

AGENDA

GENERAL PURPOSES COMMITTEE MEETING

Date: Thursday, 8 March 2018

Time: 5.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, Kent, ME10 3HT

Membership:

Councillors Mike Baldock, Bowles (Chairman), Mike Cosgrove, Adrian Crowther, Duncan Dewar-Whalley, Harrison, Alan Horton, Gerry Lewin (Vice-Chairman) and Mike Whiting

Quorum = 3

Pages

1. Emergency Evacuation Procedure

The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.

The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.

The Chairman will inform the meeting that:

(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park. Nobody must leave the assembly point until everybody can be accounted for and nobody must return to the building until the Chairman has informed them that it is safe to do so; and

(b) the lifts must not be used in the event of an evacuation.

Any officers present at the meeting will aid with the evacuation.

It is important that the Chairman is informed of any person attending who is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.

2. Apologies for Absence and Confirmation of Substitutes

3. Minutes

To approve the Minutes of the Meeting held on 29 September 2016 (Minute Nos. 384 - 389) as a correct record.

4. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the room while that item is considered.

Advice to Members: If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

5. Constitution Review	1 - 4
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Issued on Wednesday, 28 February 2018

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of this Committee, please visit www.swale.gov.uk

**Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

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General Purposes Committee		Agenda Item:
Meeting Date	8 March 2018	
Report Title	Constitution Review	
Cabinet Member	Cllr Andrew Bowles, Leader	
SMT Lead	Donna Price, Monitoring Officer	
Head of Service	Donna Price, Monitoring Officer	
Lead Officer	Katherine Bescoby, Democratic and Electoral Services Manager	
Key Decision	No	
Classification	Open	
Forward Plan	Reference number:	
Recommendations	<ol style="list-style-type: none"> 1. That the Committee considers the report and the working papers and makes recommendations to Council. (Recommendations from this Committee will be presented to Council on 21 March 2018.) 2. That the Monitoring Officer be granted a delegation to remove all references to Director of Corporate Services and Local Engagement Forums throughout the constitution and to amend the allocation to Proper Officer functions. 	

1 Purpose of Report and Executive Summary

- 1.1 Reviewing the constitution regularly ensures it is fit for purpose and maintains good governance and decision making arrangements. The review of the constitution is an on-going task and it is timely to look at the items presented in this report.

Working Papers are attached for the Committee's consideration, on the following topics:

- A. Officer Delegations – revised delegations are attached for Members to consider
- B. Standards Committee Procedure Rules – revised procedure rules are attached, to reflect a change in the appointment of the Chair for the Hearings Panel

- C. Member and Officer access to exempt reports – to clarify the arrangements relating to exempt reports in exceptional circumstances
- D. Contract Standing Orders – see working paper and suggested revisions
- E. Council Procedure Rules – see working paper with suggestions for consideration
- F. Matters referred by the Appointments Committee/Council – see working paper and suggestions for consideration
- G. Code of Conduct Complaint Assessment Criteria – this needs to be added in to the constitution and reflects the current arrangements.

2 Background

- 2.1 Working papers have been prepared to cover the matters set out in Para 1.2 above.

3 Proposals

- 3.1 The Committee is asked to give a view and make recommendations to the Council regarding the items raised in the Working Papers.

4 Alternative Options

- 4.1 There is discretion on the proposals set out in the Working Papers; matters where there is no discretion in relation to law and statutory guidance do not form part of this report

5 Consultation Undertaken or Proposed

- 5.1 The review of the Constitution is the role of this Committee. All members do receive all council agendas and reports and can attend the Committee. All recommendations from this Committee have to be agreed by Council.

6 Implications

Issue	Implications
Corporate Plan	Having an up to date Constitution is important for good governance and decision making and is part of the Council to be proud of objective.
Financial, Resource and	None at this stage, it is anticipated that the work arising out of the review will be contained within existing resources.

Property	
Legal and Statutory	Where there is a change as a result of legislation or regulation, or suggested on the basis of legal advice this is set out in the working papers.
Crime and Disorder	None identified at this stage
Sustainability	None identified at this stage
Health and Wellbeing	None identified at this stage
Risk Management and Health and Safety	None identified at this stage
Equality and Diversity	None identified at this stage

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Working Papers

8 Background Papers

None

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PART 3.4 - SCHEME OF OFFICER DELEGATIONS

INTRODUCTION

This scheme has been adopted by Swale Borough Council and its Executive and is the list of delegations to officers under section 101 of the Local Government Act 1972 (as amended), section 15 of the Local Government Act 2000 and all other powers enabling delegations to officers.

The delegations which follow are subject to the responsibility of the Chief Executive to ensure the efficient management and execution of the Council's functions and implementation of its policies.

The purpose of the delegations is to lead to a streamlining of the processes of the Council.

Any reference to any Act of Parliament shall include references to regulations, subordinate legislation and European Union legislation upon which either UK legislation is based, or from which powers, duties and functions of the Council are derived.

Reference to any enactment, regulation, order or byelaw shall include any amendment, re-enactment or re-making of the same.

Any post referred to below shall be deemed to include any successor post or a post which includes within the job description elements relevant to any particular delegation, which were also present in the earlier post and shall include anyone acting up or seconded.

The exercise of any delegated power is subject to: -

- the overriding requirement to ensure that the financial effect of the delegation will fall within an approved budget;
- the Council's policies including the Budget and Policy framework, the Procedure Rules, Protocols and Codes in this Constitution;
- any statutory restrictions; and
- the right of Council, Cabinet or committee to decide on any matter in a particular case.

In streamlining, wherever possible the scheme of delegation, reference is made only where appropriate to the policies under which the delegation is being exercised. There is an overriding requirement that all delegations are agreed with the law and the council's policies.

Before deciding whether to exercise the delegation the officer concerned should ensure that the Director and/or Heads of Service has considered whether the matters is of a controversial nature, or involving significant changes in policy, to require consultation upon with the relevant committee chairman or cabinet member and recorded or agreement reached to report to the cabinet, council and committee as appropriate.

Officers shall also undertake all the operational duties within the remit of their team or service and all necessary powers to do this are therefore deemed to be delegated to the relevant Director or Head of Service or Officer who has responsibility for the discharge of the function.

So far as the delegations relate to powers which arise by virtue of agency agreements, they are subject also to any qualifications contained in the respective agreements.

Reference in these delegations to any Statute, Statutory Instrument or Regulation made thereunder shall be deemed to include any statutory re-enactment or modification thereof and any Order or Regulation made thereunder.

Except where specific provision is made by legislation or by resolution of the Council, the Heads of Service are appointed to be the proper officers in respect of any legislation falling within the scope of their respective services.

All Directors and Heads of Service shall designate an appropriate responsible officer to deputise during his/her absence or indisposition.

The delegated powers held by an officer may be exercised by the line manager of that officer, and any Director or Head of Service may authorise other responsible officers (who have the relevant skills and knowledge) to act on their behalf, provided that there is a written record of such authorisation. A central record will be kept.

Where the Council, a Committee or Sub-Committee, the Leader, Cabinet, a Cabinet, Committee or an individual Cabinet Member has delegated a function to an Officer, the person or body making the delegation may at any time resume responsibility for the function either in respect of a particular matter or generally, and so may exercise the function despite the delegation.

In determining the suitability of an officer to be given this authority, regard must be had to the nature of the authority being given, the seniority of the post, the experience of the relevant officer and all other relevant circumstances so as to ensure that the authority and the relevant officer are appropriately matched. This authorisation must:

- be in writing, dated and signed by the officer giving the authority;
- specifically identify the post and person authorised to carry out the functions;
- specifically identify the functions to which the authorisation relates (attach an extract from the scheme as the numbering may change over time); and
- identify any conditions (if any) to which the authorisation is subject..

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Conflicts of Interest

Every Officer is responsible for identifying whether he/she has any conflict of interest in any matter which is under consideration, actual or perceived, within the authority, and notifying the authority (including under section 117 of the Local Government Act 1972).

Where an Officer has a conflict of interest in any matter, he/she shall not participate in that matter in his/her capacity as an Officer except with the prior approval of his/her line manager, the Monitoring Officer or the Chief Executive.

Where the Chief Executive is unable to act on a matter because of a conflict of interest, the matter shall be discharged by the Corporate Directors collectively, or by such Officer as they shall determine for this purpose.

Where a Corporate Director is unable to act on a matter because of a conflict of interest, the Chief Executive shall discharge the matter him/herself or allocate the matter to another Officer.

Where the Monitoring Officer is unable to act on a matter in his/her statutory capacity under section 5 of the Local Government and Housing Act 1989, the matter shall be discharged by the Officer designated by the Monitoring Officer as Deputy Monitoring Officer.

Where the Monitoring Officer is unable to act on a matter under the Standards Committee Regulations 2008 in relation to Member conduct, the matter shall be discharged by the person appointed by the Monitoring Officer for this purpose under section 82A of the Local Government Act 2000.

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Where any other Officer is unable to act on a matter, that Officer's line manager or the Chief Executive may arrange for another Officer to discharge the matter.

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DELEGATIONS TO THE CHIEF EXECUTIVE

General

1. To be and carry out the duties of Head of Paid Service and to exercise authority over all other officers of the Council so far as is necessary for the efficient management of the Council's functions.
2. All appointments, ~~(including appointments for particular statutory purposes)~~, discipline and dismissals of staff at and below Head of Service level is delegated to the Chief Executive (for Heads of Service appointments a joint Member officer decision-making panel will be constituted, the member of which will be agreed between the Leader and Chief Executive); appointment and dismissal of Directors and Section 151 Officer must be confirmed by the Appointments Sub-Committee.
3. To exercise the power to appoint a Person in respect of disciplinary investigations or proceedings in respect of the Monitoring Officer or Chief Finance Officer. This delegation is to be exercised in consultation with the Leader and in accordance with Part 4.9 of the Constitution.
4. To nominate a deputy who may exercise the Chief Executive's powers in the absence or incapacity of the Chief Executive.
5. To exercise any of the powers delegated to any other officer, including Directors.
6. To bring forward proposals for restructuring of the Council where it may be required or thought to be desirable to ensure that the Council has advice on the establishment and structure needed to carry out efficiently the work of the Council. This includes undertaking any statutory consultation or other consultation.
7. To be responsible for Health and Safety.
8. To liaise with national and local associations, authorities, groups, companies, organisations and individuals to further the policies and objectives of the Council.
9. To be responsible for undertaking negotiations and consultation with staff through their trade unions on all matters relating to employment.
10. To submit responses to government and other bodies, consulting on changes to legislation and policy, as considered appropriate, following consultation with the appropriate Cabinet Member.

Emergency Measures – in exercising these delegations the Chief Executive will ensure that the Leader is informed in accordance with the Council's Emergency Plan.

11. To be authorised in response to a serious emergency/disaster within the Borough, and on the border of the Borough, to commit staff and resources until such time as the Emergency Committee can meet.
12. To discharge the Council's duties under Civil Contingencies Act 2004.
13. Authority to take any urgent action between meetings in consultation with the Leader or Deputy Leader, on matters which are outside the scope of powers expressly delegated to any Director or Head of Service.

Crime and Disorder

14. To consult with other agencies and with the Chairman of the Crime and Disorder Partnership and Ward Members and to take such action as may be necessary to secure the proper implementation of Orders under the Crime and Disorder Act 1998, or any amendment or re-enactment thereof.
15. To authorise officers to apply for judicial approval and to undertake surveillance under the Regulation of Investigatory Powers Act 2000, including exceptional cases where it is likely that knowledge of confidential information will be acquired or where a vulnerable or juvenile Covert Human Intelligent Source is to be used.

Complaints

16. To deal transparently with issues relating to the Commission for Local Administration (Complaints to the Local Government Ombudsman).
17. To make maladministration payments in consultation with the Leader of the Council up to £2,000.

Elections

18. To be the Electoral Registration Officer.
19. To be the Returning Officer.
20. To discharge the Council's functions regarding Parliamentary, Local Government (Kent County Council, Borough Council and Parish/Town Council) and European Elections and Referendum.
21. To make an order under Section 91 of the Local Government Act 1972 to appoint temporary members to Parish Councils.

Miscellaneous

22. To take preliminary steps to protect the rights and interests of the Council relating to any White Paper, Bill of Statutory Instrument or Order in Parliament.
23. Authority to reallocate the delegations to different Directors/Heads of Service as and when required.
24. To determine arrangements for civic hospitality and transport in consultation with the Leader of the Council.

~~24-25.~~ To administer the Members' Allowances Scheme

26. To be the "proper officer" for the functions designated to the Proper Officer under the Local Government Act 1972; Representation of the People Act 1983; Local Elections (Parishes and Communities) Rules 1986; Local Government and Housing Act 1989.

27. To deal with issues relating to the Commission for Local Administration (Complaints to the Local Government Ombudsman).

28. To report to Council on any requests to approve extended absence of Councillors from any meetings, and the declaration of vacancies of any seats of the Council

29. To record, hold and administer civic gifts

30. To be the Petitions Officer

31. Receive requests for Call for Action and to place items on the appropriate Scrutiny Committee

32. To authorise approval of conference attendance for Members appointed to outside bodies or in connection with their Council responsibilities in consultation with the Leader of the Council

DELEGATIONS TO ~~EACH DIRECTOR~~ THE DIRECTOR OF REGENERATION

1. Authority to write-off any irrecoverable debt not delegated to the Head of Finance and Head of Commissioning and Customer Contact in accordance with the financial regulations.
2. To donate or write-off surplus goods or equipment which are not economically viable to sell.
3. To award contracts for the winning tender in accordance with Contract Standing Orders.
4. On receipt of a detailed report from the relevant Head of Service to approve virement on the approved budget of a cost centre subject to the limitations outlined in the Financial regulations
5. In consultation with the relevant portfolio holder, to authorise waivers to competitive tendering process for the amounts not exceeding the limit set out in Contract Standing Orders.
6. In consultation with the relevant portfolio holder, to authorise the extension of contracts for amounts not exceeding the limit set out in Contract Standing Orders.
7. Authority to appoint staff within the approved establishment. The Chief Executive has delegated authority to the Directors all appointments, discipline and dismissal of staff below Heads of Service within their Directorates.
8. Authority to authorise Occasional or Regular Car User Allowances in accordance with the Council's Conditions of Service.
9. Authority to determine requests for honoraria within their directorate in accordance with the Council's HR policies.
10. To issue requisitions for information under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.

Corporate Strategy and Communications

11. To produce and publish publicity and information material.
12. To manage and co-ordinate press and media relations.
13. To issue press statements and where appropriate, following discussion with the relevant portfolio holder.
14. To co-ordinate consultation on behalf of the Council.

Miscellaneous

To authorise officers to apply for judicial approval and to undertake surveillance under the Regulation of Investigatory Powers Act 2000 including cases, in the absence of the Chief Executive, where it is likely that knowledge of confidential information will be acquired or where a vulnerable or juvenile Covert Human Intelligent Source is to be used.

To give consent to the exercise by the Police of powers to disperse groups of young persons under Part 5 of the Anti Social Behaviour Act 2003.

DELEGATIONS TO THE MONITORING OFFICER

1. To be and carry out the duties of the Monitoring Officer in accordance with Section 5 of the Local Government and Housing Act 1989, the Local Government Act 2000 and any other enactments and the Council's Constitution, and to nominate a member of staff to deputise as Monitoring Officer.
2. To maintain a record of notices of disclosable pecuniary interests and disclosable non-pecuniary interests by any Councillor and personal and prejudicial and personal and non-prejudicial interests by any Officer and to maintain the register of Councillor's interests and declarations.
3. To consider and determine applications from Parish and Town Councillors in respect of declarations of prejudicial interests under Section 94 of the Local Government Act 1972.
4. To maintain the record of officer delegations.
5. To make any necessary updates to the constitution (as required by law) where there is no discretion.
6. To publish and maintain the Council's Constitution with authority to make minor textual changes and amendments to Officer Delegations to take account of changes in legislation.

~~DELEGATIONS TO THE CORPORATE SERVICES DIRECTOR~~

- ~~25. To be and carry out the duties of the Monitoring Officer in accordance with Section 5 of the Local Government and Housing Act 1989, the Local Government Act 2000 and any other enactments and the Council's Constitution, and to nominate a member of staff to deputise as Monitoring Officer. (MO)~~
- ~~26. To be the "proper officer" for the functions designated to the Proper Officer under the Local Government Act 1972; Representation of the People Act 1983; Local Elections (Parishes and Communities) Rules 1986; Local Government and Housing Act 1989. (CEX)~~
- ~~27. To be the Deputy Electoral Registration Officer.~~
- ~~28. To authorise officers to apply for judicial approval and to undertake surveillance under the Regulation of Investigatory Powers Act 2000 including cases, in the absence of the Chief Executive, where it is likely that knowledge of confidential information will be acquired or where a vulnerable or juvenile Covert Human Intelligent Source is to be used. (REG)~~
- ~~29. To give consent to the exercise by the Police of powers to disperse groups of young persons under Part 5 of the Anti Social Behaviour Act 2003. (REG)~~
- ~~30. To deal with issues relating to the Commission for Local Administration (Complaints to the Local Government Ombudsman). (CEX)~~
- ~~31. To maintain a record of notices of disclosable pecuniary interests and disclosable non-pecuniary interests by any Councillor and personal and prejudicial and personal and non-prejudicial interests by any Officer and to maintain the register of Councillor's interests and declarations. (MO)~~
- ~~32. To report to Council on any requests to approve extended absence of Councillors from any meetings, and the declaration of vacancies of any seats of the Council. (CEX)~~
- ~~33. To consider and determine applications from Parish and Town Councillors in respect of declarations of prejudicial interests under Section 94 of the Local Government Act 1972. (MO)~~
- ~~34. To record, hold and administer civic gifts. (CEX)~~
- ~~35. To provide information to the public and Councillors about the decision making process and individual decisions.~~
- ~~36. To maintain the record of officer delegations. (MO)~~
- ~~37. To make any necessary updates to the constitution (as required by law) where there is no discretion. (MO)~~
- ~~38-33. To be the Petitions Officer. (CEX).~~
- ~~39. Receive requests for Call for Action and to place items on the appropriate Scrutiny Committee. (CEX)~~
- ~~40. To authorise approval of conference attendance for Members appointed to outside bodies or in connection with their Council responsibilities in consultation~~

~~with the Leader of the Council. (CEX)~~

~~41. To publish and maintain the Council's Constitution with authority to make minor textual changes and amendments to Officer Delegations to take account of changes in legislation. (MO)~~

~~Environmental Services~~ **DELEGATIONS TO THE MID KENT ENVIRONMENTAL SERVICES MANAGER**

1. To discharge the Council's responsibilities with regard to statutory nuisances.

~~2.~~ To administer all Port Health matters and monitor and enforce all other matters of public health and environmental health.

~~3-2.~~ To appoint inspectors under the Health and Safety at Work etc. Act 1974.

~~4-3.~~ To implement and enforce the provisions of the Health and Safety at Work Act 1974 and any others referred to therein, together with any Health and Safety Regulations.

~~5-4.~~ To implement the provisions of the Food and Environment Protection Act 1985, the Control of Pesticides Regulations 1986 and of the Food Safety Act 1990 and any Orders or Regulations made thereunder or relating to the foregoing or having effect by virtue of the European Communities Act 1972 and any modifications or re-enactment to the foregoing.

~~6-5.~~ To enforce the provisions of the Prevention of Damage by Pests Act 1949.

~~7-6.~~ To implement and enforce the provisions of the Environmental Protection Act 1990.

~~8-7.~~ To implement and enforce the Environment Act 1995.

~~9-8.~~ To enforce the provisions of the Clean Air Act 1993.

~~10-9.~~ To enforce the provisions of the Control of Pollution Act 1974.

~~11-10.~~ To enforce the provisions of the Pollution Prevention and Control Act 1999.

~~12-11.~~ To implement and enforce the provisions of the Noise and Statutory Nuisance Act 1993.

~~13-12.~~ To implement and enforce the provisions of the Environmental Permitting (England and Wales) Regulations 2010.

~~14-13.~~ To implement and enforce the provisions of the Public Health Acts 1936 and 1961.

~~15-14.~~ To enforce the provisions of The Public Health (Control of Disease) Act 1984.

NB: The Clinical Director of the Kent Health Protection Unit is appointed as the Proper Officer of the Council to carry out duties under the above Act, the Public Health (Prevention of Tuberculosis) Regulations 1925, the Public Health Act 1936, the Public Health (Ships) Regulations 1979 and any other Regulations made under the Act, and any consultants in Communicable Disease Control, authorised by the Clinical Director, are similarly appointed to act on his behalf.

~~16-15.~~ To implement and enforce the provisions of the Water Industry Act 1991 and Private Water Supplies Regulations 2009 in relation to private water supplies.

~~17-16.~~ To implement and enforce the provisions of the Building Act 1984.

~~18-17.~~ To enforce the provisions of The County of Kent Act 1981.

~~19-18.~~ To implement and enforce the provisions of the Local Government (Miscellaneous Provisions) Act 1976 and 1982.

~~20-19.~~ To enforce the provisions of the Land Drainage Act 1991

~~21-20.~~ To enforce the provisions of the Clean Neighbourhoods and Environment Act 2005
Part 5, Chapter 1 sections 77 – 79, Chapter 2, section 82 – 86,
Part 7, Chapter 1 sections 69 – 73,
Part 9, sections 101 – 105

39. To enforce the provisions of the Environmental Damage (Prevention and Remediation) (England) Regulations 2015
40. To enforce the provisions of the Noise Act 1996
41. To enforce the provisions of the Anti-Social Behaviour Crime and Policing Act 2014 – Chapter 1 Sections 43 – 93
42. To enforce the provisions of the Health Act 2006 – Part 1 Chapter 1.
43. To enforce the provisions of the Plant Protection Product Regulations 2011.
44. To enforce the provisions of the Plant Protection Products (Sustainable Use) Regulations 2012.

Miscellaneous

45. To enforce provisions of the Offices, Shops and Railway Premises Act 1963.
46. To arrange burials and cremations pursuant to Section 46 of the Public Health (Control of Disease) Act 1984.

DELEGATIONS TO THE LICENSING AND RESILIENCE MANAGER

Licensing

471 To carry out all licensing functions in respect of:

- Street trading in licensed streets (the Local Government (Miscellaneous Provisions) Act 1982);
- Premises, club premises, personal licences, provisional statement, Designated Premises Supervisor, Temporary Event Notices in accordance with the Council's Licensing Policy and the Licensing Act 2003;
- Premises, provisional statement, Temporary Use Notices, Game Machine Permits, Lotteries, Prize Gaming Permits, acting as the Responsible Authority and instituting proceedings for non-compliance in accordance with the Council's Gambling Policy and the Gambling Act 2005;
- Street collections (section 5 of the Police, Factories etc. (Miscellaneous Provisions) Act 1916 (as amended);
- House to House collections (Section 2 of the House to House Collections Act 1939 (as amended); and
- Sex establishments (Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- To act as the "responsible authority" within the meaning of the Licensing Act 2003 and Gambling Act 2005.
- To maintain a register of persons carrying out business as a scrap metal dealer pursuant to the provisions of the Scrap Metal Dealers Act 1964 and 2013.

Hackney Carriage and Private Hire Vehicles

482 To undertake all functions regarding Hackney Carriage and Private Hire Vehicles in accordance with the relevant provisions of the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

Other

3. To grant and to renew licences for pleasure boats and for pleasure boatmen pursuant to the Public Health Acts Amendment Act 1907 (as amended by the Local Government Act 1974) and to dispose of boats and ancillary equipment abandoned or uncollected on any port or foreshore in Council's ownership

3.4.

Audit DELEGATIONS TO THE HEAD OF AUDIT PARTNERSHIP

Please note delegations 48 to 49 will be assigned to the Head of Audit

491. The provision of an adequate and effective system of internal audit of the Council's accounting records and its system of internal control in accordance with the proper practices in relation to internal control as prescribed by the Accounts and Audit Regulations 2015.

502. The maintenance of the Council's **Strategic-Comprehensive** Risk Register and the provision of advice and guidance on the principles and practices of Risk Management.

~~Human Resources~~ **DELEGATIONS TO THE HEAD OF HUMAN RESOURCES PARTNERSHIP**

~~Please note delegations 50 to 64 will be assigned to the Head of Human Resources~~

General

51. | ~~To operate the Severance Policy with any redundancies or business cases for enhancements being approved by the appropriate Director or Chief Executive, and signed off by the appropriate Cabinet Member.~~
52. Enter into agreements with trade unions where implementation does not increase expenditure.
53. Enter into agreements with staff for the purpose of regulating work time.
54. Assimilate staff on appointment, promotion or re-grading.
55. Grant removal expenses and lodging allowances in accordance with any scheme approved by the Council.
56. Determination of requests for provision of temporary accommodation for employees.
57. To make changes in accordance with legal requirements and best practice to HR policies and procedures following informal consultation with staff and the agreement of the Cabinet Member for Finance.
58. Administer the Council's Pension Discretionary Policy.

~~Training – these delegations to be exercised in accordance with HR and Learning and Development policies.~~

59. Grant financial assistance for post entry training.
60. Determination of proposals to attend corporate and service training courses.
61. Determination of proposals for the retention of fees for trainers.

Payroll

62. To implement all negotiated salary or wage awards where no exercise of a discretion is involved.
63. Administer staff benefits and expenses and review rates annually.
64. To pay salaries, wages, pensions and insurance contributions without reference to Members in accordance with the agreed arrangements.
65. To make payments in respect of Members' allowances and expenses under Sections 173 to 178 of the Local Government Act 1972, and to keep a register of such payments.

DELEGATIONS TO HEADS OF SERVICE

1. Authority to approve staffing structures within existing budgets. The Directors have delegated authority to Heads of Service for all appointments, discipline and dismissal of staff within their teams.
2. Authorisation to approve the payment of overtime to members of staff in accordance with the Council's Conditions of Service or the appropriate negotiated conditions within their department.
3. To sign any document needed to implement a decision by, or in the name of, the Council that is within the scope of the powers delegated to.
4. Authority to authorise staff to enter land or premises.
5. To serve statutory notices and arrange for works in default.
6. Authority to spend in accordance with the financial regulations. This includes authority to award contracts that are within the approved budget for the current financial year, having gone through the tendering procedures as set out in contract standing orders. (Relevant Cabinet Members to be kept informed of any waivers granted).
7. Authority to implement new and existing legislation.
8. To respond to consultations on behalf of the Council in consultation with the relevant Cabinet Member where appropriate.

DELEGATIONS TO THE HEAD OF LEGAL PARTNERSHIP

These delegations are subject to the Law Society practice procedures and requirements of the Solicitors Regulation Authority

General

1. Authority to sign, or, where necessary, seal, any document needed to implement a decision taken by, or in the name of, the Council, and to authorise other officers to do so and to keep a record.
2. To act as Solicitor to the Council and carry out all related work on behalf of the Council.
3. To institute, conduct, prosecute and defend any legal proceedings on behalf of the Council including cases where the Council considers it expedient for the protection or the promotion of the interests of the inhabitants of the Council's area.
4. On instruction from client departments to settle, if appropriate, and in the interests of the Council any actual or threatened legal proceedings and in consultation where necessary with the relevant statutory officers.
5. To ensure with regard to 3 and 4 above that the early involvement of the Council's External Auditor be sought where appropriate in cases of an unusual and significant nature and that an information report be presented thereafter at the earliest opportunity to the Executive.
6. To instruct Counsel and professional advisors as appropriate and in accordance with the agreed procedures of the Mid Kent Legal Services Partnership.
7. To give legal undertakings and indemnities on behalf of the Council and to keep a register.
8. Under Section 223 of the Local Government Act 1972 to authorise Officers who are not admitted solicitors to appear in Magistrates' Courts on behalf of the Council.
9. Determine procedural arrangements for the issue of all consents, refusals, decisions and notices on behalf of the Council.
10. To accept on behalf of the Council the service of notices, orders and legal procedures.
11. To agree changes to membership of Committees throughout the year in consultation with the appropriate Group Leader.

Land and Property

12. To dispose of any land or any interest in land in accordance with the law, following Member approval.
13. To acquire properties which the Council is under a legal obligation to acquire under planning legislation, following Member approval.
14. To complete all property transactions and contractual arrangements.
15. To make and carry out the statutory notifications and advertisement procedure in relation to Footpath Orders, in accordance with S257 of the Town and Country Planning Act, and where there are no objections, or any objections made are withdrawn, to confirm the Order.

Miscellaneous

~~16. To administer the Members' Allowance Scheme.(CEX)~~

~~17.16.~~ To be Data Protection and Freedom of Information Officer and to maintain the Records Retention Scheme and Publication Scheme in respect of the Freedom of Information Act 2000.

~~18.17.~~ To maintain a central record of RIPA applications and authorisations in line with RIPA Orders and Codes of Practice.

~~19.18.~~ Implement provisions of Environmental Information Regulations 1995.

DELEGATIONS TO THE ~~HEAD OF FINANCE~~ CHIEF FINANCE OFFICER

1. To be the Chief Finance Officer and be responsible for the administration of the financial affairs of the Council under Section 151 of the Local Government Act 1972 (as amended); to exercise the duties of the Chief Finance Officer under Section 114 of the Local Government Finance Act 1988; and to discharge functions under the Accounts and Audit Regulations 2011
2. To deal with matters specified by Financial Regulations.
3. Negotiate with the external auditor on the level and type of audit resources required to carry out the statutory and management audit requirements of the Council.
4. To write-off any irrecoverable debt in accordance with the Financial regulations, and the information to be kept in a register.
5. To estimate any collection fund surplus or deficit and to subsequently notify the major precepting authority.
6. To make loans to officers for car purchase and to keep a register of these loans.
7. To enter into leasing agreements to lease assets for use by the Council as approved by the Capital Programme or Executive.
8. To arrange and review insurance in accordance with the Council's Policy.
9. To raise loans and make investments as and when required.
10. To manage the Council's treasury management activities in accordance with the CIPFA Code of Practice for Treasury management and CLG Guidelines
11. Authorise financial leases in accordance with approved capital financing arrangements.
12. Make arrangements for the collection of income due to the Council.
13. Sign all necessary claim forms in respect of any grants or other funds payable to the Council.
14. To set the Council Tax and Business Rate Base.
15. To publish in a local newspaper, within 21 days, notice of the amount of Council Tax set by the authority in accordance with Section 38 Local Government Finance Act 1992.
16. Exercise responsibility for the accounting arrangements for the operation of the collection fund in connection with the administration of Council Tax and Non-Domestic Rate.
17. Authorise Statutory Returns in connection with Council Tax and Council Tax Benefit, Non-Domestic Rate and Discretionary Housing Payments.
18. Authorise Statutory subsidy calculations and returns in connection with the administration of Housing Benefit.
19. Determine and declare local average interest rates in accordance with legislation and the interest rate for loans to housing associations.
20. Issue, renew or repay temporary loans.

21. Administer matters in respect of mortgages granted by the Council.
22. Authorise the premature repayment of mortgages issued by the Council.
23. Provide financial services either on an agency basis or where required by statute.
24. Authorise persons to act for the Council at company and creditor meetings.
25. Where appropriate to elect for VAT status on particular land or property.

DELEGATIONS TO THE HEAD OF COMMISSIONING AND CUSTOMER SERVICES

Comment [KB1]: Awaiting details from Martyn

Waste Collection and Disposal

1. To exercise powers in relation to refuse collection, street cleaning, public conveniences, recycling and minor works.
2. To levy charges regarding the collection and disposal of waste other than household waste, and for the provision of bins and sacks.
3. To implement and enforce the provisions of Part II and Schedule 4 of the Environmental Protection Act 1990.
4. To implement and enforce the provisions of the Public Health Act 1961 regarding the accumulations of rubbish.

Seafront and Harbour

5. To manage and maintain seafront facilities.
6. To grant and to renew licences for pleasure boats and for pleasure boatmen pursuant to the Public Health Acts Amendment Act 1907 (as amended by the Local Government Act 1974) and to dispose of boats and ancillary equipment abandoned or uncollected on any port or foreshore in Council's ownership.
- 6.7. To grant and renew licences and leases for beach huts.

Recreation

- 7.8. To manage, maintain and control (including temporary or permanent closure of) parks, open spaces, country parks, equipped play areas, outdoor ——— and indoor sports facilities and swimming pools.
9. To let parks and open spaces for sporting and recreation facilities including fairs, exhibitions and displays.
- 8.10. To grant and to renew licences for fitness and leisure coaches and instructors.
- 9.11. To make arrangements for the provision and advertising of leisure and recreation services and events.
- 10.12. To deal with petitions in relation to ball games on open spaces in consultation with Ward Members.

Cemeteries and Churchyards

- 11.13. To manage and maintain Council owned cemeteries and to maintain "closed churchyards".
- 12.14. To exercise powers in relation to the granting of rights of burial, rights to erect memorials and maintenance of graves pursuant to the Local Government Act 1972, Public Health Act 1936 and Local Authorities Cemeteries Order 1977.

Parking and Highways Management

- ~~13.~~15. _____ To manage, maintain and control off-street parking and to make necessary amendments to the Off Street Parking Order.
- ~~14.~~16. _____ To manage on-street parking enforcement in accordance with The Road Traffic (Permitted Parking and Special Parking Area) (County of Kent) (Borough of Swale) Order 1999.
- ~~15.~~17. _____ To agree to the use of car parks for non-commercial use and to temporarily suspend on and off street parking bays.
- ~~16.~~18. _____ To enforce the provisions of the Road Traffic Regulation Act 1984 and Refuse Disposal (Amenity) Act 1978 regarding the removal of vehicles and any other offence.
- ~~17.~~19. _____ To enforce the provisions of the Clean Neighbourhoods and Environment Act 2005 in relation to fixed penalty notices for nuisance parking offences.
- ~~18.~~20. _____ To exercise the Council's powers to provide and maintain footway lighting systems and street naming and numbering.
- ~~19.~~21. _____ To exercise the power to provide and maintain bus shelters and to give consent to Parish Councils for the erection of seats and shelters.
- ~~20.~~22. _____ Authority in conjunction with the Head of Legal to make Orders for the closure of highways for a period of 24 hours or less for special purposes under Section 21 of the Town Police Clauses Act 1847.

Allotments

- 21. To administer allotments and the discharge of related statutory functions.

Contract Standing Orders

- 22. To agree waivers in accordance with Contract Standing Orders.

Miscellaneous

- 23. In conjunction with the Head of Legal, to serve Notices under section 23 of the Local Government (Miscellaneous Provisions) Act 1976 in relation to dangerous trees.
- 24. To implement and enforce the provisions of the Land Drainage Act 1991.
- 25. To undertake responsibility for the effects of oil pollution on the coast line.

DELEGATIONS TO THE HEAD OF ECONOMIC AND COMMUNITY SERVICES

~~Corporate Strategy and Communications~~

Comment [KB2]: Moved to Director of Regeneration

- ~~10. To produce and publish publicity and information material.~~
- ~~11. To manage and co-ordinate press and media relations.~~
- ~~12. To issue press statements and where appropriate, following discussion with the relevant portfolio holder.~~
- ~~13. To co-ordinate consultation on behalf of the Council.~~

Community Services

5. To enable community development services across the Borough.
6. To provide management and administration of local grant schemes and payments in accordance with the agreed policy framework.
7. To manage Community Halls and asset transfer projects.
8. To manage the CCTV partnership agreement and take decisions on service provision
9. To deliver services in accordance with statutory and legislative requirements including Section 17 of the Crime and Disorder Act.
10. To manage the Community Safety Unit.

Cultural Services

11. To work in partnership to enable the delivery of arts, heritage and cultural activities in Swale .
12. To manage the preservation and development of cultural and heritage infrastructure.
13. To enable the delivery for sports and physical activities across the Borough.

Economic Development and Regeneration

14. To implement key regeneration projects across the Borough.
15. To enable synergy between the Council, learning providers and local business.
16. To enable the delivery of tourism projects across the Borough.
17. To manage green infrastructure projects and promote biodiversity.

Environmental Services

18. To discharge the Council's responsibilities with regard to statutory nuisances.
19. To enforce the provisions of the following Acts in relation to the welfare of animals:
 - Performing Animals (Regulation) Act 1925;

- Pet Animals Act 1951;
 - Animal Boarding Establishments Act 1963;
 - Breeding of Dogs Act 1973 and 1991;
 - Riding Establishments Act 1964 and 1970;
 - Dangerous Wild Animals Act 1976;
 - Zoo Licensing Act 1981;
 - Animal Welfare Act 2006;
 - Dogs Act 1871, 1906 and Dangerous Dogs Act 1991; and
 - Dog Control Orders (Clean Neighbourhoods and Environment Act) 2005.
 - Breeding and Sale of Dogs (Welfare) Act 1999;
 - Section 11(2) of The Microchipping of Dogs (England) Regulations 2015
20. To enforce the provisions of the Prevention of Damage by Pests Act 1949.
 21. To implement and enforce the provisions of the Environmental Protection Act 1990.
 22. To implement and enforce the Environment Act 1995.
 23. To enforce the provisions of the Clean Air Act 1993.
 24. To enforce the provisions of the Control of Pollution Act 1974.
 25. To implement and enforce the provisions of the Noise and Statutory Nuisance Act 1993.
 26. To implement and enforce the provisions of Part 6 of the Antisocial Behaviour Act 2003.
 27. To enforce the provisions of the Noise Act 1996.
 28. To implement and enforce the provisions of the Criminal Damage Act 1971, the Antisocial Behaviour Act 2003, Part IV of the Environmental Protection Act 1990 and the Town and Country Planning Act 1990 in relation to graffiti, littering and fly posting.
 29. To implement and enforce the provisions of the Clean Neighbourhood Act 2005.
 30. To enforce the provisions of the Control of Pollution Amendment Act 1989 and the Environmental Protection (Duty of Care) Regulations 1991 regarding transport of waste.
 31. To implement and enforce the provisions of the Environmental Permitting (England and Wales) Regulations 2007.
 32. To implement and enforce the provisions of Part II and Schedule 4 of the Environmental Protection Act 1990.
 33. To enforce the provisions of the Health Act 2006 relating to smoke-free offences.
 34. To enforce the provisions of The County of Kent Act 1981.
 35. To implement and enforce the provisions of the Local Government (Miscellaneous Provisions) Act 1976 and 1982.
 36. To administer the Waste to land (Use in Agriculture) Regulations 1989.
 37. To enforce the provisions of S3-6 of the Refuse Disposal Amenity Act 1978, Part VIII of the Road

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Traffic Regulations Act 1984 and The Removal and Disposal of Vehicles (England) (Amended) Regulations 2002.

38. To implement and enforce the provisions of S235-238 of Part XI of the Local Government Act 1972 in relation to the enforcement of Byelaws.
39. To implement and enforce the provisions of Parts 1, 2, 4, 6, 7 and Part 11 S154 only of the Anti-Social Behaviour, Crime and Policing Act 2014.

Gypsy Sites and Unlawful Encampments

40. To monitor the number of gypsies/land travellers, legally and illegally encamped within the Borough and to maintain a continuing dialogue with the Kent County Council over gypsy site provision.
41. To issue Notices in relation to the removal of gypsies on the highway under the Highways Act 1980 and from Council owned land under the Criminal Justice and Public Order Act 1994.

Miscellaneous

42. | To enter into agreements and contracts for the supply of goods and services in connection with the service.
43. To enable the delivery of markets on Council owned sites by working with market cooperatives in Faversham, Sheerness and Sittingbourne.
44. To enforce the provisions of the Sunday Trading Act 1994 and to enforce any breaches of street trading under the Local Government (Miscellaneous Provisions) Act 1982.
45. To exercise the Council's power to secure unoccupied buildings under the provisions of the Local Government (Miscellaneous Provisions) Act 1982.
46. To authorise officers to apply for judicial approval and to undertake surveillance under the Regulation of Investigatory Powers Act 2000, excluding cases where it is likely that knowledge of confidential information will be acquired or where a vulnerable or juvenile Covert Human Intelligent Source is to be used.
47. To implement the provisions of the Counter Terrorism and Security Act 2015.
48. To implement the provisions of the Modern Slavery Act 2015.
49. To implement the provisions of the Childrens Act 2004.

DELEGATIONS TO THE HEAD OF RESIDENT SERVICES

Housing

1. To implement and enforce the provisions of the Housing Act 1985 (as amended) and the Housing Act 2004 in relation to demolition orders, housing conditions, licensing of houses in multiple occupation and additional control provisions in relation to residential accommodation including overcrowding.
2. Power to approve disabled facilities grants in accordance with statutory criteria and authority to allow applicants to start work before grants are approved pursuant to Part I of the Housing Grants Construction and Regeneration Act 1996 (as amended).
3. To implement the provisions of Article 3 of the Regulatory Reform Act (Housing Assistance) (England and Wales) Order 2002 with power to provide housing assistance in accordance with the Council's published policy and grant/loan conditions, and power in consultation with the Cabinet Member for Housing to recover the grant in total or in part where a house is sold within five years.
4. To implement the provisions of Part VI of the Housing Act 1996 (as amended).
5. To enter into agreements for the supply of goods and services in connection with grant and financial assistance schemes.

6. To promote group repair and renewal schemes.

7. To implement Enforced Sale Procedure under the Law of Property Act 1925 including service of notice under Section 103 of the Act.

Comment [KB3]: New legislation – Marks delegation

6-8. To implement and enforce the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014.

Comment [KB4]: New legislation – Mark's delegation

Homelessness

7-9. To adopt the power given in the Localism Act 2011 to discharge Homelessness Duty into the Private Rented Sector.

Homelessness

10. To implement the provisions of Part VII of the Housing Act 1996 (as amended) in relation to processing and determining all homeless applications.

8-11. To implement the provisions contained in the Homeless Reduction Act 2017 in relation to the prevention and relief of homelessness.

Comment [KB5]: New legislation – Mark's delegation

Council Tax and Non-Domestic Rates

9-12. To exercise all of the Council's powers and duties to bill, administer and collect the Council Tax and Non-Domestic Rates .

10-13. Pursuant to Section 101 of the Local Government Act 1972, to issue enforcement proceedings including making complaints on behalf of the Swale Borough Council in the Magistrates

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Court under the following Regulations: -

- The Community Charges (Administration and Enforcement) Regulations 1989;
- The Community Charges (Administration and Enforcement) (Amendment) Regulations 1989;
- Community Charges (Co-Owners) Regulations 1990 (as amended);
- Non-Domestic Rating (Collection and Enforcement) (Miscellaneous Provisions) Regulations 1990 (as amended);
- Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended);
- any other further regulations issued by the Secretary of State for the Environment under the Local Government Finance Act 1988 (Schedule 9);
- The Council Tax (Administration & Enforcement) Regulations 1992 (as amended); and
- any further regulations issued by the Secretary of State for the Environment under the Local Government Finance Act 1992 (Schedule 4).

~~11.~~14. To write off any irrecoverable debt in respect of Council Tax, Non-Domestic Rates and Housing Benefit Overpayments in accordance with the Financial regulations and the information to be kept in a register.

~~12.~~15. To appear on behalf of the Council at a Valuation Tribunal.

~~13.~~16. To consider applications for non-domestic rate relief from charitable and other organisations pursuant to Sections 43 and 47 of the Local Government Finance Act 1988.

~~14.~~17. To consider applications for the reduction and remission of rates pursuant to section 49 of the Local Government Finance Act 1988.

~~15.~~18. To write-off any irrecoverable debt in the case of council tax, business rates or housing benefit overpayments in accordance with the Financial Regulations, and the information to be kept in a register.

Housing and Council Tax Benefit

~~16.~~19. To exercise all of the Council's powers and responsibilities for Housing and Council Tax Benefits, including the payment of benefits and the determination of discretionary payments.

~~17.~~20. To administer rent rebates for Local Authority tenants and rent allowances for Private/Housing pursuant to Section 134 of the Social Security Administration Act 1992 (as amended).

Caravans

~~18.~~21. To implement and enforce the provisions of the Caravan Sites and Control of Development Act 1960.

Public Health

~~19.~~22. To implement and enforce the provisions of the Public Health Act 1936 and 1961.

~~20.~~23. To implement and enforce the provisions of the Water Industry Act 1991 in relation to private water supplies.

Buildings

~~21-24.~~ To implement and enforce the provisions of the Building Act 1984. |

~~22-25.~~ To enforce the provisions of Part XI of the Local Government (Miscellaneous Provisions) Act 1982. |

~~23-26.~~ To implement and enforce the provisions of the Water Act 1989. |

Drainage

~~24-27.~~ To implement and enforce the provisions of the Land Drainage Act 1991. |

~~25-28.~~ To enforce the provisions of the Local Government (Miscellaneous Provisions) Act 1976. |

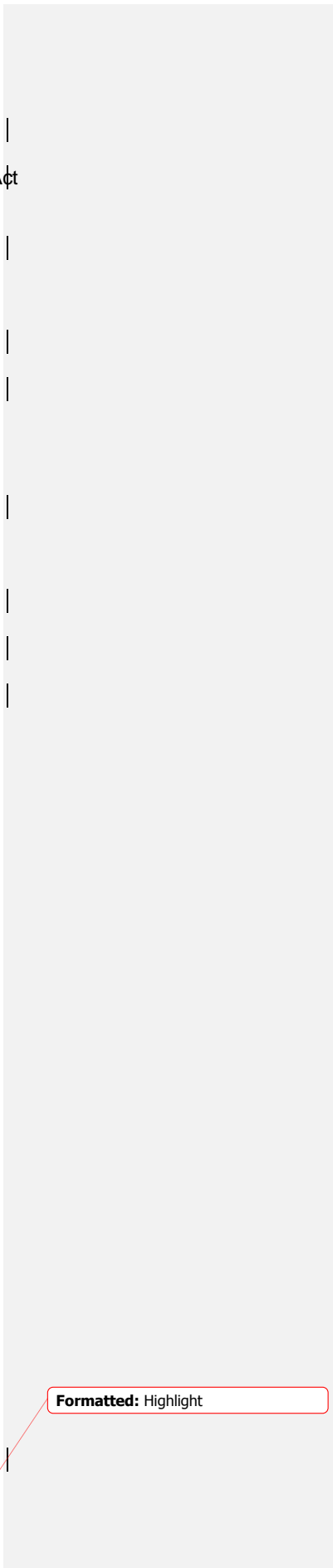
Pests

~~26-29.~~ To implement and enforce the provisions of the Prevention of Damage by Pests Act 1949. |

Miscellaneous

~~27-30.~~ To implement and enforce the provisions of Part III of the Environmental Protection Act 1990. |

~~28-31.~~ To enforce the provisions of The County of Kent Act 1981. |



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DELEGATIONS TO THE HEAD OF PROPERTY

General

1. To enter into all 'de-minimis' Agreements, eg. minor wayleaves, easements, rights of way, temporary occupation of land, tenants-at-will etc.
2. To negotiate and agree terms for the modification, variation or release of covenants contained in conveyances and transfers in accordance with any relevant provisions contained within the Asset Management Strategy, the Asset Transfer Policy and Disposals Policy.
3. To deal with Blight Notices ensuring final compensation where the notices have been accepted by the Council for conveyancing purposes.
4. To approve disturbance payments, etc. other than payments in respect of well maintained houses.
5. To finalise negotiations in the case of confirmed Compulsory Purchase Orders.
6. To deal with applications for the sale of sub-station sites.
7. To deal with applications for the sale and purchase of land where the proposed consideration does not exceed £10,000 or where the land is to be sold or purchased on behalf of the Kent County Council.
8. To assign leases, subject to the normal investigation of the financial abilities of the new leases and to those cases also requiring a change of the approved use being determined, in consultation with the Cabinet Member for Finance.
9. To terminate or accept the surrender of a leasehold interest in land where it is of benefit to the Council.
10. To approve rent reviews and lease renewals up to a maximum increase of £7000 or 20% per annum whichever is the greater amount.
11. To enter into leases for less than seven years or to enter into leases where the annual rent is less than £3000.
12. To retain agents to advise upon terms for sales, leases, purchases, easements, compensation claims and similar matters or otherwise in connection therewith.
13. To negotiate the terms of, and authorise the granting of, landlords licences and consents and variations under existing leases.
14. To carry out any site investigation where he/she considers it necessary whether upon the commencement of negotiations or acquisition or otherwise.
15. To apply for planning permission for the development of any land or property and to make any other application under planning legislation.

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DELEGATIONS TO THE HEAD OF COMMISSIONING AND CUSTOMER SERVICES CONTACT

Waste Collection and Disposal

1. To exercise powers in relation to refuse collection, street cleaning, public conveniences, recycling and minor works.
2. To levy charges regarding the collection and disposal of waste other than household waste, and for the provision of bins and sacks.
3. To implement and enforce the provisions of Part II and Schedule 4 of the Environmental Protection Act 1990.
4. To implement and enforce the provisions of the Public Health Act 1961 regarding the accumulations of rubbish.

Seafront and Harbour

5. To manage and maintain seafront facilities.
- ~~5.6. To commission and monitor the beach lifeguarding service~~
- ~~6. To grant and to renew licences for pleasure boats and for pleasure boatmen pursuant to the Public Health Acts Amendment Act 1907 (as amended by the Local Government Act 1974) and to dispose of boats and ancillary equipment abandoned or uncollected on any port or foreshore in Council's ownership.~~
7. To grant and renew licences and leases for beach huts.
8. To undertake responsibility for the effects of oil pollution on the coast line.
9. To work with the key authorities on coastal risk management and Flood planning.

Comment [MC1]: This is now done by Licensing

Recreation ~~Leisure~~ and Green Spaces

10. To manage, maintain and control (including temporary or permanent closure of) parks, open spaces, country parks, equipped play areas ~~and, outdoor sports facilities and indoor sports facilities and swimming pools.~~
11. Preparation of key strategic documents and plans for sport, leisure and open spaces to support the Local Plan process.
- 12.
- ~~9.13.~~ To let parks and open spaces for sporting and recreation facilities including fairs, exhibitions and displays.
- ~~10.14.~~ To grant and to renew licences for fitness and leisure coaches and instructors.
15. Responsibility for the development and provision of indoor leisure facilities including the leisure centre contract.

~~41-16.~~ To make arrangements for the provision and advertising of leisure ~~and recreation~~ services and events.

~~42-17.~~ To deal with petitions in relation to ball games on open spaces in consultation with Ward Members.

Cemeteries and Closed Churchyards

~~43-18.~~ To manage and maintain Council owned cemeteries and to maintain “closed churchyards” on behalf of Church parishes.

~~44-19.~~ To exercise powers in relation to the granting of rights of burial, rights to erect memorials and maintenance of graves pursuant to the Local Government Act 1972, Public Health Act 1936 and Local Authorities Cemeteries Order 1977.

Parking and Highways Management

~~45-20.~~ To manage, maintain and control off-street parking and to make necessary amendments to the Off Street Parking Order.

~~46-21.~~ To manage on-street parking enforcement in accordance with The Road Traffic (Permitted Parking and Special Parking Area) (County of Kent) (Borough of Swale) Order 1999.

~~47-22.~~ To agree to the temporary use of car parks for other activities non-commercial use and to temporarily suspend on and off street parking bays.

~~48-23.~~ To enforce the provisions of the Road Traffic Regulation Act 1984 and Refuse Disposal (Amenity) Act 1978 regarding the removal of vehicles and any other offence.

~~49-24.~~ To enforce the provisions of the Clean Neighbourhoods and Environment Act 2005 in relation to fixed penalty notices for nuisance parking offences.

~~20-25.~~ To exercise the Council’s powers to provide and maintain footway lighting systems and street naming and numbering.

~~24-26.~~ To exercise the power to provide and maintain bus shelters and to give consent to Parish Councils for the erection of seats and shelters.

~~22-27.~~ Authority in conjunction with the Head of Legal to make Orders for the closure of highways for a period of 24 hours or less for special purposes under Section 21 of the Town Police Clauses Act 1847 and Road Traffic Act 1984.

Allotments

~~23-28.~~ To administer allotments and the discharge of related statutory functions.

Contract Standing Orders Commissioning and Contract Management

29. To develop the key Commissioning and Procurement Strategies, Plans and Procedures for officers to follow.

30. To monitor and make suggested changes to the Contract Standing Orders document in order to comply with legislation.

31. To agree waivers in accordance with Contract Standing Orders.

32. To lead on contract management within the authority, including monitoring of the Council's major contracts – waste and recycling, street cleansing, public conveniences, leisure centres and grounds maintenance.

33. To issue defaults and rectification notices to contractors who do not meet the terms of service.

34. To agree to the extension or termination of contracts within the parameters set out in Contract Standing Orders.

24-35. Monitor and record expressions of interest for the Community Right to Challenge as per the Localism Act 2011 and The Community right to challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012.

Customer Services

36. To provide the frontline service for all residents contacting the Council using varying methods of communication and multiple locations.

37. The development of the Council's Customer Charter, Complaints Strategy and procedures.

Miscellaneous

25-38. In conjunction with the Head of Legal, to serve Notices under section 23 of the Local Government (Miscellaneous Provisions) Act 1976 in relation to dangerous trees.

26-39. To implement and enforce the provisions of the Land Drainage Act 1991.

27.1. To undertake responsibility for the effects of oil pollution on the coast line.

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DELEGATIONS TO THE HEAD OF PLANNING

Development Management Control

1. To determine applications, negotiate and enter into S.106 Agreements, to agree minor variations to planning obligations, to respond to prior notifications, and to make observations on behalf of the Borough Council in accordance with the provisions of the appropriate Development Plan or other adopted Borough Council Planning Policy Guidance.

2. The delegated powers in paragraph 1 above shall not be exercised where in the following Circumstances:

(a) Any planning applications submitted by a member of the Council or Members of staff and for Council development (whether involving Council owned land or not);

(b) in relation to determining planning applications where the decision of the Head of Planning would conflict with any written representation received within the specified representation period from:

- (i) — any Member of the Borough Council or;
- (ii) —
- (iii) — a statutory consultee; or
- (iv) —
- (v) (i) a Parish or Town Council;

provided that any such representations from (ii) or (iii) above are, in the opinion of the Head of Planning, based upon relevant material planning considerations.

(c) applications where the decision of the Head of Planning would conflict with the representation from a Parish or Town Council or with letters of representations, or petitions, from at least three or should that be five separate addresses received within the

specified representation period from persons or bodies (other than those set out in (a) above) provided that any such representations are, in the opinion of the Head of Planning, based upon relevant planning considerations and a relevant Ward Member requests that the application should be reported to the Planning Committee (see 2 (i) above) (e) applications submitted by Members of the Council and Members of Staff; and

(d) applications which the Head of Planning considers are sufficiently major or raise difficult questions of policy interpretation or any unusual or difficult issues which warrant Member determination.

3. During the appeal process to negotiate and enter into S.106 Agreements and conditions in accordance with Council Local Plan policies and any pre-appeal discussions with relevant Members.

Trees, Hedgerows and High Hedges

4. To respond to notifications under the Town and Country Planning Act 1990 of intention to cut down, uproot, top or lop a tree within a Conservation Area or for trees covered by Tree Preservation Orders.

5. To determine Felling Licence applications.

Comment [KB1]: This would pick up recommendation b of scrutiny report

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Comment [KB2]: As referred to in scrutiny report

Comment [KB3]: Need to add in reference as in scrutiny report about speaking at the Planning Cttee (member or parish council or both)

6. To make and confirm, where there are no objections, Tree Preservation Orders.
7. Refusals of permission to cut down trees and approvals to lopping, silvicultural thinning of woodlands and routine cutting of coppice woodland not affecting draw trees.
8. Authority under Regulation 12 of the Hedgerows Regulations 1997 (as amended) and Section 214B of the Town and Country Planning Act 1990 (as amended) to enter onto land.
9. To respond to hedgerow notifications in consultation with the appropriate Ward Member(s).
10. Subject to consultation with the Head of Legal, to serve notices relating to dangerous trees, in accordance with Section 23 of the Local Government (Miscellaneous Provisions) Act 1976.
11. To consider and determine the Council's response to the formal complaints in relation to high hedges, to issue remedial notices and determine all other matters in relation to high hedges in accordance with Part 8 of the Anti-Social Behaviour Act 2003.

Enforcement

- ~~12. To authorise, sign and serve all enforcement and other notices under the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements)(England) Regulations 2007 on behalf of the Council. serve Enforcement Notices and/or to issue "breach of condition notices" to secure compliance with planning conditions, following consultation with the Planning Committee Chair or Vice Chair and local ward member(s).~~
- ~~13. To serve Notices under the Town and Country Planning Act 1990 requiring the proper maintenance of land and the removal or obliteration of any placard or poster.~~
- ~~14. In cases of urgency between meetings to serve a "Stop Notice", a "Temporary Stop Notice" an Enforcement Notices or a Listed Building Enforcement Notice (following consultation with the Chairman or the Vice-Chairman of the Planning Committee and a relevant Ward Member).~~
- ~~15. To serve a requisition for information under Section 330 of the Town and Country Planning Act 1990.~~
13. To authorise the Head of Legal to take necessary legal proceedings in respect of planning enforcement legislation, including applications for injunction and taking direct action.

Conservation of Historic Environment

- ~~146. To authorise, sign and serve all -In cases of extreme urgency between meetings to serve a Building Preservation Notices and Urgent Works Notices under Section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990.~~
- ~~157. To serve Urgent Works Notices and carry out works where it is considered urgently necessary for the preservation of a listed building.~~
168. To input to consultations by Church Authorities under the Ecclesiastical Exemption Regulations.

Miscellaneous

179. To respond to any pre-application or other consultation on nationally significant infrastructure projects submitted or to be submitted to the Major Infrastructure Planning Unit under the Planning Act 2008.

18. To respond to consultations from neighbouring planning authorities including Kent County Council following consultation with the Planning Committee Chair or Vice Chair and relevant ward member(s).

19. To authorise the Head of Legal Services to apply for judicial review of decisions made by the Planning Inspectorate in consultation with the Planning Committee Chair or Vice Chair.

19.-To exercise powers of entry in accordance with Sections 196A and 324 of the Town and Country Planning Act 1990 (as amended) and Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

209. To screen and scope Environmental Impact Assessments, in accordance with The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended).

214. To determine applications for Certificates of Lawful Use or Development.

222. To carry out consultations under the procedure set out for minor developments by Government departments.

23. To accept non-material amendments to approve schemes including minor amendments to conditions and planning obligations

24. To approve details reserved in conditional permissions (facing materials, landscaping, joinery details etc.)

25. To determine whether an application should not be considered in outline.

26. To serve notices requiring information regarding disposal of waste pursuant to Section 93 of the Control of Pollution Act 1974.

27. To act as "responsible authority" within the meaning of the Licensing Act 2003 and Gambling Act 2005.

28. To implement the provisions of the Environmental Assessment of Plans and Programmes Regulations 2004.

29. To authorise officers to apply for judicial approval and to undertake surveillance under the Regulation of Investigatory Powers Act 2000, excluding cases where it is likely that confidential information will be acquired.

30. To be responsible for the Council's Building Control function by way of representation at the Joint Committee of the South Thames Gateway Building Control Partnership.

31. To implement and enforce the provisions of the Antisocial Behaviour Act 2003 in relation to high hedges and miscellaneous powers.

| 32. To exercise responsibility for local land charges

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PART 4.6 - STANDARDS COMMITTEE PROCEDURE RULES

The Pre-Hearing Process

Procedure for Local Standards Hearings

Pre-Hearing Process

Upon receipt of the final report of the Investigating Officer, including a finding that the Subject Member failed to comply with the Code of Conduct for Members, or where the Standards Committee determines that the matter should be considered at a formal hearing, the Monitoring Officer shall:

- (a) Arrange a date for the Standards Committee's hearing;
- (b) Constitute a Hearings Panel comprising of three members, the Chair of which is to be appointed by the Monitoring Officer in consultation with the Chair / Vice Chair of the Standards Committee;
- (c) Send a copy of the report to the Subject Member and advise him of the date, time and place for the hearing;
- (de) Send a copy of the report to the Complainant and advise him of the date, time and place for the hearing;
- (ed) Where the complaint relates to a Parish/Town Councillor, notify that Parish or Town Council of the date, time and place of the hearing;
- (fe) Request the Subject Member to complete and return the Pre-Hearing Forms within 14 days of receipt;
- (gf) In the light of any Pre-Hearing Forms returned by the Subject Member, determine whether the Standards Committee will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- (gh) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and high-lighting the issues which the Standards Committee will need to address, and
- (ih) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
 - (i) All Members of the Standards Committee who will conduct the hearing;
 - (ii) The Subject Member;
 - (iii) The Complainant, and
 - (iv) The Investigating Officer.

The Hearing Procedure

Standards Committee or any constituted Sub Committee

Procedure for Local Standards Hearings

1. Interpretation

- 1.1. "Subject Member" means the Member of the Authority who is the subject of the allegation being considered by the Hearings Panel, unless stated otherwise. It also includes the ~~Subject Member's~~ nominated representative of the Subject Member(s).
- 1.2. "Complainant" means the person who has submitted the complaint in respect of the Members alleged breach of the Code.
- 1.3. "Investigating Officer" references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation which may include the Monitoring Officer, and his or her nominated representative.
- 1.4. "The Matter" is the subject matter of the Investigating Officer's report.
- 1.5. "The Hearings Panel" refers to a Sub-Committee of the Standards Committee which it has delegated the conduct of the hearing.
- 1.6. "Chairman" refers to the person presiding at the hearing.
- 1.7. "Independent Person" refers to a non voting person who has been appointed, following advertisement, by a positive vote from a majority of all the Members of Council and who's views must be sought and taken into account.
- 1.8. "The Committee Support Officer" means an officer of the Authority responsible for supporting the Hearings Panel's discharge of its functions and recording the decisions of the Hearings Panel.
- 1.9. "Legal Advisor" means the officer responsible for providing legal advice to the Hearings Panel. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the Authority.

2. Rules of Procedure

- 2.1. The Hearings Panel consists of three voting elected Members drawn from the Standards Committee, one of whom shall be elected as Chairman.
- 2.2. The quorum for a meeting of the Hearings Panel is three elected Members.

Swale Borough Council Constitution

March 2013

Part 4.6 Standards Committee Procedure Rules

- 2.3. If the Subject Member is not present at the start of the hearing the Chairman shall ask the Legal Advisor whether the Subject Member has indicated his/her intention not to attend the hearing. The Hearing Panel shall then consider any reasons which the Subject Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend. If the Hearings Panel is satisfied with such reasons, it shall adjourn the hearing to another date; however if they are not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Hearings Panel shall decide whether to consider the matter and make a determination in the absence of the Subject Member or to adjourn the hearing to another date.
- 2.4. If the Investigating Officer is not present, the Standards Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer.
- 2.5. The Hearings Panel may exclude the press and public from the meeting where it appears likely that confidential or exempt information will be disclosed. At the start of the meeting the Chairman shall ask the Subject Member, Investigating Officer and the Legal Adviser whether they wish to make any representations that the Hearings Panel exclude the Press and public from all or any part of the hearing. Full reasons for the request must be given and the other parties will be given the opportunity to respond.

On hearing the arguments of all parties the Standards Committee shall determine whether to exclude the press and public from all or any part of the hearing. Where no resolution to exclude press and public is made the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available.

- 2.6. The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.
- 2.7. All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.

3. Representation

The Subject Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

4. Conduct of the Hearing

- 4.1. Subject to paragraph 4.2 below, the order of business will be as follows:

~~(a)~~ — election of Chairman;

~~(b)~~(a) apologies for absence;

~~(c)~~(b) declarations of interest

~~(d)~~(c) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (see paragraph 2.3 above);

~~(e)~~(d) introduction by the Chairman of all persons present;

~~(f)~~(e) receive representations as to whether the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the press and public;

~~(g)~~(f) determine whether the press and public are to be excluded from any part of the hearing and/or whether any documents (or parts thereof) should be withheld from the press and public;

4.2. Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that, upon taking legal advice, such a variation is necessary in the interests of fairness.

4.3. The Hearings Panel may adjourn the hearing at any time.

4.4. The Hearings Panel may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Hearings Panel should be shared with the Subject Member and the Investigating Officer if they are present.

4.5. At the start of the hearing the Chairman will confirm that all present know the procedure which will be followed by the Hearings Panel in determining the matter.

4.6. **Presentation of the Pre-Hearing Summary Report**

4.6.1. The Monitoring Officer, or his representative, will present the pre-hearing summary report highlighting any points of difference in respect of which the Subject Member has stated that he/she disagrees with any finding of fact in the Investigating Officer's report.

4.6.2. The Chairman will then ask the Subject Member to confirm that this is an accurate summary of the issues and that he/she maintains the position as set out in the pre-hearing summary report.

4.6.3. The Chairman will then give the Subject Member the opportunity to identify any additional points upon which he/she disagrees with any finding of fact in the Investigating Officer's report. In such cases the Subject Member will need to explain, to the satisfaction of the Hearings Panel; why these points were not identified during the pre-hearing process.

4.6.4. Where the Subject Members fails to explain, to the satisfaction of the Hearings Panel, reasons for failing to identify each additional point of difference as part of the pre-hearing process, the Hearings Panel may decide to continue with the hearing without allowing the Subject Member to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report but in respect

of which they failed to identify a point of difference as part of the prehearing process.

- 4.6.5. If the Hearings Panel is satisfied with the Subject Members reasons the Chairman shall then ask the Investigating Officer (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Alternatively, the Hearings Panel may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.

4.7. **Presentation of the Investigating Officer's Report**

- 4.7.1. The Investigating Officer to present their report; including any documentary evidence or other material; having particular regard to any points of difference identified by the Subject Member and explain their reasoning, on the basis of their findings of fact, why they concluded that the Subject Member had failed to comply with the Code of Conduct.
- 4.7.2. Where the Subject Member admits that they failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Hearings Panel may then make a determination that the Councillor has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken (see paragraph 4.16 below).
- 4.7.3. Where no admission is made by the Subject Member the Investigating Officer may call witnesses as necessary to address any points of difference. **No new points will be permitted.**
- 4.7.4. In the absence of the Investigating Officer, the Hearings Panel shall determine on the advice of the Legal Advisor which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses' attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
- 4.7.5. No cross-examination shall be permitted however, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness, the Chairman shall ask the Subject Member if there are any matters upon which the Standards Committee should seek the advice of the Investigating Officer or the witness.
- 4.7.6. The Hearings Panel may question the Investigating Officer upon the content of their report and any witness called.

4.8. **Presentation of the Subject Member's case**

- 4.8.1. The Chairman shall then invite the Subject Member to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.

4.8.2. No cross-examination shall be permitted but, at the conclusion of the Subject Members evidence and/or of the evidence of each witness, the Chairman shall ask the Investigating Officer if there are any matters upon which the Hearings Panel should seek the advice of the Councillor or the witness.

4.8.3. The Hearings Panel may question the Subject Member and any witness called.

4.9. **Witnesses**

The Hearings Panel shall be entitled to refuse to hear evidence from the Investigating Officer, the Councillor or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the Code of Conduct.

4.10. **Summing up**

The Chairman will invite the Investigating Officer to sum up the complaint followed by the Subject Member who will sum up their case.

4.11. **Views/Submissions of the Independent Person**

The Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct.

4.12. **Additional Evidence**

4.12.1. At the conclusion of the evidence, the Chairman shall check with the Members of the Hearings Panel that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

4.12.2. If the Hearings Panel at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, they may; on not more than one occasion; adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and/or to undertake further investigation on any point specified by the Hearings Panel.

4.13. **Deliberations of the Hearings Panel**

4.13.1. The Hearing Panel will adjourn the hearing and deliberate in private; assisted on matters of law by the legal advisor; to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.

4.13.2. The Hearings Panel shall take its decision on the balance of probability based on the evidence which it has received at the hearing.

- 4.13.3. The Hearing Panel may at any time come out of private session and reconvene the hearing in public in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.
- 4.13.4. At the conclusion of their consideration, the Hearings Panel shall consider whether it is minded to make any recommendations to the Authority with a view to promoting high standards of conduct among Councillors.

4.14. Announcing the decision

The Hearing Panel will reconvene the hearing in public and the Chairman will announce whether or not on the facts found, the Panel considers that there has been a breach of the Code of Conduct as set out in the Investigating Officers report.

4.15. Determination of No Breach of the Code of Conduct

- 4.15.1. Where the Hearings Panel determines that the Councillor has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report the Chairman will set out any recommendations which the Hearings Panel is minded to make to the Authority with a view to promoting high standards of conduct among Councillors and seek the views of the Subject Member, the Investigating Officer and the Legal Advisor before the Hearings Panel finalises any such recommendations.
- 4.15.2. The Chairman will then ask the Subject Member whether they have any objection to publication by the authority o a statement of its finding.

4.16. Determination that there was a Breach of the Code of Conduct

- 4.16.1. Where the Hearings Panel determines that the Subject Member has failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report the Chairman will invite the Independent Person, the Investigating Officer (or in their absence, the Legal Advisor) and the Subject Member to make their representations as to whether or not any sanctions should be applied and, if so, what form they should take. Possible sanctions include:
- (a) Reporting its findings to Council [*or to the Parish Council*] for information;
 - (b) Recommending to the Subject Member's Group Leader (or in the case of ungrouped Members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;s
 - (c) Recommending to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - (d) Instructing the Monitoring Officer to [*or recommend that the Parish Council*] arrange training for the Subject Member;

- (e) Removing the Subject Member [*or recommend to the Parish Council that the Member be removed*] from all outside appointments to which they has been appointed or nominated by the authority [*or by the Parish Council*];
- (f) Withdrawing [*or recommend to the Parish Council that it withdraws*] facilities provided to the Subject Member by the Council, such as a computer, website and/or email and Internet access; or
- (g) Excluding [*or recommend that the Parish Council exclude*] the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

4.16.2. When deciding whether to apply one or more sanctions, the Hearing Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Hearing Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

- (a) What was the Subject Member's intention and did they know that they were failing to follow the District or Parish Council's Code of Conduct?
- (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- (c) Has there been a breach of trust?
- (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- (e) What was the result/impact of failing to follow the District or Parish Council's Code of Conduct?
- (f) How serious was the incident?
- (g) Does the Subject Member accept that they were at fault?
- (h) Did the Subject Member apologise to the relevant persons?
- (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
- (j) Has the Subject Member previously breached of the District or Parish] Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?

4.16.3. Having heard the representations the Chairman will ensure that each Member of the Hearings Panel is satisfied that they have sufficient information to enable them to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.

4.16.4. The Chairman should then set out any recommendations which the Standards Committee is minded to make to the Authority with a view to promoting high standards of conduct among Councillors and seek the views of the Independent Person, the Investigating Officer (or in their absence, the Legal Advisor) and the Subject Member.

4.16.5. The Hearing Panel will adjourn and deliberate in private to consider whether to impose a sanction, and where appropriate what sanction to impose and when that sanction should take effect. In addition the they will consider any recommendations to be made to the Authority.

4.16.6. At the completion of their consideration, the Hearings Panel will reconvene the hearing in public and the Chairman will announce the Hearings Panel's decision as to whether a sanction is to be imposed the nature of such a sanction, and when it should take effect, together with the principal reasons for those decisions. They will then give details of any recommendations to be made to the authority.

4.17. The close of the hearing

The Hearings Panel will announce its decision on the day of the hearing and provide the Legal Advisor with a short written statement of their decision, which the Legal Advisor will use as the basis of the formal decision notice. The Chairman will then formally close the meeting.

5. Publication and notification of the decision and recommendations

- 5.1. Following the close of the hearing, the Legal Advisor will agree with the Chairman of the Hearings Panel a formal written decision notice of the Hearings Panel's determination.
- 5.2. Within 20 working days of the hearing, the Monitoring Officer will provide a copy of the full written decision and the reasons for that decision, including any recommendations, to:
 - (a) the Subject Member;
 - (b) the Complainant;
 - (c) in the case of a Parish Council Member; the Clerk to that Members Parish Council.
- 5.3. Within 20 working days of the Hearing Panel's announcement of its decision and recommendations, the Monitoring Officer will publish a summary of the Hearing Panel's decision and recommendations and reasons for the decision and recommendations on the Council's website.

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Add to Part 4.2 Access to Information Procedure Rules

12. Member and Officer Access to Exempt Reports

All members will be served notice of all meetings of the Council and other committees and will therefore be in receipt of exempt reports. In exceptional circumstances, to be decided by the Monitoring Officer in consultation with the Chair / Vice Chair of the Scrutiny Committee, the exempt report will not be published as part of the full agenda and will instead be tabled at the meeting whereby members and officers will have to sign for a numbered copy of the report which is to be returned at the end of the meeting before leaving the meeting room.

Exceptional circumstances are defined as:

- (i) Where the business to be conducted involves commercially sensitive information, the disclosure of which could prejudice the Council's negotiating position; or
- (ii) Where there is a need to preserve legal professional privilege, the disclosure of which could prejudice any action contemplated by the Council.

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Working Paper: General Purposes Committee 8 March 2018: Proposed changes to Contract Standing Orders.

1. As part of the review of the Constitution, it is necessary to consider whether it is appropriate to amend Contract Standing Orders (CSO) to ensure the content reflects current legislation and requirements.
2. Purchasing decisions and processes are important because the money involved is public money. The purpose of Contract Standing Orders is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Council furthers its corporate objectives.
3. Even when a tender process is not required under the Directives, for example because the estimated value of a contract falls below the relevant threshold, EU Treaty-based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply and some degree of advertising, appropriate to the scale of the contract, is likely to be necessary to demonstrate transparency. This is in line with the UK objective of achieving value for money in all public procurement, not just that which is covered by the procurement Directives. The proposed amendments recognise and comply with the principles of the EU Treaties, which at the current time are also enshrined in UK law and so will continue even after Brexit.
4. The aim has been to create a balance between the need for scrutiny and checks via thresholds of spend, templates for audit purposes and the involvement of Members in the decision making but also making it easier for officers to procure the service required and also for local businesses to bid for the work.
5. Appendix I identifies the detailed changes to CSOs together with the rationale for such changes, as the basis for consideration by the Committee. Annex II shows the full CSO document.
6. Research has been undertaken with other Kent authorities in helping to make the suggested changes.

RECOMMENDATION: It is proposed that the amendments to CSOs as set out in Appendix I, are recommended to Council

Martyn Cassell, Head of Commissioning and Customer Contact.

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ANNEX I - General Purposes Committee 8 March 2018: Proposed changes to Contract Standing Orders.

Clause	Current wording	Proposed wording	Rationale
3.3	New clause	3.3.11 – All contract conditions must contain reference to Data Protection and the emerging GDPR.	The new regulations place further emphasis on the control of personal information and it is vital that our terms and conditions include a mechanism for officers to ensure our contractors meet the required levels.
3.3	New clause	3.3.12 – All contracts with a bronze, silver or gold Safeguarding assurance must have adequate provision to ensure that appropriate safeguarding measures are in place throughout the contract.	A new method of capturing safeguarding information has been included in the tender documents and allows us to meet our statutory needs on safeguarding children and vulnerable adults. This clause allows a mechanism for officers to ensure our contractors meet the required levels.
3.6	All contracts of a value of £25,000 or more or which involve a substantial risk to the Council must be subject to a written risk assessment, which should be kept on the contract file.	All contracts of a value of £25,000 or more or which involve a substantial risk to the Council must be subject to a written risk assessment, which should be kept on the contract file and updated when required or annually whichever occurs first.	Adds in a requirement for contract lead officers to review risk throughout the length of the contract, not just at the start.
5.5	It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Council's	It is a disciplinary offence to fail to comply with these Contract Standing Orders and the	Corporate Services Director post no longer

	Purchasing Guide. All employees have a duty to report breaches of Contract Standing Orders to the Corporate Services Director.	Council's Purchasing Guide. All employees have a duty to report breaches of Contract Standing Orders to the Chief Financial Officer.	exists.
7.4	Current financial values relating to EU tender thresholds	Table has been updated with the new figures.	Requirement by law.
7.4	£75,000-£164,176 a) At least three written tenders in advance.	a) At least three electronic tenders in advance.	This was correcting an error from the last refresh as all tenders are now submitted electronically and not written.
7.6	Financial appraisals shall be carried out by Financial Services on all Contractors submitting a bid of £75,000 and above, this will be undertaken at the PQQ or suitability assessment stage. For contracts above £30,000 but not exceeding £74,999, prior to award of contract the proposed successful contractor shall be subject to financial appraisal by Financial Services.	Financial appraisals shall be carried out by Financial Services on all Tenderers submitting a bid of £30,000 and above. Contracts with a whole life value > £100,000 shall have a financial appraisal undertaken by financial services on or near the anniversary date of the contract award date.	This is a change to add in an extra level of scrutiny in light of recent events with private companies and public sector contracts.
8.3	All contracts valued at £75,000 or above must be reported to the Cabinet for approval and shall be executed as a deed, there is a 5 calendar day call in period post Cabinet, Once the Minutes have been published, usually the following Monday) All other contracts may be signed by officers with appropriate delegated authority. £74,999 shall be the threshold for the purposes of Regulation 8 of the Local Authority (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.	All contracts valued at £100,000 or above must be reported to the Cabinet for approval and shall be executed as a deed, there is a 5 calendar day call in period post Cabinet, Once the Minutes have been published, usually the following Monday) All other contracts may be signed by officers with appropriate delegated authority. £99,999 shall be the threshold for the purposes of Regulation 8 of the Local Authority (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.	It is proposed to increase the value of contracts that require Cabinet approval from £75,000 to £100,000 to bring it in line with the key decision value for all other decisions.
13.1.4	at the discretion of the relevant Head of Service who may for contracts exceeding £25,000 but not exceeding £74,999 proceed in a manner most expedient to the efficient management of the service / Council with reasons recorded in writing.	at the discretion of the relevant Head of Service who may for contracts exceeding £25,000 but not exceeding £99,999 proceed in a manner most expedient to the efficient management of the service / Council with reasons recorded in	As per clause 8.3 the amount a Head of Service can sign a waiver off for needs to increase up to £99,999.

		writing.	
13.3.2 and 13.3.3 and 14.2.2	Old values of £74,999 and £75,000	Amended to change values to £99,999 and £100,000 as per above	As per change to 8.3.

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Part 4.12 - CONTRACT STANDING ORDERS (CSOs)

- Approved 12 January 2011;
- Revised 22 October 2014 – PCR 2015
- January 2016 New EU thresholds
- Approved **Minute 904(e)** comes into force 1/1/2017
- January 2018 New EU thresholds
- Draft March 2018 subject to HOS / Legal / Procurement Board / SMT / GPC / Full Council

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1 Introduction – Purpose of the Contract Standing Orders

- 1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Council:
 - 1.1.1 Furthers its corporate objectives.
 - 1.1.2 Uses its resources efficiently.
 - 1.1.3 Purchases quality goods, services and works.
 - 1.1.4 Safeguards its reputation from any implication of dishonesty or corruption.
- 1.2 Purchasing by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings.
- 1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 1.4 These Contract Standing Orders do not provide guidelines on what is the best way to purchase works, supplies (goods) and services. They set out minimum requirements to be followed. Further information and guidelines are set out in the Council's Purchasing Guide, Procurement Strategy, Code of Conduct, Safety Policy, Equal Opportunities Policy, Local First Policy, Safeguarding Policy, Commissioning Framework, Protected Disclosure Policy (Whistleblowing) and Data Quality Standard.

2 General Principles – Application and Compliance with Contract Standing Orders

- 2.1 These Contract Standing Orders apply to the purchase by or on behalf of the Council of works, supplies (goods) and services.
- 2.2 These Contract Standing Orders apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.
- 2.3 These Contract Standing Orders do not apply to:
 - 2.3.1 Employment contracts;
 - 2.3.2 Contracts relating solely to the purchase or sale of interests in land;
 - 2.3.3 Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings;
 - 2.3.4 Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector

bodies;

- 2.3.5 Contractual arrangements with other local authority's or similar body's where the Council is not the lead authority in which case the lead authority's Standing Orders shall prevail. Contracts involving shared services, the CSO of the lead authority in the partnership shall apply even if different from the Council's;
- 2.3.6 Framework Agreements providing that the head of Legal and finance has agreed the terms of the Framework Agreement.

3 General Principles Applying to All Contracts

- 3.1 All orders used in connection with Contracts shall be on the Council's official order template;
- 3.2 Standard contract clauses shall be used in all contracts of a value of £25,000 or more. The standard contract clauses are issued by Legal Services and can be found on the intranet;
- 3.3 As a minimum, all contracts of a value of £25,000 or more shall include clauses which set out:
 - 3.3.1 The works, supplies (goods), services, material, matters or things to be carried out or supplied;
 - 3.3.2 The time within which the contract is to be performed;
 - 3.3.3 Quality requirements and / or standards which must be met. Including arrangements for securing good data quality;
 - 3.3.4 Requirements on the contractor to hold and maintain appropriate insurance/s / licenses;
 - 3.3.5 What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part);
 - 3.3.6 Requirements on the contractor and sub-contractors to comply with all relevant equalities and health and safety legislation;
 - 3.3.7 That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or s117(2) Local Government Act 1972;
 - 3.3.8 Arrangements required to address Public Interest Disclosure (Whistleblowing) issues that arise;
 - 3.3.9 All contract conditions and form of tender and declarations must contain reference to the Bribery Act 2010;

- 3.3.10 All contracts above the relevant EU threshold must contain reference to the Social Value Act, consideration will always be given for contracts. below the relevant EU threshold.
- 3.3.11 All contract conditions must contain reference to the Data Protection and the emerging GDPR.
- 3.3.12 All contracts with a bronze, silver or gold level of safeguarding assurance - must have adequate provision to ensure that appropriate safeguarding measures are in place throughout the life of the contract.
- 3.4 Written contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council. In this context, “non-commercial” means requirements unrelated to the actual performance of the contract.
- 3.5 All contracts shall include relevant specifications and / or briefs / technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council’s Purchasing Guide. All procurement documentation including specifications and / or briefs / technical requirements and relevant contractual documentation need to be advertised all at the same time regardless of the procurement procedure.
- 3.6 All contracts of a value of £25,000 or more or which involve a substantial risk to the Council must be subject to a written risk assessment, which should be kept on the contract file and updated when required or annually whichever occurs first.

4 Regulatory Context

- 4.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:
 - 4.1.1 All relevant statutory provisions;
 - 4.1.2 The Council’s Constitution including these Contract Standing Orders, the Council’s Financial Regulations and Scheme of Delegation;
 - 4.1.3 The Council’s Purchasing Guide and other policies and procedures of the Council as appropriate;
- 4.2 In the event of conflict in legislation, E.U. Rules will take precedence, followed by UK legislation, then the Council’s Constitution, the Council’s Purchasing Guide the Council’s and guidelines, policies and procedures.

5 Responsibilities of Directors and Responsible Officers

- 5.1 Each Director shall:
 - 5.1.1 be responsible for the purchasing undertaken by his / her

Directorate;

- 5.1.2 be accountable to the Cabinet for the performance of his / her duties in relation to purchasing;
 - 5.1.3 comply with the Council's decision making processes including, where appropriate, implementing and operating a Scheme of Delegation;
 - 5.1.4 appoint a Responsible / Lead Officer in writing who shall be an authorised signatory;
 - 5.1.5 take immediate action in the event of breach of these Contract Standing Orders.
- 5.2 A Responsible / Lead Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Council.
- 5.3 A Responsible / Lead Officer's duties in respect of purchasing are to ensure:
- 5.3.1 compliance with all Regulatory Provisions and integrity of the tender process;
 - 5.3.2 compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest affecting any purchasing process;
 - 5.3.3 that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used;
 - 5.3.4 the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings;
 - 5.3.5 compliance with the Council's decision making processes;
 - 5.3.6 that all contracts of a value of £5,000 or more are included on the Council's Contract Register;
 - 5.3.7 that proper records of all contract award procedures, waivers, exemptions and extensions are maintained, with separate files for each purchase of a value of £25,000 or more;
 - 5.3.8 All Contracts over £25,000 will be:
 - 1. In the form approved by Legal Services;
 - 2. executed;
 - 3. a minimum of three copies of this contract are required; one to be stored in the Council's strong room; the second to the winning bidder/s and a copy for the

lead officer or their staff. An electronic copy of the signed / sealed contract is to be emailed to procurement.

5.3.9 that value for money is achieved;

5.3.10 that a risk assessment is carried out to ascertain whether a bond or guarantee is required to protect the Council in the event of non-performance.

5.4 In considering how best to procure works, supplies and services, Directors and / or Responsible Officers (as appropriate in the context), shall take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-procurement / purchasing methods, and the availability of local authority charging and trading powers under the Local Government Act 2003.

5.5 It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Council's Purchasing Guide. All employees have a duty to report breaches of Contract Standing Orders to the Chief Financial Officer.

5.6 Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services must immediately report that suspicion to the Head of Internal Audit.

6 Scheme of Delegation

6.1 Council purchasing may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme(s) of Delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the officer delegating the task and notified to the relevant Director.

6.2 Officers shall, where appropriate, be informed by their Director of the extent of any delegated authority and applicable financial thresholds.

7 Financial Thresholds and Procedures

7.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values. All Figures quoted in this document are exclusive of VAT.

7.2 **There is a general presumption in favour of competition.** Wherever possible, contract opportunities should be advertised by way of a public notice. The Council must consider the potential effect of a contract on interstate trade (at a European level). If a contract may be of interest to contractors from other member states then this may result in a need to advertise in a manner which ensures that potential contractors from other member states are aware of the opportunity, **even for small value contracts or contracts under the E.U. Threshold levels outlined below.**

7.3 The public notice referred to at 7.2 may take the form of a notice or

advertisement in an electronic or paper format, on an easily accessible website or other electronic media and / or in the press, trade journals or Official Journal of the European Union (“OJEU”) (as appropriate). The Responsible / Lead Officer may choose to place one or more public notices in different media. As a minimum any tender valued at £25,000 or above will be advertised on www.swale.gov.uk, the Kent Portal and Contracts Finder.

7.4 Table setting out financial thresholds and procedures

Total net value	Type of contract	Procedure to be used
£0 - £999	works, supplies and services	<ul style="list-style-type: none"> a) At least one quotation in advance; b) All purchases however small to be in writing, on an official order; c) Approved by the relevant Head of Service or authorised officer; d) Officer should be able to provide a rationale for why they selected the provider used.
Procedure to be used £1,000 to £4,999	works, supplies and services	<ul style="list-style-type: none"> a) At least two quotes in advance; b) All purchases however small to be in writing, on an official order; c) Consideration given to Purchasing Scheme's e.g. to provide better V.F.M.; d) Approved by the relevant Head of Service or authorised officer; e) Records maintained to demonstrate probity and V.F.M. obtained.
Procedure to be used £5,000 to £24,999	works, supplies and services	<ul style="list-style-type: none"> a) At least three quotes in advance; b) Contracts & Procurement need to be made aware of any procurement where the whole life value is >£5,000. c) All purchases however small to be in writing, on an official order d) Consideration given to Purchasing Scheme's e.g. to provide better ; V.F.M.; e) Approved by the relevant Head of Service or authorised officer; f) Records maintained to demonstrate probity and VFM obtained; g) Record to be entered on the Council s Contract Register;
Procedure to be used £25,000 to 99,999	works, supplies and services	<ul style="list-style-type: none"> a) At least three electronic tenders in advance b) As a minimum to be advertised on www.swale.gov.uk, the Council's E-procurement System plus Contract Finder; c) Tenders opened at the same time by the Democratic and Electoral Services Manager (or nominee), in the presence of the Responsible Officer (or nominee) and a suitable person from Legal Services (or Nominee); d) Record to be entered on the Council s Contract Register; e) Contracts in writing using the standard clauses and to include the core clauses as set out within the CSOs document; f) Award of contract approved by the Responsible Officer plus signed by another officer; g) Risk assessment conducted (in writing) and kept on the file.

<p>Procedure to be used £100,000 to £181,302**</p>	<p>works, supplies and services</p>	<p>a) At least three electronic tenders in advance; b) As a minimum to be advertised www.swale.gov.uk the Council's E-procurement System plus Contract Finder; c) List of contractors invited to tender approved by the Responsible Officer; d) Tenders opened at the same time by the Democratic and Electoral Services Manager (or nominee), in the presence of the Responsible Officer (or nominee) and a suitable person from Legal Services (or Nominee); e) Tenderers subjected to Financial Appraisal prior to award of tender; f) Approval required from the Cabinet for award of contract, waiver from CSOs and extensions to contracts; g) Contract executed as a deed; h) Record of the contract entered on the Councils Contract Register; i) Standard contract clauses to be used and to include the core clauses as set out within the CSOs document; j) Risk assessment conducted (in writing) and kept on the file.</p>
<p>Procedure to be used £181,302** plus **EU Threshold</p>	<p>Supplies and services</p>	<p>a) EU Rules apply – full competitive process with tenders following advertisement in the O.J.E.U. for supplies and services, there is a presumption in favour of advertising and a competitive process. This will also be advertised on the Swale website, The Council's e-procurement system and Contract Finder. b) Points a; c; d; e; f; g; h; I and j as above for works, supplies and services for £100,000 to £181,302**</p>
<p>Procedure to be used 181,302 to 4,551,413**</p>	<p>Works</p>	<p>a) Points a – j as above for works, supplies and services for £100,000 to £181,302**</p>
<p>Procedure to be used £615,278** Plus **EU Threshold</p>	<p>Light Touch Regime Services</p>	<p>a) Points a – j as above for works, supplies and services for £100,000 to £615,278**</p>
<p>Procedure to be used £4,533,413** plus **EU Threshold</p>	<p>Works</p>	<p>a) EU Rules apply – full competitive process with tenders following advertisement in the O.J.E.U. b) Points a; c; d; e; f; g; h; I and j as above for works, supplies and services for £100,000 to £181,302**</p>

* For the purposes of the EU Rules services are divided into two types and the EU Rules apply to a different degree. Responsible Officers should act cautiously and seek advice when considering the procedure to be used and application of the EU Rules to services contracts.
** or relevant threshold in force at the time under the EU Rules.

7.5 Where contracts are of a type and value which means that they are subject to the EU Rules then there are four main types of EU procedures available. These are the open, restricted, competitive dialogue and competitive negotiated procedures. Care must be taken to ensure that the correct and most appropriate

procedure is used and assistance on the choice and use of EU procedure should be sought from Legal Services or the Procurement team.

- 7.6 Financial appraisals shall be carried out by Financial Services on all Tenderers submitting a bid of £30,000 and above.. Contracts with a whole life value > £100,000 shall have a financial appraisal undertaken by financial services on or near the anniversary date of the contract award date.
- 7.7 Contracts with a high degree of complexity or where there is a lack of knowledge in house may require the assistance of a consultant. With Director approval, the Lead Officer may need to compile a pre-inception document, (PID) and a Performance Fund Bid to SMT prior to any procurement.

8 Financial Thresholds and Processes Applying to Approval and Execution of Contracts

- 8.1 For contracts over the relevant EU Threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing by the relevant Director in advance.
- 8.2 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his / her general obligations under these Contract Standing Orders ensure, in particular, that:
- 8.2.1 the appropriate approvals have been obtained to authorise that decision; and;
 - 8.2.2 where appropriate, a standstill period complying with the EU Rules is incorporated into the final award process.
- 8.3 All contracts valued at £100,000 or above must be reported to the Cabinet for approval and shall be executed as a deed, there is a 5 calendar day call in period post Cabinet, Once the Minutes have been published, usually the following Monday) All other contracts may be signed by officers with appropriate delegated authority. £99,999 shall be the threshold for the purposes of Regulation 8 of the Local Authority (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.
- 8.4 Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Director of Corporate Services.

9 Calculating the Contract Value

- 9.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that the contract value shall be the genuine pre-estimate of the value of the entire contract (whole life value) excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options).
- 9.2 Contracts may be split into lots where it is practical to do so. However, the aggregated cost of the lots shall determine the contract's whole of life value and

the procurement process to be followed. Artificial splitting of a contract to avoid the application of the procurement rules or these CSOs is not permitted. However, should lots not be used then Reg. 84 applies i.e. individual report as to why lots were not used.

- 9.3 The EU Rules cover contracts which are below the stated EU threshold where they constitute repeat purchases and / or purchases of a similar type in a specified period. Responsible Officers should therefore seek advice on the application of the E.U. Rules where they envisage that they may require repeat purchases and / or purchases of a similar type.

10 Principles Underlying Tendering Processes and Tender Evaluation

- 10.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:

- 10.1.1 Sufficient time is given to plan and run the process;**
- 10.1.2 Equal opportunity and equal treatment;**
- 10.1.3 Openness and transparency;**
- 10.1.4 Probity;**
- 10.1.5 Outcomes which deliver sustainability, efficiency and cost savings (where appropriate).**

11 Submission and Opening of tenders

- 11.1 An Invitation to Tender shall be issued by the Council for all contracts over £25,000 using the Council's e-procurement system and tenders shall be submitted in accordance with the requirements of the Invitation to Tender.
- 11.2 Any tenders received (other than those received electronically, to which 11.3 shall apply) shall be:
- 11.2.1 addressed to the Democratic and Electoral Services Manager;
 - 11.2.2 in a sealed envelope marked "Tender" followed by the subject matter to which it relates;
 - 11.2.3 kept in a safe place by the Democratic and Electoral Services Manager;
 - 11.2.4 retained unopened until the date and time specified for its opening.
- 11.3 Where the Council has indicated in the Invitation to Tender that a tender can or must be submitted electronically, then those tenders shall be:

- 11.3.1 addressed to the e-mail address as notified in the Invitation to Tender;
 - 11.3.2 in the format specified in the Invitation to Tender;
 - 11.3.3 stored in a secure mailbox, which requires a code or other appropriate security measure, to open it;
 - 11.3.4 retained unopened until the date and time specified for its opening;
- 11.4 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the relevant Director is satisfied that there is sufficient evidence of the tender having been dispatched in time for it to have arrived before the closing date and time, or other exceptional circumstances apply and the other tenders have not been opened.
- 11.5 **All tenders of £25,000 and above are to be opened in the presence of the Democratic and Electoral Services Manager (or nominee), and a suitable person from Legal Services (or Nominee).**

An immediate record to be made of the tenders received including names and addresses and the date and time of opening, this record to be retained by the Democratic and Electoral Services Manager and Procurement.

12 Evaluation of Quotes and Tenders

- 12.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes / tenderers. Evaluations shall be undertaken in accordance with the Council's evaluation procedure, [P.16](#).
- 12.2 Tenders subject to the EU Rules shall be evaluated in accordance with the EU Rules.
- 12.3 **Save in exceptional circumstances approved in advance by the relevant Director, all contracts shall be awarded on the basis of the quote or tender which represents the Most Economical and Advantageous Tender to the Council and not on the basis of lowest price.**
- 12.4 Post tender negotiations will only be used in special circumstances and after approval from the relevant Director. (Seek guidance from the procurement team first)

13 Waivers

- 13.1 The requirement for the Council to conduct a competitive purchasing process for contracts in excess of £5,001 may be waived in the following circumstances.
 - 13.1.1 For contracts which are not subject to the EU Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or

- damage to property; or
- 13.1.2 the circumstances set out in EU Regulation 14 apply (whether or not the contract is of a type which is subject to the application of the EU Rules); or
- 13.1.3 the contract is awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Council; or
- 13.1.4 at the discretion of the relevant Head of Service who may for contracts exceeding £25,000 but not exceeding £99,999 proceed in a manner most expedient to the efficient management of the service / Council with reasons recorded in writing.
- 13.2 A Responsible / Lead Officer who seeks a waiver of Contract Standing Orders, shall do so only in advance and **only in exceptional circumstances**. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Purchasing Guide.
- 13.3 All waivers from these Contract Standing Orders must be:
- 13.3.1 Fully documented;
- 13.3.2 Subject to a written report in an approved format. For contracts not exceeding £99,999 the report shall be submitted in advance to Procurement and include the reasons why the waiver is genuinely required. For contracts of £100,000 and above the report shall be submitted to the Cabinet;
- 13.3.3 Subject to agreement in advance by the Head of Commissioning and Customer Contact and in consultation with the Heads of Mid Kent Legal Services and Finance as appropriate, who shall, for contracts exceeding £25,000 but not exceeding £99,999, record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver. The Contracts and Procurement Manager and Contracts and Procurement Support Manager have the delegated authority to consider and approve Waivers valued between £1,000 to £24,999 and record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional. Waiver from competitive purchasing process for contracts of £100,000 and above must be approved in advance by the Cabinet. In the report to Cabinet a recommendation; "Cabinet agree to the waiver requested in relation to the [works, goods / services] contract and that the Head of Commissioning and Customer Services be authorised to complete the necessary documentation". Prior to Cabinet, the waiver should still be considered by the heads of Mid Kent Legal Services and Finance. In the absence of the Head of Commissioning and Customer

Contact, the Contracts and Procurement Manager has the delegated authority to record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver and sign off over waivers over £25,000 in consultation with the Heads of Mid-Kent Legal Services and Finance, waivers above £100,000 subject to Cabinet approval;

- 13.4 All decisions on waivers must take into account:
 - 13.4.1 Probity;
 - 13.4.2 Best value / value for money principles.
- 13.5 For contracts subject to the EU Rules, any waiver from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.
- 13.6 A waiver shall not be applied for reasons of poor contract planning.
- 13.7 A wavier may only apply to the omission/s of certain item/s therefore, the Responsible / Lead Officer will be required to follow all other criteria in CSOs other than what has been approved and agreed in the submitted waiver.

14 Extensions to Existing Contracts

- 14.1 Where extensions to existing contracts are made the extensions must be determined in accordance with the advertisement / contract terms, for a specified period and made in accordance with the principles set out in the Council's Purchasing Guide.
- 14.2 Any extension must be:
 - 14.2.1 Fully documented;
 - 14.2.2 Subject to a written report in an approved format, form [P.24](#). For contracts where **the extension** value is not exceeding £99,999 the report shall be submitted in advance to the relevant Director and include the reasons why the extension is required For contracts where the **extension value** is £100,000 and above the report shall be submitted to the Cabinet;
 - 14.2.3 Subject to approval in advance by the relevant Director who shall, for contracts where the **extension value** is not exceeding £99,999, record that they have considered the reasons for the extension and that they are satisfied that the circumstances justifying the extension are genuinely exceptional. Extensions for contracts where the extension value is £100,000 and above must be approved in advance by the Cabinet.
- 14.3 Any extension must take into account:

- 14.3.1 Probity;
 - 14.3.2 Best value / value for money principles.
- 14.4 For contracts subject to EU Rules, any extension must meet the conditions set out in the EU Rules in addition to the more general requirements set out above.

15 Purchasing Schemes

- 15.1 A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Purchasing Guide.
- 15.2 Responsible Officers must check in advance that
- 15.2.1 The Council is legally entitled to use the Purchasing Scheme;
 - 15.2.2 The purchases to be made do properly fall within the coverage of the Purchasing Scheme;
 - 15.2.3 The establishment and operation of each Purchasing Scheme is in compliance with the EU Rules (where they apply) and meets the Council's own requirements.
- 15.3 A "Purchasing Scheme" may include:
- 15.3.1 Contractor prequalification lists / select lists;
 - 15.3.2 Framework arrangements (including those set up by the Cabinet Office ;)
 - 15.3.3 Purchasing arrangements set up by central purchasing bodies and commercial organisations;
 - 15.3.4 Consortium purchasing;
 - 15.3.5 Collaborative working arrangements;
 - 15.3.6 Formal agency arrangements;
 - 15.3.7 E-procurement / purchasing schemes and methods;
 - 15.3.8 Other similar arrangements such as the IDeA Marketplace
- 15.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Purchasing Guide.
- 15.5 Prior to using any purchasing scheme / framework, the Responsible Officer / Lead Officer should check with Economic Development to ensure that the works, good or services required are unable to be procured locally.

16 Review and Changes to these Contract Standing Orders

- 16.1 These Contract Standing Orders shall be reviewed and updated on a regular basis. Save in the case of revisions to the EU Thresholds amended Contract Standing Orders shall be agreed and adopted by the Council. Revisions to the EU Thresholds shall be dealt with in accordance with the Constitution - Scheme of Delegation to the Head of Legal Partnership. Any other modifications to C.S.O.s outside of the scope above will need to be presented to SMT, General Purposes Committee and then to Full Council for approval. Any changes in legislation C.S.O.s will be updated automatically however these C.S.O.s will be reviewed every three years to ensure that these C.S.O.s evolve with the Council's requirements.

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Working Paper – Council Procedure Rules and various

1. Some comments have been received regarding the arrangements for Council meetings (mainly in the procedure rules), and whether the timescales and/or timings are appropriate.
2. With this in mind, Members are asked if they wish to consider reviewing the following Procedure Rules.

Procedure Rule	Suggestions for review
<p>3 - Ordinary Meetings</p> <p>(11) Scrutiny update. This requires an item to be placed on the Council agenda when Scrutiny recommendations have been considered by the Cabinet, and is an opportunity for Scrutiny to summarise findings and for Cabinet to give the Cabinet response.</p>	<p>Members may wish to consider whether this item is still necessary?</p>
<p>14 – Questions by Members</p> <p>The deadline for questions is 4.30pm the Wednesday before the meeting.</p> <p>There is a 3 minute deadline for supplementary questions (for the supplementary question and answer)</p> <p>There is a maximum time limit of 30 minutes</p>	<p>Does the deadline give sufficient time for officers and cabinet members to prepare responses?</p> <p>Should this item be included at the Budget Council meeting?</p>
<p>Questions by the Public (in public participation rules)</p> <p>The deadline for questions is 4.30pm the Friday before the meeting. There is no time limit for each public question or for the whole item.</p>	<p>The scheme is different to Member questions. Do Members wish to review the deadline for questions, whether there should be a time limit for individual questions and for the whole item.</p> <p>Does the deadline give sufficient time for officers and cabinet members to prepare responses?</p>

	Should this item be included at the Budget Council meeting?
18 - Leader's Statement	Should this item be included at the Budget Council meeting? Should there be a time limit for questions on the Leader's Statement?
19 – Voting	There is nothing written into the rules for voting about being Members being present in the room for the discussion in order to be able to vote.
Agenda front re disclosure of interests	Disclosure of lobbying to be added to all agenda for Members to declare – for the purposes of transparency and does not prohibit a member for taking part in the discussion or vote. This is in line with arrangements at other authorities.

3. Members may also wish to suggest other items for review.

WORKING PAPER – General Purposes Committee 8 March 2018

1. Council at its meeting on 13 December 2018 made the following recommendation:

5) That the General Purposes Committee considers the appropriate revisions to amend and update the Constitution; this is to include the appointment process for Statutory Officers, the appointment process for senior positions in the event of the need for interim positions or in a situation when there are only internal candidates; and updating the scheme of delegation.

2. This paper addresses the points raised and attached as an appendix is the tracked changes document setting out the suggested amendments.

3. Members attention is drawn in particular to the proposed procedure for the appointment of the Data Protection Officer (DPO). The General Data Protection Regulation (Article 37) effective from 25 May 2018 requires organisations to designate a formal Data Protection Officer for the organisation.

4. Article 38 makes is clear that DPO “shall not receive any instructions regarding the exercise of tasks”. The DPO is independent in that he or she is free from direction or reporting requirements to other staff, managers or section heads. Article 38 states that “the DPO shall not be dismissed or penalised by the controller or processor for performing tasks”. It is considered that whilst it is clear that significance, independence and protection are being afforded to the role it is not of the level of the three existing statutory officer hence the suggestion that appointment be at a different level.

5. Members are asked to consider the suggested amendments to Part 4.8 of the Constitution and to make recommendations accordingly.

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PART 4.8 - OFFICER EMPLOYMENT PROCEDURE RULES

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1.0 Recruitment and Appointment

(a) Declarations

(i) the Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons. (This will be included in application forms).

(ii) No candidate so related to a councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

(b) Seeking support for appointment.

(i) The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

(ii)

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A Councillor shall not solicit for any person any Council appointment or give a written testimonial of a candidate's ability, experience or character for an application for appointment with the Council.

~~No councillor will seek support for any person for any appointment with the Council.~~

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2.0 Recruitment of Head of Paid Service and ~~Chief Officers~~ Directors

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(1) Where the authority propose to appoint a Head of Paid Service or Director ~~Chief Officer~~, and it is not proposed that the appointment be made exclusively from among their existing officers, they shall

(a) draw up a statement specifying

(i) the duties of the officer concerned and

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(ii) any qualifications or qualities to be sought in the person to be appointed;

(b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and

(c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request. ~~(Minute No. 1076(2)/3/93).~~

(2) In relation to potential appointment from among existing officers, the arrangements set out in 1 (a)-(c) will apply.

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(3) On occasions where it is appropriate in the business interests of the Council to appoint from among existing officers on an interim basis to cover the Head of Service roles and above, then the same arrangements as set out in 1-(a)-(c) will apply. In the event of these interim arrangements continuing in place for a period of 6 months (or such other shorter period agreed between the Head of Paid Service and the Leader), and subject to satisfactory performance in the role as defined by the Council's performance appraisal scheme then delegated authority is given to the Chief Executive as Head of Paid Service in consultation with the Leader to confirm such arrangements as permanent at and below Head of Service level in accordance with the arrangements set out in the Chief Executive's general delegation number two. Where the role to be covered is at Director or Chief Executive level then this would involve members as set out in 2.1 and 2.2 below. Where the role involved is a shared service role then in exercising the delegation should have regard to any comments received from the chief executives of the partner authorities.

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2.1 Appointment of Head of Paid Service

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(a) ~~(a)~~ The full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by the Appointments Sub-Committee. This Committee should include at least one Member of the Cabinet. The authority must approve the appointment before an offer of appointment is made to that person.

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(b) The full Council may only approve the appointment of Head of Paid Service where no wellfounded objection has been made by any Member of the Cabinet.

2.2 Appointment of ~~Chief Officers~~Directors (Other than Head of Paid Service)

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The Appointments Sub-Committee will appoint ~~Chief Officers~~Directors and will make a recommendation to Council regarding the appointment of the Head of Paid Service, ~~Chief Financial Officer and the Monitoring Officer~~. An offer of employment shall only be made where no well-founded objection has been made by any Member of the Cabinet.

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2.3 Other Appointments

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(a) Officers below ~~Chief Officer~~Directors – Appointment of officers ~~below chief officers~~below Directors (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by

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Councillors. This is subject to the provisions of the Chief Executive's general delegation number two which states that for Heads of Service appointments a joint member officer decision making panel will be constituted, the membership of which will be agreed between the Leader and Chief Executive.

(b) Assistants to political groups – Appointment of an assistant to a political groups shall be made in accordance with the wishes of that political group.

(c) Other Statutory Appointments –

In addition to the Head of Paid Service and the Chief Financial Officer, the Monitoring Officer and Data Protection Officer are afforded different levels of statutory protection by legislation. That of the DPO is lesser than the other three statutory officers.

In relation to the appointment of the Monitoring Officer this will be ratified by Council following the appropriate due process for appointment, bearing in mind that the Monitoring Officer is not a stand-alone role and is not an appointment to a substantive position and would not be subject to a formal interview process but solely of an approval of a recommendation made to Council.

In relation to the Data Protection Officer, this would be subject to appointment by a constituted joint member officer decision making panel the membership of which will be agreed between the Leader and Chief Executive. The decision of that panel would then be ratified as set out on in 3.0 below.

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3.0 Procedure for appointment to certain posts

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“Appointor” means, in relation to the appointment of a person as an officer of the Authority, the Authority or, where a Committee, Sub-Committee or officer is discharging the function of appointment on behalf of the Authority, that Committee, Sub-Committee or officer, as the case may be.

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An offer of an appointment as an officer designated as:

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- The Head of the Authority's Paid Service
- The Chief Financial officer having responsibility, for the purposes of section 151 of the Local Government Act 1972, for the administration of the authority's financial affairs.

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- ☐ A Statutory Chief Officer within the meaning of section 2(6) of the Local Government and Housing Act 1989 Act (Directors), or
- ☐ A Deputy Chief Officer within the meaning of section 2(8) of the 1989 Act (Heads of Service),
- the Monitoring Officer,

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must not be made by the appointer until:

(a) the appointor has notified the Proper Officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;

(b) the Proper Officer has notified every member of the Executive of the Authority of:

(i) The name of the person to whom the appointor wishes to make the appointment;

(ii) any other particulars relevant to the appointment which the appointor has notified to the Proper Officer; and

(iii) the period within which any objection to the making of the offer is to be made by the Executive Leader on behalf of the Executive to the Proper Officer; and

(c) either

(i) the Executive Leader has, within the period specified in the Notice under subparagraph (iii), notified the appointor that neither he nor any other member of the Executive has any objection to the making of the offer; or

(ii) the Proper Officer has notified the appointor that no objection was received by him within that period from the Executive Leader; or

(iii) the appointor is satisfied that any objection received from the Executive Leader within that period is not material or is not well-founded.

4.0 Disciplinary Action against certain postholders

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If a complaint of misconduct is received about the Chief Executive, Chief Finance Officer or Monitoring Officer, the complaint will be dealt with in accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 as set out in Appendix 1. If so, the General Purposes Committee will appoint the independent person required under the Regulations.

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(a) In paragraph (b), 'Chief Finance Officer', 'Council Manager', 'Disciplinary Action', 'Head of Authority's Paid Service' and 'Monitoring Officer', have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001 and 'designated independent person' has the same meaning as in regulation 7 of those Regulations.

(b) No disciplinary action in respect of the head of authority's paid service (unless he is also a Council manager of the authority), its monitoring officer, or chief finance officer, except action described in paragraph (c) may be taken by the authority, or by a committee, a sub-committee, a joint committee on which the authority is represented or any other person acting on behalf of the authority, other than in accordance with a recommendation in a report made by a designated independent person.

(c) The action mentioned in paragraph (b) is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension must be on full pay and terminate no later than the expiry of two months beginning on the day on which the suspension takes effect.

The designated independent person must be such a person as may be agreed between the Authority and the relevant officer or, in default of such agreement, nominated by the Secretary of State.

The designated independent person:

(a) may direct:

(i) that the Authority terminates any suspension of the relevant officer;

(ii) that any such suspension must continue after the expiry of two months;

(iii) that the terms on which any such suspension has taken place must be varied in accordance with the direction; or

(iv) that no steps (whether by the Authority or any Committee, Sub-Committee or officer acting on behalf of the Authority) towards disciplinary action or further disciplinary action against the relevant officer, other than steps taken in the presence, or with the agreement, of the Designated Independent Person, are to be taken before a report is made under Sub-Paragraph (d) below;

(b) may inspect any documents relating to the conduct of the relevant officer which are in the possession of the Authority, or which the Authority has power to authorise him to inspect;

(c) may require any member of staff of the Authority to answer questions concerning the conduct of the relevant officer;

(d) must make a report to the General Purposes Committee:

(i) stating his opinion as to whether (and, if so, the extent to which) the evidence he has obtained supports any allegation of misconduct against the relevant officer; and

(ii) recommending any disciplinary action which appears to him to be appropriate for the Authority to take against the relevant officer; and

(e) must no later than the time at which he makes his report under Sub-Paragraph (d) above, send a copy of the report to the relevant officer.

A Local Authority must pay reasonable remuneration to a Designated Independent Person appointed by the Authority and any costs incurred by him in, or in connection with, the discharge of his functions under this Standing Order. (The Local Authorities (Standing Orders) (England) Regulations 2001)

Note: Where disciplinary action is contemplated against the Chief Executive, Chief Finance Officer or Monitoring Officer any investigation and hearing will be conducted in accordance with procedures contained within the current version of the Joint Negotiating Committee for Chief Executives of Local Authorities Chief Executives' Handbook.

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5.0 Disciplinary Action

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~~Councillors will not be involved in the disciplinary action against any officer below Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to members in respect of disciplinary action.~~

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Councillors will not be involved in any disciplinary action nor dismissal against any officer (other than the Statutory Officers mentioned above) except where such involvement is necessary for any investigation or inquiry into alleged misconduct. However, the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Councillors in respect of disciplinary action or capability from decisions made by the Chief Executive or the involvement of Councillors in consultation with the Chief Executive in relation to disciplinary matters.

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~~6.0 Dismissal Councillors will not be involved in the dismissal of any officer below Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to Members in respect of disciplinary action.~~

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76.0 Procedure for dismissal from certain posts

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"Dismissor" means, in relation to the dismissal of an officer of the Authority, the Authority or, where a Committee, Sub-Committee or another officer is discharging the function of dismissal on behalf of the Authority, that Committee, Sub-Committee or other officer as the case may be.

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Notice of the dismissal of an officer designated as:

The Head of the Authority's Paid Service

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A Statutory Chief Officer within the meaning of section 2(6) of the Local Government and Housing Act 1989 Act (Directors), or

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A Deputy Chief Officer within the meaning of section 2(8) of the 1989 Act (Heads of Service)

- [The Chief Finance officer having responsibility, for the purposes of section 151 of the Local Government Act 1972, for the administration of the authority's financial affairs.](#)
- [the Monitoring Officer](#)

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must not be given by the dismissor until:

(a) the dismissor has notified the Proper Officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;

(b) The Proper Officer has notified every member of the Executive of the Authority of:

(i) the name of the person who the dismissor wishes to dismiss;

(ii) any other particulars relevant to the dismissal which the dismissor has notified to the Proper Officer; and

(iii) the period within which any objection to the dismissal is to be made by the Executive Leader on behalf of the Executive to the Proper Officer; and (c) Either

(i) the Executive Leader has, within the period specified in the Notice under subparagraph (iii), notified the dismissor that neither he nor any other member of the Executive had any objection to the dismissal; or

(ii) the Proper Officer has notified the dismissor that no objection was received by him within that period from the Executive Leader; or

(iii) the dismissor is satisfied that any objection received from the Executive Leader within that period is not material or is not well-founded.

NB 1 The power to approve the appointment or dismissal of the Head of the Authority's Paid Service shall be exercised by the Full Council following a recommendation from the General Purposes Committee. Neither courses of action may be delegated to a Committee or SubCommittee.

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NB 2 "Disciplinary Action" in relation to a member of staff of a Local Authority means any action occasioned by alleged misconduct which, if proved, would according to

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the usual practice of the Authority, be recorded on the member of staff's personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Authority has undertaken to renew such a contract.

“Member of Staff” means a person appointed to or holding a paid office or employment under the authority.

NB 3 Other Policies

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Except as set out in these Officer Employment Procedure Rules, or as required by law or under a contract of employment, all appointments shall be made and disciplinary action shall be taken in accordance with the Authority's personnel and Human Resources practices and procedures which may add to these Rules but not conflict with them.

To be added as Appendix A to Part 5.1 Members Code of Conduct

Code of Conduct Complaint Assessment Criteria

Before any assessment is made the Monitoring Officer must be satisfied that the complaint meets the following tests:

- it is a complaint against one or more named Members of the Authority or an authority covered by the Standards Committee;
- the named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- the complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the code and the complainant must be informed that no formal action will be taken in respect of the complaint.

As part of its consideration the Monitoring Officer will promote confidence in the system by demonstrating that the processes and procedures take complaints seriously and are dealt with appropriately, fairly and in a balanced way. However, as part of that consideration regard will be had to the fact that deciding to investigate a complaint or take other action will cost both public money and the officers' and Members' time. This will be an important consideration where the matter is relatively minor.

Submission of information

We will only consider cases where we are satisfied that there is sufficient information to ensure we can fulfil our role to treat complaints seriously and for them to be dealt with appropriately, fairly and in a balanced way. If we are not satisfied that we have enough information to make a decision as to whether the complaint should be referred for investigation or other action we will advise the complainant that no further action will be taken on the complaint.

Identity of person complained against

If the complaint is about someone who is no longer a Member of the Authority but is a Member of another authority the complaint will be referred to that authority to consider.

Nature of complaint

If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or been the subject of an investigation by other regulatory authorities then the complainant will be advised that there is nothing to be gained by further action being taken.

Timing between alleged breach and receipt of complaint

If the complaint relates to something that happened so long ago that there would be little benefit in taking action now then the complainant will be advised accordingly. Any notification will make it clear that the period of time that has passed since the alleged conduct occurred was taken into account when deciding whether the matter should be

referred for investigation or further action. In the light of this no further action would be warranted.

Trivial complaints

If the complaint is considered to be trivial then the complainant will be notified that it was not considered sufficiently serious to warrant further action.

Malicious, politically motivated or tit for tat complaints

If the matter is considered to fall within these categories then the complainant will be notified that it appears simply to fall into the relevant category and was not considered sufficiently serious to warrant further action.

Anonymous complaints

We will not entertain anonymous complaints.

Confidentiality of complainant in the public interest

To ensure that as many complaints as possible will be considered the Monitoring Officer is authorised to keep the identity of the complainant confidential where the Monitoring Officer is of the opinion that this is in the public interest.

Multiple complaints

It is not uncommon that one event gives rise to similar complaints from a number of different complainants. The regime is concerned with individual Member's potential breach of the Code of Conduct and so each separate complaint must be considered.

Initial assessment decisions

The purpose of such decisions is to reach a decision on what should happen with the complaint. In undertaking its function one of the following decisions will be reached:

- informal resolution of the complain;
- referral of the complaint to the Monitoring Officer for further investigation;
- no action be taken.

In considering the decisions available we will have regard to the following:

- the public interest;
- any difficulty in dealing with the case fairly and speedily;
- the status of the Member;
- the status of the complainant;
- whether there is a potential conflict of interest of so many Members of the standards committee that it could not properly monitor the investigation;
- whether there is a potential conflict of interest of the Monitoring Officer or other officers and that suitable alternative arrangements cannot be put in place to address the conflict;
- the seriousness or complexity of the case;
- whether the complaint relates to long term or systematic/officer bullying which could be more effectively investigated by someone outside the authority.

There is a presumption in favour of local informal resolution wherever possible. This course will be dependent upon the nature of the complaint and will take into account the needs of Swale Borough Council and the parish and town councils which they serve.

Certain complaints will lend themselves to being resolved in this way. For instance they may indicate a wider problem of lack of knowledge or understanding of the Code or where a training need amongst a group of councillors is identified.

A proactive approach can be a good way to resolve matters that are less serious.

The following are some examples of alternatives to investigation:

- arranging for the subject Member to attend a training course;
- arranging for that Member and the complainant to engage in a process of conciliation;
- instituting changes to the procedures of the Authority if they have given rise to the complaint.

If other action is proposed then all parties will be asked to confirm in writing that they will cooperate with the process.

Where a formal investigation finds evidence of failure to comply with the Code of Conduct there may well still be an opportunity for local resolution, avoiding the necessity of a local hearing. If this is an appropriate course of action and the complainant is satisfied with the outcome, then the Monitoring Officer will consult with the Independent Person before agreeing any local resolution.

Any decision to take no action will have regard to the assessment criteria set out. There has to be a potential breach of the Code for any action to be considered.

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