

## **Annual Council – 1st June 2015**

### **Constitution and timetable of meetings 2015/2016**

#### **1. Summary of report**

- 1.1 This report sets out proposed amendments to the Constitution and is produced in accordance with the requirements of Article 14 of the Constitution and the Council's duty to monitor and review the Constitution. The scheme of delegations to officers was revised by the Audit Committee on 20th April 2015.
- 1.2 The report also sets out the timetable of meetings to be adopted for the municipal year 2015/2016.

#### **2. Recommendations**

- 2.1 That the amendments to the following parts of the Constitution as set out in the report be approved:
  - (a) Part 2 – Articles
    - Article 4
    - Article 10
    - Article 11
  - (b) Part 3 – Responsibility for functions
    - 3.2 - Scheme of delegations to Committees
    - 3.5 - Scheme of delegations to officers
    - 3.6 - West Midlands Joint Committee
  - (c) Part 4 – Rules of procedure
    - 2 - Access to Information rules
    - 6 - Officer Employment rules
    - 7 - Finance rules
    - 8 - Contract rules
  - (d) Part 5 – Codes and protocols
    - New protocol 20 – Mayor's Charity Appeal Fund and charity events
- 2.2 That the Members' Allowances Scheme be approved for a further 12 months subject to any changes to structures or responsibilities.
- 2.3 That the timetable of meetings for the municipal year 2015/2016 as set out in Appendix 7 of the report be approved.

### **3. Background information**

#### **3.1 Part 1 – Articles of the Constitution**

##### **(a) Article 4**

The Local Government Act 2000 gave the Council collective responsibility for approving the Council's policy framework and budget. The list is split into two parts. Part (i) are those plans and strategies which are required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and subsequent amending legislation adopted by the Council. Part (ii) are other plans and strategies which the Council considers should be adopted as part of the policy framework. The following plans fall under part (ii) of this policy framework:

- Council tax reduction scheme
- Library Plan

##### **(b) Article 10**

This article sets out the senior management structure and defines the roles of the Chief Executive, Executive Directors and statutory officer functions. Following the recent re-structure carried out by the Chief Executive the following posts will be designated Chief Officers with responsibilities as determined from time to time by the Chief Executive:

Chief Executive  
Executive Director for Children's Services  
Executive Director for Resources  
Executive Director for Economy and Environment  
Executive Director for Social Care and Inclusion  
Director of Public Health

##### **(c) Article 11**

This article relates to decision making under the Local Government Act 2000 which established the new Executive arrangements. The definition of a key decision which is set out in Part 11.03 has over the years proved over complicated to explain therefore the following is put forward as a new less complicated version:

##### **(b) Key decisions:**

##### **(1) A key decision is:**

- (i) any decision in relation to an executive function which results in the Council incurring expenditure which is, or the making of savings which are, significant, having regard to the Council's budget for the service or function to which the decision relates or

- (ii) any decision that is likely to have significant impact on two or more wards within the borough.
- (2) The threshold for “significant” expenditure/savings is £250,000.
- (3) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.

### 3.2 **Part 3 – Responsibility for functions**

#### (a) **Part 3.2 – Responsibility for Council functions – Delegations to Committees**

##### **Personnel Committee**

##### (i) **Training**

That the following words be added to the end of this paragraph:

“and that where members are sitting on appeals panels in respect of dismissals this requirement will apply to them.”

##### (ii) **Appointment/dismissal of Chief Officers/Deputy Chief Officer**

At the request of the Monitoring Officer it is proposed to amend the existing delegations (2) and (5) to read as follows:

- (2) The appointment and dismissal of Chief Officers/Deputy Chief Officers as defined within Article 10 of the Constitution and within the Local Authorities (Standing Orders) (England) Regulations 2001, and the provisions thereof, particularly in relation to the well founded objection procedure, in accordance with the Employment Procedure Rules.”

(Note: The appointment and dismissal of the Director of Public Health will be subject to consultation with Public Health England.)

- (5) To act as the Committee which considers matters relating to the conduct and capability of Chief Officers/Deputy Chief Officers as defined in (2) above in accordance with the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001.

The Monitoring Officer has also requested that the following be added as new paragraph (10). An explanatory note relating to this matter is set out at **Appendix 1** to this report:

- (10) To determine remuneration and severance packages for employees in excess of £100,000.

(b) **Part 3.5 – Scheme of delegations to officers**

(i) **Reports on use of delegated powers – paragraph 3**

The Audit Committee at their meeting held on 20th April 2015 reviewed the requirement imposed by this clause following the report of the Chief Finance Officer which gave a nil return in respect of decisions taken. Historically this report has always given a nil return and members of the Audit Committee asked whether there was a statutory requirement for this requirement to be included in the Council's Constitution. The Council's Monitoring Officer informed the Committee that there is no legal requirement for this clause which appeared to have been added at an early stage in the new required Constitution as a reasonable requirement to manage this part of the Council's decision making process which has over time proved unnecessary therefore the Audit Committee recommended that the Monitoring Officer remove this requirement from the Constitution.

(ii) **Specific powers delegated to officers**

The delegations to officers under the Constitution are reviewed on a regular basis to reflect changes in legislation, structural and organisational changes within the Council. The proposed changes are set out in **Appendix 2** to this report. The Audit Committee at their meeting on 20th April 2015 reviewed the proposed amendments. At the time of writing this report the changes arising from the re-allocation of the duties of the former Executive Director for Neighbourhoods have not been fully re-allocated and will be the subject of a further report in due course.

(c) **3.6 – West Midlands Joint Committee**

The West Midlands Joint Committee at its meeting held on 28th January 2015 agreed to changes to the functions of the Joint Committee. A copy of the amended document together with a document showing the changes is attached as **Appendix 3** to this report.

4. **Part 4 – Rules of procedure**

Part 4 of the Constitution relates to rules of procedure and comprises 8 sections.

The amendments proposed to this part of the Constitution are as follows:

(a) **Part 2 - Access to Information procedure rules – notice of private meetings of the Executive**

In accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, a local authority must give 28 clear days notice of its intention to hold a meeting of the Executive in private. Members of the Executive will be entitled to receive 5 clear days notice of a meeting to which they are summoned unless the meeting is convened at a shorter notice as a matter of urgency.

(b) **Part 6 – Officer Employment procedure rules**

At the request of the Monitoring Officer it is proposed to insert the following at paragraph 5:

- (e) **Appointment of Director of Public Health:** The Director of Public Health will be appointed by the Council in accordance with the requirements of the Health and Social Care Act 2012 and the relevant guidance issued by the Department of Health.

The following additional paragraph is proposed as paragraph 8:

8. **Dismissal of the Director of Public Health – requirement for consultation with the Secretary of State for Health**

No dismissal other than suspension may be taken in respect of the Director of Public Health, except following consultation with the Secretary of State.

(c) **Part 7 - Financial rules**

The Audit Committee at its meeting on 20th April 2015 recommended Council at its annual meeting to adopt the amendments to finance procedure rules as set out in the report attached at **Appendix 4**.

(d) **8 – Contract Rules**

At the request of the Monitoring Officer it is proposed to make amendments to the existing contract rules taking into account new legislation. A copy of the new rules are set out in **Appendix 5**.

3.3 **Part 5 – Codes and protocols**

**New protocol – Mayor’s Charity Appeals fund and charity events**

This new protocol which is attached as **Appendix 6** to this report is proposed in order to ensure that the Mayor and other interested parties are clear about the procedures which apply to the Mayor’s Charity Appeal Fund and the level of assistance required.

4. **Members Allowances Scheme**

The Council adopted a new scheme on 17th November 2014 to be operational from 17 November 2014 as required by the Local Authorities (Members Allowances) (England) Regulations 2003. In respect of the present scheme, the Council adopted the recommendation made by the Independent Review Panel to rely on an index for 4 years instead of reviewing the scheme annually, this index being the annual updating in line with the JNC pay award for officers.

## 5. **Timetable 2015/2016**

The draft timetable which is recommended for approval is attached as **Appendix 7**.

In order for business to be administered in the most effective way possible, it is important that once the timetable is agreed by the Council, only in the most exceptional circumstances should meeting dates be re-arranged.

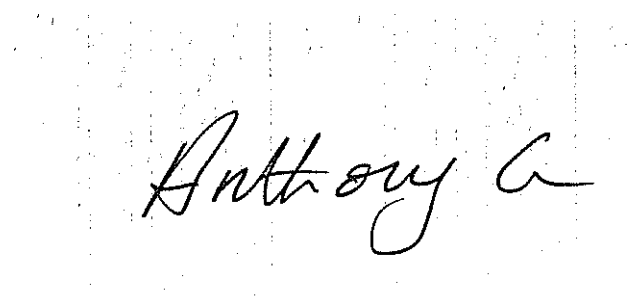
**Background papers - Nil**

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A handwritten signature in black ink, appearing to read 'Anthony A.', is centered within a rectangular area defined by a dotted grid pattern.

Signed:

Head of Legal and Democratic Services

21st May 2015

## **Appendix 1**

### **Remuneration and severance packages for employees in excess of £100,000**

The Localism Act 2011 introduced the concept of increased accountability over senior officer pay in local government by requiring councils to prepare and publish a pay policy statement every financial year, which is required to meet various statutory requirements. In performing this function the council must have regard to any guidance issued by the Secretary of State for the Department of Communities and Local Government.

One of the key objectives of the primary legislation and subsequent statutory guidance is to provide local accountability through councillors having a significant input into how decisions on remuneration for chief officers are made. The 2012 statutory guidance stated that full council or a meeting of members should be offered the opportunity to vote before large salaries are offered in respect of a new appointment. It provided for a notional threshold of £100,000 or above. The 2013 statutory guidance, which supplemented the 2012 guidance, extended this requirement to severance packages of £100,000 or above. The objective of increasing transparency in the council's approach to pay is achieved through the publication of the pay policy statement itself, which itself builds upon the requirement to publish senior employees remuneration under Regulation 4 Accounts Audit (Amendment No 2) (England) Regulations as part of its published salaries information, and more latterly the Local Government Transparency Code 2014.

Council policy in respect of the recruitment and appointment of Chief Officers is set out at Part 4.6 of the Council's Constitution, Officer Employment Procedure Rules, whereby the Council has historically delegated the power to approve remuneration levels for the Chief Executive, Executive Directors and Assistant Directors to the Appointments Board and more latterly Personnel Committee since 2004. Therefore councillors have always had a significant input on the appointment of chief officers and their remuneration. As previously stated this is set out in the council's constitution which is a public document. All of these appointments are also subject to the well-founded objection process involving Members of the Executive.

When Council has considered approving the pay policy statement it has been given the option of voting on remuneration packages over £100,000 which is the suggested threshold of the Secretary of State. In the 2013 Guidance which supplements the Localism Act 2011 and the 2012 Guidance, the Secretary of State suggests that elected members are given an opportunity to vote on severance packages that exceed a suggested threshold of £100,000. Again in practice significant severance packages of £100,000 are discussed with the council's external auditors and reported to Appointments Board, now Personnel Committee, prior to approval. This builds in safeguards in respect of the lawfulness of any proposed large severance payments as the council's external auditors have the power to challenge such packages. These packages are also publicly reported in the council's accounts under regulations referred to above. The payments are already therefore transparent and subject to councillor consideration, and decision.

## Legal Implications

What is included in a severance payment? – Normally a severance package will include for example salary up to the date of termination of employment, payment in lieu of notice (PILON), accrued holiday pay, allowances, contractual benefits and expenses, redundancy pay (where there is a genuine redundancy situation) and pension entitlements. All such payments are contractual and/or statutory entitlements and accordingly there is no discretion available to the Council in negotiation or payment of the same.

Are the Council's pension costs included within the severance payment? – The February 2013 Guidance at paragraph 11 under the section entitled “Severance Packages” says that severance payments “includes any payments offered to staff leaving the authority”. Paragraph 14 then says that the severance package may include salary paid in lieu, redundancy compensation, pension entitlements, holiday pay and any bonuses, fees or allowances paid. Both the spirit and the letter of the Guidance requires public scrutiny and transparency of payments made to employees under a severance package and not the actual cost incurred by the Council on the termination of employment, such as pension costs to the Council, legal costs of the termination, recruitment costs of the replacement employee. These costs [if applied] could be substantial and would easily erode into the £100,000 severance payment threshold under the Guidance. If extra costs had been required to be included as part of the same then the Guidance would have explicitly mentioned it, and probably if such costs had been included then the threshold by its nature would have been higher.

Council should note that the payment of any severance package is already regulated by the appropriate pay policies applicable to all staff within the organisation including the most senior staff. As such, these components comprise contractual/statutory terms with individual employees, and any vote by full Council or Personnel Committee to unilaterally vary the same could result in a claim for breach of contract or unfair dismissal.

If a meeting of full council is required to meet to approve severance packages then due to the council's six week cycle there could be a delay in implementing redundancies/terminations in a timely fashion which could result in an increased cost to the council, operational uncertainty and increased risk of litigation. Sometimes the negotiation of a severance package is very dynamic and timing can often be a factor in achieving a negotiated settlement that both parties are happy with. If council wish to vote on severance packages above £100,000 it may mean that on occasions a special council may be required to approve the terms of such a package at short notice. If the Personnel Committee felt unable to exercise the delegation given to them it could refer any matter back to full council for determination.

In view of the above and in the interests of the efficient use of resources it is probably in the best interests of the council that accountability for, and the delegation of remuneration and severance packages of £100,000 or more above [the components of which will be contractual/statutory in any event and therefore not within the Council's discretion] should be delegated to the Personnel Committee, as it has been historically to the Appointments Board.



## **Audit Committee – 20 April 2015**

### **Amendments to officer delegations under Part 3.5 of the Council's Constitution**

**Service:** Legal and Democratic Services

**Wards:** Not applicable

#### **1. Summary**

This reports sets out amendments to officer delegations which will be considered by Annual Council at its meeting to be held on 1 June 2015.

#### **2. Recommendations**

- 2.1 That the Committee review and note the revisions to officer delegations as set out in the Appendix to this report.
- 2.2. That the report be circulated to Group Leaders and independent members for information.

#### **3. Report detail**

- 3.1 The proposed amendments to officer delegations for the forthcoming municipal year (2015/2016) reflect new legislation and minor operational amendments. The **Appendix** to this report shows in column 1 the current delegation and the amendment to that delegation is shown in column 2.

The complete list of existing delegations are set out in Part 3.5 of the Constitution and can found on CMIS (Committee Management and Information system) by clicking [here](#).

- 3.2 A review of the senior management structure is being undertaken by the Chief Executive and any changes in responsibilities resulting from this review will need to be reflected in officer delegations at a later date.
- 3.3 It is suggested that as was done last year this report be circulated to Group Leaders and independent members for information.

#### **4. Resource implications**

- 4.1 **Financial:** None arising from this report.
- 4.2 **Legal:** There will be an ongoing requirement to keep the officer delegations under review to ensure that the Council acts within the law.
- 4.3 **Staffing:** None arising from this report.

**5. Citizen impact**

The proposed amendments will assist with the efficient and effective decision making which will be of benefit to citizens.

**6. Community safety** - None arising from this report.

**7. Environment impact** - None arising from this report.

**8. Performance and risk management issues**

8.1 **Risk:** Updating the current scheme of officer delegations will reduce the risk of officers acting in an unlawful manner and result in decision making being more transparent and accountable.

8.2 **Performance management:** An updated scheme of delegations will add to the efficient operation of the Council's services.

**9. Equality implications** - None arising from this report.

**10. Consultation**


The revised delegations attached as an appendix to this report are as a result of extensive consultation with relevant Council directorates.

**Background papers**

None

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Tony Cox  
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10 April 2015

## Proposed amendments to Table 5 – Scheme of delegations to officers

1. Current delegation	2. Proposed changes
<p>13. <b>Executive Director, Resources</b></p>	<p>Following delegations to be transferred from the Executive Director, Regeneration to the Executive Director, Resources:</p> <p>13.5 Invite, accept and appoint in accordance with Financial and Contract Rules, consultants and contractors for a specified period for the development and execution of approved projects. (18.1)*</p> <p>13.6 Exercise all routine housing functions that are not specifically delegated to any relevant Cabinet member, the Cabinet, or any Committee. (18.17)</p> <p>13.7 Make decisions under Part 6 and Part 7 of the Housing Act 1996, and to review decisions made under Part 7, Sections 175-218. (18.18)</p> <p>13.8 To serve notices of seeking possessions and taking other legal action in respect of tenants (including introductory tenants) who are in arrears of rent or in other breach of their tenancy conditions. (18.19)*</p> <p>13.9 Issue notices under Section 16 of the Local Government (Miscellaneous Provisions) Act, 1976 in respect of information as to ownership of land and properties in advance of action by the Council. (18.20)</p> <p>13.10 To instruct the Head of Legal and Democratic Services to take summary proceedings for the recovery of Council owned properties and land that are occupied by a person or persons who entered, or remain in occupation without the Council's licence or consent. (18.21)*</p>

	<p>13.11 Approve, in conjunction with the Chief Finance Officer, submissions by registered social landlords for rehabilitation work, to approve mortgage terms and to make the relevant applications for grants. (18.22)*</p> <p>13.12 To exercise all the statutory powers and duties of the Council relating to private sector housing including The Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 and subject to the limits set out in the Financial and Contract Rules, authority to:</p> <ul style="list-style-type: none"> <li>(a) Purchase equipment, tools and materials and authorise the execution of works;</li> <li>(b) Approve the settlement of the third party claims including:</li> <li>(c) Write off of recovery of debt relating to Statutory Notices or completion of work in default in consultation with the Head of Legal and Democratic Services;</li> <li>(d) Issue house in multiple occupation (HMO) licences and related notices;</li> <li>(e) consider and determine applications for loans or grants for aids for purposes detailed within the Council's Housing Renewal Assistance policy including aids and adaptations to the homes of people with disabilities below £50,000.</li> <li>(f) consider and determine applications for repair and improvements to private housing in line with the Council's Housing Renewal Assistance Policy. (18.24)</li> </ul> <p>13.13 (a) To grant authorisations (as the appropriate officer), to enforcement officers under the Housing Act 2004 Section</p>
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	<p>243 for the purposes of:</p> <ul style="list-style-type: none"> <li>(i) Section 131 (management orders: power of entry to carry out work)</li> <li>(ii) Section 235 (power to require documents to be produced)</li> <li>(iii) Section 239 (powers of entry)</li> <li>(iv) Paragraph 3 (4) of Schedule 3 (improvement notices: power of entry to carry out work), and</li> <li>(v) Paragraph 25 Schedule 7 (Empty Dwelling Management Orders: power of entry to carry out work)</li> </ul> <p>(b) To authorise in his absence the Systems Leaders (Money, Home, Job) to grant such authorisations and those listed in 13.14 and 13.15.</p> <p>(c) To authorise the System Leaders (Money, Home, Job) and the Manager of Housing Standards and Improvement to take action under the following legislation, including where relevant, the service and enforcement of notices, licences, authorisation of works in default, implementation of charges, approval of grants, loans and other financial assistance institution of legal proceedings:</p> <ul style="list-style-type: none"> <li>(1) Housing Acts 1980;</li> <li>(2) Housing Act 1985 (as amended);</li> <li>(3) Housing Act 1988;</li> <li>(4) Housing Act 1996;</li> <li>(5) Housing Act 2004;</li> </ul>
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	<p>(6) Housing Association Act 1985;</p> <p>(7) Housing and Building Control Act 1984;</p> <p>(8) Housing Grants, Construction and Regeneration Act 1996;</p> <p>(9) Local Government Act 1972;</p> <p>(10) Local Government and Housing Act 1989;</p> <p>(11) Local Government (Miscellaneous Provisions) Act 1976;</p> <p>(12) Local Government (Miscellaneous Provisions) Act 1982;</p> <p>(13) Rent Act 1977;</p> <p>(14) Water Act 1989;</p> <p>(15) Protection from Eviction Act 1977;</p> <p>(16) Landlord and Tenant Act 1954;</p> <p>(17) Landlord and Tenant Act 1985;</p> <p>(18) Landlord and Tenant Act 1987;</p> <p>(19) Caravan Sites and Control of Development Act 1960;</p> <p>(20) Caravan Sites Act 1968, Part 1;</p> <p>(21) Mobile Homes Act 1973;</p> <p>(22) Mobile Homes Act 1983;</p> <p>(23) Land Compensation Act 1973;</p> <p>(24) Noise and Statutory Nuisance Act 1993;</p> <p>(25) Prevention of Damage by Pests Act 1949;</p> <p>(26) Public Health Act 1936;</p> <p>(27) Public Health Act 1961;</p> <p>(28) Public Health Act 1969;</p> <p>(29) Refuse Disposal (amenity) Act 1978;</p> <p>(30) Building Act 1984;</p> <p>(31) Environmental Protection Act, 1990;</p> <p>(32) Control of Pollution Act 1974;</p> <p>(33) Defective Premises Act 1972;</p> <p>(34) Clean Air Act 1993;</p> <p>(35) Home Energy Conservation Act 1995;</p> <p>(36) European Communities Act 1972;</p>
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	<p>(37) Health and Safety at Work Act 1974.  (38) Homeless Act 2002  (39) Care Act 2014 (18.25)</p> <p>13.14 To take action under the following legislation (as may be amended), including where relevant, the determination of homelessness applications, the service of notices, issuing of licences, authorisation at works in default, implementation of charges, approval of grants, institution of legal proceedings etc:</p> <ul style="list-style-type: none"> <li>(1) Planning legislation (including the Town and Country Planning Act 1990, the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008;</li> <li>(2) Housing Act 1996 (as amended by the Homelessness Act 2002;</li> <li>(3) Immigration and Asylum Act 1999;</li> <li>(4) Nationality Immigration and Asylum Act 2002;</li> <li>(5) Asylums and Immigration (Treatment of Claimants) Act 2004;</li> <li>(6) Protection from Eviction Act 1977;</li> <li>(7) Children Act 2002;</li> <li>(8) Localism Act 2011 (18.26)</li> </ul> <p>13.15 Instruct the Head of Legal and Democratic Services to initiate proceedings for contraventions of any of the Acts (listed previously), which relate to the private sector. This includes issuing of a formal caution in lieu of prosecution in appropriate circumstances, e.g:</p> <ul style="list-style-type: none"> <li>(a) Where mitigating circumstances exist;</li> <li>(b) Where sufficient evidence exists to prosecute;</li> <li>(c) Where it is in the public interest to do so;</li> <li>(d) Where the perpetrator admits the offence.(18.27)*</li> </ul>
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	<p>13.16 Without prejudice to any delegations, authorise the Monitoring Officer to institute appropriate legal proceedings including against unauthorised occupiers found on the Council's land or premises. (18.28)</p> <p>(Note: (a) Except where otherwise stated Systems Leader(s) (Money Home Job) may exercise the above powers and also duly delegate these powers to other officers:</p> <p>(b) After consultation with the Head of Paid Service and the Monitoring Officer, the Executive Director, Resources is duly authorised to add to this list.)</p> <p>*Delegations also retained by the Executive Director, Regeneration</p>
<p>14. <b>Chief Finance Officer</b></p>	<p>Insert the following new delegations:</p> <p>14.8 Take all necessary action to devise a scheme to process business rate retail relief and the business rates reoccupation relief for qualifying bodies together with authority to amend each scheme to reflect any changes required by legislation and or government guidance.</p> <p>14.9 Authority to manage and determine awards of business rate relief and business rates reoccupation relief under each scheme.</p> <p>14.16 To determine the Council tax base in accordance with the Local Government Finance Act 1992</p> <p><b>Note:</b> The following powers may be exercised by the: Head of Finance: 2, 4, 5, 6, 7, 12, 13, 14, 17, 22, 23, 24, 25, 30, 31 (In the absence of the Chief Finance Officer (Assistant Director of Finance) the Head of Finance will act as the designated Chief Financial Officer and may exercise all of the delegations as set out above and specifically 14.1)</p>



<p><b>16. Executive Director, Children's Services</b></p> <p>16.24 Preparation of Statements of Special Educational Needs.</p> <p>16.25 Arrangements to implement special educational provisions specified in Statements of Special Educational Needs.</p> <p>16.28 Approval of grant aid for parental visits at appropriate times to children with special educational needs in residential schools and colleges.</p> <p>16.29 Provision of education to individual pupils "otherwise than in school".</p> <p>16.41 Exercise functions under Local Authority Social Services Act 1970 so far as they relate to children;.</p> <p>16.42 Exercise any health related functions exercised on behalf of any National Health Service body under section 75 of the National Health Service Act 2006.</p> <p>16.43 Make arrangements to ensure local authority functions are discharged with regard to the needs to safeguard and promote the welfare of children as required by Section 11 of the Children Act 2004.</p> <p>16.47 Provide an interpretation service where necessary.</p> <p>16.52 Ensure there are adequate resources for the accommodation of young people who are subject of secure remands under the Children and Young Person's Act 1969 and Youth Detention Accommodation under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.</p>	<p>16.24 Assessing for and where required, completing an Education, Health and Care Plan.</p> <p>16.25 Arrangements to implement special educational provisions specified in the Education, Health and Care Plan.</p> <p>To be deleted</p> <p>Move to paragraph 16.12 (A Education Services – General)</p> <p>To be deleted and replaced with new delegation:</p> <p>16.41 Exercise functions under the Children Act 2004, Section 18(2)</p> <p>16.47 Provide access to an interpretation service where necessary.</p> <p>16.52 Ensure there is access to sufficient resources for the accommodation of young people who are subject of secure remands under the Children and Young Person's Act 1969 and Youth Detention Accommodation under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.</p>
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16.53 Refer persons to the Secretary of State for possible inclusion on the Protection of Children Act list.	16.53 Maintain safe recruitment and employment practices and ensure that reference is made to the Disclosure and Barring Service and the Health and Care Professions Council when necessary.
16.54 Ensure that the educational attainment and state of health of looked after children are monitored.	16.54 Ensure that the education and health of looked after children are monitored and responded to as necessary.
16.57 Keep a register of all children placed by any local authority within the directorates area and of all children placed by the directorate outside of the local authority area.	16.57 Keep a record of all children placed by any local authority within the directorates area and of all children placed by the directorate outside of the local authority area.
16.58 Appeal to the tribunal against Care Quality Commission decisions to cancel registration, vary or remove a condition of registration, or add a new condition of registration in respect of the directorate.	16.58 Appeal against Ofsted decisions to cancel registration, vary or remove a condition of registration, or add a new condition of registration in respect of the directorate.
16.60 Provide support for asylum seekers and their dependents who are destitute or who are likely to become destitute and for whom support is not available elsewhere.	16.60 Provide support for asylum seekers with children who are destitute or who are likely to become destitute and for whom support is not available elsewhere.
16.64 Authority to determine applications or assistance under Section 17(6) of the Children Acts 1989.	16.64 Authority to provide assistance under Section 17(6) of the Children Acts 1989.
16.65 The day to day reception and placement in appropriate accommodation of any child brought to the attention of Social Services as being in need of accommodation or committed to the care of the Local Authority by the courts under the Children Act 1989 or the Legal Aid, Sentencing and Punishment of Offenders Act 2012.	16.65 The day to day reception and placement in appropriate accommodation of any child brought to the attention of the Council as being in need of accommodation or committed to the care of the Local Authority by the courts under the Children Act 1989 or the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
16.67 Receive and find appropriate placements for children committed to the care of the local authority on interim or full care orders.	To be deleted

<p>16.68 Authority to authorise a placement of children subject to care orders, with their parents or other persons with parental responsibility in accordance with the placements of children with parents etc, regulations, 1991.</p> <p>16.71 Authority to arrange regular visiting to ensure the welfare of any child, accommodated in a voluntary home by Social Services is adequately safeguarded and promoted in accordance with the duty under Section 62 of the Children Act 1989.</p> <p>16.72 Consider and authorise the payment of approved adoption allowances, residential allowances and special guardianship allowances in accordance with the scheme duly approved by the Department of Health and Social Security in cases where the adoption panel has recommended such allowances, and the agency decision maker has confirmed the recommendations as an agency decision.</p> <p>16.73 Authority to apply to the courts for placement in secure accommodation of juveniles accommodated by, or in the care of the local authority in accordance with Section 25 of the Children Act, 1989 and the accompanying Secure Accommodation Regulations, 1991.</p> <p>16.75 Authority to appoint and pay the reasonable expenses of independent visitors, appointed under paragraph 17 of Schedule 2 of the Children Act, 1989, and as defined by the accompanying definition of independent visitors (children) regulations, 1991.</p>	<p>16.68 Authority to authorise a placement of children subject to care orders, with their parents or other persons with parental responsibility in accordance with the Care Planning, Placement and Case Review Regulations 2010.</p> <p>16.71 Authority to arrange regular visiting to ensure the welfare of any child, accommodated in a voluntary home by Social Services is adequately safeguarded and promoted in accordance with the duty under Section 62 of the Children Act 1989 or superceded legislation.</p> <p>16.72 Consider and authorise the payment of approved adoption allowances, residential allowances and special guardianship allowances in accordance with the Adoption Allowance Regulations 1991 and any scheme approved by the Department of Work and Pensions in cases where the adoption panel has recommended such allowances, and the agency decision maker has confirmed the recommendations as an agency decision.</p> <p>16.73 Authority to apply to the court for an order to place a child or young person in secure accommodation in accordance with Section 25 of the Children Act, 1989 and the accompanying Secure Accommodation Regulations, 1991.</p> <p>16.75 Authority to appoint and pay the reasonable expenses of independent visitors, appointed under paragraph 17 of Schedule 2 of the Children Act, 1989, in accordance with Regulation 47, Care Planning, Placement and Case Review (England) Regulations 2010 and paragraphs 3.184 – 3.212, Children Act 1989 Regulations and Guidance Volume 2: Care Planning, Placement and Case Review 2010.</p>
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<p>16.81 Authority to agree the legal costs in relation to an application by a relative or foster carer for a Residents Order to promote the welfare of a child.</p> <p>16.112 To make sufficient provision of children's centres to meet local need, so far as is reasonably practicable and ensure universal access to children's centres is achieved and all children and families can be reached effectively, especially the most deprived. To consult before establishing, significantly changing or closing a children's centre.</p> <p>16.113 Ensure sufficient provision of childcare places and ensure implementation of statutory guidance for local authorities on the delivery of free Early Education for three and four year olds and securing sufficient childcare and extend provision to include 20% most vulnerable 2 year olds from September 2013.</p> <p>16.114 Ensure the provision of sufficient childcare for working parents or parents in education or training.</p>	<p>16.81 Authority to agree the legal costs in relation to an application by a relative or foster carer for a Special Guardianship or Child Arrangement Order to promote the welfare of a child.</p> <p>16.112 To make sufficient provision of children's centres, so far as reasonably practicable, to meet local need and ensure that a network of children's centres is accessible to all families with young children in their area.</p> <p>16.113 To make sufficient provision of childcare and early education places for two, three and four year olds until the child reaches compulsory school age (the beginning of the term following their fifth birthday).</p> <p>16.114 To provide sufficient child care to enable parents to undertake work, education or training, or continue with the same.</p>
<p>17. <b>Executive Director, Social Care and Inclusion</b></p> <p>The holder of the post of Executive Director, Social Care and Inclusion shall be responsible for the overall strategic management of the directorate, exercising the functions under Section 18 (3) of the Children Act 2004 in relation to adult education, and, without prejudice to the foregoing, shall have power, subject to compliance with the constitutional arrangements and any relevant provisions of the Council's Financial and Contract Rules to:</p>	<p>The holder of the post of Executive Director, Social Care and Inclusion shall act as the Council's statutory Director of Adult Social Services in accordance with Section 6 of the Local Authority Social Services Act 1970. The Director shall be responsible for the overall strategic management and direction of Social Care and Inclusion across the Council, exercising the functions under Section 18 (3) of the Children Act 2004 in relation to adult education, and, without prejudice to the foregoing, shall have power, subject to compliance with the constitutional arrangements and any relevant provisions of the Council's Financial and Contract Rules to:</p>

<p>17.1 Exercise the Council's functions in respect of all routine adult social services functions that are not specifically delegated to any relevant Cabinet member, the Cabinet or any Cabinet Committee, including assessing local needs and assuring availability of a full range of adult social services, provide professional leadership and workforce planning, lead the implementation of standards, manage cultural change, promote local access, ownership, partnership working across all agencies, deliver a whole systems approach to supporting communities and promote social inclusion and well being.</p> <p>17.6 Ensure that there is in place an efficient process for assessment and care management for current and potential service users and carers.</p> <p>17.9 Ensure that all arrangements for service provision are reviewed in accordance with legislative requirements and mandatory guidance.</p> <p>17.13 Present reports to Courts and Tribunals where required.</p>	<p>17.1 Exercise the Council's functions in respect of all routine adult social services functions that are not specifically delegated to any relevant Cabinet member, the Cabinet or any Cabinet Committee, including assessing local needs and assuring availability of a full range of adult social services;</p> <ul style="list-style-type: none"> <li>• Provide professional leadership including workforce planning</li> <li>• Leading the implementation of standards</li> <li>• Managing cultural change</li> <li>• Responding to formal and informal consultations</li> <li>• Promote local access and ownership</li> <li>• Partnership working across all agencies</li> <li>• Deliver an integrated whole systems approach to supporting communities</li> <li>• Promote social inclusion and wellbeing</li> <li>• Improving preventative services and delivering early intervention</li> <li>• Independent advice and advocacy</li> <li>• Any functions exercisable by the authority under Section 75 National Health Service Act 2006 on behalf of NHS body to include making arrangements for any services provided.</li> </ul> <p>17.6 Ensure that there is in place an efficient process for assessment and care management for current and potential service users and carers based on local need.</p> <p>17.9 Ensure that we assess, plan and commission adult social care and wellbeing services to meet all needs within the borough and that these are reviewed in accordance with legislative requirements and mandatory guidance.</p> <p>17.13 Present reports to Courts and Tribunals where required. This to include the authority to take decisions, serve notices, requirements or orders, make applications, exercise power of</p>
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<p>17.21 Authority to negotiate and agree fee levels with independent sector providers, having regard to the assessed needs of the clients, the services to be provided, and the availability of resources (National Health Services and Community Act 1990 and Health and Social Care Act 2012).</p> <p>17.28 Discretion to vary charges in cases where there are special circumstances, hardship etc.</p>	<p>entry, provide reports and institute or defend any proceedings before magistrate, court or other tribunal on behalf of the Council in discharge of the Council's adult social care functions arising under any law or act.</p> <p>17.21 Authority to negotiate and agree fee levels with independent sector providers, having regard to the assessed needs of the clients, the services to be provided, and the availability of resources (National Health Services and Community Act 1990 and Health and Social Care Act 2012 and Care Act 2014).</p> <p>17.28 To establish residential and non residential charging schemes following Care Act guidance, including discretion to vary charges in cases where there are special circumstances, hardship etc. The discretion to vary charges including the provision to write off debt where it is felt that an individual would be at risk if the debt was pursued or they chose to withdraw from care on financial grounds. A written record of all decisions should be made.</p> <p>Insert following new delegations:</p> <p>17.31 Making arrangements for ensuring that functions are discharged having regard to the need to safeguard and promote the needs of vulnerable adults including the requirement for a statutory Adults Safeguarding Board.</p> <p>17.32 To manage peoples affairs as appointee and guardian for individuals who lack capacity.</p> <p>Amend the list of legislation set out in existing paragraph 17.32 as follows:</p> <p>(3) Local Authorities Social Services Act 1970 (Schedule 1)</p> <p>(27) Mental Capacity Act 2005 including deprivation of liberty</p>
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	safeguards (30) Care Act 2014 (31) Children and Families Act 2014 (relevant adult sections)
18. Executive Director, Regeneration  18.6 Invite, accept and appoint term consultants and contractors, for a specified period for the development and execution of approved design and/or maintenance projects/programmes for the annual minor improvements and local safety programmes and for the analyses and advice to support the making of planning policy and planning decisions, including the representation of the Council at public inquiries and examinations.  18.13 Authority to approve the transfer or market stall licences to another family member or employee upon application, providing the officer considering the application is satisfied that the licence holder had traded on the market concerned for at least 5 years; and that during the 2 years immediately preceding the application:  (a) The family member has personally assisted the licence holder in trading on the stall to which the application relates; or  (b) The applicant has been employed (other than on a self employed basis) by the license holder for the purpose of trading on the stall to which the application relates.	See delegations transferred to Executive Director, Resources  18.6 Invite, accept and appoint term consultants and contractors, for a specified period for the development and execution of approved design and/or strategic projects/programmes for the Regeneration Transportation Capital Programme and for the analyses and advice to support the making of planning policy and planning decisions, including the representation of the Council at public inquiries and examinations.  18.13 Authority to approve the transfer or market stall licences to another family member or employee upon application, providing the officer considering the application is satisfied that the licence holder had traded on the market concerned for at least 5 years; and that during the 2 years immediately preceding the application:  (a) The family member has personally assisted the licence holder in trading on the stall to which the application relates;  (b) The applicant has been employed (other than on a self employed basis) by the license holder for the purpose of trading on the stall to which the application relates;  (c) the licence holder has not been subject to any disciplinary actions.

<p>18.25(b) To authorise in his absence the Assistant Director (Regeneration and Housing) to grant such authorisations.</p> <p>Note: (a) Except where otherwise stated, the holders of the following posts within Regeneration Services may exercise the above powers:</p> <p style="padding-left: 40px;">Assistant Director Regeneration Head of Development and Delivery Head of Strategic Regeneration Head of Housing Head of Property Services Head of Planning and Building Control</p>	<p>To be deleted</p> <p>Note: (a) Except where otherwise stated, the holders of the following posts within Regeneration Services may exercise the above powers:</p> <p style="padding-left: 40px;">Head of Development and Delivery Head of Strategic Regeneration Head of Planning and Building Control</p>
<p><b>20. Head of Planning and Building Control</b></p> <p>Applications to be determined by Committee:</p> <p>.....</p> <p>(e) Applications submitted by or on behalf of the Council, or for the development of council-owned land over the value of £10,000 where there is significant community interest;</p>	<p>Applications to be determined by Committee:</p> <p>.....</p> <p>(e) Applications submitted by or on behalf of the Council, or for the development of council-owned land over the value of £20,000 where there is significant community interest;</p>
<p><b>21. Head of Development and Delivery</b></p> <p>21.1 The Head of Development and Delivery has authority to determine the following applications and to take the following actions under Part VIII, Chapter 1 of the Town and Country Planning Act 1990 and Town and Country Planning (Trees) Regulations 1999:</p>	<p>21.1 The Head of Development and Delivery has authority to determine the following applications and to take the following actions under Part VIII of the Town and Country Planning Act 1990 and Town and Country Planning (Tree Preservation) (England) Regulations 2012 and Section 192 of the Planning Act 2008:</p>



<p>.....</p> <p>(d) confirm Tree Preservation Orders where there is no significant community interest;</p>	<p>.....</p> <p>(d) confirm or not confirm Tree Preservation Orders where there is no significant community interest;</p>
<p>21.5 With regard to the Regeneration Capital Programmes and other grant aided regeneration programmes, to authorise the undertaking of any works and/or necessary action for the implementation of programmes including design works, invitation to and acceptance of (the most economically advantageous) tender, quotation or estimate, subject to Financial and Contract Rules.</p> <p>21.10 The Head of Development and Delivery be authorised to instigate action for the removal of dangerous trees under Section 23 of the Local Government (Miscellaneous Provisions) Act 1976.</p> <p>21.12 The Head of Development and Delivery be authorised to confirm any Tree Preservation Order, where no objections have been received, or where objections have been resolved.</p>	<p>21.5 With regard to the Regeneration (Development and Delivery) Capital Programmes and other grant aided or revenue funded regeneration programmes, to authorise the undertaking of any works and/or necessary action for the implementation of programmes including design works, invitation to and acceptance of best value tender, quotation or estimate, subject to Financial and Contract Rules.</p> <p>21.10 The Head of Development and Delivery be authorised to instigate action for the removal of dangerous trees under Section 23 of the Local Government (Miscellaneous Provisions) Act 1976, including the powers of entry for officers and contractors to undertake work to dangerous trees.</p> <p>To be deleted</p> <p>Insert the following new delegations:</p> <p>21.13 Maintain a schedule of Locally Listed Buildings with the authority to add or remove sites from the schedule in line with published criteria.</p> <p>21.14 Maintain a schedule of Local Sites (Sites of Importance/Local Importance for Nature Conservation) with the authority to add or remove sites from the schedule in line with published criteria and endorsement by the Birmingham and Black Country Local Sites Partnership.</p>

	21.15 Authority to make applications for planning permission, listed building and advert consent.
25. <b>Head of Communities and Public Protection</b>	Insert the “Food Safety and Hygiene (England) Regulations 2013” to the list set out in paragraph 25.5.
28. <b>Head of Service, Engineering and Transportation Services</b>  28.41 Authorise members of staff (in consultation with the Regulatory Services Manager) employed in Street Pride to act on behalf of the Council from time to time in enforcing the following legislation:	28.41 Authorise members of staff (in consultation with the Head of Communities and Public Protection) employed in Clean and Green Services to act on behalf of the Council from time to time in enforcing the following legislation:
29. <b>Head of Benefits</b>	29. Head of Business Change
31. <b>Head of Internal Audit</b>	<p>Authorisation of applications for directed surveillance and covert human intelligence sources relating to:</p> <p>(a) applications for miscellaneous and any application in an urgent situation;</p> <p>(b) applications pertaining to a non-criminal investigation into the conduct of an employee (non RIPA)</p> <p>in accordance with the requirements of the Regulation of the Investigatory Powers Act, 2000 and (Amendment) Order 2012, SI 2012/1500 and set out in the corporate policy procedure.</p> <p><b>Note:</b> In the absence of the Chief Finance Officer (Assistant Director of Finance) and the Head of Finance, the Head of Internal Audit will act as the designated Chief Finance Officer and may exercise all of the CFO delegations and specifically 14.1.</p>

<p>34. <b>Systems Leader(s) (Money, Home, Job) – New</b></p>	<p>34.1 To carry out relevant duties specified in the Housing Act 1996 particularly under Part 6 and Part 7, as amended by Homelessness (Priority Need for Accommodation) (England) Order 2002 and the Homelessness Act 2002.</p> <p>34.2 Make arrangements to ensure local authority functions are implemented with regards to the needs to safeguard and promote the welfare of vulnerable adults.</p> <p>34.3 Acceptance of standard fund and other grant allocations where these are costs in accordance with approved Council policy.</p> <p>34.4 To authorise the Head of Legal and Democratic Services to complete tenancy agreements in respect of/and licences to occupy Supported and Temporary Accommodation and plots on the Council's Willenhall Lane Travellers site.</p> <p>34.5 Authority to admit to temporary accommodation, either provided by the Council, by other authorities, voluntary organisations, or privately registered homes (including bed and breakfast / hotels), persons who are vulnerable and homeless.</p> <p>34.6 Authority to approve interest free loans or grants not exceeding £5,000 to individual homeless households to prevent homelessness or up to £50,000 to other bodies to assist in tackling homelessness in accordance with guidelines as approved by the Council's Executive.</p> <p>34.7 Authority to grant interest free loans for dwellings where assistance is up to £30,000 in line with the Housing Renewal Assistance Policy</p> <p>34.8 Authority to approve applications for concessionary travel passes</p>
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	<p>for homeless clients and those vulnerable clients fleeing violence.</p> <p>34.9 Agree the termination of licences to occupy rooms or temporary accommodation units in respect of homeless households where necessary and write off debts for former tenants.</p> <p>34.10 To increase charges payable for the occupation of Council owned supported housing and temporary accommodation and Willenhall Lane Travellers site to recover costs associated with the services and as a minimum in line with councils calculated rate of inflation</p> <p>34.11 Authorisation of directed surveillance and covert human intelligence sources in accordance with the requirements of the Regulation of the Investigatory Powers Act, 2000.</p> <p>34.12 Taking all necessary action for the collection of amounts due to the Council using any powers available to the Council.*</p> <p>34.13 With the approval of the Chief Finance Officer authority to write off irrecoverable amounts due to the Council:</p> <ul style="list-style-type: none"> <li>(a) Without limit as regards local taxation on a single property.</li> <li>(b) Without limit as regards housing benefit and or Council tax discounts on a single property.</li> </ul> <p>34.14 Authority to manage and determine awards of business rate relief and business rates reoccupation relief under each scheme.*</p> <p>34.15 Approval to grant discretionary relief from national non-domestic</p>
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	<p>rates in accordance with the Council's approved scheme, and under Sections 47 and 48 of the Local Government Finance Act 1988.*</p> <p>34.16 Authorising, on behalf of the Council as billing authority, valuation agreements in respect of the Non-Domestic Rating local list, as required by the Valuation Office Agency.*</p> <p>34.17 To fix incidental charges relating to local taxation, and central cashier functions.*</p> <p>34.18 To determine applications for rate relief from Non Domestic Rates under Section 44A of the Local Government Finance Act, 1988.*</p> <p>34.19 To determine applications for hardship relief from Non Domestic Rates under Section 49 of the Local Government Finance Act 1988 and from Council tax under Section 13A of the Local Government Act, 1992.*</p> <p>34.20 To determine the completion date for a property notice in accordance with Section 46A and Schedule 4A of the Local Government Finance Act 1988 as well as Section 17 of the Local Government Finance Act 1992.*</p> <p>34.21 Engage in data matching exercises designed to assist in the detection of fraud.*</p> <p>34.22 Administer the Council responsibilities under the provisions of the Social Security legislation and in accordance with the Council's approved policy relating to the Housing Benefit and Council Tax Reduction Scheme including the following:</p> <ul style="list-style-type: none"> <li>• The administration of the Council's local schemes</li> </ul>
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	<ul style="list-style-type: none"> <li>• The administration of the Council's Prosecution and Sanctions Policy in relation to Housing Benefit and Council Tax Benefit reduction fraud.</li> <li>• Including power to make any determinations under the relevant legislation.*</li> </ul> <p>34.23 Authority to manage and determine awards of business rate retail relief and business rates reoccupation relief under each scheme.*</p> <p>Note: * The Chief Finance Officer also has these delegations.</p>
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## APPENDIX 3

### WEST MIDLANDS JOINT COMMITTEE CONSTITUTION

[ 2015~~3~~ ]

1. (i) The District Councils of the County of West Midlands established on 24 July 1985 a Joint Committee known as the West Midlands Joint Committee ("the Committee") for the purpose of discharging the functions mentioned in the Annex. The Committee was a joint committee for the purposes of Part VI of the Local Government Act 1972 and the provisions of that part applicable to joint committees shall apply to the Committee.
- (ii) This Revised Constitution has been updated to reflect changes as set out in the Localism Act 2011 in relation to strategic planning and cross boundary infrastructure matters which must now be dealt with via the Duty to Cooperate ("the duty"). ~~Further takes account of the establishment of a Shadow Integrated Transport Authority Board, its membership and role and functions as outlined in the attached annex.~~
2. (i) The Committee shall comprise seven voting members, each District Council being entitled to appoint one voting member who shall be a member of the District Council making the appointment. In the event of any voting member of the Committee ceasing to be a member of the District Council which appointed him/her, the District Council shall forthwith appoint another voting member in his/her place. Only a voting member is entitled to be elected as Chair or Vice-Chair of the Committee.
- (ii) Each District Council may appoint two of its members to attend the meeting of the Committee as observer members in addition to the voting member appointed under (i) above. Such observer members may speak at meetings of the Committee but not vote.
- (iii) Each District Council may appoint members of its Council as substitute for the voting members or observer members appointed under (i) or (ii) above to attend meetings of the Committee and its sub-committees in the absence for any reason of the voting members or observer members appointed under (i) or (ii) above and in attending meetings of the Committee and its sub-committees the substitute voting members or observer members shall be treated in all respects as if they were appointed under (i) or (ii) above as the case may be. The Secretary for the Committee shall be informed prior to the commencement of the meeting of the names of substitute members.
- (iv) The Chairman of each Joint Authority appointed in the West Midlands shall be an ex officio member of the Committee. Such ex officio members may speak at meetings of the Committee but not vote.
- ~~(v) The Chairman (or their delegated representative) of each of the Local Enterprise Partnership's covering the Met. Area geography (GBS LEP, Black Country LEP and Coventry & Warwickshire LEP) shall be an ex officio member of the Committee for Shadow Board items. Such ex officio members may speak at meetings of the Committee but not vote.~~
- ~~(vii)~~(v) The Committee shall, at its Annual Meeting, elect a Chair and Vice-Chair from amongst its voting members. In the event of both being absent from the meeting, the Chair and the Vice-Chair for whatever reason, the Committee shall elect a Chair from amongst the voting members present for that meeting.
- ~~(vii)~~(vi) Four voting members of the Committee shall constitute a quorum. Except as otherwise provided by statute, all questions shall be decided by a majority of the votes of the voting members present, the Chair having the casting vote in addition to his/her vote as a Member of the Committee.

- | ~~(viii)~~(vii) The Committee will meet as agreed at AGM but in any event at least quarterly. However, a meeting of the Committee may be convened at any time by the Secretary in consultation with the Chair. A meeting of the Committee must also be convened by the Chair within 28 days of the receipt of a requisition of any two voting members of the Committee addressed to the Secretary to the Committee. All requisitions shall be in writing and no business other than that specified in the requisition shall be transacted at such a meeting.
  - | ~~(ix)~~(viii) The Committee shall from time to time make such standing orders for the carrying on of the business of the Committee as the Committee shall deem necessary or desirable.
  - | ~~(x)~~(ix) For the avoidance of doubt and subject to there being no changes to the law on this issue, where a District Council is operating executive arrangements pursuant to the Local Government Act 2000 (and any regulations made under it), it will be a matter for the Executive of the District Council to appoint any voting member, observer member or substitute member to the Committee.
3. The Committee shall from time to time appoint such sub-committees to consider and deal with any of the functions of the Committee as may be thought desirable.
  4. The Committee shall employ a Secretary and such other officers as may be deemed necessary for the due conduct of the business of the Committee at such remuneration (if any) and upon such terms as the Committee shall decide. The appointment of Secretary shall be for a term of three years and shall be made at the annual meeting of the Committee in the appropriate year.
  5. (i) The Secretary shall keep proper accounts of the money received and expended by the Committee.  
(ii) The Secretary shall apportion the expenses of the Committee between the District Councils in proportion to the population of each district in the County.
  6. This Revised Constitution and, subject as hereinafter mentioned, the functions of the Committee may be amended at any time by the unanimous agreement of the District Councils.
  7. That the relevant Standing Orders for West Midlands Joint Committee are those of Birmingham City Council.
  8. Decision making between meetings is delegated to the Chair, but those decisions are only to be implemented if supported in writing by the signatures of all of the Chief Executives of each of the 7 Districts.



## **The Annex**

### (Functions of the Joint Committee)

1. To make nominations or appointments as the case may be:-

(i) to the 5 balancing places of the West Midlands Police and Crime Panel

~~(ii)~~ (ii) to the 5 balancing places of the West Midlands Integrated Transport Authority Joint Overview and Scrutiny Committee.

2. In relation to Birmingham Airport, to:-

2.1 (i) determine the exercise of the Districts' powers and rights as shareholders of the Company including the manner in which the Districts' block shareholder vote is to be exercised;

(ii) determine the manner in which the block vote is to be cast by any of the Districts' Directors.

(iii) determine the exercise of rights and performance of obligations, warranties, indemnities and covenants contained in the Investment Agreement and Taxation Deed relating to the restructuring of the Airport;

(iv) appoint and remove the Districts' Directors on the Board and appoint appropriate officers as Districts' Observers to attend Board meetings and support the District Directors.

2.2 The delegation of powers by the Districts to the Joint Committee in clause 2.1 shall be subject to a condition that all resolutions of the Joint Committee or any Sub-Committee appointed by the Joint Committee shall be passed by a majority of the members present who between them represent Districts who hold at least 51% of the Districts' total shareholding.

2.3 The Joint Committee may arrange for the discharge of their functions by a Sub-Committee subject to the same condition set out in clause 2.2.

2.4 The Joint Committee may arrange for the discharge of their functions subject to the condition set out in clause 2.2 by each of the Districts' Chief Executives or anyone authorized by any District to act in the Chief Executive's absence acting in consultation with the Chair or Vice Chair of the Joint Committee.

- 3.. To co-ordinate actions on important issues affecting the Districts and to provide a vehicle for communicating these actions, and the needs of Districts, to Government and other influential bodies.
4. To consult and co-operate as respects matters affecting the District Councils (including the Duty to Cooperate and as appropriate with each District Council and the Joint Authorities.
5. To consider, in consultation with and, if appropriate, in partnership with the Joint Authorities, whether they could make better value arrangements for the provision of any services, supplies or works required in connection with the discharge of the functions of the District Councils.
6. To co-ordinate the exercise by the District Councils of the enforcement functions conferred on them by the Weights and Measures Act 1985 (as amended) with a view to securing uniformity in the exercise of those functions throughout the West Midlands and the employment provision or use by those Councils for the purposes of those functions of staff, property and facilities.

7. To oversee the work of and payment of the Joint Data Team contract with Mott Macdonald Ltd dated 27 March 2008.

7.8. To receive reports from any partnership

9. To exercise the functions delegated to it by the Agreement between the District Council relating to landfill brokerage dated 9 September 1994.

10. ~~In relation to the Shadow Integrated Transport Authority Board~~

10.1 To act as a strategic advisory body; setting and reviewing objectives for strategic investment in transport economic infrastructure across the conurbation, including:

a. ~~Providing a coherent single position on the major strategic transportation issues~~

b. ~~Setting the annual transport budget~~

c. ~~Setting major transport priorities~~

d. ~~Advising the existing ITA in respect of developing and monitoring the Local Transport Plan and its expenditure~~

10.2 ~~Consider the formal review and identify a preferred option for transport governance which is fit for purpose;~~

10.3 Influence and align government investment in transport in order to boost economic growth;

10.4 ~~To ensure alignment in decision making on transport supports other areas of policy;~~

10.5 ~~Co-ordinate and align decision making on transport with the LEPs (through direct LEP representation) ensuring that business views are taken on board and that LEP growth plans are reflected in strategic priorities;~~

10.6 ~~Advising on capital expenditure programmes and ensuring policy and programmes are delivered effectively through partners including Local Authorities, Centro, Network Rail and the Highways Agency;~~

10.7 ~~Recommend appropriate steps to reorganise the ITA to make its functions more efficient;~~ and

~~10.8 Engaging and Co-ordinating with the wider travel to work area.~~  
(attached)

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**WEST MIDLANDS JOINT COMMITTEE**  
**CONSTITUTION**

[ 2015]

1. (i) The District Councils of the County of West Midlands established on 24 July 1985 a Joint Committee known as the West Midlands Joint Committee ("the Committee") for the purpose of discharging the functions mentioned in the Annex. The Committee was a joint committee for the purposes of Part VI of the Local Government Act 1972 and the provisions of that part applicable to joint committees shall apply to the Committee.
- (ii) This Revised Constitution has been updated to reflect changes as set out in the Localism Act 2011 in relation to strategic planning and cross boundary infrastructure matters which must now be dealt with via the Duty to Cooperate ("the duty").
2. (i) The Committee shall comprise seven voting members, each District Council being entitled to appoint one voting member who shall be a member of the District Council making the appointment. In the event of any voting member of the Committee ceasing to be a member of the District Council which appointed him/her, the District Council shall forthwith appoint another voting member in his/her place. Only a voting member is entitled to be elected as Chair or Vice-Chair of the Committee.
- (ii) Each District Council may appoint two of its members to attend the meeting of the Committee as observer members in addition to the voting member appointed under (i) above. Such observer members may speak at meetings of the Committee but not vote.
- (iii) Each District Council may appoint members of its Council as substitute for the voting members or observer members appointed under (i) or (ii) above to attend meetings of the Committee and its sub-committees in the absence for any reason of the voting members or observer members appointed under (i) or (ii) above and in attending meetings of the Committee and its sub-committees the substitute voting members or observer members shall be treated in all respects as if they were appointed under (i) or (ii) above as the case may be. The Secretary for the Committee shall be informed prior to the commencement of the meeting of the names of substitute members.
- (iv) The Chairman of each Joint Authority appointed in the West Midlands shall be an ex officio member of the Committee. Such ex officio members may speak at meetings of the Committee but not vote.
- (v) The Committee shall, at its Annual Meeting, elect a Chair and Vice-Chair from amongst its voting members. In the event of both being absent from the meeting, the Chair and the Vice-Chair for whatever reason, the Committee shall elect a Chair from amongst the voting members present for that meeting.
- (vi) Four voting members of the Committee shall constitute a quorum. Except as otherwise provided by statute, all questions shall be decided by a majority of the votes of the voting members present, the Chair having the casting vote in addition to his/her vote as a Member of the Committee.
- (vii) The Committee will meet as agreed at AGM but in any event at least quarterly. However, a meeting of the Committee may be convened at any time by the Secretary in consultation with the Chair. A meeting of the Committee must also be convened by the Chair within 28 days of the receipt of a requisition of any two voting members of the Committee addressed to the Secretary to the Committee. All requisitions shall be in writing and no business other than that specified in the requisition shall be transacted at such a meeting.

- (viii) The Committee shall from time to time make such standing orders for the carrying on of the business of the Committee as the Committee shall deem necessary or desirable.
  - (ix) For the avoidance of doubt and subject to there being no changes to the law on this issue, where a District Council is operating executive arrangements pursuant to the Local Government Act 2000 (and any regulations made under it), it will be a matter for the Executive of the District Council to appoint any voting member, observer member or substitute member to the Committee.
3. The Committee shall from time to time appoint such sub-committees to consider and deal with any of the functions of the Committee as may be thought desirable.
  4. The Committee shall employ a Secretary and such other officers as may be deemed necessary for the due conduct of the business of the Committee at such remuneration (if any) and upon such terms as the Committee shall decide. The appointment of Secretary shall be for a term of three years and shall be made at the annual meeting of the Committee in the appropriate year.
  5. (i) The Secretary shall keep proper accounts of the money received and expended by the Committee.  
  
(ii) The Secretary shall apportion the expenses of the Committee between the District Councils in proportion to the population of each district in the County.
  6. This Revised Constitution and, subject as hereinafter mentioned, the functions of the Committee may be amended at any time by the unanimous agreement of the District Councils.
  7. That the relevant Standing Orders for West Midlands Joint Committee are those of Birmingham City Council.
  8. Decision making between meetings is delegated to the Chair, but those decisions are only to be implemented if supported in writing by the signatures of all of the Chief Executives of each of the 7 Districts.

## **The Annex**

### **(Functions of the Joint Committee)**

1. To make nominations or appointments as the case may be:-
  - (i) to the 5 balancing places of the West Midlands Police and Crime Panel
  - (ii) to the 5 balancing places of the West Midlands Integrated Transport Authority Joint Overview and Scrutiny Committee.
2. In relation to Birmingham Airport, to:-
  - 2.1 (i) determine the exercise of the Districts' powers and rights as shareholders of the Company including the manner in which the Districts' block shareholder vote is to be exercised;
  - (ii) determine the manner in which the block vote is to be cast by any of the Districts' Directors.
  - (iii) determine the exercise of rights and performance of obligations, warranties, indemnities and covenants contained in the Investment Agreement and Taxation Deed relating to the restructuring of the Airport;
  - (iv) appoint and remove the Districts' Directors on the Board and appoint appropriate officers as Districts' Observers to attend Board meetings and support the District Directors.
  - 2.2 The delegation of powers by the Districts to the Joint Committee in clause 2.1 shall be subject to a condition that all resolutions of the Joint Committee or any Sub-Committee appointed by the Joint Committee shall be passed by a majority of the members present who between them represent Districts who hold at least 51% of the Districts' total shareholding.
  - 2.3 The Joint Committee may arrange for the discharge of their functions by a Sub-Committee subject to the same condition set out in clause 2.2.
  - 2.4 The Joint Committee may arrange for the discharge of their functions subject to the condition set out in clause 2.2 by each of the Districts' Chief Executives or anyone authorized by any District to act in the Chief Executive's absence acting in consultation with the Chair or Vice Chair of the Joint Committee.
- 3.. To co-ordinate actions on important issues affecting the Districts and to provide a vehicle for communicating these actions, and the needs of Districts, to Government and other influential bodies.
4. To consult and co-operate as respects matters affecting the District Councils (including the Duty to Cooperate and as appropriate with each District Council and the Joint Authorities.
5. To consider, in consultation with and, if appropriate, in partnership with the Joint Authorities, whether they could make better value arrangements for the provision of any services, supplies or works required in connection with the discharge of the functions of the District Councils.
6. To co-ordinate the exercise by the District Councils of the enforcement functions conferred on them by the Weights and Measures Act 1985 (as amended) with a view to securing uniformity in the exercise of those functions throughout the West Midlands and the employment provision or use by those Councils for the purposes of those functions of staff, property and facilities.

7. To oversee the work of and payment of the Joint Data Team contract with Mott Macdonald Ltd dated 27 March 2008.
8. To receive reports from any partnership
9. To exercise the functions delegated to it by the Agreement between the District Council relating to landfill brokerage dated 9 September 1994.

## **Audit Committee – 20 April 2015**

### **Review of the Constitution –Part 4- Section 7- Financial Rules**

#### **1. Summary of report:**

- 1.1 This report sets out some minor changes to the Constitution rules of procedure

#### **2. Background papers:**

- 2.1 Council's Constitution

#### **3. Recommendation(s)**

- i) that the amendments to finance procedure rules contained within this report be approved for inclusion in the updated Constitution at its Annual meeting in June 2015 ;

#### **4. Background**

- 4.1 Part 4 of the Constitution relates to rules of procedure and is made up of eight sections, the seventh and eight sections being the financial rules and contract rules which are the responsibility of the Audit Committee.
- 4.2 The proposed amendments are contained within the attached appendix.

#### **5. Resource and Legal Considerations:**

- 5.1 None directly arising from this report.

#### **6. Performance and risk management issues:**

- 6.1 Performance and risk management are a feature of all Council functions. It is important that Council policies and procedures are reviewed and updated on a regular basis. If the Council fails to do this there is an increased risk that the Council will be subject to legal challenge or litigation. In terms of performance it is important that elected members and officers have a clear framework of standards to follow in delivering services to the community. These frameworks provide accountability and transparency in respect of the way in which the Council deliver services. The Constitution is a key part of this framework of internal control.

#### **7.0 Equality Implications:**

- 7.1 In maintaining up-to-date policies and procedures the Council will ensure that services are delivered fairly in an open and transparent manner.



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Current	Proposed
<p><b>1.3 Role of the Cabinet and Executive Directors</b></p> <p>1. Where these rules require a decision of the Cabinet:</p> <p>(a) The Cabinet as a whole shall take the decision in accordance with authority given to it in the Council's constitution, and</p> <p>(b) Where the decision, is a 'key decision' as described in article 12.03 of the Council's constitution, it shall be taken only in accordance with the rules set out in the constitution.</p>	<p><b>1.3 Role of the Cabinet and Executive Directors</b></p> <p>1. Where these rules require a decision of the Cabinet:</p> <p>(a) The Cabinet as a whole shall take the decision in accordance with authority given to it in the Council's constitution, and</p> <p>(b) Where the decision, is a 'key decision' as described in article 11.03 of the Council's constitution, it shall be taken only in accordance with the rules set out in the constitution.</p>
<p><b>1.4 When Financial and Contract Rules apply</b></p> <p>4. Where managers take decisions involving the purchase or hire of vehicles, they shall first consult with the Council's fleet manager, the Council's treasury manager and then follow financial and contract rules.</p>	<p><b>1.4 When Financial and Contract Rules apply</b></p> <p>4. Where managers take decisions involving the purchase or hire of vehicles, they shall first consult with the Council's officer for fleet management, the Council's treasury manager and then follow financial and contract rules.</p>
<p><b>2.2 Financial management standards</b></p> <p>1. All officers and members of the Council have a duty to abide by the highest standards of probity in dealing with financial issues. This is made possible by ensuring everyone is clear about the standards to which they are working and the controls that are in place to ensure that these standards are met. It is each manager's responsibility, through the IPM process, to ensure that officers they are responsible for are adequately trained to understand their responsibilities and perform their duties.</p>	<p><b>2.2 Financial management standards</b></p> <p>1. All officers and members of the Council have a duty to abide by the highest standards of probity in dealing with financial issues. This is made possible by ensuring everyone is clear about the standards to which they are working and the controls that are in place to ensure that these standards are met. It is each manager's responsibility, to ensure that officers they are responsible for are adequately trained to understand their responsibilities and perform their duties.</p>

<p><b>2.3 Virements and budget transfers</b></p> <p><b>2. Virements</b></p> <p>(d) The Executive may:</p> <p>(i) Increase capital or revenue expenditure in-year by use of general reserves (in addition to the use of reserves planned in the budget calculations), provided that such use of reserves do not exceed £1,000,000 in aggregate in a financial year and provided that the Chief Finance Officer has certified in writing that such use of reserves would not cause the council's overall reserves to fall below a prudent level.</p>	<p><b>2.3 Virements and budget transfers</b></p> <p><b>2. Virements</b></p> <p>(d) The Executive may:</p> <p>(i) Increase capital or revenue expenditure in-year by use of general reserves in accordance with the Councils approved Medium Term Financial Strategy, provided that the Chief Finance Officer has certified in writing that such use of reserves would not cause the councils overall position to fall below the specified level.</p>
<p><b>2.3 Virements and budget transfers</b></p> <p><b>2. Virements</b></p> <p>(g) A school's governing body may transfer budget provisions between heads of expenditure within the delegated school budget following notification to the Executive Director with service responsibility.</p>	<p><b>2.3 Virements and budget transfers</b></p> <p><b>2. Virements</b></p> <p>delete</p>
<p><b>2.4 Treatment of year-end balances</b></p> <p>2. All internal business unit surpluses are to be retained for the benefit of the Council and their application shall require approval of the Cabinet.</p>	<p><b>2.4 Treatment of year-end balances</b></p> <p>2. delete</p>
<p><b>2.5 Accounting policies</b></p> <p>2. The Chief Finance Officer shall ensure that:</p> <p>(a) Systems of internal control are in place that ensure financial transactions are lawful,</p> <p>(b) Suitable accounting policies are selected and applied</p>	<p><b>2.5 Accounting policies</b></p> <p>2. The Chief Finance Officer shall ensure that:</p> <p>(a) Systems of internal control are in place that ensure financial transactions are lawful,</p> <p>(b) Suitable accounting policies are selected and applied</p>

<p>consistently,</p> <p>(c) Proper accounting records are maintained, and</p> <p>(d) Financial statements are prepared following the financial year-end that present fairly the financial position of the authority and its expenditure and income.</p>	<p>consistently,</p> <p>(c) Proper accounting records are maintained, and</p> <p>(d) Financial statements are prepared following the financial year-end that present a true and fair view of the financial position of the authority and its expenditure and income.</p>
<p><b>2.6 Accounting records and returns</b></p> <p>1. The Council shall maintain and comply with its statutory responsibility to prepare its annual accounts to present fairly its operations during the financial year. These accounts shall be subject to external audit</p>	<p><b>2.6 Accounting records and returns</b></p> <p>1. The Council shall maintain and comply with its statutory responsibility to prepare its annual accounts to present a true and fair view of its operations during the financial year. These accounts shall be subject to external audit.</p>
<p><b>2.7 The Annual Statement of Accounts</b></p> <p>The Council shall undertake its statutory responsibility to prepare and publish its own accounts to present fairly its operations during the year. The Council's audit committee shall be responsible for approving the statutory annual statement of accounts.</p>	<p><b>2.7 The Annual Statement of Accounts</b></p> <p>The Council shall undertake its statutory responsibility to prepare and publish its own accounts to present a true and fair view of its operations during the year. The Council's audit committee shall be responsible for approving the statutory annual statement of accounts.</p>
<p><b>3. Financial planning</b></p> <p><b>3.3 Budgets and medium-term financial planning</b></p>	<p><b>3. Financial planning</b></p> <p><b>3.3 Budgets and medium-term financial planning</b></p> <p>4 The Council, through its Cabinet and Executive Directors, shall ensure that a budget exists to cover its entire operations, and shall create and maintain controls to ensure that:</p>

<p><b>3.6 Maintenance of reserves</b></p> <p>1. The Council shall establish and maintain a programme of capital expenditure to enable it to acquire or enhance fixed assets with a long-term value to the authority, such as land, buildings, and major items of plant, equipment or vehicles. This capital programme shall be approved annually by the Council to enable it to shape the way the Council's services are delivered in the long term.</p>	<p>(a) An appropriate budget is produced,</p> <p>(b) Procedures are in place for forecasting and monitoring the revenue and capital budgets under their control.</p> <p>(c) Regular reporting to Cabinet on the financial position of the budget is carried out.</p> <p><b>3.6 Maintenance of reserves</b></p> <p>1. Delete</p>
<p><b>5.4 Preventing fraud and corruption</b></p> <p>4. Every officer of the Council shall inform his or her line manager or immediate superior of any benefits, gifts or hospitality which may be provided during the course of his or her duties or by way of his or her employment with the Council.</p>	<p><b>5.4 Preventing fraud and corruption</b></p> <p>4. Every officer of the Council shall inform his or her line manager of any benefits, gifts or hospitality which may be provided during the course of his or her duties or by way of his or her employment with the Council.</p>
<p><b>6.4 Staffing</b></p> <p>The Council, through its Cabinet and Executive Directors, shall ensure that a budget exists to cover its entire staff, and shall create and maintain controls to ensure that:</p> <p>(a) An appropriate staffing budget is produced,</p>	<p><b>6.4 Staffing</b></p> <p>Delete</p>

<p>(b) Procedures are in place for forecasting staffing requirements and cost.</p> <p>(c) Controls are implemented that ensure staff time is used efficiently and to the benefit of the authority</p> <p>(d) Checks are undertaken prior to employing new staff to ensure that they are appropriately qualified, experienced and trustworthy.</p>	
<p><b>8.6 Trading accounts and business units</b></p> <p>For Trading accounts and business units authorities are required to keep trading accounts for services provided on a basis other than straightforward recharge of cost.</p>	<p><b>8.6 Trading accounts and Walsall Adult Community College</b></p> <ol style="list-style-type: none"> <li>1. For Trading accounts authorities are required to keep trading accounts for services provided on a basis other than straightforward recharge of cost.</li> <li>2. Walsall Adult Community College shall submit financial and operational plans to the executive annually for approval.</li> <li>3. Walsall Adult Community College must submit regular progress reports to the Corporate management on progress against those plans.</li> </ol>

## 8 - Contract Rules

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# Contract Rules

## **1 Background and Purpose**

- 1.1 These Contract Rules (“the Rules”) are made under Section 135 of the Local Government Act 1972.
- 1.2 The Rules form part of the Council's Constitution.
- 1.3 The purpose of the Rules is to:
  - 1.3.1 To achieve Best Value;
  - 1.3.2 be consistent with the highest standards of integrity and fairness;
  - 1.3.3 comply with all legal requirements;
  - 1.3.4 support the Council's corporate aims and policies including a commitment to support a sustainable local economy;

## **2 Application**

- 2.1 The Rules shall apply to:
  - 2.1.1 Contracts (including Council set up Frameworks Agreements) for purchasing, commissioning, leasing or hire of goods, works or services for the Council;
  - 2.1.2 Sub-contracts where the Council specifies, names or nominates a sub-contractor to a Contractor or Supplier in a tender specification;
  - 2.1.3 (Unless the Council expressly agrees otherwise), contracts on behalf of any Partnership for which the Council is the accountable body;
  - 2.1.4 Schools, except statutory provisions require otherwise.
- 2.2 Where the Council is required to follow rules laid down by Central Government or other organisation that provides grant funding (“the Grantor”) to the Council, Officers shall follow the Grantor's contract procedure rules where they are more stringent than the Council's.
- 2.3 The Rules do not apply to:
  - 2.3.1 Contracts of employment for the Council's Officers and contracts for interim or temporary Chief Officers, except in the making of contracts with recruitment and staffing agencies (other than for the appointment of interim or temporary Chief Officers); or
  - 2.3.2 Subject to Rule 22, Contracts relating to the purchase or sale of interests in land; or
  - 2.3.3 Contracts for treasury management and loans; or

- 2.3.4 The investment of assets belonging to charities and trusts for which an Officer acts as treasurer; or
- 2.3.5 Grants made by the Council; or
- 2.3.6 Purchases from Framework Agreements.

### **3 Compliance**

- 3.1 All procurements shall be conducted in accordance with the following:
  - 3.1.1 All relevant statutory provisions including the Public Contracts Regulations 2015 ("the Regulations") or equivalent;
  - 3.1.2 The relevant EU Rules;
  - 3.1.3 The Council's Constitution; and
  - 3.1.4 Any Corporate Procurement Strategy or Procurement Code, if the Council has one in place at the time of procurement.
- 3.2 Failure to comply with the Rules may leave the Council, or individual Officers or Members, open to risk of legal challenge. Breaches will be regarded as a serious matter which may be considered gross misconduct and could lead to disciplinary action and/or dismissal.
- 3.3 Officers must declare any interests which could bring them into conflict with the Council's interests.
- 3.4 Members must disclose all relevant interests on their register of interest forms, and any meeting they attend.

### **4 Preparing to contract**

- 4.1 Authority for all contracts must be granted before they are entered into. Authority can be in the form of:
  - 4.1.1 A Cabinet resolution; or
  - 4.1.2 A decision made properly within the powers of Cabinet or Chief Officer under the Scheme of Delegations; or
  - 4.1.3 A decision by Cabinet delegating authority to an Authorised Officer.
- 4.2 Subject to Rule 9, the following conditions must be met:
  - 4.2.1 The contract must comply with the Rules and the Financial Regulations; and
  - 4.2.2 There must be enough budget to cover the financial commitment being made including ongoing revenue costs, Authorised Officers will need to seek approval for the power to offset any shortfall in budget.



- 4.3 Executive Directors have overall responsibility for the operation of the Council's functions. All requirements for goods, services or works that fall within those areas must first have been consulted on with the relevant Officer as set out in this rules as authorised to award a tender prior to the commencement of any procurement or commissioning exercise.

## **5 Use of Existing Contracts and Local Suppliers**

- 5.1 Existing Council contracts, EU Rules and UK procurement law compliant purchasing consortium arrangements or Framework Agreements shall be used wherever available unless a Chief Officer has agreed otherwise in which case these rules shall apply. Before any procurement is commenced, Authorised Officers shall establish whether:
- 5.1.1 The Council has existing contracts or beneficial arrangements for the future purchase of goods, works and services; or
  - 5.1.2 Items are to be found in any available Council's i-Procurement online purchasing system; or
  - 5.1.3 The Council is able to purchase through a public authority purchasing consortium; or
  - 5.1.4 Buying Solutions' or other Central Purchasing Bodies' Framework Agreements are available.
- 5.2 When proposing to purchase using a purchasing consortium arrangement or Framework Agreement, Officers shall conduct due diligence to determine it is EU and UK procurement law compliant.
- 5.3 When undertaking any form of procurement Officers should have regard to any potential local suppliers who can engage the chain of supply and or tender for the supply of goods, works and services.
- 5.4 Where potential local suppliers have been indentified, Officers should seek to inform those suppliers of the Council's intention to procure and how they can engage in the procurement process but Officers must not act in any way anti-competitively or disclose any information that is not readily available to the general public.

## **6 Special Contracts**

### **Schools**

- 6.1 Where the Rules apply to the Council's schools, each school's governing body shall:
- 6.1.1 Act as the Head of Service for all procurement, commissioning, leasing, purchasing or sale of any goods, works or services over which the school has authority under the delegation of schools management or other legislation;

- 6.1.2 Delegate to the school's head teacher or other senior members of the school's staff such authority as it sees fit to take actions on its behalf; and
- 6.1.3 Seek authority of the Council's Executive or Assistant Directors or Cabinet wherever the Rules require.

### **Social Care Contracts**

- 6.2 The Chief Officers responsible for providing Social Care for Children and Adult Services shall:
  - 6.2.1 Consult with the Head of Legal and Democratic Services to create a set of rules governing the procurement of services relating to Social Care, which are awards of contracts for social and other specific services pursuant to Section 7 and Schedule 3 of the Regulations;
  - 6.2.2 Ensure such rules reflect the structure of the market for Social Care services; and
  - 6.2.3 Balance the need to achieve Best Value with that to make contracts rapidly to meet individual service users' needs.
- 6.3 Except where a set of rules have been created Officers shall procure services only in accordance with the Rules.

### **Consultants**

- 6.4 Chief Officers who wish to appoint consultants shall ensure:
  - 6.4.1 The Council has a genuine need for consultants;
  - 6.4.2 The nature and extent of the work is clearly defined;
  - 6.4.3 Suitably qualified and experienced consultants provide quotations or tenders;
  - 6.4.4 A written contract is made with the consultant who is appointed in a form approved by the Head of Legal and Democratic Services;
  - 6.4.5 Consultants provide insurance cover to a level approved by the Council's Insurance and Loss Control Manager; and
  - 6.4.6 The consultant shall formally accept the appointment before the work is commenced.

### **Appointments of Legal Advisors and Experts**

- 6.5 Where a Chief Officer seeks to appoint external legal advisors and experts, following consultation with the Head of Legal and Democratic Services, the following rules shall apply:
  - 6.5.1 Where the Council is a member of a pre procured legal services framework or consortium that should be the first selection point

for external legal advisers except on grounds of expediency and or specialism in which case rules 6.5.2 and 6.5.3 shall apply.

- 6.5.2 Tenders shall not be required for the engagement of counsel, medical experts, the clergy or experts at court proceedings; and
- 6.5.3 Tenders shall not be required for the instruction of legal advisers, who shall be appointed in consultation with the Head of Legal and Democratic Services.

## **7 Electronic Tendering, Advertising on Contracts Finder and Approved Lists**

- 7.1 Unless agreed by the Council's Head of Procurement or Head of Legal Services, all procurement must be undertaken using the Council's electronic procurement portal except where a compliant pre procured framework or consortium arrangement is being used.
- 7.2 All contracts to be tendered with a value in excess of £25,000 must be also advertised on Contracts Finder, unless agreed otherwise by the Council's Head of Procurement or Head of Legal and Democratic Services; or purchasing is proposed by using EU Rules-complaint purchasing consortiums or Framework Agreements.
- 7.3 Authorised Officers shall ensure that where proposed contracts, irrespective of their total contract value, might be of interest to potential tenderers located in other states of the European Union, a sufficiently accessible advertisement is published. Generally the greater the interest of the contract to potential tenderers from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:
  - 7.3.1 The Council's website;
  - 7.3.2 Portal websites specifically created for contract advertisements;
  - 7.3.3 National official journals; and
  - 7.3.4 The Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED) (even if there is no requirement within the Regulations).
- 7.4 Approved Lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot be aggregated and priced in a single tendering exercise. Approved Lists cannot be used where the Regulations apply.

## **8 Contract Value and Mixed Contracts Procedure**

- 8.1 The total contract value shall be the genuine pre-estimate of the value of the entire contract 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). Wherever possible, estimates shall be based on previous purchases, catalogue prices or Contractor's or Suppliers' estimates. There shall be no artificial splitting of a contract to avoid the application of the provisions of the Regulations and/or the Rules.
- 8.2 Where the need is for a mixture of works, goods and/or services, then the relevant procurement process will be determined having regard to the characteristics of the main subject matter in question.
- 8.3 The Appendix to these Rules set out in summary which procurement process should be used, dependent upon the total contract value as calculated in accordance with Rule 8.1.

## **9 Waiver of or Exemption from the Contract Rules**

- 9.1 If a Chief Officer believes that goods, works or services are needed urgently by the Council, he or she may in writing waive or suspend the requirement to follow the Rules and other instructions to the extent necessary to remedy the urgent situation. Such waiver or suspension shall only apply where:
- 9.1.1 A situation of genuine urgency is perceived to exist; or
  - 9.1.2 A breach of statutory duty will occur; or
  - 9.1.3 Action is required to safeguard the Council's assets or interests; or
  - 9.1.4 Grants or other funding will be lost unless urgent action is taken.
- 9.2 The Chief Officer responsible for waiving or suspending any part of these rules or procedures shall provide a written report to the Corporate Management Team as soon as practicable detailing the Rules or procedures they have set aside and the reasons requiring these actions.
- 9.3 **Please note** that the waiver of these Rules under Rule 9.1 above or exemption under Rule 9.4 below is: (i) not a waiver or exemption from the EU Rules, the Regulations and UK procurement law requirements, as these cannot be waived or exempted from; and (ii) is subject to the following restrictions:
- 9.3.1 The waiver under Rule 9.1 or exemption under Rule 9.4 from the Rules cannot be used or seen to be used as an attempt to avoid or circumvent compliance with EU Rules and UK procurement law including the Regulations and the legal duty to obtain Best Value.
  - 9.3.2 Any waiver under Rule 9.1 must be for the shortest period of time possible to permit a short term contract to be put in place to enable a fully Rule compliant procurement process to be undertaken.

- 9.4 A Chief Officer shall not be required to seek quotations or tenders where goods, works or services:
- 9.4.1 must be purchased from a supplier holding exclusive rights of manufacture, supply, authorship, editorial, publication or distribution and where no generic equivalent exists;
  - 9.4.2 are required by the Council as a partial replacement for or in addition to existing goods, works or services already purchased by the Council and to obtain them from a supplier other than the supplier which supplied the existing goods would oblige the Council to acquire goods, works or services having different technical characteristics which would result in:
    - 9.4.2.1 Technical incompatibility between the existing goods, works or services and the goods, works or services to be purchased; or
    - 9.4.2.2 Significant disproportionate technical difficulties in the operation and maintenance of the existing goods, works or services.
  - 9.4.3 have a price that is controlled Central Government regulations;
  - 9.4.4 are repairs or parts for existing plant or machinery provided by the original supplier and no equivalent exists;
  - 9.4.5 are the hiring of performance artists or other suppliers of fine art exhibits; and
  - 9.4.6 to be obtained at a public auction, fair or market.
- 9.5 Before an Authorised Officer procures using any of the exemptions set out in Rule 9.4 above, they must seek advice from the Head of Procurement and/or Head of Law as to the application of the Regulations.

## **10 Significant Contracts**

- 10.1 "Significant Contracts" are contracts for goods, works or services which exceed £50,000 but for goods and services do not exceed the current EU threshold and for works do not exceed £250,000.
- 10.2 An Authorised Officer shall take responsibility for the procurement of Significant Contracts. This Officer shall report regularly to a Chief Officer.
- 10.3 Tenders shall be invited in writing from at least two Contractors or Suppliers for Significant Contracts by inviting or directing potential tenderers to the means of submitting a tender. In the event that less than two Contractors or Suppliers show interest in submitting or do submit a tender following compliance with the requirements to advertise in Rule 7, then a tender shall be obtained from the Contractor or Supplier who is willing and able to submit a tender.

- 10.4 Tenders shall be sought, evaluated and awarded in accordance with Rules 16 and 17 below.
- 10.5 Tenders shall be returned to the Council as required by any Invitation to Tender and shall be held securely in the custody of the Authorised Officer and remain unopened until the time set for their opening.
- 10.6 Tenders for Significant Contracts shall be opened by the relevant Authorised Officer or by a Procurement Officer.
- 10.7 The relevant Head of Service or more senior Authorised Officer may accept one or more of the tenders received and award the contract(s).
- 10.8 Significant Contracts shall be evidenced by a written contract in a form approved by the Head of Legal and Democratic Services which, except for where the Council's Purchase Order Terms and Conditions of contract are used, shall be signed by the Head of Service responsible for the service on the Council's behalf and by an authorised signatory of the Contractor or Supplier.

## **11 Major Contracts**

- 11.1 "Major Contracts" are contracts for goods, works or services which exceed the Significant Contracts threshold but do not exceed £500,000.
- 11.2 The procurement of Major Contracts for goods and services shall follow the Regulations.
- 11.3 An Authorised Officer shall take responsibility for the procurement of Major Contracts in respect of works. This Officer shall report regularly to a Chief Officer.
- 11.4 Tenders shall be invited from at least three Contractors or Suppliers. In the event that less than three Contractors or Suppliers show interest in submitting or do not submit a tender following compliance with the requirements to advertise in Rule 7, then tenders shall be obtained from those Contractors or Suppliers who are willing and able to submit a tender.
- 11.5 Tenders shall be sought, evaluated and awarded in accordance with Rules 15 and 16 below.
- 11.6 Sealed tenders shall be returned to the Tenders – Postal/Courier and Filing Services Civic Centre and shall be held securely in the custody of the Authorised Officer and remain unopened until the time set for their opening.
- 11.7 Tenders for Major Contracts shall be opened by the relevant Head of Service or by two Procurement officers.
- 11.8 The relevant Assistant Director or more senior Authorised Officer may accept one or more of the tenders received and award the contract(s).
- 11.9 Contractors or Suppliers appointed are to confirm acceptance of their appointment in writing. No work, other than the Contractor's or Supplier's off-

site preparations should be commenced, nor any delivery of goods, materials or services accepted, until the Contractors or Supplier appointed has:

- 11.9.1 Formally accepted their appointment;
  - 11.9.2 Provided evidence of insurances to the satisfaction of the Council's Corporate Risk and Project Manager; and
  - 11.9.3 Provided any agreed surety or bond to the Council.
- 11.10 Major Contracts shall be evidenced by a written contract, in a form approved by the Head of Legal and Democratic Services, which shall be signed by Executive Director responsible for the service on the Council's behalf and by an authorised signatory of the Contractor or Supplier.
- 11.11 The Authorised Officer should be regularly informed the Assistant or Executive Director or Project Board responsible for the contract on the contract's performance and expenditure to date and the predicted out-turn including any areas of difficulty and propose remedial action.

## **12 Strategic Contracts**

- 12.1 "Strategic Contracts" are contracts for goods, works or services which exceed £500,000.
- 12.2 The procurement of Strategic Contracts for goods and services shall follow the Regulations.
- 12.3 The procurement of Strategic Contracts for works over the EU Threshold (for works) shall follow the Regulations.
- 12.4 An Authorised Officer shall take responsibility for the procurement of Strategic Contracts in respect of works up to the EU Threshold (for works). This Officer shall report regularly to a Chief Officer.
- 12.5 Tenders shall be invited from at least four Contractors or Suppliers by inviting or directing in writing potential tenderers to the means of submitting a tender. In the event that less than four Contractors or Suppliers show interest in submitting or do not submit a tender following compliance with the requirements to advertise in Rule 7, then tenders shall be obtained from those Contractors or Suppliers who are willing to submit a tender.
- 12.6 Tenders shall be obtained, evaluated and awarded in accordance with Rules 15 and 16 below.
- 12.7 Sealed tenders shall be returned to the Tenders – Postal/Courier and Filing, Civic Centre and shall be held securely in the custody of the Authorised Officer and remain unopened until the time set for their opening.
- 12.8 Tenders for Strategic Contracts shall be opened by the relevant Executive Director or Assistant Director in the presence of a Procurement Officer.

- 12.9 One or more tenders shall be accepted following a resolution of the Cabinet. Cabinet may resolve to delegate acceptance of tenders for individual contracts to a Chief Officer.
- 12.10 The Executive or Assistant Director responsible shall sign all letters of appointment but note that Rule 12.12 below the contract shall be sealed by the Council.
- 12.11 Contractors or Suppliers appointed are to confirm acceptance of their appointment in writing. No work, other than the Contractor's or Supplier's off-site preparations should be commenced, nor any delivery of goods, materials or services accepted, until the Contractors or Supplier appointed has:
- 12.11.1 formally accepted their appointment;
  - 12.11.2 Provided evidence of insurances to the satisfaction of the Council's Corporate Risk and Project Manager; and
  - 12.11.3 Provided any agreed bond or surety to the Council.
- 12.12 Strategic Contracts shall be evidenced by a written contract in a form approved by the Head of Legal and Democratic Services. All Strategic Contracts exceeding £500,000 shall be made under the Council's seal.
- 12.13 The Authorised Officer should create a regular monitoring report for the Assistant or Executive Director and any Project Board responsible for the contract. This report should include up-to-date information on the contract's performance and expenditure to date and the predicted out-turn. The report should highlight any areas of difficulty and propose remedial action.

### **13 Contracts subject to the Regulations**

- 13.1 Where the total contract value of any Major or Strategic Contract exceeds EU Threshold the Regulations must be complied with.
- 13.2 The Regulations are lengthy and detailed and only the principal requirements are set out in the Rules. Advice must be sought from the Head of Procurement and/or the Head of Law before starting any procurement which is likely to be subject to the Regulations.
- 13.3 The Regulations specify how the contract shall be advertised, the types of the procedure to be used, timescales, evaluating the tender and how the contract shall be awarded (including mandatory debriefing and a standstill period). Failure to adhere correctly to the Regulations may result in legal proceedings being taken against the Council.
- 13.4 The Rules shall apply to contracts subject to the Regulations in so far as they do not conflict with the Regulations.
- 13.5 For the avoidance of doubt, it is not possible to waive all or any part of the Regulations.



## **14 Minor Contract Quotations**

- 14.1 Authorised Officers shall seek to obtain written quotations from at least two Contractors or Suppliers for all Minor Contracts whose value is anticipated to be up to £50,000. Authorised Officers shall:
  - 14.1.1 Seek to obtain quotations only from Contractors or Suppliers known to be able to provide the goods, works and/or services required;
  - 14.1.2 Seek all quotations at a similar time, providing a written specification;
  - 14.1.3 Allow a reasonable time for Contractors or Suppliers to provide quotations;
  - 14.1.4 Receive quotations by letter, facsimile or email; and
  - 14.1.5 Evaluate all quotations received.
- 14.2 Subject to the Regulations, Authorised Officers shall retain quotations in accordance with document disposal guidelines, ensuring they remain available for inspection by the Head of Internal Audit or any representative of the Council's external auditor.
- 14.3 The relevant Service Manager or more senior Authorised Officer may accept one or more of the tenders received and award the contract(s).

## **15 Tenders**

- 15.1 Tenders shall be sought from Contractors or Suppliers who have responded to any advert placed by the Council in accordance with Rule 7 of the Rules and may be capable of being awarded the tender.
- 15.2 All Contractors or Suppliers invited to tender for Significant, Major or Strategic contracts shall be provided at no cost to themselves with identical Invitation to Tenders which shall specify and include:
  - 15.2.1 The date and time by which tenders are to be received, and the address to which they are to be delivered;
  - 15.2.2 All documents to be completed, which shall include health and safety and equality and diversity questionnaires;
  - 15.2.3 A copy of the contractual terms and conditions to which the tenderer will be bound if they are awarded the tender;
  - 15.2.4 Instructions for the tender's return including where electronic tendering is unavailable or chosen to not be used a label which contains the name of the proposed contract and the Council Directorate to which the contract relates;
  - 15.2.5 The summary form of tender to be completed and signed by the tenderer; and

- 15.3 Information supplied shall include but not be limited to:
- 15.3.1 Full specification of all goods works or services to be provided;
  - 15.3.2 Intended duration of the proposed contract;
  - 15.3.3 Evaluation criteria to be used in assessing tenders; and
  - 15.3.4 The method by which any errors in tenders will be treated.
- 15.4 Each tender shall be informed that the Council:
- 15.4.1 does not bind itself to contract with the Contractors or Supplier offering the cheapest tender or with any Contractor or Supplier;
  - 15.4.2 will not be liable for any costs or expenses whatsoever incurred by the tenderers in respect of the preparation and submission of their tender and that the Council shall be at liberty to cancel the tender process at any time and shall not be liable for any costs or expenses whatsoever incurred by the tenderer as a result of such cancellation;
  - 15.4.3 will not consider any tender which is not accompanied by all tender documents;
  - 15.4.4 may not consider any tender received after the latest date and time;
  - 15.4.5 may not consider any tender bearing any mark or label identifying the tenderer, whether made by the sender, an agent or carrier;
  - 15.4.6 will not consider any tender offering a variant offer, except where it accompanies a compliant offer unless stated otherwise; or
  - 15.4.7 will not consider any tender requiring a form of contract other than that approved by the Council's Head of Legal and Democratic Services.
- 15.5 Subject to the Regulations, Authorised Officers shall retain tenders in accordance with document disposal guidelines, ensuring they remain available for inspection by the Head of Internal Audit or any representative of the Council's external auditor.

## **16 Evaluation and Award of Tenders**

- 16.1 Tenders shall be assessed:
- 16.1.1 As soon as possible after they have been opened;
  - 16.1.2 In line with evaluation criteria set out in the Invitation To Tender; and
  - 16.1.3 By Authorised Officers or duly appointed consultants.

- 16.2 Assessment shall be restricted to:
- 16.2.1 Information contained within the tenders;
  - 16.2.2 Further information requested from tenderers following initial assessment of tenders and any clarification required; and
  - 16.2.3 Material provided at an interview or presentation (if available).
- 16.3 The Authorised Officer responsible for assessment of the tenders shall:
- 16.3.1 Examine all compliant offers and variant or alternative offers where applicable;
  - 16.3.2 Deal with errors in tenders using the method set out in the tender specification;
  - 16.3.3 Seek clarification and additional detail from each tenderer;
  - 16.3.4 Undertake financial evaluation of each tenderer; and
  - 16.3.5 Where appropriate invite tenderers to attend interviews and make presentations.
- 16.4 The Authorised Officer may also:
- 16.4.1 Seek additional information from tenderers in writing where that is relevant or needed to remove ambiguities from tenders. Where this is provided by telephone, Officers should keep a log of the questions asked and answers given;
  - 16.4.2 Create a small panel of appropriate Officers to interview some or all tenderers; and
  - 16.4.3 Interview tenderers following proper planning. Tenderers to be called should receive adequate details of what is required and sufficient time to prepare answers and presentations. Questions, answers and marks awarded should be written and retained.
- 16.5 The Authorised Officer shall produce an evaluation report to the Chief Officer who is to accept one or more tenders. In respect of Strategic Contracts this report shall be made available to the Cabinet, or any Project Board prior to their accepting one or more tenders.
- 16.6 The evaluation report shall offer clear, costed recommendations, to the Chief Officer responsible for accepting the tender.

## **17 Form of Contract**

- 17.1 The Council shall make contracts with Contractors or Suppliers appointed in accordance with the Rules and with the requirements of the Financial Regulations.

- 17.2 For all purchases of goods and services only the Council's Purchase Order Terms and Conditions shall be used for purchases up to the relevant EU Threshold in value unless agreed otherwise by the Head of Procurement or Head of Law.
- 17.3 Every contract made by the Council, whether by way of official purchase order, or by formal written agreement, shall require:
- 17.3.1 Goods, works or services to comply with any relevant British Standard or equivalent European Union standard wherever these exist;
  - 17.3.2 Evidence that Contractors or Suppliers maintain sufficient insurance as may be required by the Council's Risk and Insurance Department;
  - 17.3.3 Compliance with the relevant Construction (Design and Management) Regulations wherever these apply;
  - 17.3.4 An appropriate health and safety policy;
  - 17.3.5 An acceptable equality policy compliant with the provisions of the Equalities Act 2010;
  - 17.3.6 A signed statement agreeing that the Council may revoke the contract in the case of corrupt activity or behaviour by the Contractor or Supplier; and
  - 17.3.7 Where applicable a clause setting out when any bond or surety shall be returned and retention monies released.
- 17.4 All official purchase orders and written contracts shall:
- 17.4.1 Describe the goods, works or services to be provided;
  - 17.4.2 State the price to be paid and when it shall be paid, along with any discounts or other deductions;
  - 17.4.3 Indicate the time or times, within which the contract is to be performed, including any terms and conditions under which the contract may be extended;
  - 17.4.4 Include or refer to any terms and conditions set out by the Council or agreed with the Contractor or Supplier;
  - 17.4.5 Fulfil the requirements of the Council's Financial Regulations; and
  - 17.4.6 Comply with the requirements of the Council's ORACLE accounts payable system.
- 17.5 In all cases the official purchase order or written contract document shall be in a form approved by the Head of Legal and Democratic Services except where:
- 17.5.1 A contract is to be made with a statutory undertaking or utility company; or

- 17.5.2 Government purchasing agreement terms and conditions are to be used; or
- 17.5.3 Terms and conditions are agreed by a purchasing consortium which includes the Council; or
- 17.5.4 A Central Government office requires their terms and conditions are followed, or
- 17.5.5 The Head of Legal and Democratic Services agrees use of the Contractor's or Supplier's terms and conditions.

## **18 Execution of Contracts under seal**

- 18.1 Authorised Officers requiring a written contract to be made under the Council's seal shall provide the following:
  - 18.1.1 Written confirmation of compliance with the Rules and the exercise of authority by a Chief Officer;
  - 18.1.2 For Strategic Contracts a copy of the Cabinet decision accepting the tender and awarding the contract or delegated authority to an Officer to accept the tender and award the contract;
  - 18.1.3 Any other documents required by the Head of Legal and Democratic Services, to enable a contract to be sealed.
- 18.2 The seal is applied by the Head of Legal and Democratic Services or his or her nominated Officer. **Please note:** The application of the seal is an administrative function and not a legal review of the contract or the tendering exercise.
- 18.3 Where a contract has no consideration (i.e. no discernible money is being spent by the parties) the Council's seal shall be used.

## **19 Register of Contracts**

- 19.1 Executive Directors shall keep a register of all contracts subject to the Rules 10, 11 and 12 entered into by that Directorate ("the Register of Contracts"). Authorised Officers shall ensure contracts for which they are responsible are entered into this Register of Contracts: this includes any amendments or variations. The Register of Contracts shall be available for inspection by the Head of Internal Audit at all reasonable times.
- 19.2 A copy of every signed contract and every subsequent amendment and/or variation to it entered into by the Council will be retained by the service area to which it relates.
- 19.3 The original contract and any subsequent amendments and/or variations to it shall be forwarded to the Head of Law, and then kept securely in the Council's Central Records.

## **20 Contract Management and Variation**

- 20.1 An Authorised Officer shall:
  - 20.1.1 Take responsibility for communications between the Council and the Contractor or Supplier;
  - 20.1.2 Ensure that the Contractor or Supplier complies with the contract's terms, provides appropriate insurances, and complies with health and safety and other legislation;
  - 20.1.3 Represent the Council at meetings with the Contractor or Supplier and stakeholders;
  - 20.1.4 Report on the contract progress to Chief Officers, any Project Board or Cabinet as appropriate and its completion; and
  - 20.1.5 Examine the Contractor's or Supplier's final account.
- 20.2 The Authorised Officer shall ensure that there is in place adequate contract management and monitoring to ensure that the Council receives Best Value, that the contract terms are complied with and that supplies and services meet the required standards.
- 20.3 The Authorised Officer, or a duly appointed consultant acting on the Council's behalf, may instruct the Contractor or Supplier to vary the goods, works or services provided as follows:
  - 20.3.1 No variation can substantially or materially change the character of the contract and or goods, service or works originally procured;
  - 20.3.2 The Contract permits variation and the variation is included in accordance with the terms of the contract including the prices set out therein;
  - 20.3.3 All variation orders are created in writing, and are provided to the Contractor or Supplier, with a copy retained by the Authorised Officer;
  - 20.3.4 All variation orders are created at the time that the variation is instructed/agreed;
- 20.4 Chief Officers must approve all variations whose value exceeds £50,000. Where variations require additional funding or a change to the Council's capital programme, the Chief Finance Officer shall be consulted prior to the variation being approved.

## **21 Trading externally and surplus assets**

- 21.1 Executive and Assistant Directors shall sell goods works or services only after consultation with the Head of Legal and Democratic Services.
- 21.2 Paragraph 21.1 is subject to:
- 21.2.1 The provision of such trading activities and the manner in which it is provided is lawful;
  - 21.2.2 The proposal to dispose of Council-owned assets, including surplus or obsolete furniture or equipment shall be approved by the relevant Head of Service with their agreement that there is no further need for such assets. Surplus assets shall first be offered to other service areas or directorates within the Council (including schools maintained by the Council). Any such asset which remains to be disposed of externally shall be offered for sale at the highest price attainable;
  - 21.2.3 When considering the sale of an asset and the process to be followed to secure offers to purchase due regard shall be had to the reasonably anticipated value of the item and the associated costs of seeking the sale when determining the process for sale;
  - 21.2.4 A written contract is entered into by the Council for the provision of the goods works or services;
  - 21.2.5 Where it is a legal requirement for full Council to approve the fees or charges such approval is sought; and
  - 21.2.6 Where the anticipated income to be raised exceeds £500,000 in any financial year the appropriate Executive Director will first seek approval of Cabinet.

## **22 Disposal of Land and Property**

- 22.1 The Executive Director for Regeneration shall be responsible for acquisitions and disposals of land, whether by way of purchase sale or lease.
- 22.2 Before land is offered for sale or lease, an Authorised Officer shall arrange land sales and leases so that the Council obtains best consideration. An Authorised Officer shall obtain a qualified valuer's estimate of the likely sale price shall be obtained.
- 22.3 Prior to the making of a compulsory purchase order in order to acquire any land or property, a written report shall be presented to the Cabinet.
- 22.4 Where there is no provision for the cost of acquisition or redevelopment of the land in the Council's approved capital programme, a Capital Finance Report shall be considered by the Cabinet and by the Council if appropriate.

- 22.5 The written approval of the Cabinet shall be obtained prior to any advertisement being placed or contract executed where in the reasonable opinion of a Council Surveyor:
- 22.5.1 the value of land to be acquired or disposed of by way of sale is estimated to exceed £500,000; or
  - 22.5.2 leases of land or property are proposed whose rental value is anticipated to exceed £50,000 during any complete year.
- 22.6 Where Cabinet authority is not required, the Executive Director for Regeneration shall approve in writing:
- 22.6.1 Any purchase or sale whose price is not anticipated to exceed £500,000 in value; and
  - 22.6.2 Proposed leases whose rental value is not anticipated to exceed £50,000 during any complete year.
- 22.7 Prior to disposal of land or property, the Executive Director for Regeneration in consultation with the Leader of the Council and in their absence the Deputy Leader and or relevant Cabinet portfolio holder, shall determine whether:
- 22.7.1 The land or property shall be disposed of to one particular person;
  - 22.7.2 Formal sealed tenders are to be obtained and the land transferred to the person providing the highest offer strictly in accordance with the terms of their tender;
  - 22.7.3 Sealed offers leading to negotiations for the sale to the person making the highest bid under mutually agreeable terms; or
  - 22.7.4 The land shall be sold by public auction.

## **23 Implementation, application and minor amendment**

- 23.1 The Head of Legal and Democratic Services shall compile and maintain the Rules and shall advise on their implementation and interpretation.
- 23.2 In the case of ambiguity regarding their interpretation the Head of Legal and Democratic Services shall determine the correct application and interpretation of the Rules.
- 23.3 Delegated Authority is given to Head of Legal and Democratic Services in consultation with the relevant Cabinet Member to amend and or update the Rules as appropriate to meet future and operational requirements to ensure the aims and principles of the Rules are given full effect.



## 24 Definitions and Interpretation

24.1 In the Rules the following terms shall have the following meanings:

Term	Meaning
“Approved List”	A list of Contractors or Suppliers of goods, works and services, drawn up or approved for use by Chief Officers, of persons ready and capable of supplying goods works and services.
“Authorised Officer”	An Officer who has the authority to deal with the contract in question given to the relevant Chief Officer in writing <u>and</u> who has received the required procurement training
“Best Value”	The duty, which Part 1 of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by Council
“Cabinet”	The Council Executive
“Central Purchasing Bodies”	A contracting authority which acquires goods or services intended for one or more contracting authority in accordance with the Regulations
“Chief Officer”	The Council’s Executive and Assistant Directors and Heads of Service
“Contract”	Any contract for the execution of works or the supply of goods and services and “contracts” shall be interpreted accordingly
“Contractor”	Any entity who is contracted by the Council to supply goods, works and/or services to the Council
“Contracts Finder”	The UK Government’s online procurement service where details of live opportunities over certain financial thresholds are published
“Corporate Management Team”	As defined in the Constitution
“Constitution”	The constitution of the Council which sets out: (i) how it operates; (ii) how it makes decisions; and (iii) the procedures which it must follow
“E U Rules”	The European Union Directives which have been embodied in the Regulations

“E U Threshold”	<p>The contract value at which the EU Rules and the Regulations apply and which are set every two years on 1<sup>st</sup> January. The values as at 1<sup>st</sup> January 2014 are:</p> <ul style="list-style-type: none"> <li>• Goods and services - £172,514</li> <li>• Works - £4,322,012</li> </ul>
“Executive and Assistant Directors”	The relevant Chief Officers
“Financial Regulations”	The procedures to be followed when planning, undertaking or reviewing any matter relating to the management of the Council’s finances which form part of the Constitution
“Framework Agreement”	An Agreement between one or more authorities and one or more economic operators the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and where appropriate the quantity envisaged and which is compliant with EU and UK procurement law (and “Framework Agreements” shall be interpreted accordingly)
“Grant”	A gift or donation by the Council under which it has no right to receive anything in return but may attach terms and conditions specifying how the grant is to be spent
“Grantor”	The organisation giving a Grant to the Council
“Invitation to Tender”	The invitation to tender documents in the form required by the Rules
“Opening”	When used in connection with tenders, includes opening manually or electronically
“Partnership”	An agreement between the Council and any public or private organisation to deliver a specific project or services
“Project Board”	A board of Officers formed to oversee the tendering of Strategic Contracts
Purchase Order Terms and Conditions	The terms and conditions that are contained as part of and referred to in the Council’s Purchase Orders
“Quotation”	A price quoted by a potential Contractor or Supplier without a formal issue of an Invitation to

	Tender
“Regulations”	The Public Contract Regulations 2015 (or any re-enactment thereof)
“Rules”	These contract rules
“Scheme of Delegations”	As defined in the Constitution
“Supplier”	Any entity who is contracted by the Council to supply goods, works and/or services to the Council
“Tender”	A formal proposal issued in response to an Invitation to Tender
“Tenderer”	Any person or organisation who submits a formal tender in response to an Invitation to Tender
“Total contract value”	<p>The whole value or estimated value (in money or equivalent value for a single purchase or disposal calculated as follows:</p> <ul style="list-style-type: none"> <li>• Where the contract is for a fixed period by taking the total price to be paid or which might be paid during the whole of the period; or</li> <li>• Where the contract is for one year and may continue until terminate by notice the total price to be paid or which might be paid over the first three years</li> </ul>

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## Appendix – Summary of provisions

### GOODS AND SERVICES

Total Contract Value (£)	Type of Contract	Minimum number of tenders to be sought	Decision to award	Rule no.
Up to £10,000	Not subject to the Rules	Recommended minimum 2 competitive quotations	Service Manager or above	
£10,001 to £50,000	MINOR	Recommended minimum 2 competitive quotations	Service Manager or above	14
£50,001 up to EU Threshold	SIGNIFICANT	At least 3 written tenders	Head of Service or above	10, 15, 16, 17
Above EU Threshold and up to £500,000	MAJOR	The Regulations apply At least 4 written tenders	Assistant Director or above	11, 13, 15, 16, 17
£500,001 and above	STRATEGIC	The Regulations apply At least 4 written tenders	Cabinet or Delegated Approval	12, 13, 15, 16, 17, 18

### WORKS

Total Contract Value £	Type of Contract	Minimum number of tenders to be sought	Decision to award	Rule no.
Up to £10,000	Not subject to the Rules	Recommended minimum 2 competitive quotations	Service Manager or above	
£10,001 to £50,000	MINOR	Recommended minimum 2 competitive quotations	Service Manager or above	14
£50,001 up to £250,000	SIGNIFICANT	At least 3 written tenders	Head of Service or above	10, 15, 16, 17
£250,001 up to £500,000	MAJOR	At least 3 written tenders	Assistant Director or above	11, 15, 16, 17
Above £500,001 and up to EU Threshold (for works)	STRATEGIC	At least 4 written tenders	Cabinet or Delegated Approval	12, 15, 16, 17, 18
EU threshold (for works) and above	STRATEGIC	The Regulations apply At least 4 written tenders	Cabinet or Delegated Approval	13, 15, 16, 17, 18

## **The Mayor's Charity Appeal Fund and Charity Events Protocol**

## **The Role of the Mayor**

The Mayor as 'First Citizen' represents and promotes the Council at Civic and ceremonial occasions within the Borough of Walsall and elsewhere. The Mayor's Office provides support for Civic and Ceremonial duties and day-to-day Mayoral engagements.

Typically, a Mayor decides in addition to raise money for their chosen charities through hosting charity events such as quiz nights, concerts, and so on.

Before the start of any municipal year, the incoming Mayor is expected to establish their own independent Fundraising Committee which will oversee all fundraising and arrange all charity events for the Mayoral year. It is important that the Committee has enough members to run the Mayor's Charity Appeal, organise and market events, sell tickets and be responsible for the delivery of all planned fundraising activities. It will be the Mayor's responsibility to convene meetings of the Committee. Fundraisers from the chosen charities will usually have experience and expertise to assist the Mayor in optimising fund-raising opportunities.

## **Roles and responsibilities for the Charity Appeal Fund**

The Council cannot use public money to support or subsidise charity events for the Mayor and there will not be any exceptions to this.

This means that the roles and responsibilities in relation to the Mayor's Charities are as follows:

<b>Mayor's fundraising committee (or the Mayor if s/he doesn't appoint a committee)</b>	<b>Mayor's office</b>
Put together a programme of charity events for the year.	Offer advice and experience about the suitability of events and the appropriate procedures and protocol
Check the Mayor's availability with the Mayor's PA and provide all necessary information to book the Mayor for the event effectively.	Provide tickets to events if an individual calls into the Council House or telephone's the Mayor's Office
Organise and hold all fund-raising events.	
Carry out all administration associated with fund-raising activities.	
Publicise activities and events. Pay for all design and printing.	Assist by getting design and printing work carried out.
Ensure there are sufficient people	Keep in a secure place any items

<p>available to successfully run any charity event arranged and to source sufficient tombola and raffle prizes.</p> <p>Ensure a statement is included on all tickets and promotional materials which ensures people giving money to the Fund or attending charity events are aware of how the appeal runs.</p> <p>This should not be changed or added to and should read as follows:</p> <p><i>This event is being organised by the Mayor's Fundraising Committee to benefit the Mayor's charitable appeal. Any net proceeds from the event will be deposited into the Appeal Fund for distribution at the end of the Municipal Year.</i></p>	<p>donated for the Mayor's use. Each item will be logged in when donated and out when used.</p>
<p>Retain any invoices or receipts relating to charitable activities and hand them to the Mayor's Office.</p> <p>Notify the Mayor's Office of any expenditure.</p> <p>Meet any expenses incurred from funds raised and banked previously.</p>	<p>Open a bank account for the Charity Appeal Fund separate to all other bank accounts at the council (and close it at the end of the term of office).</p> <p>Act as the custodians of any funds raised, formally acknowledge any donations made to the Mayor's Charity Appeal and distribute cheques to the Mayor's chosen charities at the end of their Mayoral year.</p> <p>Hold the cheque books and paying in books.</p>
	<p>Provide the Mayor and fundraising committee with updates on overall spending and monies received on a basis agreed with the Mayor.</p>

### **Managing the Mayor's Charity Appeal Fund**

The Mayor's Charity Appeal Fund is purely a mechanism for holding monies donated by individuals or organisations on behalf of the Mayor or for monies raised directly by the Mayor and their Fundraising Committee. It is not a registered charity or a formal Charitable Fund.

Any charity events arranged are held with the sole intention of raising money for the Mayor's Charity Appeal. All overheads and associated costs are to be financed

from the existing charity income or from the Mayor direct with all net profit, after the payment of any overheads and costs, being deposited into the Fund.

The budget for the running of Mayor's Office is held by Democratic Services. This budget has an amount which funds hospitality at events such as receptions for civic heads from outside the Walsall Borough, Insignia Visits, receptions for notable people, and so on and is not for the personal use of the Mayor or for the Mayor's charity events. The Mayor has an allowance which covers their personal drinks in the Mayor's Parlour and clothing for use during their Mayoral Year.

The Charity Appeal Fund is secondary to the Civic function of the Mayor and the Mayor's Office and therefore the setting of fundraising targets is to be avoided. The use of such monetary targets could lead to the Mayor's Charity Appeal becoming an overriding preoccupation of the mayoral year which can distract from the civic role being undertaken.

The Mayor's Charity Appeal Fund is the holding fund for all monies donated to the Mayor during their mayoral year. Under no circumstances is this to be used as a holding fund for expenses or sundry items for third parties which are then paid back to them at a future date.

### **Events at Council Venues**

There are eight 'Mayoral' events for which the use of either Walsall Town Hall or Darlaston Town Hall is provided free of charge. Four of these events are held annually and are booked by the Mayor's Office:

- Mayor Making Reception
- Mayor's Civic Sunday
- At Homes
- Remembrance Sunday

These four events are considered official Walsall Council events which the council supports appropriately and so:

- The Mayor's Office/Democratic Services pay for all the costs incurred. The Town Hall is provided free of charge.
- The Mayor's Office will undertake the lead role to plan and administer the events while the Venue Development Team will support the Mayor's Office in the delivery of the events.

In addition to the four Civic Events, the Mayor is allocated a further four events which can be used for either civic events (such as a special military parade) or for fundraising for the Mayor's chosen charities.



If the Town Hall is used for a 'charity event' this will not be considered to be an official Walsall Council event and, whilst there is still no hire charge, these events receive a lesser degree of support from the council:

- The organisation of these events is to be led by the Mayor's Fundraising Committee or the Mayor themselves.
- The council will not support the running costs of the Mayor's charity events beyond free hall usage.
- The Venue Development Team will allocate up to ten hours per charity event to support the organisation and advise on event operation.
- The Venue Development Team will take responsibility for the safe operation of the Town Hall during the event and will employ and supervise stewards/security staff. The cost of the stewards/security staff will be notified to the Mayor and will be recharged to the Mayor's Fundraising Committee or the Mayor, if he has no appointed Committee.
- The Venue Development Team will, on request, provide a licensed bar service for these events. This will be a cash bar and will not be subsidised.

### **Bookings**

Bookings for the eight Mayoral Events can be taken in advance. Booking these events as early as possible is recommended to secure the dates.

Except where the dates are pre-determined, such as Mayor Making or Remembrance Sunday, bookings for Mayoral Events will not take precedence over other Town Hall bookings. Town Hall events are essentially booked on a 'first come first served' basis.

The Venue Development Team will advise and support the safe and effective operation of the events.

It is the responsibility of the Venue Development Team to decide how many staff will be required, which staff are to be employed and their hours of work, to enable the event to go ahead safely.

Similarly, the Venue Development Team give final operational approval for all Town Hall events.

Any event held in either Walsall Town Hall or Darlaston Town Hall is covered by the insurance policy held by the council.

The organiser of the event (ie: The Mayor's Fundraising Committee or the Mayor) is asked to provide a full risk assessment to the Venue Development Team in advance of the event.

The Venue Development Team check this and that all other possible health and safety risks are identified and resolved in advance of the event.

## TIMETABLE 2015/2016 (21.5.15)

	May	June	July	August	September	October	November	December	January	February	March	April	May
<b>Mon.</b>													
<b>Tue.</b>													
<b>Wed.</b>													
<b>Thur.</b>	1												
<b>Fri.</b>	2								1 Bank hol.				
<b>Mon.</b>	4 Bank hol.	1 Annual Council		3			2		4 Audit	1 Brownhills AP			2 Bank hol.
<b>Tue.</b>	5	2		4	1 Employ B Audit		3 Employ B Social Care SP	1 Employ B Neighbour SP	5 Employ B Children SP	2 Employ B N. Walsall	1 Employ B		3
<b>Wed.</b>	6	3 Adjourned Council	1 Licensing	5	2 Licensing		4	2	6	3 Cabinet	2 Personnel		4
<b>Thur.</b>	7 Elections	4	2 Employ A Social Care SP	6 Planning	3 Employ A Planning	1 Employ A Planning	5 Employ A Planning	3 Employ A Planning	7 Employ A Planning	4 Employ A Planning	3 Employ A Planning		5 Elections
<b>Fri.</b>	8	5	3	7	4	2	6	4	8	5	4	1	6
<b>Mon.</b>	11	8	6	10	7 Health WB	5 Standards	9 Audit	7 Health WB	11 Council	8 Aldridge AP	7 SACRE	4 Walsall S. AP	9
<b>Tue.</b>	12	9	7 Employ B N. Walsall AP	11	8 Employ B Children SP	6 Employ B Walsall S. AP	10 Employ B Willenhall AP	8 Employ B Aldridge AP	12 Employ B	9 Employ B Walsall S. AP	8 Employ B Business SP	5 Employ B Neighbour SP	10
<b>Wed.</b>	13	10 Licensing	8	12	9 Cabinet	7	11	9 Personnel	13 Licensing	10	9	6	11
<b>Thur.</b>	14	11 Planning	9 Employ A Planning	13	10 Employ A Business SP	8 Employ A	12 Employ A Darlaston AP	10 Employ A	14 Employ A Neighbour SP	11 Employ A	10 Employ A Social Care SP	7 Employ A N. Walsall AP	12
<b>Fri.</b>	15	12	10	14	11	9	13	11	15	12	11	8	13
<b>Mon</b>	18	15 Personnel	13 Council	17	14 Darlaston AP	12 SACRE	16 Council	14	18 Health WB	15	14	11 Council	16
<b>Tue.</b>	19	16 Neighbour SP	14 Employ B Aldridge AP	18	15 Employ B Neighbour SP	13 Employ B Children SP	17 Employ B N. Walsall AP	15 Employ B	19 Employ B Willenhall AP	16 Employ B Neighbour SP	15 Employ B	12 Employ B Brownhills AP	17
<b>Wed</b>	20	17	15 Darlaston AP	19	16 Personnel	14 Licensing	18	16 Cabinet	20 Personnel	17	16 Cabinet	13 Licensing	18
<b>Thur</b>	21	18 Business SP	16 Employ A Walsall S. AP	20	17 Employ A N. Walsall AP	15 Employ A	19 Employ A	17 Employ A Social Care SP	21 Employ A Business SP	18 Employ A	17 Employ A	14 Employ A Business SP	19
<b>Fri</b>	22	19	17	21	18	16	20	18	22	19	18	15	20
<b>Mon</b>	25 Bank hol.	22 Health WB	20 Audit SACRE	24	21 Council	19 Health WB	23 Brownhills AP	21	25 Standards	22 Audit	21	18 Audit	23 Annual Council
<b>Tue</b>	26	23 Children SP	21 Standards Employ B	25	22 Employ B Willenhall SP	20 Employ B Neighbour SP	24 Employ B Children SP	22	26 Employ B Darlaston AP	23 Employ B Children SP	22 Employ B Darlaston AP	19 Employ B Children SP	24
<b>Wed</b>	27	24 Cabinet	22 Cabinet	26	23 Audit	21 Personnel	25 Licensing	23	27	24 Licensing	23	20 Personnel	25 Adjourned Council
<b>Thur</b>	28	25	23 Employ A	27	24 Employ A Social Care SP	22 Employ A Business SP	26 Employ A Business SP	24	28 Employ A Social Care SP	25 Employ A Council	24 Employ A Willenhall AP	21 Employ A Social Care SP	26
<b>Fri</b>	29	26	24	28	25	23	27	25 Bank hol.	29	26	25 Bank hol.	22	27
<b>Mon</b>		29 Brownhills AP	27	31 Bank hol.	28 Brownhills AP	26	30 Walsall S. AP	28 Bank hol.		29 Health WB	28 Bank hol.	25 Health WB	30 Bank hol.
<b>Tues</b>		30 Employ B Willenhall AP	28 Employ B		29 Employ B Aldridge AP	27 Employ B		29 Bank hol			29 Employ B Aldridge AP	26 Employ B Standards	31
<b>Wed</b>			29 Personnel		30	28 Cabinet		30			30	27 Cabinet	
<b>Thur</b>			30 Employ A			29 Employ A		31			31 Employ A Planning	28 Employ A Planning	
<b>Fri</b>			31			30						29	

## **Timetable abbreviations**

### **Regulatory Committees**

Audit	Audit Committee
Employ A	Employment Appeals Sub-Committee A
Employ B	Employment Appeals Sub-Committee B
Health WB	Health and Wellbeing Board
Licensing	Licensing and Safety Committee
Planning	Planning Committee
Standards	Standards Committee

### **Scrutiny and Performance Panels**

Business SP	Business, Employment and Local Economy Scrutiny and Performance Panel
Children SP	Children's Services Scrutiny and Performance Panel
Neighbourhood SP	Neighbourhoods Scrutiny and Performance Panel
Social Care and Health SP	Health Scrutiny and Performance Panel

### **Area Panels**

N. Walsall AP	North Walsall – Bloxwich East/Bloxwich West/Blakenall/Birchills-Leamore
Brownhills AP	Brownhills/Pelsall/Rushall-Shelfield
Darlaston AP	Darlaston North/Bentley/Darlaston South
Walsall S AP	Walsall South - St. Matthews/Paddock/Palfrey/Pleck
Aldridge AP	Aldridge and Beacon – Streetly/Pheasey/Aldridge/Walsall Wood
Willenhall AP	Willenhall North/Willenhall South/Short Heath