

TO: **COUNCIL**  
**27 APRIL 2016**

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**ANNUAL REVIEW OF CONSTITUTION**  
**Director of Corporate Services –Borough Solicitor**

**1 PURPOSE OF REPORT**

1.1 The report recommends changes to the Constitution for approval by Council.

**2 RECOMMENDATION(S)**

2.1 It is **RECOMMENDED** that Full Council;

- i. **Adopt the proposed changes to the constitution set out in Appendices A, B and C**
- ii. **Authorise the Borough Solicitor to make any other minor editorial changes to the constitution.**

**3 REASONS FOR RECOMMENDATIONS**

3.1 Part 7 of the Constitution requires the Monitoring Officer to monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect. Any changes considered necessary are subject to approval by Council.

**4 ALTERNATIVE OPTIONS CONSIDERED**

4.1 None. Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution under review.

**5 SUPPORTING INFORMATION**

5.1 The Constitution is the Council's primary document which sets out how the Council operates its decision making processes and is comprised of the following parts

<b>Part 1</b>	The Structure of the Council
<b>Part 2</b>	Responsibilities for Decisions
<b>Part 3</b>	Overview and Scrutiny
<b>Part 4</b>	The way in which the Council operates
<b>Part 5</b>	Citizens and the Council
<b>Part 6</b>	Members allowances
<b>Part 7</b>	Review, Revision, Suspension, Interpretation and Publication of the Constitution

- 5.2 The proposals in this report cover changes that have been suggested as part of an internal review process within the Council by officers as well as changes that have been brought about by legislation.
- 5.3 The changes that are proposed to be made to the constitution are shown in the remaining Appendices to this report. Where the titles of senior officers have changed or their posts have been subsumed, these minor textual changes have not been included but will be reflected in the online version of the constitution.
- 5.4 **Appendix A** relates to Part 2 of the constitution and sets out three new delegations to specified Chief Officers relating to Completion Notices, Community Protection Notices, Property Transactions and Neighbourhood Planning decisions
- 5.5 **Appendix B** relates to Part 4 of the Constitution and introduces new thresholds for procurement in the Council's Contract Standing Orders as well as some clarifications and corrections
- 5.6 **Appendix C** also covers Part 4 and introduces a formal process for dealing with Councillor Code of Conduct complaints and incorporates within the Code of Conduct itself a process for the granting of dispensations to Councillors who may be otherwise unable to participate in an item of business at a meeting due to the existence of a Disclosable Pecuniary Interest or an Affected Interest

## **6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

- 6.1 The Borough Solicitor is the author of this report

### Borough Treasurer

- 6.2 There are no financial implications arising from this report

### Equalities Impact Assessment

- 6.3 With regard to Appendix C support will be offered to ensure that all complainants are able to understand and comply with the Councillor Complaints process, including providing support on completing the complaints form if required. This will mitigate any potential adverse impact on some older people, people with disabilities or people with English as a second language who may find it difficult to understand and comply with the process.

## **7 CONSULTATION**

### Principal Groups Consulted

- 7.1 Corporate Management Team, Standards Committee (Appendix C only), and Governance and Audit Committee

### Background Papers

Unrestricted

Covering report titled "Standards Framework Update" presented to Standards Committee (29 February) and Governance and Audit Committee (30 March)

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**PROPOSED AMENDMENTS TO PART 2 – RESPONSIBILITY FOR DECISIONS**

**1. Authority to issue completion notices**

- 1.1 The Local Government Act 1988 s46A and Schedule 4A of the Local Government Finance Act 1988 state that where it is considered that a commercial premises is structurally complete, or that the works remaining can reasonably expected to be completed within three months, a completion notice will be served on the 'owner' of the commercial premises. The 'owner' is defined as the 'person entitled to possession'. The completion notice specifies the date on which the commercial premises becomes rateable and enters the rating list for business rates purposes.
- 1.2 Authority to issue completion notices is delegated to the Borough Treasurer and he has exercised this function under the overarching delegation to 'take all reasonable steps and measures to discharge the function of the Borough Treasurer'.

**RECOMMENDATION:** In order for clarity and transparency of decision making it is proposed that the Borough Treasurer's delegations are amended to add:

Issue completion notices

**2. Enactment of new legislation**

- 2.1 The Anti-Social Behaviour, Crime and Policing Act 2014 introduced a number of functions and duties, including but not limited to, the issuing of Community Protection Notices.

**RECOMMENDATION:** In order to ensure that officers can utilise all relevant provisions within the legislation it is proposed that the Director of Environment, Culture and Communities delegations are amended to add:

To exercise functions and powers under the Anti-Social Behaviour, Crime and Policing Act 2014

- 2.2 The Energy Act 2013 introduces new duties, including but not limited to, inspecting smoke detectors in rental properties.

**RECOMMENDATION:** In order to ensure that officers can utilise all relevant provisions within the legislation it is proposed that the delegations of the Director of Corporate Services and the Director of Environment, Culture and Communities are amended to add:

To exercise functions and powers under the Energy Act 2013

### 3. Property Transactions

The following delegations revise, update and clarify decision making roles in respect of property transactions and bring these decision making processes into line with the Council's Contract Standing Orders.

#### 3.1 Executive Member Transformation and Finance (additional delegation)

To authorise the grant of leases, agreements for leases or tenancy agreements for terms of more than 7 years at a consideration exceeding £100,000 per annum

#### 3.2 Chief Officer Property (existing delegations to be deleted and replaced with the following:)

- 1.1 Carry out the functions set out in Table A below, in conjunction with the Director of Corporate Services and the Executive Member Transformation and Finance within the financial limits set out in the Table and in accordance with best value
- 1.2 Agree all payments in connection with the acquisition of land under Compulsory Purchase Powers, including home loss and disturbance payments.
- 1.3 Authorise the service of Notices under Landlord and Tenant legislation and other Agreements in respect of land.
- 1.4 To negotiate and enter into any necessary arrangements for the surrender of leasehold interests to or by the Council on the best terms available.
- 1.5 To take any action under the terms of a transfer of land to or by the Council, lease or licence, relating to the use, ownership or the occupation of land.
- 1.6 To maintain the Council's terrier land records and other related property information.

**TABLE A**

		<b>Up to £400,000</b>	<b>£400,000 up to £1Million</b>	<b>Over £1Million</b>
1.	To authorise the acquisition and disposal of freehold or long leasehold or other interests in land	Chief Officer: Property	Director: Corporate Services with advice from Chief Officer: Property	Executive Member with advice from: Chief Officer: Property and Director: Corporate Services
2.	To authorise the grant of leases and Tenancy Agreements for terms of up to 7 years and rents or licence fees up to £100,000 per annum	Chief Officer: Property		
3	To authorise the grant of leases, agreements for leases or tenancy agreements for terms of more than 7 years at a consideration exceeding	Executive Member on advice of Chief Officer: Property		

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	£100,000 per annum	
4.	To carry out any acquisition or disposal required by statute, or a resolution of the Council or the Executive	Chief Officer: Property
5.	To negotiate and complete consents rent reviews and lease renewals (whatever the term) and give and receive statutory notices under all Landlord and Tenant legislation	Chief Officer: Property
6.	To grant a wayleave or easement to statutory undertakers at the best terms reasonably available.	Chief Officer Property with agreement of Director of Corporate Services
7.	To grant or take a grant of any Licence or Tenancy At Will  (a) up to £50,000 p.a.  (b) over £50,000 p.a.	Chief Officer: Property  Chief Officer: Property with agreement of Director of Corporate Services

#### 4. **Neighbourhood Planning decisions**

The Localism Act 2011 (by amending the Town and Country Planning Act 1990) introduced provisions which empower Parish and Town Councils and designated Neighbourhood Forums to initiate the process for making Neighbourhood Development Orders and Neighbourhood Development Plans in relation to the designation of Neighbourhood Areas. The Neighbourhood Planning (General) Regulations 2012 (as amended) were introduced on 6 April 2012. The Regulations set out clear statutory criteria for the Neighbourhood Planning decision making process. It is therefore important that the Council adopts a formal decision-making framework, and clear scheme of delegation to process future Neighbourhood Planning applications. The Executive delegations necessary to give effect to the Neighbourhood Planning process are set out below.

##### 4.1 **Executive Member Planning and Transport (additional delegations relating to Neighbourhood Planning process)**

- Decision to designate a Neighbourhood Area
- Decision to refuse to designate a Neighbourhood area
- Approval of a pre submission consultation response

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- Approval of representations to Examiner
- Submission of response to Examiners report
- Approval of publicity by Electoral Services for referendum
- Revocation or Modification of a Neighbourhood Development Plan

### 4.2 Executive (additional delegation relating to Neighbourhood Planning process)

- Decision Statement on making of Neighbourhood Development Plan

### 4.3 Chief Officer: Planning and Transport in consultation with the Executive Member Planning and Transport (additional delegation relating to Neighbourhood Planning process)

- All duties relating to the Neighbourhood Planning process not otherwise reserved to the Executive or Executive Member for Planning and Transportation

**PROPOSED AMENDMENTS TO PART 4 SECTION 11 – CONTRACT STANDING ORDERS**

**1. Enactment of new legislation**

- 1.1 The Public Contract Regulations 2015 abolished the classification of procurements as “Part B” services, which were exempt from specific regulation, and largely replaced it with a new classification of procurement - Social and Other Specific Services, in addition to the existing classifications - Services and Supplies, and Works. Each of these classifications has its own procurement threshold and its own procurement rules. It is important that the Council classifies procurements in a consistent and reasoned way which ensures minimum risk of challenge.
- 1.2 Since Contract Standing Orders dovetail with PCR 2015, these changes need to be reflected in Contract Standing Orders. In addition, the Sterling values of the three thresholds were updated on 1st January 2016.
- 1.3 Changes are made to Contract Standing Orders (Definitions, Sections 3.1 and 4.3, Appendix 3) to reflect the new classification, the new threshold values and the need to classify procurements consistently.

**2. Unnecessary sealing of contracts**

- 2.1 The Council's seal must be affixed to any contract with a total contract value of £400,000 or more (sections 2.3.11 and 6.8). This requirement is removed.
- Few documents need to be sealed to give them legal efficacy. Examples of such documents are Deeds, Agreements under Section 106 Town and Country Planning Act, documents creating or transferring significant interests in land and Byelaws. None of the contracts the Council enters into for the procurement of services, supplies or works require sealing, and may simply be signed by a responsible officer, normally a Director or someone to whom the function has been delegated.
- 2.2 It is proposed to remove the requirement for sealing contracts so that time and administrative resources will be saved. In some circumstances, affixing the Council's seal may be requested in order to reflect established industry practice.

**3. Clarifications**

- 3.1 Contract Standing Orders deals with contract extensions. In their current form they are open to different interpretations and this could lead to confusion. Amendments are proposed to clarify section 8. Extensions allowed for in the contract must be approved by a Director. Extensions not allowed for in the contract must be approved by the Director for the first year, and by the Executive Member for subsequent years, with advice from the Borough Solicitor and Treasurer.
- 3.2 A recent audit of procurement highlighted a discrepancy in Appendix 1 (one of the “tick sheets”, which are used extensively by officers to easily understand the route their procurement must take). It appeared to require OJEU advertising above £100,000 rather than above the EU threshold, which is £164,176. This has been corrected.
- 3.3 Some minor changes have been made to wording in order to simplify and clarify.

## **SECTION 11 – CONTRACT STANDING ORDERS**

These Contract Standing Orders are made under section 135 of the Local Government Act 1972.

Guidance regarding the use of these Standing Orders and further explanation as to how they operate can be found in the Procurement Manual.

### **DEFINITIONS**

In these Standing Orders, the following expressions have the following meanings:

“Category Manager”	The officer of the Council to whom the Corporate Management Team has allocated responsibility for the delivery and management of a Category Strategy for a defined category of works, goods or services
“Category Strategy”	The written strategy for a defined Category, which has been formally approved by the Executive in accordance with these Standing Orders.
“Corporate Contract”	A contract relating to the procurement of supplies, works or services that has been tendered and managed by the Council
“Corporate Finance System”	Agresso or its replacement
“Director”	The Chief Executive or the most senior officer in a department of the Council or the Governing Body of a school with delegated responsibilities under the Local Management of Schools Regulations
“Executive Member”	Means the Member of the Executive with responsibility for the service for which a procurement is being carried out
“Executive”	Means a meeting to which the Leader and all those Members that are serving as Executive Members have been invited, or in the case of non-executive functions references to “the Executive” are deemed to be references to the Council or the committee or sub-committee to which the Council has delegated responsibility for that function
“Framework Agreement”	Means an agreement or other arrangement between one or more contracting authorities and one or more

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suppliers which establishes the terms (in particular as to price and, where appropriate, quantity) under which suppliers will enter into one or more contracts with the Council in the period during which the framework agreement applies

“Grant”

Means a grant as defined and described in paragraph 2.4 of these Contract Standing Orders

“Non Commercial Considerations”

1. whether contractors employ self-employed individuals,
2. any involvement of the business activities or interests of the contractor with irrelevant fields of Government policy,
3. the conduct of the contractor in industrial disputes,
4. the country of origin or location of suppliers,
5. any political, industrial or sectarian interest of the contractor,
6. financial support or lack of financial support by the contractor for any institution,
7. use or non use by a contractor of technical or professional services provided by the Council under the Building Act 1984.

“Procurement Plan“

Means the Procurement Plan available from the Procurement pages on the Council’s intranet

“Procurement Manual”

The manual containing guidance and mandatory rules on the procurement of all supplies services and works and any further matters referred to in these Contract Standing Orders

“Public Contracts Regulations”

The Public Contracts Regulations [2006 2015](#) (SI [2006-2015](#) No [512](#)) as amended

“Responsible Officer”

The Director or a person to whom the Director has given clear written delegated responsibility to exercise a function which these Contract Standing Orders identify ~~may be performed by a Responsible Officer to the extent of such delegation~~

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<u>"Social and Other Specific Services Threshold"</u>	<u>£589,148</u> or any different figure that may be substituted by statutory instrument from time to time
"Supplies and Services Threshold"	<del>£173,934</del> <u>£164,176</u> or any different figure that may be substituted by <del>S</del> statutory instrument from time to time
"Total Contract Value"	The whole of the estimated value net of value added tax which the Council expects to give under the contract, calculated according to the valuation rules set out in the Procurement Manual
"Threshold"	Means the Supplies and Services Threshold <u>or the Social and Other Specific Services Threshold</u> or the Works Threshold as the case may be
"Works Threshold"	<del>£4,348,350</del> <u>£4,104,394</u> or any different figure that may be substituted by statutory instrument from time to time

## 1. Introduction and application of Standing Orders

These Contract Standing Orders set out the framework for the procurement of supplies, works and services. They are an essential set of rules and compliance with them will ensure that officers both seek and obtain good value for money and that public money is properly spent and accounted for. **These Standing Orders apply to all contracts for the procurement of supplies, the provision of services (including adults and children's care services) or the execution of works by the Council or on its behalf.**

- 1.1 In any procurement where quotations or tenders are required no matter what the value may be, officers must always apply procedures that allow a fair and non-discriminatory competitive process, and equal treatment of all potential suppliers and contractors.
- 1.2 Contracts must not be artificially split to avoid the application of the key thresholds contained in these Standing Orders.
- 1.3 Officers dealing with the procurement of standard or repetitive supplies and services should always consider the use of Framework Agreements and corporate contracts and should seek guidance from the Head of Procurement or from the Borough Solicitor.
- 1.4 These Contract Standing Orders do not apply to the following:
  - A contract for service for the employment of staff by the Council
  - The engagement of Counsel
  - The acquisition disposal or transfer of land or an interest in land and property
  - Hire of premises
  - Grants made by the Council
  - Direct payments to individuals for social care services or services brokered on behalf of individuals in receipt of an individual budget.

## 2. Roles and responsibilities

- 2.1 Directors are responsible for ensuring that chief officers and all staff with procurement responsibilities within their directorates fully understand and comply with these Standing Orders.
- 2.2 Directors are responsible for all purchase orders and contracts tendered and let by their directorates, are accountable to the Executive for the performance of their duties in relation to contract letting and management and must ensure that all council officers comply with these Standing Orders. The duties set out in paragraph 2.3 also apply to a Responsible Officer (except for paragraphs 2.3.5, and paragraphs 2.3.13 to .15 which are duties to be complied with by a Director personally)
- 2.3 Their duties are as follows:
  - 2.3.1 To seek and obtain value for money and secure continuous improvement in all procurements.
  - 2.3.2 To ensure no contract is entered into by their Directorate without there being adequate and agreed budget provision.

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- 2.3.3 To ensure compliance with all applicable UK and EU legislation, seeking advice from the Borough Solicitor or the Head of Procurement at an early stage in the process whenever appropriate.
- 2.3.4 To ensure that Non Commercial Considerations do not influence any decision to seek quotations or tenders or to enter into any contract.
- 2.3.5 To ensure all staff (including any agents or consultants acting on their behalf) dealing with procurement for their directorate are fully aware of and comply with these Standing Orders and those parts of the Procurement Manual which are stated therein as compulsory in accordance with these Standing Orders and to arrange adequate training on their operation.
- 2.3.6 To declare to the council any pecuniary interest whether direct or indirect they personally have in any contract to be let, and to make that declaration in writing to the Borough Solicitor.
- 2.3.7 In the event of any breach of these Standing Orders to take immediate action and report it to the Borough Solicitor and/or the Borough Treasurer.
- 2.3.8 To ensure every contract over £100,000 has a named officer with responsibility for it.
- 2.3.9 To keep securely proper records of all purchase orders, signed contracts and copies of all relevant documentation so as to provide a full audit trail of actions taken.
- 2.3.10 To comply with the Council's arrangements for the obtaining and opening of quotations and tenders as set out in the Procurement Manual.
- 2.3.11 To ensure that ~~the council's seal is affixed to any contract with a total contract value of £400,000 or more and to ensure that all other~~ contracts are signed by a Director or by a person authorised under delegated powers to act on his or her behalf or placed through the Corporate Finance System.
- 2.3.12 To keep a record of any waivers of these Standing Orders.
- 2.3.13 To keep a written record of any delegations they make of their powers under these Standing Orders and ensure these are published on the Council's Intranet.
- 2.3.14 To ensure that records are kept in a manner that ensures reviews of contracts are undertaken in good time ideally at least one year in advance of termination dates and that appropriate action is taken.
- 2.3.15 To make arrangements for the publication of tenders and of contracts awarded as the Council may require from time to time.
- 2.3.16 To assist and support Category Managers in the preparation of Category Strategies and to comply with the provisions of Category Strategies approved by the Executive in accordance with these Contract Standing Orders
- 2.3.17 To ensure that all reports recommending the award of a contract for the procurement of works, supplies or services within a category, which are the subject of an approved Category Strategy, contain the comments of the relevant Category Manager.
- 2.4 These Standing Orders do not apply to grants awarded by the Council. A grant is an arrangement where money is given for the benefit of all or for a section of the local

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community for a stated purpose other than for the procurement of services whether the services are to be given to the ~~council~~ [Council](#) or to third parties. An arrangement where payments are made to secure the provision of services whether to the Council or to some third party is a contract for services to which these Contract Standing Orders apply.

### 3. Consultation and approvals prior to advertising a procurement

- 3.1 Officers must take advice from the Head of Procurement or the Borough Solicitor on the relevance of the Public Contract Regulations for any procurement where the Total Contract Value is estimated to be more than £100,000, [including advice on the classification of a procurement as Supplies and Services, Works or Social and Other Specific Services.](#)
- 3.2 When it can reasonably be anticipated that the Total Contract Value might exceed £100,000 the Director must ensure that an estimate of the anticipated Total Contract Value is prepared and recorded in writing. The estimate should not be more than twelve months old when tenders or quotations are invited and is to be exclusive of Value Added Tax.
- 3.3 For all procurements of supplies and services with an estimated Total Contract Value in excess of £100,000, [and procurement of works with an estimated Total Contract Value in excess of £400,000,](#) a Procurement Plan in the form set out in the Procurement Manual and incorporating comments from the Borough Treasurer, Borough Solicitor and Head of Procurement, must be prepared for the approval of the Director and, if appropriate the Executive Member (see [Appendix Appendices 1, 2 and 3](#)). In all cases the Procurement Plan must be approved before the contract is advertised ~~in accordance with paragraph 4.4 below.~~

### 4. Obtaining quotations and tenders

- 4.1 (a) Subject to paragraph 4.1(b) below, where any procurement of supplies or services has an estimated Total Contract Value of less than the Supplies and Services Threshold, the required number of quotations or tenders must be sought in accordance with the financial limits and procedures set out in Appendix 1 [or Appendix 3 as the case may be.](#) ~~Where the estimated Total Contract Value of any procurement of supplies or services is for more than £100,000, invitations to tender must be issued in accordance with the procedures set out below and in the Procurement Manual.~~
- (b) Procurements of residential care placements, care and or support provided in the person's home or for the special educational or other needs of younger people (including fostering) shall be carried out in accordance with procedures authorised by the relevant Director in consultation with the Executive Member with the advice of the Borough Treasurer, the Borough Solicitor and the Head of Procurement and published in the Procurement Manual
- 4.2 Where any works contract is to be let the required number of quotations or tenders must be sought in accordance with the financial limits and procedures set out in Appendix 2.
- 4.3 The Responsible Officer must ensure that the selection of suppliers from whom tenders or quotations are sought is carried out openly, fairly and transparently. The requirements for advertising, which are made to ensure compliance with legal

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requirements for transparency and freedom from discrimination, are set out in Appendices ~~x-1, 2 and 3~~ and Appendix 2 and must always be followed.

### 5. Contract documentation and standard contract conditions

5.1 The provisions of any Statute, Regulation, Treaty or Directive of the European Union take precedence over anything said in these Standing Orders, and all contracts entered into by the Council must comply with all of those requirements.

5.2 The Council's standard conditions of contract shall always be employed unless,

(1a) Leasing arrangements are involved, or

(1b) the requirement is particularly complex and the use of the standard conditions is inappropriate

AND in each such case the formal advice of the Borough Solicitor has been given, or

(2) the supplier requires the Council to contract on terms supplied by it, and the total value is no more than £35,000.

In all cases where the Total Contract Value is expected to exceed the Threshold, the advice of the Borough Solicitor must be sought on any appropriate additions to the Council's standard terms.

### 6. Approval and acceptance of quotations and tenders

6.1 All requests for quotations and tenders for works, services or supplies must be carried out according to the procedures set out in the Procurement Manual .

6.2 The evaluation of written quotations and tenders and any pre-qualification of bidders must be carried out according to the procedures set out in the Procurement Manual, clearly documented and, if above the Threshold, advice must be sought from the Head of Procurement.

6.3 Where the estimated Total Contract Value is more than £100,000 and only one tender is received the Director must take advice from the Head of Procurement and the Borough Solicitor on the appropriate action.

6.4 The Responsible Officer may accept a tender or quotation for **works, supplies** or **services** where the Total Contract Value is not more than £400,000. Where the tender is above £100,000, a report should be submitted by officers to the Director, but if a Director has not delegated power to a Responsible Officer to accept a quotation the Director must prepare a report on the acceptance of the tender or quotation and keep it available for auditing.

6.5 The Director shall not accept tenders for supplies, services or works where the Total Contract Value is more than £400,000 and less than £1,000,000 without securing the written agreement of the Executive Member.

6.6 For all contracts where the Total Contract Value is greater than £1,000,000, acceptance of the tender must be approved by the Executive upon a report by the Director.

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- 6.7 Where the Director wishes to accept a tender other than the lowest acceptable tender, full supporting documentation must be kept to evidence why the lowest acceptable tender was not accepted. If the tender is one to which paragraphs 6.5 or 6.6 applies, the Director shall report the values of all tenders received and the reasons for selecting the preferred tender.
- 6.8 All contracts entered into by the Council shall be completed (subject to delegated financial limits) in accordance with the following requirements.

Total Value	Method of Completion	Signed By
Up to and including £5,000	Council's official written order	Responsible Officer
£5,000 to £100,000	Acceptance Letter or Council's official order	Responsible Officer
<del>Over £100,000 – Threshold (currently £173,934)</del>	Signed contract	Responsible Officer
<del>Threshold – £400,000</del>	<del>Signed Contract or Deed as advised by the Borough Solicitor</del>	<del>Responsible Officer or in accordance with the requirements for sealing of contracts</del>
<del>Over £400,000 Where requested</del>	Execution under seal	Borough Solicitor

- 6.9 It is advised that a All contracts should as a matter of good practice ~~must~~ be signed or sealed before the supply, service or construction work begins.

## 7. Waiver of Contract Standing Orders

- 7.1 If there are special circumstances to waive or suspend any section or sections of Contract Standing Orders, the following approvals must be obtained depending on contract value:
1. for all contracts up to *and including* £35,000, the Director may approve.
  2. for contracts in excess of £35,000 but *up to and including contracts for* £400,000 the Borough Solicitor and the Chief Executive (taking advice from the Head of Procurement) may approve.
  3. for contracts over £400,000 a report must be made to the Executive, incorporating advice from the Head of Procurement, for approval save that where the Borough Solicitor and Chief Executive have confirmed that there is genuine urgency and it is not possible to obtain approval from the Executive in time, the Leader may approve, but shall report his decision to the next meeting of the Executive for information
- 7.2 The standard Waiver form is to be used unless reporting to the Executive in accordance with 7.1 above and the approval must be retained by the Director.
- 7.3 The Director must ensure that a record of all cases where Contract Standing Orders have been waived is sent to the Head of Procurement, including those authorised under the Director's own delegated powers, recording the reasons for waiver and the approvals obtained. The Head of Procurement shall maintain a full record, sequentially numbered, of all Waivers granted.

## 8. Contract extensions

8.1 Where a contract, which was not required to be advertised by the Public Contracts Regulations or any preceding Regulations, does not have any provision for an extension, one extension, where similar terms and conditions will apply, may be agreed for a maximum period of one year, but the written approval of the Director, who must consult with the Borough Solicitor and the Treasurer, must be given.

8.2 ~~Any extension provided for in the contract~~ ~~Where a contract does provide for an extension, the extension~~ may be implemented, subject to the prior written approval of the Director being given.

~~8.3 If a contract has already been extended under a provision for extension it contains, it may not be extended further under 8.1 above.~~

8.43 If a contract has been extended in accordance with 8.1 or 8.2 above any further request for an extension must be approved by the Executive Member on a written report, with advice from the Borough Solicitor and the Treasurer.

## Contract variations

8.54 A contract variation can be only be approved where the proposed variation does not materially alter the terms of the contract. Guidance on what constitutes a material alteration is given in the Procurement manual. The Director must obtain advice from the Borough Solicitor before proceeding to agree to a variation and must ensure there is an adequate budget for the variation.

## 9. Framework Agreements

9.1 Framework Agreements let by other contracting authorities may only be used in accordance with the requirements set out in the Procurement Manual.

## 10. Category Management

10.1 The Council has adopted the principles of category management in order to provide a more strategic approach to procurement and to help increase efficiencies and value for money through better coordination and aggregation of requirements across the Council.

10.2 A Category Manager shall be responsible for the preparation of a Category Strategy for the commissioning and procurement of any works, supplies or services relevant to the category in consultation with any Director who holds a budget that will be affected by the Category Strategy.

10.3 A Category Strategy shall identify responsibility for contract awards for contracts of up to £1 million that are in compliance with the strategy, but if no responsibility for such contract award is allocated, the Director to whom the Category Manager usually reports shall be responsible for making the decision. Corporate Contracts which are not within a Category Strategy shall be the responsibility of the Director of Corporate Services.

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Appendix 1									
Supplies and Services			Minimum Requirements				✓	= Mandatory	
	Total Contract Value	Up to £5K	>£5K to £10K	>£10K to £35K	>£35K to £100K	>£100K to £400K	>£400K to £1m	>£1m	
Procurement Plan	Director* to approve, with advice from Head of Procurement					✓	✓	✓	
	Executive Member to approve						✓	✓	
Format	Request for Quotation (RFQ)	✓ oral	✓	✓	✓				
	Invitation to Tender (ITT)				Optional	✓	✓	✓	
Specification		✓ oral	✓ outline	✓ outline	✓	✓	✓	✓	
Terms	BFC terms and conditions	Preferred	Preferred	Preferred	✓				
	Special terms - contact Legal Services				Optional	✓	✓	✓	
Competition	Minimum 1 quote	✓ oral	✓						
	Seek a minimum of 3 quotes			✓	✓				
	Formal Tender - seek a minimum of 5 tenders					✓	✓	✓	
	Order under a Framework Agreement	Mini competition of all suppliers able to meet the requirement - or otherwise as defined in the Framework Agreement							
Advertising	SE Business Portal and Contracts Finder**				✓	✓	✓	✓	
	European website (TED)					Mandatory above Threshold***	✓	✓	
Contract SO Waiver	Director to record reasons on file	✓	✓	✓					
	Chief Executive and Borough Solicitor to approve				✓	✓			
	The Executive to approve						✓	✓	
Contract Award	Director*	✓	✓	✓	✓				
	Report to Director* for approval					✓			
	Report to Director and Executive Member for approval						✓		
	Report to the Executive for approval							✓	
Contract Award Notice	SE Business Portal and Contracts Finder**				✓	✓	✓	✓	
	European website (TED)					Mandatory above Threshold***	✓	✓	
Form of Contract	Purchase Order	✓ oral	✓	✓	✓				
	Contract signed by Director*					✓	✓	✓	
	Deed signed under seal by Mayor and Borough Solicitor						If requested.		
* Or as delegated, or Governing Body for Schools									
** Schools don't have to use Contracts Finder									
*** Threshold is £164,176 as of 1st January 2016.									

Unrestricted

Appendix 2		Minimum Requirements							✓ = Mandatory
Works		Up to £5K	>£5K to £10K	>£10K to £35K	>£35K to £100K	>£100K to £400K	>£400K to £1m	>£1m	
Procurement Plan	Director* to approve, with advice from Head of Procurement						✓	✓	
	Executive Member to approve						✓	✓	
Format	Request for Quotation (RFQ)	✓ oral	✓	✓	✓				
	Invitation to Tender (ITT)					✓	✓	✓	
Specification		✓ oral	✓ outline	✓ outline	✓	✓	✓	✓	
Terms	BFC terms and conditions	Preferred	Preferred	Preferred	✓				
	Special terms - contact Legal Services				Optional	✓	✓	✓	
Competition	Minimum 1 quote	✓ oral	✓						
	Seek a minimum of 3 quotes			✓	✓				
	Formal Tender - seek a minimum of 5 tenders					✓	✓	✓	
	Order under a Framework Agreement	Mini competition of all suppliers able to meet the requirement - or otherwise as defined in the Framework Agreement							
Advertising	SE Business Portal and Contracts Finder**						✓	✓	
	European website (TED)							Mandatory above Threshold***	
Contract SO Waiver	Director to record reasons on file	✓	✓	✓					
	Chief Executive and Borough Solicitor to approve				✓	✓			
	The Executive to approve						✓	✓	
Contract Award	Director*	✓	✓	✓	✓				
	Report to Director* for approval					✓			
	Report to Director and Executive Member for approval						✓		
	Report to the Executive for approval							✓	
Contract Award Notice	SE Business Portal and Contracts Finder**				✓	✓	✓	✓	
	European website (TED)							Mandatory above Threshold***	
Form of Contract	Purchase Order	✓ oral	✓	✓	✓				
	Contract signed by Director*					✓	✓	✓	
	Deed signed under seal by Mayor and Borough Solicitor							If requested.	
* Or as delegated, or Governing Body for Schools									
** Schools don't have to use Contracts Finder									
*** Threshold is £4,104,394 as of 1st January 2016.									

Unrestricted

Appendix 3								
Social and Other Specific Services			Minimum Requirements			✓	= Mandatory	
	Total Contract Value	Up to £5K	>£5K to £10K	>£10K to £35K	>£35K to £100K	>£100K to £400K	>£400K to £1m	>£1m
Procurement Plan	Director* to approve, with advice from Head of Procurement					✓	✓	✓
	Executive Member to approve						✓	✓
Format	Request for Quotation (RFQ)	✓ oral	✓	✓	✓			
	Invitation to Tender (ITT)				Optional	✓	✓	✓
Specification		✓ oral	✓ outline	✓ outline	✓	✓	✓	✓
Terms	BFC terms and conditions	Preferred	Preferred	Preferred	✓			
	Special terms - contact Legal Services				Optional	✓	✓	✓
Competition	Minimum 1 quote	✓ oral	✓					
	Seek a minimum of 3 quotes			✓	✓			
	Formal Tender - seek a minimum of 5 tenders					✓	✓	✓
	Order under a Framework Agreement	Mini competition of all suppliers able to meet the requirement - or otherwise as defined in the Framework Agreement						
Advertising	SE Business Portal and Contracts Finder**				✓	✓	✓	✓
	European website (TED)						Mandatory above Threshold***	✓
Contract SO Waiver	Director to record reasons on file	✓	✓	✓				
	Chief Executive and Borough Solicitor to approve				✓	✓		
	The Executive to approve						✓	✓
Contract Award	Director*	✓	✓	✓	✓			
	Report to Director* for approval					✓		
	Report to Director and Executive Member for approval						✓	
	Report to the Executive for approval							✓
Contract Award Notice	SE Business Portal and Contracts Finder**				✓	✓	✓	✓
	European website (TED)						Mandatory above Threshold***	✓
Form of Contract	Purchase Order	✓ oral	✓	✓	✓			
	Contract signed by Director*					✓	✓	✓
	Deed signed under seal by Mayor and Borough Solicitor						If requested.	
* Or as delegated, or Governing Body for Schools								
** Schools don't have to use Contracts Finder								
*** Threshold is £589,148 as of 1st January 2016.								

TO: **GOVERNANCE & AUDIT COMMITTEE**  
**30 March 2016**

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**STANDARDS FRAMEWORK UPDATE**  
**Monitoring Officer**

**1 PURPOSE OF REPORT**

1.1 The Council implemented a new Standards regime in 2012 to give effect to the requirements of the Localism Act and accompanying Regulations. The new regime was and remains framed around the following;

- Standards Committee Terms of Reference
- Code of Conduct for Councillors

1.2 This report seeks to augment the local standards framework by the adoption of a formal procedure for dealing with standards complaints incorporating a range of sanctions available to the Standards Committee and further by clarifying the Council's process for the granting of dispensations.

**2 RECOMMENDATION(S): That;**

**2.1 A formal procedure for dealing with Councillor Code of Conduct complaints as set out in Appendix A to this report be approved for adoption by Council.**

**2.2 An amendment to the Councillor Code of Conduct clarifying the process for the granting of dispensations as set out in Appendix C to this report be approved for adoption by Council.**

**3.3 The committee note with reference to Paragraph 5.8 of this report that a Member/Officer working group has been set up to review the scope and effectiveness of the current standards framework with particular emphasis on the current range of sanctions available under the Code of Conduct.**

**3 REASONS FOR RECOMMENDATION(S)**

3.1 Whilst the Council's process for dealing with Councillor Code of Conduct complaints is set out on its intranet site this has been drawn up in very broad terms and requires updating into a formal procedure. This report seeks to place the process on a formal footing having regard to clarity of roles, timescales and appropriate sanctions.

3.2 The Council's constitution currently includes no provision setting out the parameters for the granting of dispensations to Councillors who would otherwise be excluded from participating in Council business due to the existence of Disclosable Pecuniary Interests or Affected Interests.

## **4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The Localism Act requires the Authority to have arrangements in place under which alleged breaches of the Councillor Code of Conduct can be investigated and arrangements under which decisions on allegations can be made. Whilst current arrangements exist, they are informal in nature and do require consolidation to ensure that the Authority effectively discharges its statutory duty.

## **5 SUPPORTING INFORMATION**

### **A. Procedure for dealing with Code of Conduct Complaints**

- 5.1 The Localism Act 2011 provided for the abolition of the statutory standards framework but required local authorities to:
- promote and maintain high standards of conduct;
  - adopt a code of conduct consistent with prescribed principles;
  - put in place arrangements under which allegations of councillor conduct could be assessed by the Monitoring officer, and if appropriate, investigated potentially leading to sanctions against the councillor;
  - appoint an Independent Person, and;
  - establish and maintain a register of members interests.
- 5.2 Arrangements for dealing with Councillor Code of Conduct complaints were revised by the Authority in 2012 in light of the new statutory provisions. These arrangements for dealing with Code of Conduct complaints require the Monitoring Officer to undertake an initial assessment against the approved criteria, consult with the Independent Person and endeavour to resolve complaints informally where possible and appropriate. Where informal resolution is not possible the Monitoring Officer may refer a complaint for investigation and in certain circumstances, determination by the Standards Committee which would have a range of sanctions available to it where a Councillor was found to be in breach of the Code.
- 5.3 However, these arrangements have not to date been embedded within a formal procedure. Appendix A sets out a procedure which can be shared with parties involved in code of conduct complaints and which provides a transparency of process.
- 5.4 It should be noted that the proposed procedure envisages hearings under the Code to be considered by a Panel of the Standards Committee ("The Code of Conduct Panel") comprised of two Councillors and two Independent Members with one of the Independent Members holding the Chair and retaining a casting vote in the event of deadlock. As is the case currently, any decision of the Panel will need to be ratified by the Governance and Audit Committee before taking effect as neither the Panel nor its parent committee (Standards Committee) has any decision making powers

Adequacy of available sanctions

- 5.5 One of the concerns raised across local authorities nationally since the introduction of the new regime in 2012 has been the lack of enforceable sanctions and the absence of any powers to suspend or disqualify errant Councillors. Local authorities have therefore been left to develop their own range of sanctions which are in many respects dependent upon the co-operation of the representative political groups for their effectiveness.
- 5.6 Bracknell Forest Council currently recognises the following sanctions as being available to its Standards Committee;
- censoring the Councillor/co-opted Member
  - recommending to the Councillors group leader (or in the case of “ungrouped” Members, recommend to council or to committees) that he/she be removed from any or all committees or sub-committees
  - recommending to the Leader of the Council that the Councillor be removed from the Executive, or removed from particular portfolio responsibilities
  - recommending that the Councillor be removed from any or all outside appointments to which he/she has been appointed or nominated by the Leader of the Council
  - withdrawing facilities provided to the Councillor/co-opted member by the council such as a computer or internet access
  - excluding the Councilor/co-opted Member from Council premises, with the exception of meeting rooms as necessary for attending the Council, the Executive, Committee and Sub-Committee meetings
- 5.7 The table in Appendix B sets out the sanctions available across a sample range of authorities. It will be noted that this Authority’s range of recognised sanctions corresponds broadly with those in Appendix B. The table does however reveal a number of sanctions not explicitly recognised in the Bracknell Forest procedure. These are:
- Instructing Monitoring Officer to arrange training (though this has been applied by the Council in the past)
  - Publicise findings/issue press release
  - Report findings to Council
  - Exclude from Council offices
- 5.8 A Member/Officer Working Group is due to be set up in the coming weeks to review the scope and effectiveness of the Standards Framework with particular emphasis on current range of sanctions available under the Code of Conduct. Its recommendations will be incorporated within a future report to the Standards Committee.

**B. Dispensations**

- 5.9 Prior to the coming into force of the relevant provisions of the Localism Act 2011, dispensations could only be granted by the Standards Committee. The Act extended this power to the Council, a Committee, Sub Committee or an Officer.
- 5.10 The Act also broadened the basis upon which dispensations could be granted to incorporate the following scenarios;
- i. without the dispensation the number of persons prohibited from participating in the particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business*
  - ii. without the dispensation the representation of different political groups on the body transacting the business would be so upset as to alter the likely outcome of any vote relating to the business*
  - iii. in relation to an Executive function, without the dispensation each member of the Executive would be prohibited from participating in the particular business*
  - iv. granting the dispensation is in the interests of persons living in the authority's area*
  - v. it is otherwise appropriate to grant a dispensation*
- 5.11 On 25 April 2012 the Council agreed that dispensations in respect of scenarios (i) to (iii) may be granted by the Monitoring Officer in consultation with the Chairman of the Standards Committee but that decisions relating to (iv) and (v) due to their subjective nature, should be reserved to the Governance and Audit Committee. It is however considered by the Standards Committee that due to the tight timeframes involved between a Councillor becoming aware of an Interest and the meeting at which the interest would otherwise need to be declared, determination by a Governance and Audit Committee would be impracticable. It is therefore proposed that such determinations are made by the Monitoring Officer in consultation with the Chair of the Standards Committee.
- 5.12 Appendix C sets out a procedure for the granting of dispensations for inclusion within the Councillor Code of Conduct to reflect the above.

**6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

Borough Solicitor

- 6.1 The Borough Solicitor is the author of this report

Borough Treasurer

- 6.2 There are no financial implications arising from the recommendations in this report.

Equalities Impact Assessment

- 6.3 Not required

Strategic Risk Management Issues

- 6.4 None

## **7 CONSULTATION**

### Principal Groups Consulted

7.1 Director of Corporate Services, CMT

## **8. APPENDICES**

A - Procedure for dealing with Code of Conduct Complaints

B - Table of Code of Conduct sanctions available across a sample range of Local Authorities

C –Procedure for dealing with dispensation requests (to be included in Councillor Code of Conduct)

### Contact for further information

Sanjay Prashar- 01344 355607

[sanjay.prashar@bracknell-forest.gov.uk](mailto:sanjay.prashar@bracknell-forest.gov.uk)

**BRACKNELL FOREST BOROUGH COUNCIL  
ARRANGEMENTS FOR DEALING WITH COUNCILLOR CODE OF CONDUCT  
COMPLAINTS**

**1. Context**

1.1 These 'Arrangements' set out how a complaint may be made that an elected or co-opted Member of this Council has failed to comply with the Council's Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with that Code of Conduct.

1.2 Under sections 28(6) and (7) of the Localism Act 2011, the Council must have in place 'arrangements' under which allegations that a member or co-opted Member of the Council, or of a committee or sub-committee of the Council, has failed to comply with its Code of Conduct can be investigated and decisions made on such allegations.

1.3 In this procedure;

- An Independent Person is an individual appointed by the Council in accordance with the requirements of the Localism Act 2011 and whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a Member against whom an allegation as been made.
- An Independent Member is a non elected Member of the Standards Committee. There are four such Members on the Council's Standards Committee one of whom serves as the Chair.

**2. The Code of Conduct**

2.1 The Council has adopted a Code of Conduct for Members, which is available for inspection on its web site.

**3. Making a complaint**

3.1 Complaints alleging that a member has breached the Code of Conduct must be in writing stating the paragraph of the Code that it is alleged the member has not complied with and explaining the circumstances of the non-compliance. The complainant must complete the Council's complaint form which is available on the Council's web site at [www.bracknell-forest.gov.uk](http://www.bracknell-forest.gov.uk)

3.2 Where a complaint is received orally or by email the complainant will be advised to complete the complaint form. If necessary, assistance will be provided or arrangements made to enable the complainant to complete the complaint form.

3.3 The complainant must provide us with their name and a contact address or email address, so that we can acknowledge receipt of the complaint and keep them informed of its progress. If they wish to keep their name and address confidential, they must indicate this in the space provided on the complaint form, in which case we will not disclose it to the member against whom the complaint has been made without their prior consent. However there may be exceptions, such as those outlined in paragraph 3.7 below. A request from a complainant for confidentiality should be supported by reasons. The Authority does not normally investigate complaints received anonymously or where

## Unrestricted

the complainant cannot otherwise be identified, unless there is a clear public interest in doing so.

- 3.4 The Democratic Services Team will log the complaint and write to the complainant **within five working days** acknowledging receipt of the complaint.
- 3.5 Officers in the Democratic Services Team will check a complaint. If a complaint specifies that it relates to a failure to comply with the Code of Conduct by a member, or it appears that it might relate to a member and a failure to comply with the Code of Conduct, then it will be passed to the Council's Monitoring Officer for further action **within two working days** of its acknowledgement, together with any relevant correspondence with the complainant.
- 3.6 The Monitoring Officer is a senior officer of the Authority who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of member misconduct. The Deputy Monitoring Officer may take the role of the Monitoring Officer if the Monitoring Officer is unable to act.
- 3.7 The Monitoring Officer will normally disclose to the subject member the details of the complaint, except where such disclosure would be against the public interest or would prejudice any future investigation, or where the complainant has requested confidentiality. If any one of these exceptions applies the Monitoring Officer may only notify the member of the fact that an allegation has been made and the reasons why details cannot be disclosed. A complainant who has requested confidentiality will be informed if the Monitoring Officer considers that it is necessary to divulge their details to the member so that an investigation can be progressed.

#### **4. Will the complaint be investigated?**

- 4.1 The Monitoring Officer will review every complaint received and, after consultation with the Independent Chair of the Standards Committee,\* as well as in appropriate circumstances, the Independent Person, take one of three decisions:
  - i. Take no action
  - ii. Seek to resolve the complaint informally
  - iii. Refer the Complaint for investigation

This decision will normally be taken **within 10 working days** of receipt of the complaint. The Monitoring Officer will inform the complainant and the Member of his decision and the reasons for that decision.

*(\*or in their absence another Independent Member)*

- 4.2 It is likely that no action will be taken where;

- there is no prima facie evidence that the Code has been breached;
- taking into account the nature of the allegation, using public funds to examine the matter further would be disproportionate;
- the complaint appears to be vexatious, or politically motivated
- the conduct complained about has already been the subject of investigation or enquiry by another public body;

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- the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation, and there is nothing further to be gained;
- there is not enough information to take the matter further;
- the complaint was made anonymously;
- the complainant has requested that their identity as complainant be withheld from the member, and the matter cannot reasonably be taken further in these circumstances;
- the member has already apologised for the action that was the subject of the complaint, and that is sufficient to dispose of the complaint;
- the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual member(s).
- the complaint relates to conduct in a Members private life and not in their official capacity.

4.3 Where the Monitoring Officer requires additional information in order to come to a decision they may seek such information from the complainant, and may request information from the member against whom the complaint is directed.

4.4 As indicated in paragraph 4.1 above, in appropriate cases, the Monitoring Officer may, having consulted with the Independent Chair of the Standards Committee, seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Council.

4.5 If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the police and other regulatory agencies.

### **5. How is the investigation conducted?**

5.1 If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another Council or an external investigator. The Monitoring Officer will write to the relevant parties:

- a) informing them that the matter has been referred for investigation;
- b) if appropriate, advising them who is to be responsible for conducting the investigation;
- c) advising them how the investigation will be carried out and within what timescale; and
- d) giving any Member who is the subject of the investigation the opportunity to comment on the complaint made.

5.2 The Investigating Officer will decide whether they need to meet or speak to the complainant to understand the nature of the complaint and so that the complainant can explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

5.3 The Investigating Officer will normally write to the Member against whom the complaint has been made and provide them with a copy of the complaint, and ask the Member to provide their explanation of events, and to identify what documents the Investigating Officer needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep the identity of the complainant confidential or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete personal details from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.

5.4 At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the Member concerned, to give them both an opportunity to identify any matter in that draft report with which they disagree or which they consider requires more consideration.

5.5 Having received and taken account of any comments which may be made on the draft report, the Investigating Officer will send their final report to the Monitoring Officer.

**6. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

6.1 The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the complainant and to the Member concerned, notifying them that he/she is satisfied that no further action is required, and give both of them a copy of the Investigating Officer's final report. The findings will be reported to the Council for information, without question or debate, unless the Member asks that they be not reported. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

**7. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

7.1 The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before a Code of Conduct Panel or, after consulting the Independent Person and Chairman of the Standards Committee seek a resolution.

**Resolution**

7.2 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, the Monitoring Officer will consult with the Independent Person, Chairman of the Standards Committee and with the complainant and seek to agree what is considered to be a fair resolution which also helps to ensure higher standards of conduct in the future. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee for information, but will take no further action. However, if the complainant tells the Monitoring Officer that any suggested resolution would not be adequate; the Monitoring Officer will refer the matter for a hearing.

**Hearing**

7.3 If the Monitoring Officer considers that resolution is not appropriate, or the complainant is not satisfied by the proposed resolution, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to a Code of Conduct Panel which will conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

### **What is the Code of Conduct Panel?**

- 7.4 The Code of Conduct Panel will comprise four members of the Standards Committee, two of whom will be Independent Members. It will be chaired by one of the Independent Members who will hold a casting vote in the event of deadlock
- 7.5 The Independent Person or his deputy will be present at any hearing to advise the Panel
- 7.6 The Monitoring Officer will conduct a 'pre-hearing process', requiring the Member to give their response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Code of Conduct Panel may issue directions as to the manner in which the hearing will be conducted.
- 7.7 A member who is the subject of a hearing may be represented by counsel, by a solicitor or, with the consent of the Code of Conduct Panel, by any other representative.
- 7.8 If a Member who is the subject of a report to the Code of Conduct Panel fails to attend a hearing of which that Member has been given notice, the Code of Conduct Panel may:
- (a) unless it is satisfied that there is sufficient reason for such failure, consider the allegation and make a determination in the absence of that Member; or
  - (b) adjourn the hearing to another date.
- 7.9 Hearings will be conducted in accordance with the process set out in Annex A

### **8. What action can the Code of Conduct Panel take where a Member has failed to comply with the Code of Conduct?**

8.1 The sanctions which may be imposed upon a Member found to be in breach of the Code are;

- Censoring the Member/Co-opted Member
- Recommending to the Member's group leader (or in the case of an "ungrouped" Member, recommend to council or to committees) that he/she be removed from any or all committees or sub-committees
- Recommending to the Leader of the Council that the Member be removed from the Executive, or removed from particular portfolio responsibilities
- Recommending that the Member be removed from any or all outside appointments to which he/she has been appointed or nominated by the Leader of the Council
- Withdrawing facilities provided to the Member/co-opted Member by the council such as a computer or internet access

8.2 The Code of Conduct Panel has no power to suspend or disqualify the Member or to withdraw the member's allowance.

## **9. What happens at the end of the hearing?**

9.1 At the end of the hearing, the Chair will announce the findings of the Code of Conduct Panel. Those findings as well as the Panel's recommendations regarding sanctions (where there is a finding of failure to comply with the Code) will be presented to a specially convened meeting of the Governance and Audit Committee for ratification

9.2 As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal decision notice, in consultation with the Chair of the Code of Conduct Panel, and send a copy to the Complainant and to the Member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Standards Committee

## **10. Withdrawal of complaint**

10.1 The complainant can request, but there is no right, to withdraw a complaint and it is for the Monitoring Officer in any particular case to consider and decide whether or not to agree to a withdrawal. When making a decision the Monitoring Officer will give due consideration to such matters as:

- a) Whether there are identifiable underlying reasons for the withdrawal request;
- b) Whether the public interest in taking action on a complaint outweighs the reasons behind the complainant's withdrawal request; and
- c) Whether the complaint can be adequately investigated without the complainant's participation.

## **11. Revision of these arrangements**

11.1 The Council may by resolution agree to amend these arrangements, and the Chair of the Code of Conduct Panel may depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## **12. Appeals**

12.1 There is no right of appeal for the complainant or for the Member against a decision of the Monitoring Officer.

12.2 If either party feels that the Authority has failed to deal with the complaint properly, that party may make a complaint to the Local Government Ombudsman

## **Appendix A –Code of Conduct Panel Hearing Procedure**

### **1. Purpose of hearing**

To consider the report of the Monitoring Officer concerning the complaint made about the conduct of Councillor X.

### **2. Material to be provided to the hearing**

The Monitoring Officer will provide a report which will include:-

1. Relevant extracts from the Code of Conduct for Councillors.
2. The factual material and conclusions of the person undertaking the investigation (which may be the Monitoring Officer or someone authorised by him).
3. Any material and information provided by Councillor X.

### **3. Procedure**

#### In attendance:-

Code of Conduct Panel Members, Democratic Services Officer, Panel Adviser, Independent Person, Monitoring Officer and/or his representative, any other witnesses, Councillor X, his or her representative (if any) and his or her witness(es), the Complainant (if present).

Nb: the hearing may proceed in the absence of Councillor X unless the Panel Members decide it is not in the interests of justice to do so.

1. The Chair introduces the Panel and its advisers.
2. Chair indicates what material the Panel has before it.
3. Chair explains the procedure to be followed:-
  - (i) Exclude press/public?
  - (ii) The Monitoring Officer/representative introduces his report and explains the conclusions he has reached. The presenter of the report may call witnesses to give evidence although it is hoped in the majority of cases this will not be necessary.
  - (iii) The Panel to ask Councillor X if he/she requires clarification of any points in the report. If so, and the Panel feels this is relevant, it should seek such clarification.
  - (iv) The Panel will seek clarification of any points to help it form a view on whether the complaint has been properly investigated and whether it has sufficient information to enable it to make a properly informed judgement.
  - (v) If present, the complainant says what he/she wishes to say.
  - (vi) The Panel may allow questions to be asked of the Complainant through the Chair.
  - (vii) Councillor X or his representative says what he/she wishes to say. Are there any new

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issues?

(viii) The Panel then questions Councillor X.

(ix) Councillor X or their representative calls any witnesses who have information to give relevant to the issue before the Panel.

(x) The Panel then ask questions of those witnesses.

(xi) The Chair asks the Monitoring Officer for any final comments.

(xii) Final comments are made by Councillor X or their representative. (no new material)

(xiii) The Panel retires to consider decision.

(xiv) Wherever possible legal advice will be given publicly but the Panel reserves the right to seek it privately in exceptional circumstances.

(xv) Decision with brief reasons announced.

Nb. *The Chair of the Code of Conduct Panel may depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.*

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Appendix B

**Code of Conduct sanctions available across a range of local Authorities**

Authority	Instruct MO to arrange training	Publicise findings/press release	Report findings to Council	Recommend removal from outside appointments	Recommend leader to remove from portfolio responsibilities	Recommend leader to remove from Committees/Sub Committees	Withdraw facilities	Exclude from Council Offices	Censure/Censure Motion
Lewisham	x	x	x				x	x	x
Camden		x	x		x	x			x
Brent	x	x	x	x	x	x	x	x	x
Merton	x	x	x	x	x	x	x	x	
Southwark	x			x	x	x		x	x
Barking & Dagenham	x	x	x	x	x	x	x	x	x
Newham	x		x	x	x	x	x	x	
Havering	x			x	x	x	x		x
Haringey	x	x	x	x	x	x	x	x	
Hammersmith and Fulham			x		x	x			x
Sutton	x	x	x	x	x	x	x	x	
Slough	x	x		x	x	x	x	x	
Wokingham					x	x	x	x	x
Reading	x					x			x
West Berkshire						x			x
Bracknell Forest				x	x	x	x		x

## **Procedure for the Granting of Dispensations**

### **1 Introduction**

1.1 This guide explains:-

- (a) The purpose and effect of dispensations
- (b) The procedure for requesting dispensations
- (c) The criteria which are applied in determining dispensation requests the terms of dispensations.

### **2 Purpose and effect of dispensations**

2.1 In certain circumstances Councillors may be granted a dispensation which enables them to take part in Council business where this would otherwise be prohibited under the Code of Conduct or by law. (ie where they have a Disclosable Pecuniary Interest or Affected Interest). If Councillors act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law.

### **3 Process for making requests**

3.1 Any Councillor who wishes to apply for a dispensation must fully complete the attached form and submit it to the Monitoring Officer at least 3 working days before the meeting for which the dispensation is required. Applications may be accepted within a shorter period in exceptional circumstances.

3.2 In order to avoid delay Councillors must ensure that they give full details of the grounds for their request and submit it to the Monitoring Officer as soon as they become aware that a dispensation is necessary.

3.3 A request for dispensation must be made on an individual basis. Group applications are not permitted.

### **4 Consideration by the Monitoring Officer in consultation with the Chair of the Standards Committee**

4.1 The Monitoring Officer will consider requests for a dispensation having regard to the criteria set out in paragraph 5.

4.2 The Monitoring Officer, after consultation with the Chairman, or in their absence the Vice Chairman of the Standards Committee, may grant a dispensation if they consider that either;

- (a) Without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business (i.e. the meeting would be inquorate);
- (b) Without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote and;
- (c) Without the dispensation each member of the Council's Executive would be prohibited from participating in any particular business to be transacted by the Council's Executive.
- (d) Granting a dispensation is in the interests of persons living in the Authority's area;  
or
- (e) It is otherwise appropriate to grant a dispensation.

## Unrestricted

- 4.3 The terms of any dispensation shall be in accordance with paragraph 6.
- 4.4 The Monitoring Officer will notify the Councillor of their decision and reasons in writing at the earliest opportunity.

### **5 Criteria for determination of requests**

- 5.1 In reaching a decision on a request for a dispensation the Monitoring Officer will take into account:
- (a) The nature of the Councillor's Disclosable Pecuniary interest or Affected Interest
  - (b) The need to maintain public confidence in the conduct of the Council's business
  - (c) The possible outcome of the proposed vote
  - (d) The need for efficient and effective conduct of the Council's business
  - (e) Any other relevant circumstances.

### **6 Terms of dispensations**

- 6.1 Dispensations may be granted:
- (a) For one meeting; or
  - (b) For a period not exceeding 4 years.
- 6.2 Dispensations may allow the Councillor:
- (a) To participate, or participate further, in any discussion of the matter at the meeting(s); and/or
  - (b) To participate in any vote, or further vote, taken on the matter at the meeting(s).

### **7 Disclosure of decision**

- 7.1 Any Councillor who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any business to which it relates.

**BRACKNELL FOREST COUNCIL****Dispensation Request Form**

Please give full details of the following in support of your application for a dispensation. You should refer to the accompanying "Procedure for Granting Dispensations"  
If you need any help completing this form please contact the Monitoring Officer.

Your name	
Decision-making body in respect of which you require a dispensation	
Details of your membership of that body	
The business for which you require a dispensation (refer to agenda Item number if appropriate)	
Details of your interest in that business	
Date of meeting or time period (up to 4 years) for which dispensation is sought	
Dispensation requested to participate, or participate further, in any discussion of that business by that body	Yes/No
Dispensation requested to participate in any vote, or further vote, taken on that business by that body	Yes/No