate its activities;
- meetings; notice and frequency of meetings; quorum rules; chairing arrangements; voting arrangements; and representation of other members; secretariat function
- information sharing principles / protocols;
- organisational structure and reporting mechanism (how often, who reporting to and what reporting on);
- Performance management arrangements;
- How complaints will be handled; and
- Member involvement (roles and responsibilities, democratic accountability, declaration of interests etc).
- Equalities and inclusion

## **Financial matters**

Where applicable the Partnership Agreement should document:

- Accountable Body agreement;
- Partnership capital;
- Income and expenditure;
- Grants and other sources of funding;
- Banking and financial arrangements;
- Role of Lead Partner;
- Accounting arrangements; and
- Provisions for tax payments and VAT.

## **Other considerations**

The Partnership Agreement should define:

- Arrangements for dealing with the media and other stakeholders (Communications Strategy);
- The circumstances necessary for the suspension, exclusion and removal of a partner;
- Arrangements for resolving conflicts and/or disputes;
- Procedures for whistle blowing / dealing with fraud etc.
- Right of access for appropriate audit bodies

## **Termination of Partnership Involvement**

The Partnership Agreement should define:

- Termination provisions;
- Exit strategy (including surpluses and mediation);
- Final reporting arrangements; and
- At dissolution the partners may need to:
  - Inform the funders;
  - Provide appropriate final reports; and
  - Inform all stakeholders / service users.

## **Review**

State when the agreement will be reviewed and by whom.

## **Agreement**

The Partnership Agreement should be agreed and signed by all parties. Note: For all Major Partnerships the partnership agreement should be prepared in consultation with Legal Services.

## **General Principles of Conduct for Partnership Working**

### **Selflessness**

Members of the partnership should serve only the public interest and should never improperly seek or confer an advantage or disadvantage on any person or organisation.

### **Honesty and Integrity**

Members of the partnership should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.

### **Objectivity**

Members of the partnership should make decisions on merit, including when making appointments, awarding contracts, or recommending rewards or benefits.

### **Accountability**

Members of the partnership should be accountable to the public (where appropriate) for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with any scrutiny appropriate to their role.

### **Openness**

Members of the partnership should be as open as possible about their actions and those of the organisation they represent, and should be prepared to give reasons for those actions.

### **Personal Judgment**

Members of the partnership may take account of the views of others, including those of political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

### **Respect for Others**

Members of the partnership should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the Local Authority's Statutory Officers, and its other employees.

### **Duty to Uphold the Law**

Members of the partnership should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

### **Stewardship**

Members of the partnership should do whatever they are able to ensure that the organisation they represent, authorise use of their resources prudently and in accordance with the law.

### **Leadership**

Members of the partnership should promote and support these principles by leadership, and by example, and should act in a way that maintains public trust.

## **Protocol for Members working with outside bodies**

### **Introduction**

This protocol should be read and followed when working as part of a partnership, either directly representing the council, in an advisory capacity or as part of an interest group. Any issues in this protocol which are not clear or require clarification should be discussed with the monitoring officer, political group leader, the chief executive and/or the appropriate director.

Elected members should ensure that all partnerships they are involved with have a clear governance framework similar to that in Appendix 2A of this toolkit.

### **Protocol**

The council supports the activities of partnership working and recognises the benefits to the community, but wishes to ensure that elected members and the council are not exposed to any unidentified and unexpected risks and liabilities.

All new partnerships will set out within the business case the need for council representation by elected members and/or officers. In the first instance officers will be identified by the head of service through the relevant director, and where appropriate, CMT will make proposals to executive for elected members. However, where the partnership is classified as 'significant' executive will approve nominations for officers made by CMT and confirm elected member representation. Legal indemnity will not cover any representative sitting on a partnership who has not had the appropriate approval from CMT or executive.

### **Authority to become involved with a partnership**

Any elected member who is approached or wishes to become involved in a partnership should discuss the matter and the extent of their involvement with their group leader. The group leader may want to discuss the partnership and aspects of work with the chief executive. The elected member should only accept or become involved after receiving formal approval from executive. The relevant lead officer for the partnership should support the elected member in understanding their role and participation in the partnership. The elected member and CMT also need to inform the partnerships manager of the elected member's involvement.

### **Prohibition on signing contracts**

Elected members working for a partnership should not sign any contracts or legally binding documentation on behalf of the partnership or the council. Elected members are reminded that only authorised officers have power to sign documents of this nature.

#### **Prohibition on provision of financial, technical or legal advice**

Elected members should not provide financial, technical, or legal advice to a partnership. Advice is available on these issues and may be taken when necessary. They must ensure that the partnership arranges indemnity insurance as appropriate, details of which should be provided to the council's insurance officer. Professional or trustee indemnity insurance will not always be appropriate. The cost of such insurance could be prohibitive for smaller groups with only a small income and no employees. In this case, a risk assessment should be

carried out to ensure that financial systems are in place to prevent financial or legal difficulties.

## **General**

Elected members must report any change in personal circumstances which may create a new or perceived conflict of interest. Elected members must also discuss with the partnership any new issues concerning potential conflicts of interest, or issues which impact on their role as an elected member for Cumbria County Council – changes to the aims, constitution or position of the partnership that could be contrary to the public or the council's interest. Elected members may need to declare their involvement in the partnership on the register of interests. If in doubt, advice should be sought from the monitoring officer.

Elected members must also remember that if they act as a trustee of a charitable partnership or body, their first duty is to the charity. However elected members must also remember that, when working within a partnership, they remain elected members of Cumbria County Council and are still bound by the relevant codes of conduct in the council's constitution. They should actively encourage the partnership to follow similar practices and procedures and must immediately report to their group leader and the chief executive if they feel that the partnership is not acting in a manner acceptable to the council or in the public interest.

# **Protocols for Officers working with outside bodies**

## **Introduction**

This protocol should be read and followed when working as part of a partnership, either directly representing the council, in an advisory capacity or as part of an interest group. Any issues in this protocol which are not clear or require clarification should be discussed with your line manager or with the monitoring officer before any involvement with outside bodies is accepted.

## **Personal responsibility of officers**

Officers must bear in mind that acceptance of a role as a charity trustee or company director (even if accepted as part of your work for the council) is a personal responsibility. There will be responsibilities to the Charity Commission, and under company law, which must be fulfilled.

## **Protocol**

The council supports the activities of partnership working and recognises the benefits to the community, but wishes to ensure that the officer and the council are not exposed to any unidentified and unexpected risk and liabilities.

## **Authority to become involved with a partnership**

Any officer who is approached or wishes to become involved in a partnership should discuss the matter and extent of their involvement with their line manager.

The manager may want to discuss the partnership with their head of service or with the monitoring officer before any involvement with outside bodies is accepted, if the officer is unsure about potential liabilities.

The officer must receive approval, in writing, from their line manager (but sanctioned by the director) before accepting any position on the partnership. All appointments to 'significant' partnerships will require CMT and executive approval.

It is the responsibility of the line manager, while discussing the officer's involvement with the partnership, to be clear as to the role and whether the officer approached is the most appropriate representative. Once the appropriate officer has been identified, then the manager should establish what, if any, additional support and training is required. The line manager is responsible for arranging this training and support.

## **Notification to directors, legal and finance**

Following appointment of an officer to a partnership, there will be an ongoing requirement for the officer to ensure that the director is aware of the council's involvement in that partnership and also to inform the partnerships manager.

Officers may need to declare their involvement in the partnership on the register of interests and seek advice from the monitoring officer.