



Review of the Council's Constitution

Ward(s): ALL

Portfolio: Leader of the Council, Councillor T Ansell

Summary of report:

The Council adopted its constitution in May 2002. Subsequently elements of the document have been amended as required. However, until now, no wholesale review had been undertaken. A review was commissioned as part of an ethical governance audit undertaken by CIPFA, who made a number of recommendations. Additionally, through use of the documents, members, officers and other stakeholders have commented upon aspects of the constitution that could be improved.

The report sets out the substantive and significant changes being proposed. Whilst there are a number administrative, clerical or typographical changes, these are not set out in the body of the report to ease readability and are instead detailed in the appendices.

Background Papers:

1. Ethical Governance Report, CIPFA

Recommendations to Council

Council is recommended to

1. approve the changes to the constitution set out in the report and appendices attached.
2. delegate authority to the Monitoring Officer to determine the commencement date for each of the changes approved in 1 above and to make changes of a typographical or administrative nature not identified in 1 above

Resource and Legal Considerations

If the constitution is amended then revised versions will need to be circulated to all stakeholders so they may have updated copies. The costs cannot be ascertained until the full extent of the revisions have been determined but it is expected that the costs will be modest and can be met from existing budgets.

Citizen Impact

The constitution sets out in one document the main operating policies for the Council. By ensuring that the constitution is up to date, fit for purpose and written in a way that makes it easier to understand it will enable more citizens to understand the way in which decisions are taken and so encourage greater engagement in local government

<p>Environment Impact</p> <p>None directly as a result of this report</p>
<p>Performance Management and Risk Management Issues</p> <p>None directly as result of this report.</p>
<p>Equality Implications</p> <p>By ensuring that all members, officers and stakeholders are aware of the Council's constitution we can all contribute to ensuring that all matters are dealt with by and on behalf of the council are undertaken from a basis of equality.</p>
<p>Consultation</p> <p>The report has been prepared in consultation with officers and feedback from members.</p>
<p>Vision 2008</p> <p>The Constitution provides an overall framework in which the council's vision will be delivered.</p>
<p>Contact Officer: Bhupinder Gill, Assistant Director for Legal & Constitutional Services ☎ 4820 gillb@walsall.gov.uk</p>

Background

The Local Government Act 2000 required all local authorities to make provision for alternative arrangements and this Council adopted its present constitution in May 2002. The constitution contains many of the Council internal rules for the conduct of its business and follows a model issued by the DETR. It consists of 11 parts with many sub parts.

Since adoption, there have been areas of the constitution that have not operated as effectively as they could have and as a result it has been subject to a number of amendments by way of patches to the relevant provisions.

The Monitoring Officer, with colleagues, has reviewed the operation of the constitution and has been noting areas for improvement. Additionally he has sought views from officers and elected members on those areas of the constitution that have hindered effective or efficient decision making.

Attached to this report and marked as **appendix 1** is a table setting out recommended changes to the provisions of the constitution. Whilst some of the changes detailed in the table are merely of a typographical/administrative nature there are others which are

substantial in nature and will represent changes to current working procedures. In the paragraphs below, the more significant proposals are drawn to members attention but they do not replace the detail that is contained within the appendices.

As part of the review the entire constitution was considered. Proposals for revision were considered for all parts in addition to those parts where adverse views were received or drawn to the attention of the Monitoring Officer. The findings of an independent ethical governance report undertaken by CIPFA have also been used to highlight and consider areas for revision. As a result there are no proposals for amendments in relation to the following parts:

- Part 1 Summary and explanation
- Part 8 Council structure
- Part 9 Members' Job Descriptions

The constituent parts of the constitution set out below are being reviewed under internal or external processes;

- Part 3 Table 5 Scheme of delegation of functions to officers of non executive functions. (a separate review is underway)
- Part 5 Codes and protocols. Save for the changes set out in the appendix, there are no changes to the members' and officers' codes of conduct whilst we await the revisions to the mandatory elements from central Government.
- Part 6 Members Allowances (a review is already underway)
- Part 7 Management Structure. A review of the management arrangements was carried out in 2005 and it is proposed that the structure be inserted into the constitution.
- Part 10 List of Members of the Council.
- Part 11 Register of Members' Interests.

Proposals for revision are contained in this report, with the main/significant changes set out below and the detail contained in the appendix for the following parts:

- Part 2 Articles
- Part 3 Responsibility for functions
- Part 4 Rules of procedure

The following paragraphs are set out in the order of the constitution to allow for easier cross- referencing. However, where issues affect a single topic, but are covered in different parts of the constitution they have been considered in the same place to make for easier reading.

Part 2 Articles

There are minor typographical/administrative amendments to most articles and these are detailed in the attached schedules.

Article 2. Members of the Council

Paragraphs 2.02, re the elections are now out of date and it is proposed that these be replaced by an updated paragraph.

Article 3. Citizens and the Council

Paragraph 3.01b details the rights of citizens to attend meetings of the authority. Whilst it is implicit in the language used that they can attend scrutiny and performance panel meetings, it is proposed to make this explicit and therefore amend the relevant paragraphs.

Article 6. Scrutiny and Performance Panels

Paragraph 6.01 sets out the five scrutiny and performance panels established by Council. However, in some circumstances the exact remit of each panel is unclear. Therefore it is proposed that the services that are covered under the remit of each panel are set out in full. It is also proposed that the terms of reference for each panel are prepared in full so that each panel member and citizens can have before them in one location, all the relevant information for that panel as opposed to the current system where one has to be expert in the constitution to find the relevant code.

It is also proposed to establish a Scrutiny Management Board. This will consist of the Chairs and Vice Chairs of the Scrutiny Panels and its broad remit will be that coordinating the work of the existing scrutiny panels, although a fuller remit will be developed.

Additional changes to scrutiny and performance panels are set out below in 4.5.

Article 7. The Executive

Paragraph 7.01 sets out the role of the Executive. It is proposed to expand this paragraph to set out the legal position that the underlying presumption is that unless it is stated to the contrary, a matter is an executive function.

That paragraph 7.04 be extended to include the information reproduced in the schedule to table 3, i.e. the names of the portfolio holders together with their portfolios and with the additional information as to the extent of their portfolios.

Article 8. Regulatory and other Committees

Paragraphs 8.01 and 8.03, refers readers to another part of the constitution in order to establish the regulatory committees. It is proposed that they be listed in this paragraph to make it easier to establish which committees are being referred to. It is also proposed, as with the scrutiny and performance panels, that each committee

has full terms of reference produced so that committee members and citizens have in a single document with all the information that is pertinent to that committee.

Article 13. Decision Making

Paragraph 13.03b defines a key decision. The definition adopted locally is one which is wider than that which was proposed in the model constitution issued by DETR. It is therefore proposed to amend the definition to bring it in line with the model definition. Thus a key decision will be one that has a significant effect on two wards or more as opposed to the current definition of one ward or more. Additionally, it is proposed to remove the limitation on responding to consultation documents from the definition of a key decision.

Part 3

This part of the constitution sets out in a series of tables which internal bodies are responsible for defined classes of decisions. Unfortunately many of the tables refer readers on to further tables or to the statutory regulations so the tables on their own are difficult to follow.

They also contain the remit for the regulatory committees and the extent of their decision making powers, but they do not contain all of the information regarding the forums in one location. It is proposed that the existing information, which is contained in a number of documents or locations within the constitution, is collated and presented in one location in the tables for each of the forums

Table 1. Responsibility for Local Choice Functions

This table comprises 4 columns setting out those matters where the legislation provides a discretion as to the decision making body who will exercise a specific power. Unfortunately 2 of the 4 columns are either empty or refer onwards to another table. It is proposed that these columns (membership and delegation of function) be deleted and that the information which should have been present be reproduced in the relevant parts of table 2.

Table 2. Responsibility for Council Functions.

This part of the constitution sets out the different committees of the Council and the extent of their decision making powers. However, as with other parts of the constitution on numerous occasions it refers readers other parts of the constitution or for information to be gleaned from elsewhere. It is proposed that this information is reproduced under each committees terms of reference so that all of the information for a particular committee appears in one central location (e.g. membership, quorum, remit).

Table 3. Responsibility for Executive Functions.

That the schedule be expanded to include the extent and remit of the individual portfolios.

Table 4. Advisory bodies, statutory committees and other bodies

This part of the constitution sets out the different committees and the extent of their decision making powers. However, as with other parts of the constitution on numerous occasions it refers readers to other parts of the constitution or information to be gleaned from elsewhere. It is proposed that much of this information is reproduced under each committees terms of reference so that all of the information for a particular committee appears in one central location (e.g. membership, quorum, remit).

Part 4 Rules of Procedure

4.1 Council Procedure Rules

These are the rules that regulate the meetings of the Council and the committees of the Council. A large proportion of the council procedure rules are required by statute and their content is also regulated by statute. Thus the existing rules have been have considered to identify those areas where issues have arisen during the period of review.

Time scales

Under the current rules there are different time periods for the receipt of questions from the public (4 clear days), elected member (4 clear days) and for notices of motion (10 clear days). The Council Summons has to be issued at least 5 clear days before the meeting. The 4 clear days notice may have originated when the original access to information rules required the summons to be issued 3 clear days before the meeting, but it appears that the local notice periods were not changed when the law was amended. As a result the administrative process for compiling the documentation for each Council meeting is unnecessarily burdensome and resource intense. Further, this results in a number of pieces of paper that each elected member has to bring with them which increases the risk of papers being omitted. By unifying the time limits and having one time limit for all different types of involvement by different stakeholders it will help to make the process easier for new councillors, other stakeholders and also reduce the level of resources required to administer the process and should lead to one set of papers with all the information being available for elected members. It is proposed that single notice period of 7 clear days be adopted for questions and motions.

Time for questions

That the current time limit of 15 minutes for questions by members be doubled to 30 minutes to bring it line with that of members of the public.

Notices of motion

The current provision allows for members to move certain motions without notice. On occasions this has lead to confusion in the chamber when some elected members have been uncertain as to what they are being asked to vote on. It is not intended to revise the remit of the motions that can be moved without notice but it is

proposed that any amendment moved has to be written down by the mover and passed to the Mayor who will read it aloud before a vote is taken so that there is no ambiguity as to what members are being asked to decide.

Standing orders also regulate the conduct of committee meetings. The scope of motions that can be moved without notice is limited and does not expressly cover the situation at the regulatory committees where officers' recommendations are made in reports but they are reliant upon members moving motions. It is therefore proposed to add to list of motions that can be moved without notice to allow, at regulatory committees, members to move approval (with or without conditions), rejection (with or without conditions) or site visits.

State of Walsall debate

It proposed that this be fixed within a municipal window so that it will occur at the same time or thereabouts each year (ie, at the last ordinary meeting of Council appearing the calendar of meetings).

Voting on appointments

The current procedure requires that where there are more candidates than vacancies, that the Council votes and on each occasion and the candidate with the lowest number of votes is eliminated from the process until the number of candidates equals the number of vacancies. This process can be time consuming and it proposed that that the Council adopt the first past the post procedure, with members having the same number of votes that correspond to vacancies and on each vote the candidates with the highest number of votes is appointed and drops out of the next round(s) of votes. (Thus if there 3 vacancies each member will vote for a candidate 3 times. Whoever gains the most votes in rounds 1 is elected and does not enter round 2 or 3. In round 2 whoever gains the most votes is elected and does not enter round 3. In round 3 who ever gains the most votes is elected.)

4.2 Access to Information rules

These are a reproduction of the statutory provisions which have recently changed and thus the new provisions should be inserted.

4.3 Budget and Policy Framework Rules

These have been amended by the Chief Finance Officer to ensure the there will be greater opportunity for all members have an opportunity to input into the budget setting process. The protocol has now defined dates for various stages of the consultation to take place.

4.4 Executive Procedure Rules

No substantial changes are proposed to these rules.

4.5 Scrutiny Procedure rules

Whilst there are number of changes that affect the scrutiny procedure rules there are some that affect Article 6. The scrutiny committees have through their Chairs have made a number of recommendations for revision regarding their operating framework.

Article 6

This currently lists the scrutiny committees. But there is no detailed description of the services that fall within the remit of a particular scrutiny committee. It is proposed that each of the names is followed by a short paragraph setting out the remit of each panel.

The Chairs have also requested that the cycle of meetings be considered so as to provide greater certainty to elected members, i.e. that a committee meets on a fixed day of the week.

Overlapping Remits

Currently the rules state that where a matter falls within the remit of more than one Scrutiny and Performance Panel (SPP) then the Scrutiny and Performance Panel working group would decide which SPP would assume responsibility for the matter.

It is proposed that this be changed such that the first SPP to consider the matter will be deemed to have accepted responsibility for the matter should it come back before the panels for reconsideration of the same or associated matters.

Where such a matter is under consideration the Chair of that SPP shall invite members of all relevant SPPs to the meeting of that panel and that the host panel shall take regard of the comments of the invited members when making their recommendations.

Work plans

Whilst maintaining that the each panel shall be responsible for setting its own work plan it should have regard to the work plans of the other committees and that the Scrutiny Management Board will coordinate their work plans

Scrutiny Management Board.

It is proposed to establish a Scrutiny Management Board (SMB). This will consist of the Chairs and Vice Chairs of the scrutiny panels and its role will be that of coordinating the work of the scrutiny panels. Since all panels are of equal importance and the role is that of coordinating the work of all the panels it is proposed the chairing of the SMB is undertaken the Chairs of the scrutiny panels by rotation, the office of chair lasting from meeting until the next.

Rule 17

This sets out in detail the provisions relating to the call in mechanism. The established legal position is that once a decision has been called in and reconsidered by the executive that the same decision can not be further called in. The constitution is silent upon the matter and it is considered that be expressly cited.

Where a SPP has called in a decision and they subsequently consider that the decision may be contrary to the policy and or budget framework they may refer the matter to full Council for consideration. Whilst this position is implied in the procedures it is considered that it be expressly cited.

4.6 and 4.7 Financial Procedure Rules and Contract Procedure Rules.

Currently the financial affairs of the authority are in part regulated by two policies contained within the constitution. The main criticism of these documents has been that they are too lengthy and are not written in a format that is user friendly.

As a result of those comments it was decided that the best way forward would be to start to with a blank sheet of paper and that the two sets of rules needed to be consolidated, simplified and wherever possible for any financial thresholds to be used consistently throughout the whole of the constitution. As a result, the new procedures are shorter, more user friendly, have an index and have a consistency of thresholds. The new rules are at **appendix 2**.

Status of the rules

The new document is called Financial and Contract Rules (FCRs). They form part of the Council's Constitution and policy framework. The rules will be supplemented with procedures (guidance) on the interpretation and applications of the rules to provide support of an operational nature to officers. It is proposed that these procedures are not part of the Council's framework and as such can be amended from time to time by the executive.

Delegations/ authority

The current set of rules, written prior to the executive forms of administration and the old officer structure, delegated a number of decisions to Directors. The terminology has been amended such that it now reflects the current officer structure and allows for greater flexibility in the day to day operational decisions that have to be taken.

Many of the decisions are appropriately taken by Assistant Directors and Heads of Service so the rules have been amended to reflect the actuality of the decision making process and expressly allow for some of the decisions to be delegated to either an Executive Director, Assistant Director, Head of Service or Service Manager.

Where a matter affects more than one directorate then it is proposed that the executive directors, in consultation with the chief finance officer (CFO) may agree the matter instead of raising it at EMT.

Financial thresholds for various stages of decision have been increased where ever possible to bring them in line with European Procurement Law thresholds. This will help to ensure that where officers have complied with the constitution they have also simultaneously complied with the relevant legislation.

The decision making authorities are retained at the existing officers tiers however Assistant Directors are now recognised within the policy, which also expressly permits sub delegation to specified officer tiers as opposed to the existing system of authorisation, where by officers acted in the name of a person with delegated authority (set out in the table below).

Amount	<£2,500	<£50,000	<£150,000	<£500,000	£500,000 or more
Quotes or tenders	Best value	4 written quotes	4 formal sealed tenders	4 formal sealed tenders	4 formal sealed tenders
Return of tender to	Head of service	Head of service	Head of service	Monitoring Officer or his nominee	Monitoring Officer or his nominee
Opening tenders	Head of services or their nominees	Head of services or their nominees	Head of service or their nominees	Executive / Assistant Director	Cabinet Portfolio holder with Monitoring Officer or his nominee
Acceptance of tenders	Head of Service or Service Manager	Head of Service or Service Manager	Head of Service or Service Manager	Executive / Assistant Director	Cabinet
Signing contract	Head of Service	Head of Service	Head of Service	Executive / Assistant Director	Council seal

Virements

The rules regulating virements between budget heads are proposed to be relaxed but still maintaining a safe control mechanism. Thus for virements within;

- the same service the prior approval of the relevant budget holder and the Chief Finance Officer's nominee shall be required for whatever amount,
- different services in the same directorate The prior approval of the relevant Executive Director, the Chief Finance Officer's nominee and the relevant cabinet portfolio holder(s), shall be required for whatever amount.
- different directorates. The prior approval of the relevant cabinet portfolio holder(s), the relevant Executive Director(s), and the Chief Finance Officer's nominee shall be is required for whatever amount.

4.8 Officer Employment Procedure Rules

It is proposed to amend the rules so that in addition to relatives, officers must declare and withdraw from any selection process where they are friends with potential interviewees. Additionally the rules as currently drafted require the suspension of the Chief Executive where a matter of misconduct is being investigated as opposed to all other officers where there is discretion. This is contrary to good employment law principals and established case law. It is proposed that this be amended to provide the Appointments Board with the discretion as opposed to the obligation.

The rules also refer to legislation in a number of places. It is proposed that these be replaced with a summary of the provisions to make them more user friendly and the term General Manager be replaced with Head of Service.

Part 5 Codes and Protocols

5.1 Members code of conduct.

The Council adopted the statutory code of conduct for elected members in May 2002. A national review of the code was undertaken in 2005 and revisions to the mandatory element of the code are awaited. Therefore it is not proposed to amend the code until those have been considered.

5.2 Officer Code of Conduct

The Local Government Act 2000 provides for a national code of conduct for officers to be issued and last year a draft code was consulted upon by the government. It is anticipated that the national code will be issued shortly, so it is not proposed to amend our current code.

5.3 Member/Officer Protocol

The protocol refers to terminology in the officer core that is now out of date. It is therefore proposed that is brought up date with appropriate titles and relevant generic tier descriptions.

The protocol (para. 6.5 - 6.7) refers to executive decision making by individual cabinet members. Whilst this now legally permissible the Council has adopted a collective responsibility model for the operation of the cabinet and decision taking, hence no single cabinet member has power to take legally binding decisions. In

order to avoid confusion that may occur it is proposed that the protocol be revised to reflect the actuality at Walsall as opposed to the theoretical legal position.

5.4 Notification of key decisions

The definition of a key decision is one that is unique to Walsall in that all decisions that are significant upon a single ward are defined to be key decisions. When the model constitution was issued a recommended definition of a key decision referred to two wards or more. This was widely adopted by most local authorities. It is proposed that the definition be amended to reflect the original guidance by having the reference to two wards or more.

5.5 Management of Cabinet Business.

No substantial changes proposed for this protocol, there are number of typographical / terminology changes that need to be made to reflect the language used.

5.6 Deputation to Cabinet / Committees

No changes proposed for this protocol.

5.7 Call in procedure

No substantial change is proposed to the way in which the call in operates. The form that has been used to date S& PP 1 has been revised to make it more user friendly and also to provide more useful information.

In the guidance note that forms part of the protocol it is suggested that all persons who would wish to speak to the panel be afforded the opportunity to do so. This may cause difficulties where large numbers of people may wish to speak and may also generate a considerable amount of repetition. It is therefore proposed that this be changed to allow a representation of the views that are present with the aim to avoid repetition of the same points.

5.8 Recording of Delegated Decisions.

No changes proposed for this protocol.

5.9 Information reports.

No changes proposed for this protocol.

5.10 Budget Setting Protocol.

A revised protocol be inserted. The new protocol sets out the consultation process with officers/ members and external stakeholders. A timetable for the various stages to be completed has been incorporated to provide greater certainty for all concerned and a revised flow chart, attached as **appendix 3**.

5.11 Planning Guidance Protocol.

No changes proposed for this protocol save for those arising from the proposed amendments to 5.12.

5.12 Referral of applications to Planning and Highways Committee.

The vast part of this protocol deals with the referral from District Committees to the Planning and Highways Committee. Since the disestablishment of District Committees many of the provisions are surplus. However, the provisions in respect of making decisions contra to officers' recommendations are relevant and it proposed that those provisions are replicated in 5.11 the planning guidance protocol.

Part 7 Management structure

The responsibilities of the Executive Directors and some Assistant Directors and Heads of Service have recently changed and it is proposed this be amended to reflect the current position.

11 April 2006.

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold

<u>Part 2</u>	<u>Articles</u>	
Article.1 pg1 para 1.03.5	The constitution Create a powerful and effective means of holding decision makers to public account through an effective scrutiny process;	Create a powerful and effective means of holding decision makers accountable to the public through an effective scrutiny process;
Article 2 Pg 3 Intro	Members of the Council The article refers also to member conduct and allowances	The article refers also to members conduct and allowances
Pg3 para 2.02	Election and terms. The ordinary election of a third of all councillors will be held on the first Thursday in May in each year beginning in 2003 except that in 2005 and every fourth year there will be no regular election. The terms of office of councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later. [It is anticipated that the current periodic electoral review by the local government commission will be concluded by 2003 and will result in elections to all seats on the council in may 2004]	Election and terms. Whole Council elections were held in June 2004. The ordinary election of a third of all councillors will be held on the first Thursday in May in each year except that in 2005 and every fourth year there after there will be no regular election. The terms of office of councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.

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Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)

Pg 4 Para 2.03b	<p>(i) Councillors will a right to access information where they have a need to know to enable them to carry out their duties as Councillors</p> <p>(ii) In particular councillor have statutory right to any document relating to business to be dealt with at a council or committee meeting or at a public meeting of the executive. Councillors are also entitled to see any document relating to business to be dealt with at private meetings of the executive at the conclusion of the meeting. These statutory right do not apply to document containing exempt information (defined in the access to information rules in part 4) unless the councillor has need to know the information to perform his/her role as a Councillor.</p>	<p>(i) Councillors have a right to access information where they have a need to know to enable them to carry out their duties as Councillors. This is further discussed in the Access to Information Procedure Rules and the Member Officer Protocol para. 9.1-9.10</p> <p>(ii) Councillors have a statutory right to see any report on an agenda relating to business to be dealt with at a meeting of the Council or committee of which they are a member. Like members of the public they can also have access to papers for any other committee or the Executive which are available under the Access to Information Rules. Councillors are also entitled to see any document relating to business to be dealt with at “private meetings” of the executive at the conclusion of the meeting. (A Private meeting is a statutorily defined term and excludes briefings). These rights are subject to limitations e.g. they do not apply to documents containing confidential information. A member may also not be entitled to see reports containing exempt information (defined in the access to information rules in part 4) unless the councillor has a need to know the information to perform his/her role as a Councillor.</p>
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	(vii) new	(vii) If a member wishes to see a report or other information that is not available to the public then they should make their request in line with the member officer protocol.
Page 5 Para 2.04	Councillors will at all times observe the members code of conduct and the protocol on member officer relations set out in part 5 of this constitution.	Councillors are required to comply to with the code of conduct for elected members at all times and when dealing with officers to observe the protocol on member officer relations. In the event of any ambiguity on the application of the code of conduct or the protocol a member should seek advice and assistance at the earliest opportunity from the Monitoring Officer to avoid inadvertently breaching the code of conduct and a complaint being made to the Standards Board for England.
Page 5 Para 2.05	Councillors will be entitled to receive allowances in accordance with the members allowances scheme set out in part 6 of this constitution.	Councillors are entitled to receive allowances in accordance with the members allowances scheme set out in part 6 of this constitution. The scheme of allowances has to be published annually in a local newspaper and additionally following a review a by an independent review panel. The panel must review the scheme at least once every 4 years.

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Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold

Article 3	Citizens and the Council	
Page 6 Para 3.01a	Voting and petitions- Citizens on the electoral role for the borough have the right to vote for their local councillor(s) and sign a petition to request a referendum for an elected Mayor form of constitution. For a petition to be valid to require a referendum the number of signatures to it must equate to no less then 5% of the electorate of the borough or such other percentage prescribed by regulations.	Voting and Referendum petitions - Citizens on the electoral role for the borough have the right to vote for their local councillor(s). They can also sign a petition to request a referendum for an elected Mayor form of constitution. For a petition to be valid to require a referendum the number of signatures to it must equate to no less then 5% of the electorate of the borough (approximately xxxxxx) or such other percentage prescribed by regulations. The Monitoring Officer should be contacted in order to establish the minimum number of signatures required.
Page 6 Para3.01b(ii)	attend meetings of the Executive, except where confidential or exempt information is likely to be disclosed and the meetings is then held in private.	attend meetings of the Executive and or Scrutiny and Performance Panels except where confidential or exempt information is likely to be disclosed and the meetings is then held in private
Page 6 Para3.01b(iv)	See reports and background papers and any records of decisions made by the Council, its committees and the executive; and	See reports and background papers and any records of decisions made by the Council, its committees, the Executive and Scrutiny and Performance Panels ; and
Article 5	Chairing The Council	
Page 12 Para 5	Decide whether to not to agree	Replace with, Decide whether or not to agree
Article 6	Scrutiny and Performance Panels	

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)

Page 13 Preamble	Executive to account for their actions	Executive to account for their decisions
Page 13 Para 6.01	<p>Childrens Services and Lifelong Learning Community Organisation, Leisure and Culture Health and Social Care Regeneration, Environment, Housing and Community Safety Resources and Performance</p>	<p>Replace with (or if amended at Annual Council 2006, insert the new details)</p> <p>NEIGHBOURHOOD SCRUTINY AND PERFORMANCE PANEL</p> <p>Community Safety</p> <ul style="list-style-type: none"> • Safer Walsall Borough Partnership (including crime and disorder strategy) <p>Leisure, Culture and Lifelong Learning</p> <ul style="list-style-type: none"> • Libraries, • Sports, • Recreation, • Heritage • Parks, • Outdoor amenities, • Arts and events, • Community education, • Community associations • College of Continuing Education <p>Neighbourhood Partnerships & Programmes Team</p> <ul style="list-style-type: none"> • Neighbourhood Partnerships merged with

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		<p>Programmes Team</p> <ul style="list-style-type: none"> • Programme Team manages a range of external funds including, SRB, ESF, ERDF, and NRF. • LNPs <p style="text-align: center;">Built Environment</p> <ul style="list-style-type: none"> • Planning, building control and pollution • Highways maintenance and traffic management • Refuse collection and waste disposal • Street cleansing; grounds maintenance • Managing land and property • Public protection in relation to public health / consumer issues • Registrar • Coroner <p style="text-align: center;">Electoral Registrations and Elections</p> <ul style="list-style-type: none"> • Electoral registration and administration <p>CORPORATE SCRUTINY AND PERFORMANCE PANEL</p> <p style="text-align: center;">Finance</p> <ul style="list-style-type: none"> • accountancy, financial planning, funding, • financial systems • local taxation (council tax & business rates)
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Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)

		<ul style="list-style-type: none"> • housing and welfare benefits, anti poverty • insurance and treasury management • payrolls and pensions • debtors and creditors <p style="text-align: center;">Corporate Performance Management</p> <ul style="list-style-type: none"> • beacon index, performance reporting • performance analysis and review • CPA inspections • overview and scrutiny function • best value (BVPP, reviews, policy etc) <p style="text-align: center;">Governance</p> <ul style="list-style-type: none"> • Legal services (including monitoring officer) – contracts, non-contentious, conveyancing, advice, litigation, social services team. • Democratic services (including constitutional and member support services). <p style="text-align: center;">Strategic Transformation</p> <ul style="list-style-type: none"> • Human Resources and Organisational Development • Process re-engineering • Improving customer experience
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	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)

		<p>CHILDREN'S & YOUNG PEOPLE SCRUTINY AND PERFORMANCE PANEL</p> <p>Education</p> <ul style="list-style-type: none"> • Educational opportunities • Schools • Support to schools and other bodies in collaboration with Education Walsall • WEB, SERCO contract interface. • Education Walsall <p>Children's Services</p> <ul style="list-style-type: none"> • Homes and families • Carers • Looked after children • Corporate parenting • Health and social care needs of care leavers • Disabled children and young people, • Service planning and provision • Assessment • Inclusion and family support • Child protection and review • Children's placements <p>Youth Services</p> <ul style="list-style-type: none"> • District Youth Work • Specialist Youth Work • Youth Opinions Unite • Staff Training & Development
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	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold

		<ul style="list-style-type: none"> • Duke of Edinburgh Award Scheme <p>Children and Young People Partnership</p> <p>Communications</p> <ul style="list-style-type: none"> • Communications and marketing • Print and design • Mayoral <p>Procurement</p> <p>REGENERATION SCRUTINY AND PERFORMANCE PANEL</p> <p>Economic</p> <ul style="list-style-type: none"> • Working with partners to promote the borough of Walsall as a desirable area for business investment • Developing an integrated approach for local people to access jobs and training • Initiating special projects designed to improve the economic regeneration of Walsall <p>Environmental</p> <ul style="list-style-type: none"> • Conservation and improvement of the borough's natural and built environment, in support of Walsall's UDP and emerging Local Development Framework
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	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)

		<ul style="list-style-type: none"> • Provision of landscape planning and arboriculture advice to the Council and general public • Provision of Landscape and Urban Design support for Council • Delivery of Environmental Improvements throughout Walsall <p style="text-align: center;">Physical</p> <ul style="list-style-type: none"> • Markets • Contribution to regional and sub-regional planning • Preparation of the Local Development Framework • Preparation of transport strategy • Facilitation and support of major development proposals • Support of Walsall-based regeneration agencies <p>Strategic Transportation</p> <p>New Deal for Communities Walsall Borough Strategic Partnership</p> <ul style="list-style-type: none"> • Developing the community strategy • Administering neighbourhood renewal fund (NRF) • Local Area Agreement administration <p>Black Country Consortium West Midlands Groups</p>
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	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)

		<p>HEALTH, SOCIAL CARE and INCLUSION SCRUTINY AND PERFORMANCE PANEL</p> <p>Adult Care</p> <ul style="list-style-type: none"> • People with learning disabilities • People with physical disabilities/ sensory impairment • Older people • People with mental health problems <p>Housing Services</p> <ul style="list-style-type: none"> • Housing advice services • Travellers • Supported housing to asylum seekers • Homelessness • Strategic Housing • Supporting People <p>Corporate Support</p> <ul style="list-style-type: none"> • Equalities • Policy • Emergency Planning <p>Health</p> <ul style="list-style-type: none"> • tPCT
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	Constitution Review	
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		<p align="center">Scrutiny Management Board</p> <p>To assist in the coordination of the work of the scrutiny panels. (Fuller details to be brought to back to council at a later date)</p>
page 14 para 6.04 b(i)	review and scrutinise the decisions made by and performance of the Executive, Committees and Council officers both in relation to individual decisions and over time	Insert and the end of the paragraph save for individual decisions that are of a regulatory/quasi judicial nature
Article 7	The Executive	
Page 16 Para 7.01	The Executive will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution and those local choice functions assigned to the Executive in Table 1 of Part 3 (Responsibility for Functions) of the Constitution.	<p>Insert at the end of the paragraph</p> <p>The general position under legislation is that unless expressly stated in legislation or the Council makes a choice on those matters where it has a choice, all functions are deemed to be an executive function.</p>
Page 17 Para 7.04	Other Executive Members will be appointed by the Council and shall hold office until	Insert "1" before the preamble.
Page 17 Para 7.04	No existing provision	<p>Insert the following after para 1(d), or if amended at Annual Council 2006, insert the new details.</p> <p>2. The council has appointed the following executive members for the stated portfolios</p> <p>Leader (Councillor Tom Ansell) – overall responsibility for the Vision for 2008 and 2020, the corporate plan, public</p>

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold

		<p>relations, government relations and liaison with local MP's and West Midlands leaders. Leader will take responsibility for customer feedback and all strategic staff policies.</p> <p>Resources (Councillor John O'Hare) – Council revenue and financial budgets, insurance and risk management, policy led budgeting. Property, financial regulations, audit, legal services, constitutional services.</p> <p>Children's services (Councillor Eddie Hughes) – all children's services including children and young persons partnership (CYPP), youth offending team (YOT) and youth service, leaving care service, youth parliament, summer activities programme, school meals, school music service. Client role with Education Walsall.</p> <p>Communities and partnerships (Councillor Zahid Ali) – local neighbourhood partnerships, community engagement and consultation, equalities and diversity, voluntary and community sectors, the Community Empowerment Network, customer contact, communications and member development.</p> <p>Environment and transport (Councillor Marco Longhi) – highways, transportation, car parks, waste management, clean and green agenda, sustainability, environmental health, cemeteries and crematoria, licensing. This portfolio post will carry the corporate responsibility for the</p>
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	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold

		<p>Council and performance management.</p> <p>Housing and community safety (Councillor Melvin Pitt) – strategic housing role, housing partnerships, private sector housing, homelessness and the community safety agenda, relationship with Walsall Housing Group (WHG) and Safer Walsall Partnership tenants group.</p> <p>Leisure and culture (Councillor Garry Perry) – parks, leisure services and culture services including Art Gallery, libraries, adult learning, tourism, sports, museums and twinning.</p> <p>Regeneration (Councillor Adrian Andrew) – economic development, urban regeneration company (URC), physical development, environmental regeneration, markets, New Deal for Communities (NDC), Black Country Consortium, West Midlands regeneration issues. Town and district centres, gateways and corridors. Regeneration brief for local strategic partnership, local development framework, strategic transportation.</p> <p>Social care and health (Councillor Alan Paul) – care services for older people and people with learning disabilities, people with physical disabilities and people with mental health needs, health partnership and the public health agenda, community meals, supporting people.</p>
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	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)

Article 8	Regulatory and other Committees	
Page 18 Para 8.01		<p>Insert after the pre amble and before para 8.01</p> <p>The Council has the following regulatory committees whose terms of reference are set out part 3 of the constitution</p> <p>Development control committee Licensing and safety committee Appointments board Employment appeals committee Audit committee Standards committee School governors appointment panel</p>
Page 18 Para 8.03	The Council will also appoint the statutory and advisory bodies set out in Table 4 of Part 3 of the Constitution.	<p>Delete and insert</p> <p>The Council will also appoint the statutory and advisory bodies set out below whose term of reference appear in Table 4 of Part 3 of the Constitution;</p> <p>Adoption panel Education admission appeals panel Education exclusions appeals panel Social services complaints panel School organisation committee Standing advisory council on religious education (sacre Walsall education board</p>

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)
Page 18 Para 8.04a	If an Scrutiny and Performance Panel is	Replace with 'If a Scrutiny and Performance Panel is'
Article 13	Decision making	
Page 33 Para 13.03 b (3)	to be significant in terms of its direct effects on communities in an area comprising one or more Wards in the Borough.	Replace with "to be significant in terms of its direct effects on communities in an area comprising two or more Wards in the Borough".
Page 33 Para 13.03 b (ii)	Responses to consultation documents will be key decisions where a significant or substantive response is required. Such matters will not constitute “key decisions” where representations are being made on external issues and where the comments are consistent with Council policy and/or are part of an on-going dialogue within that established policy. In any case of uncertainty, the matter in question will be treated as a key decision.	Delete para.
Page 33 Para 13.03 b(iii)		Renumber 13.03 b (ii)
Article 14	Finance contracts and legal matters	
Page 35 and 36	Interim director for legal services and democratic services	Replace with Assistant Director for Legal & Constitutional Services

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold

Part 3	Local choice functions	
Table 1 Page 2- 5	Current table	Delete columns” membership” and “delegation of function”
Table 2 Page 6- 30	Council functions	Insert full terms of reference for each committee/ panel
Table 3 Page 33-	Executive functions List of cabinet members and their portfolios	Insert after each portfolio and description of the extent of the remit of the portfolio as above
Table 4 Page 34- 36	Advisory bodies etc	After each named panel / committee insert full terms of reference
Part 4.1 Pg 9 Para 11.4 (e)	Council procedures rules Implied but not expressly stated.	If the Member is not present to ask the question, it shall lapse
Pg 10 Para 11.8	Time allowed for questions Not more than 15 minutes shall be allowed for dealing with questions received under this rule	Change to 30 minutes

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)
Pg 10 Para 13.1 (a)	<u>Notices of Motion</u> Notices of Motion shall be given in writing to the Chief Executive at least 10 clear days before ...	Change to 7 clear days
Pg 11 Para 13.4 (a)	<u>Procedural</u> A Notice of Motion in the name of one Member shall not be proceeded with in the absence of that Member, unless that Member shall have given consent in writing to it being taken up by some other Member ...	Insert “prior to the commencement of the meeting” after the words, consent in writing, and before, to it being taken up.
Pg 13 Para 15.2	Unless notice of the motion has already been given, the person presiding may require it to be written down ...	Change may to shall
Pg 14 Para 15.6	<u>Amendments to Motions</u> Insert new para (a), and re number existing paras	New (a) Upon moving an amendment to a motion the mover shall, once it has been seconded, submit the amendment motion in writing to the person presiding prior to a vote being taken on the proposed amendment, failing which it shall fall.
Pg 15 Para 15.6 (e)	After an amendment has been carried, the person presiding will read out the amended motion before accepting any further amendments ...	Insert at start of para, Before taking the vote on the amendment, the person presiding shall read the written amendment submitted to him under paragraph (a)
Pg 15 Para 15.7 (c)	Only alterations which could be made as an amendment may be made	Add to the end, .. and shall be submitted in writing to the person presiding prior to a vote on the motion.

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)
Pg 15 Para 15.9	No Member shall address the Council more than once on any motion or amendment, but shall be entitled after speaking on any motion to speak also on any amendment to such motion after such amendment has been duly moved and seconded. The mover of an original motion or of an amendment which has been carried and has become the substantive motion shall have the right of reply, but shall be confined to answering previous speakers and shall not introduce any new matter to the debate. After the reply, the meeting shall proceed immediately to a vote.	Re word and number 15.9 (a) No Member shall address the Council on more than one occasion on any motion or amendment, subject to (b) and (c); (b) A Member may address the Council on an amendment, if after they have spoken to a motion, an amendment has been moved and seconded; (c) The mover of a motion which is or has become the substantive motion shall have a right of reply; (d) In exercising the right of reply, no new matters may be introduced into the debate and it shall be confined to answering points raised in the debate; (e) Immediately after the right of reply, or if the mover elects not to exercise the right of reply, the person presiding shall proceed immediately to a vote.
Pg 17 Para 15.12	<u>Point of Order</u> ... The Member must indicate the rule or law and the way in which he/she considers it has been broken.	Replace “indicate” with “identify and state”
Pg 18 Para 17.1	<u>State of Walsall Debate</u> The Leader will call a state of Walsall debate annually on a date and in a form to be agreed with the Mayor.	Insert after annually “ at the final ordinary meeting of council in the municipal year ”
Pg 19 Para 18.7	<u>Voting on appointments</u> If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off	Replace with: If there is more than one person nominated for any position to be filled then the nominee with the most votes shall be appointed.

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)
	the list and a new vote taken. This process will continue until there is a majority of votes for one person.	If there is more than one vacancy and the number of candidates exceeds the number of vacancies, then there shall be a number of rounds of votes, and the number of rounds shall equates to the number of vacancies . At each round the person with the most votes cast for them shall be appointed. In each round subsequent to the first the member appointed in a previous round shall not stand.
Pg 20 Para	21. Membersm Conduct	Typo
Part 4 .2	<u>Access to Information Rules</u> These rules are a recital of a statutory enactment.	Replace with new statutory code
Part 4 .3	<u>Budget and Policy Framework Rules</u> Save for a definitions section which shall be inserted into the constitution, no changes are proposed to the current rules as they are being reviewed separately.	
Part 4 .4 Para 1.5	<u>Executive Procedure Rules</u> Conflicts of Interest (a) Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members' in Part 5 of this constitution	Insert "or any Member of the Executive" after the word Leader

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)

Para 2.5 (d)	Any Member of the Council, by notice of the Chief Executive	Change “of” to “to” after notice
Part 4. 5	<u>Scrutiny & Performance Procedure Rules</u>	
1 (a)	The Council will have the Scrutiny & Performance Panels set out in Article 6 which will perform all overview & scrutiny functions on behalf of the Council and will appoint Members to them as it considers appropriate from time to time;	<p><u>Replace with:</u> The Council shall at its AGM agree the number of Scrutiny & Performance Panels, their membership and their remit. These Panels will perform all of the overview and Scrutiny functions on behalf of the Council.</p>
1 (b) (v)	Where matters fall within the remit of more than one Scrutiny & Performance Panel Working Group, to determine which of those Working Groups will assume responsibility for any particular issue;	<p><u>Replace with:</u> Where a matter falls within the remit of more than one Scrutiny & Performance Panel or a Working Group proposed to be established by the Panel or Working Group which is first due to have an ordinary meeting in the Council’s Calendar of Meeting that could reasonably receive the matter shall assume responsibility for the matter and be the (host Panel)</p> <p>1(b)(vi) The Chairman of the host Panel shall invite members of all relevant Panels to all meetings of the host Panel when the matter is discussed. The members of the host Panel will take regard of the views of the invitees when making recommendations upon the matter</p>

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)

1(b)(vi), (b) (vii)		re-number
Page 51 Para 6	<u>Quorum</u> The quorum for an Scrutiny & Performance Panel shall be as set out for Committees in the Council's Procedure Rules in Part 4 of this Constitution	<u>Replace with:</u> The quorum for a Scrutiny & Performance Panel shall be one third of its voting membership, subject to a minimum of 2
Page 51 Para 7	<u>Chairs of Scrutiny & Performance Panel meetings</u> Chairmen of scrutiny and performance panels will be appointed by the council from amongst the councillors sitting on the panel and a scrutiny and performance panel shall appoint such person as it considers appropriate to be the chairman of any working panel.	<u>Replace with:</u> New header ,Chairs and Vice Chairs of Scrutiny & Performance Panel meetings Chairmen and vice chairman of scrutiny and performance panels will be appointed by the council from amongst the councillors sitting on the panel , save for SMB whose chair ship shall be by rotation of the scrutiny chairs that comprise it. A scrutiny and performance panel shall appoint such person as it considers appropriate to be the chairman of any working panel.
Page 51 Para 8	<u>Work Programme</u> The Scrutiny & Performance Panels will be responsible for setting their own work programme and in doing so they shall take into account the wishes of Members on that Panel who are not Members of the largest political group on the Council; and shall co-ordinate the work programme with that of any other Scrutiny &	<u>Replace with:</u> The Scrutiny & Performance Panels shall be responsible for setting their own work programmes and in doing so they shall take into account the wishes of Members on that Panel who are not Members of the largest political group on the Council; and shall endeavour to co-ordinate their work programmes with that of any other Scrutiny &

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)
	Performance Panel when the issue under consideration relates to the terms of reference of both bodies; taking also into account the terms of paragraph 20 below	Performance Panel through the SMB. When the issue under consideration relates to the terms of reference of more than one Panel, then in accordance with 1(b)(v) above the host Panel shall be determined
Page 53 Para 14(a)	<u>Members and Officers giving account</u> Any Scrutiny & Performance Panel ... with the discharge of any Council functions ... General Manager	Insert “within their remit” to end of first sentence. Replace General Manager with “Assistant Director or Head of Service”
Part 4.6 Pages 59 - 98	Financial Procedure Rules	Replaced with new rules
Part 4.7 Pages 99 - 126	Contract Procedure Rules	Replaced with new rules
Part 4.8 Page 128 Para 3. c	Employment Procedure Rules Reference to Sch 1 Part 2 Local Authorities (Standing Orders) (England) Regulations 2001	Insert the relevant text of Sch 1 Part 2 local authorities (Standing Orders) (England) Regulations 2001
Page 128 Para 3. d	Reference to Sch II 5(1) of Local Authorities (Standing Orders) (England) Regulations 2001	Insert the relevant text of Sch II 5(1) Local Authorities (Standing Orders) (England) Regulations 2001
Page 130 Para 6. a	Suspension – The Chief Executive shall be suspended	Suspension - The Chief Executive may be suspended

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold
Page 130 Para 6 c	Reference to Part2 of Local Authorities (Standing Orders) (England) Regulations 2001	Replace with relevant text.
Part 5	Codes and Protocols	
5.1	Members Code of Conduct	No revisions proposed.
5.2	Officers code of conduct	No revisions proposed
5.3	Member / Officer protocol	
Page 20 Para 2.4	References to general manager and Director	Delete reference to general manager and insert "Executive" before the word Director
Page 21 Para 2.6	References to general manager	Delete references to general manager
Page 22 Para 4.5	References to general manager and Director	Delete reference to general manager and insert "Executive" before the word Director
Page 23 Para 5.7	References to general manager and Director and interim director of legal and democratic services	Delete reference to general manager and insert "Executive / Assistant " before the word Director. Replace and Interim Director of Legal and democratic Services with Monitoring Officer
Page 24 Para 6.2	References to general manager	Delete references to general manager
Page 25 Para 6.5	Under Executive arrangements, individual Members of the Executive may, for the first time, be allowed to	Delete this paragraph as the model adopted at Walsall is one of collective decision making.

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)
	formally take decisions. The Executive and Cabinet Members must satisfy themselves that they are clear what exactly they can and cannot do.	
Page 25 Para 6.6	The Council has put in place mechanisms/protocols which ensure that (as with the Council, its Committees and Sub-Committees, and the Executive and its Committees) an individual Member seeks advice from relevant officers before taking a decision within her or his delegated authority. This includes taking legal advice, financial advice and professional officer advice (particularly about contractual matters) as well as consulting the Monitoring Officer where there is doubt about vires	The Council has put in place mechanisms/protocols which ensure that (as with the Council, its Committees and Sub-Committees, the Executive and its Committees will seek advice from relevant officers before taking a decision within its delegated authority. This includes taking legal advice, financial advice and professional officer advice (particularly about contractual matters) as well as consulting the Monitoring Officer where there is doubt about vires (lawfulness and authority to make a decision)
Page 25 Para 6.7	Decisions taken by individual Members of the Executive give rise to legal and financial obligations in the same way as decisions taken collectively. Therefore, Members of the Executive should always be aware of legal and financial liabilities (consulting the Monitoring Officer and Chief Finance Officer as appropriate) which will arise from their decisions. To ensure effective leadership for the local authority and the communities its serves, there are arrangements to ensure co-ordination of and sharing responsibility for Executive decisions including those made by individuals.	Decisions taken by the Executive give rise to legal and financial obligations. Therefore, Members of the Executive should always be aware of legal and financial liabilities (consulting the Monitoring Officer and Chief Finance Officer as appropriate) which will arise from their decisions. To ensure effective leadership for the local authority and the communities its serves, there are arrangements to ensure co-ordination of and sharing responsibility for Executive decisions.
Page 25	Officers must ensure that, even they are predominantly	Insert the word “ where” between even and they

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)
Para 6.8		
Page 28 Para 9.6	The exercise of this common law right depend therefore	Insert the letter “s” after depend
Page 28 Para 9.6	interim director of legal and democratic services	Replace with Monitoring Officer
Page 28 Para 9.9	interim director of legal and democratic services	Replace with Monitoring Officer
Page 30 Para 11.3	from the Head of Personnel and Development who will refer the matter to the Interim Director of Legal and Democratic Services,	Replace with the Head of Communications who will refer the matter to the Monitoring Officer,
Page 31 Para 14.1 and 14.2	<p>14.1 This Protocol was adopted by the Council as part of the Constitution on 15th May, 2002.</p> <p>14.2 Copies of the Protocol will be issued to all Members as part of the Constitution upon election.</p>	Delete.
Part 5.4	Notification of key decisions	
Page 32 Para 8(i) (3)	to be significant in terms of its direct effects on communities in an area comprising one or more Wards in the Borough	Replace with to be significant in terms of its direct effects on communities in an area comprising two or more Wards in the Borough
Page 33 Para (note)	(Note: Responses to consultation documents will be key decisions where a significant or substantive response is required. Such matters will not constitute “key	Delete

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)
	decisions” where representations are being made on external issues and where the comments are consistent with Council policy and/or are part of an on-going dialogue within that established policy. In any case of uncertainty, the matter in question will be treated as a key decision.)	
Part 5.5	Management of cabinet business	
Page 34 Para 4.	Corporate Management Team (CMT	Replace with Executive Management Team (EMT)
Page 34 Para 5	CMT	Replace with EMT
Page 34 Para 7	By the relevant Director	Insert ” Executive” before Director
Page 35 appendix	Corporate Management Team	Replace with Executive Management Team
Page 37 Para 6	using the attached form S & PP2	Replace with using the attached form S & PP1
Page 39 and 40 S& PP1 And S& PP2	Form S &PP1 and S& PP2	Replace with revised form S & PP 1
Page 41 Para 4	All persons who wish to speak to the panel on the matter should be enabled to do so	Replace with The Chair should endeavour to enable as many different people with differing view points to address the panel, with the aim of avoiding repetition within the period of time determined.
Part 5.9	Handling of Information reports	

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold
Page 46 Para 4.	the Governing Walsall Website so	Replace with Council website
Page 46 Para 7	Only reports received from a Director (or nominated officer)	Insert “Executive “ before Director
Part 5.10	Budget setting Protocol	
Page 48	Delete existing protocol	<p>Insert new protocol</p> <p>10. BUDGET SETTING PROTOCOL</p> <ol style="list-style-type: none"> 1. The revenue budget and capital programme will be constructed in the context of the council's Medium Term Financial Strategy, which is reviewed and revised by the Chief Finance Officer once each year and approved by Cabinet. 2. The timetables and responsibilities for the construction and maintenance of a range of financial policies, strategies and procedures are as set out in the Council's prevailing Medium Term Financial Strategy. 3. The Head of Corporate and Strategic Finance will issue budget guidelines to finance staff and to services by 31 July in the preceding year. These will include, amongst other things, the protocols for the construction of the budget and

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)

		<p>the assumptions to be used in respect of pay awards and inflation for the period of the budget construction.</p> <ol style="list-style-type: none"> 4. Services will undertake detailed budget preparation, including decision conferencing where appropriate, and will submit draft budgets for the next 3 years and a revised position for the current year to the Head of Corporate & Strategic Finance by 30 September. 5. These will be summarised by the Head of Corporate & Strategic Finance and presented to EMT and Cabinet by 31 October. 6. The council tax base will be considered and set by Cabinet by 31 January. 7. Cabinet will review the draft budget and make any adjustments considered necessary and then consult with each of the Scrutiny and Performance Panels which will meet before 31 December, ensuring that each of the panels has at least one opportunity to scrutinise the draft budget proposals relating to the services within their remit and make comments and recommendations to Cabinet which will meet before 15 January. 8. The Resources & Performance Scrutiny & Performance Panel will scrutinise the council-wide financial position and draft proposals in
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	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)
		<p>addition to the draft budgets relating to the services within its remit.</p> <p>9. If there is no overall control in the Council, the Cabinet will inform the Leaders of any Group not represented on the Cabinet of its budget proposals before consulting with each of the Scrutiny & Performance Panels.</p> <p>10. Consultation on the draft budget will take place with a range of stakeholders before 31 December.</p> <p>11. Cabinet will consider the comments and recommendations of scrutiny and stakeholders and a revised draft budget by 15 January.</p> <p>12. The final revenue budget report to Cabinet will include a risk assessment of the financial position and the budget, a statement by the Chief Finance Officer on the adequacy of the budget and the level of reserves, and consideration of the medium term financial outlook for a period of at least 5 years.</p> <p>13. A detailed draft resolution will be prepared for Cabinet setting out the details of the revenue budget and capital programme and the statutory determinations; constructed to make clear what is to be recommended to full Council</p> <p>14. Cabinet will make a final recommendation on the budget and capital programme to full</p>

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)
		<p>Council by 8 February, including a recommended level of council tax.</p> <p>15. Full Council will consider the Cabinet's recommendation on the revenue budget, council tax level and capital programme on or before 4 March.</p> <p>16. As the formal notification of precepts in relation to the fire and police authorities may not align with the council's budget timetable, any amendments to council tax and/or statutory determinations arising from final budget adjustments and the final notification of such precepts may be made by the council's statutory Chief Finance Officer.</p> <p>17. If the Cabinet's recommendation is agreed by Council, this will form the revenue budget, council tax level and capital programme for the following year.</p> <p>18. If the Cabinet recommendation is amended, save for the finalisation of precepts, this will form the revenue budget, council tax level and capital programme for the following year.</p> <p>19. In all circumstances, full Council will consider and approve a revenue budget and capital programme for the following year no later than 11 March.</p> <p>20. The final decision will be binding on the council</p>

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold)

		<p>for the following year.</p> <p>21. The final decision of the Council will include the level of reserves to be provided for on the advice of the Chief Finance Officer. It is not permitted, therefore, for the Cabinet to increase budgeted spend at a later date without identifying alternative substitute savings and/or new sources of income unless the expenditure falls within the following categories:</p> <ul style="list-style-type: none"> • A defined major emergency (spend up to Bellwin limits) • The result of legal action against the council where it was not capable of prediction at the time the budget was set. • Where to not incur expenditure would result in a serious risk to life. <p>In each of the above circumstances, Cabinet would need to consider a report within 4 weeks of the decision to indicate how the use of reserves would be made good.</p> <p>22. Budgets will be allocated to named individuals who are accountable for delivery of the services covered by those budgets on time, to standard and within budget.</p> <p>23. Individual savings and investments will be</p>
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	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold

		<p>allocated to named individuals who are accountable for their full and successful delivery by 31 March of the following year.</p> <p>The key aspects of the budget setting process are set out on the attached flow diagram.</p> <p>(attached to this appendix)</p>
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Part 5.11	Planning Protocol	
Page 52 Para 1.15		<p>After current para 1.15 insert new paragraphs</p> <p>1.16 When making a decision that is contrary to officer recommendations the committee must clearly specify the reasons for doing so and these reasons must be recorded in writing by the committee clerk at the meeting and set out in detail in the minutes. If necessary, the Committee should consider adjourning in order to allow time for the wording of the reasons for refusal to be drawn up.</p> <p>1.17 Before formally making a decision that is contrary to officer recommendations, the Committee will request officers to give an opinion on the likely robustness of the proposed reasons for refusal on challenge through appeal. If in the officers' opinion one or more of the reasons for refusal are not or may not be sufficiently robust, the Committee should give serious consideration to omitting the reason or reasons, or (exceptionally) to deferring the decision for a further report. If the Committee wish to maintain such a reason or reasons,</p>

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold
		<p>then the committee must consider the potential financial implications and the legality of their proposed decision.</p> <p>1.18 It is, however, conceivable that a Committee will make a decision for reasons which in your officers' opinion are not sufficiently robust. However it is a matter for the members of the committee to come to their conclusion having considered all the evidence and taking into account all of the material factors.</p>

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold

Appendix 2. The new Finance and Contract Rules

	Constitution Review	
Page and paragraph	Current text	Proposed text. (where only one or two words are proposed for amendment they are indicated in bold

Appendix 3. Revised Budget setting flow diagram

Financial and Contract Rules

As approved by the full council at its meeting of X

This document currently has no authority and should not be construed at this time as being the policy of Walsall MBC

24 April 2006

CONTENTS

1	Application and Use of Financial and Contract Rules	6
1.1	Purpose and Authority of Financial and Contract Rules.....	6
1.2	Other Instructions to Be Followed	7
1.3	Role of the Cabinet and Executive Directors.....	7
1.4	When Financial and Contract Rules Apply	8
1.5	Officers' Interest in Contracts	9
1.6	Urgent Action	9
2	Financial Management	10
2.1	Purpose.....	10
2.2	Financial Management Standards	10
2.3	Virements and budget transfers	10
2.4	Treatment of Year-end Balances.....	11
2.5	Accounting Policies.....	12
2.6	Accounting Records and Returns	12
2.7	The Annual Statement of Accounts	12
3	Financial Planning	12
3.1	Purpose.....	12
3.2	Format of the budget	13
3.3	Budgets and Medium-Term Financial Planning.....	13
3.4	Resource Allocation.....	14
3.5	Capital Programmes	14
3.6	Maintenance of Reserves	15
4	Risk Management and Control of Resources.....	15
4.1	Purpose.....	15
4.2	Risk Management and Insurance.....	15
4.3	Internal Controls	16
4.4	Risk Management.....	16
5	Audit Requirements.....	17
5.1	Purpose.....	17

5.2	Internal Audit.....	17
5.3	External Audit	18
5.4	Preventing Fraud and Corruption	18
6	Assets	18
6.1	Purpose.....	19
6.2	Security	20
6.3	Intellectual Property	20
6.4	Treasury Management.....	21
6.5	Staffing.....	21
7	Financial Systems and Procedures.....	21
7.1	Purpose.....	21
7.2	General	22
8	Income, Ordering and Payment.....	22
8.1	Purpose.....	22
8.2	Income	23
8.3	Ordering and Paying for Work, Goods and Services	23
8.4	Payments to Employees and Members.....	25
8.5	Taxation	26
8.6	Trading Accounts and Business Units.....	26
9	External Arrangements.....	27
9.1	Purpose.....	27
9.2	Partnerships and Purchasing Consortiums	27
9.3	External Funding.....	29
9.4	Work for Third Parties	29
10	Preparing to Purchase	30
10.1	Purpose.....	30
10.2	Value of Purchase	30
10.3	Thresholds for Officers' Authority to Purchase	30
10.4	Determination of Officer Responsible for Projects or Purchase	31
10.5	Use of Existing Council Contracts	31
10.6	Application of E U Procurement Directives.....	32

11	Choosing Firms to Quote or Tender	32
	Purpose.....	32
11.1	32
11.2	General Considerations	33
11.3	Unified Standing List of contractors and consultants	33
11.4	Special List.....	34
12	Special Contracts.....	34
12.1	Purpose.....	35
12.2	Social Care	35
12.3	Consultants	35
12.4	Appointment of Legal Advisors and Experts.....	35
12.5	Specifying Sub Contractors to a Major Contract	36
12.6	Schedule of Rates/Call off Contracts.....	36
12.7	Impracticality of Seeking Quotations or Tenders.....	36
13	Seeking Quotations or Tenders	37
13.1	Purpose.....	37
13.2	Quotation or Tender.....	38
13.3	Electronic Tendering.....	38
13.4	Providing Sureties.....	39
13.5	Tender Documentation	39
13.6	Return of Tenders.....	40
13.7	Opening of Tenders	40
13.8	Assessment of Tenders	41
13.9	Acceptance of Tenders.....	41
13.10	Accepting More than One Tender	42
14	Making Contracts.....	42
14.1	Purpose.....	42
14.2	Letter of Appointment	43
14.3	Signature or sealing of the contract.....	43
14.4	Items Required in Every Contract.....	44
14.5	Register of Contracts	45

15	Variations Extensions Payments and Disputes	46
15.1	Purpose.....	46
15.2	Contract Management	46
15.3	Liquidated Damages and Contractor's Final Accounts	47
15.4	Disputes	47
15.5	Reports on Contracts' Progress and Completion	48
16	Sales Lettings and Disposals	49
16.1	Purpose.....	49
16.2	Sales of Council Assets	49
16.3	Acquisition and Disposal of Land	49
16.4	Asset Disposal	50
17	Trading within the Council and with its Partners	51
17.1	Purpose.....	51
17.2	Trading Within the Council.....	51
17.3	Provisions to Partners and Outside Bodies	52
17.4	Provision of Grants	52
17.5	The Council as Accountable Body.....	53

1 Application and Use of Financial and Contract Rules (FCRs)

1.1 Purpose and Authority of Financial and Contract Rules

- 1 Council officers are legally obliged to manage the council's finances to a very high standard and are required by law to achieve Best Value. These Financial and Procedure Contract Rules (FCRs) are designed to aid officers in complying with the legal obligations imposed. Failure to follow them may amount to a breach of the legal obligations owed by officers to the council.
- 2 These rules are issued in compliance with current legislation. They are subject to any relevant regulatory or statutory requirements of English law, and also to the law and regulations of the European Union. Where there is a conflict between these procedure rules and UK law and/or EU law, then UK law and/or EU law shall take precedence.
- 3 These Financial and Contract Rules shall apply to;
 - a) The council's financial activities,
 - b) Contracts and agreements under which payment is to be made by the council and as provided for in paragraph 4 below, and
 - c) Payments to be made to the council where it enters into contracts and agreements with partners and other organisations
- 4 These Financial and Contract Rules form part of the council's constitution and replace the Financial Procedure Rules and Contract Procedure Rules approved by the council on 28 May 2003. These rules shall only be amended or varied by the full council. Only following a resolution of the full council, or in occasions of urgency as described in section paragraph 1.6 of this rule, shall any officer act other than in accordance with these financial and contract rules.
- 5 The following words have the following specific meaning;
 - a) **"Order/Ordering"** means the placing of a request for the supply of works, goods or services once a tendering or quotation exercise has been undertaken,
 - b) **"Officer Responsible"** means the officer empowered under these Financial and Contract Rules to take the proposed action,
 - c) **"Relevant Executive Director"** means the Executive Director whose Directorate is involved and or affected by the proposed action to be taken under these Financial and Contract Rules,
 - d) **"Quotations"** means the obtaining of a price or prices for goods, works or services following the provision of a written specification, and
 - e) **"Tender/tendering"** means the procuring of a contract for the supply of goods, works or services.

- 6 For the purposes of these Financial and Contract Rules; Executive Directors, Assistant Directors, Heads of Service and Service Managers shall be as set out in the list of senior officers as maintained by the council.

1.2 Other Instructions to Be Followed

- 1 Each of these Finance and Contract Rules is supported by a set of Detailed Procedures. These Detailed Procedures may be issued, amended, revoked or suspended following approval by the council's executive management team EMT (at meeting of EMT at which all 3 statutory officers are present).
- 2 The council's officers shall comply at all times with these Financial and Contract Rules and Detailed Procedures that support them wherever detailed procedures have been approved by the council's executive management team and are in operation. Failure to comply may be seen as a breach of the council's Code of Conduct for Employees. Officers shall also follow further instructions contained in the council's:
 - a) Approved procedures on use of electronic communications,
 - b) Budget monitoring and control manual, and Medium Term Financial Strategy
 - c) VAT and accounting manuals,
 - d) Resolutions regulating local taxation, and
 - e) Other relevant council policies.
- 3 These rules, the Detailed Procedures supporting them, and the other documents listed above shall be made available to all council officers on the council's Intranet.

1.3 Role of the Cabinet and Executive Directors

- 1 Where these rules require a decision of the cabinet;
 - a) The cabinet as a whole shall take the decision in accordance with authority given to it in the council's constitution, and.
 - b) Where the decision, is a 'key decision' as described in article 13.03 of the council's constitution, it shall be taken only in accordance with the rules set out in the constitution.
- 2 The Executive Director responsible shall take all operational decisions affecting his or her Directorate, except where they are reserved or delegated to the Council, the Cabinet, the Chief Executive, or a specific Executive Director.
- 3 Where decisions pertain to more than one directorate, these shall be taken by either;
 - a) Two or more Executive Directors whose directorates are involved unless agreed otherwise between the Executive Directors whose directorates involved, or

- b) The council's executive management team (EMT)
- 4 Except where the constitution demands otherwise, Executive Directors may appoint nominees in writing (a letter) who may take any of the decisions reserved to the former, in their absence for whatever period or reason from the workplace or at the Executive Director's request. A copy of the letter shall be place on the nominees personnel file and also sent to Chief Finance Officer (CFO) and Monitoring Officer (MO).

1.4 When Financial and Contract Rules Apply

- 1 These rules lay down minimum standards or policy and behaviour and shall apply to all;
 - a) Officers of the council wherever they;
 - (i) Hold any responsibility or undertake any action regarding the council's finances or assets, or any systems used to control these, or
 - (ii) Intend to procure goods, works or services for the council's use or in order to provide these to any other organisation or partner,
 - b) Schools, except where the requirements of the Schools Standards and Frameworks Act 1998 or where other legislation shall provide otherwise,
 - c) Sub-contracts where the council specifies names or nominates a sub-contractor to a contractor or in a tender specification in accordance with Financial and Contract Rule 12.5,
 - d) Contracts where the council is to commission or provide goods, works or services for other bodies, and
 - e) Contracts where the council is the accountable body or lead partner where Financial and Contract Rule 17.5 shall apply.
- 2 Use of grant funding to purchase works, goods and services except for as provided in Financial and Contract Rule 1.4.5 and in Rule 9.3 below.
- 3 These financial and contract rules shall not normally apply to;
 - a) Employment of council officers, except in the making of contracts with recruitment and staffing agencies,
 - b) Interests in land, other than as set out in Financial and Contract Rule 16,
 - c) Contracts for treasury management and loans,
 - d) Choosing a partner organisation where the cabinet has agreed that a public/private partnership shall be undertaken, in which case the system laid down in the appropriate legislation shall be followed, or
 - e) The investment of assets belonging to charities and trusts for which an officer of the council acts as treasurer.

- 4 Where managers take decisions involving the purchase or hire of vehicles, they shall first consult with the council's fleet manager and then follow these financial and contract rules
- 5 Where tendering procedures are specified as part of a grant regime, or where officers are required to act upon written instructions received from a body with which the council operates a formal agency agreement, the grantor's or principal's requirements shall take precedence over these procedures only to the extent that the agreement requires or where the conditions are more extensive or rigorous than those prescribed in these financial and contract rules.
- 6 Where the council makes grants, its officers shall undertake this in accordance with Financial and Contract Rule 17.4 below

1.5 Officers' Interest in Contracts

- 1 As soon as any officer becomes aware that they, a family member or friend has any personal or prejudicial interest in any contract or other matter pertaining to the council's affairs, the officer shall declare this in writing to the Chief Finance Officer. This shall be done in accordance both with these rules and with the requirements of the council's code of conduct for its employees.
- 2 The Chief Finance Officer shall record in a book to be kept for that purpose, particulars of all such notices given by officers of the council in accordance with this rule. The book shall be open during office hours for the inspection of any member of the council.

1.6 Urgent Action

- 1 If an Executive Director, an Assistant Director, or Head of Service believes that goods, services or works are required urgently by the council, he or she may in writing waive or suspend the requirement for compliance with these Financial and Contract Rules and with the council's Detailed Procedures only insofar as this is necessary to remedy the situation. Such waiver or suspension shall only apply where:
 - a) A situation of genuine urgency is perceived to exist; or,
 - b) Immediate action is required to safeguard the council's assets or interests; or
 - c) Grants or other funding will be lost unless urgent action is taken.
- 2 The officers responsible for waiving or suspending compliance with any part of these rules or procedures shall provide a written report to the council's executive management team as soon as practicable detailing the rules or procedures they have set aside and the reasons requiring these actions.

2 Financial Management

2.1 Purpose

- 1 Officers involved in the council's financial management shall take appropriate action concerning:
 - a) Financial management standards,
 - b) Virements and budget transfers,
 - c) Treatment of Year-end Balances,
 - d) Accounting Policies,
 - e) Accounting Records and Returns, and
 - f) The Annual Statement of Accounts
- 2 Officers should undertake all actions in accordance with this rule and with section 2 of the council's Financial and Contract Detailed Procedure.

2.2 Financial Management Standards

- 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 managers responsibility, through the IPM process, to ensure that officers they are responsible for are adequately trained to understand their responsibilities and perform their duties.
- 2 All officers shall ensure that financial controls are promoted throughout the areas of the council's work in which they are involved. They should support and comply with all requirements to maintain a monitoring system to review compliance with financial standards.

2.3 Virements and budget transfers

- 1 A scheme of virement shall be maintained to enable the cabinet, Executive Directors and their staff to manage budgets with a degree of flexibility within the overall budget and policy framework determined by the full council, and therefore to optimise the use of resources.
- 2 Virement of budget within
 - (i) the same service. The prior approval of the relevant budget holder and the Chief Finance Officers nominee shall be required for any virement of whatever amount.
 - (ii) different services in the same directorate The prior approval of the relevant Executive Director, the Chief Finance Officers nominee and the relevant cabinet portfolio holder(s), shall be required for any virement of whatever amount.

- (iii) different directorates. The prior approval of the relevant cabinet portfolio holder(s), the relevant Executive Director(s), and the Chief Finance Officers nominee shall be required for any virement of whatever amount.
- 3 No virement relating to a specific financial year should be made with effect after 31 March in that year.
- 4 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.
- 5 Where an approved budget is a lump-sum budget or contingency intended for allocation during the year, its allocation will not be treated as a virement, provided that:
 - a) The amount is used in accordance with the purposes for which it has been established, or
 - b) The cabinet has approved the basis and the terms, including financial limits, on which it will be allocated. Individual allocations in excess of the financial limits should be reported to the cabinet,
- 6 Where it is necessary to record changes in the council's accounting structure or to correct mis-coding of entries in the council's ledger accounting system, the Chief Finance Officer or her/his nominee shall agree these adjustments in writing (i.e. journal entry or other).

2.4 Treatment of Year-end Balances

- 1 The carry forward protocol in the MTFS sets out how to deal with amounts remaining unspent in Heads' of Service/Service Managers budgets at the end of each financial year. Appropriate accounting procedures shall be maintained to ensure that carried-forward totals are correct.
- 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.
- 3 Schools' balances shall be available for carry-forward to support the expenditure of the school concerned in accordance with the council's approved scheme of delegation. Where an unplanned deficit occurs, the governing body shall prepare a detailed financial recovery plan for consideration by the cabinet member concerned, following evaluation by the chief education officer and the council's Chief Finance Officer. Schools will normally be expected to agree a plan to recover the deficit within twelve months unless there are exceptional circumstances.
- 4 In exceptional circumstances, schools may seek to incur expenditure to be financed by anticipating the following year's budget share. Such arrangements require the prior approval of the chief education officer in consultation with the Chief Finance Officer. Proposals shall be accompanied by a detailed plan setting out how the arrangement is to be accommodated as the first call on the reduced budget share.

2.5 Accounting Policies

- 1 The Chief Finance Officer shall be responsible for the preparation of the council's statement of accounts, in accordance with proper practices as set out in the format required by the Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice (CIPFA/LASAAC), for each financial year ending 31 March.
- 2 The Chief Finance Officer shall ensure that;
 - a) Systems of internal control are in place that ensure financial transactions are lawful,
 - b) Suitable accounting policies are selected and applied consistently,
 - c) Proper accounting records are maintained, and
 - d) Financial statements are prepared following the financial year-end that present fairly the financial position of the authority and its expenditure and income.

2.6 Accounting Records and Returns

- 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.
- 2 Officers shall ensure that;
 - a) All those involved in the council's financial activities operate within the required accounting standards and timetables,
 - b) All the council's transactions, material commitments and contracts and other essential accounting information are recorded completely, accurately and on a timely basis,
 - c) Procedures are in place to enable accounting records to be reconstituted in the event of systems failure,
 - d) Reconciliation procedures are carried out to ensure transactions are correctly recorded, and
 - e) Prime documents are retained in accordance with legislative and other requirements.

2.7 The Annual Statement of Accounts

- 1 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.

3 Financial Planning

3.1 Purpose

- 1 All officers involved in preparation and operation of the council's budgets shall take appropriate action to:

- a) Produce a budget in an appropriate form,
 - b) Ensure medium term financial planning,
 - c) Allocate available resource,
 - d) Establish and maintain a capital programme, and
 - e) Ensure the maintenance of the council's general reserves.
- 2 Officers should undertake all actions in accordance with this rule, with section 3 of the council's Financial and Contract Detailed Procedures, the MTFS and with its budgetary control manual.

3.2 Format of the budget

- 1 The council shall produce a budget whose format provides an appropriate level of detail within which financial control and management will be exercised. This shall enable control of virement, the maintenance of cash limits and the level at which funds may be reallocated within budgets.
- 2 The Chief Finance Officer shall ensure that controls are maintained to ensure that the budget's format;
 - a) Complies with all legal requirements and also with the CIPFA Best Value Accounting – Code of Practice (BVACOP)
 - b) Reflects the accountabilities of service delivery.

3.3 Budgets and Medium-Term Financial Planning

- 1 The council is a complex organisation responsible for delivering a wide variety of services. It shall create and operate efficient plans to enable its resources to be allocated in accordance with agreed priorities. The budget shall form the financial expression of the council's plans and policies.
- 2 The council's revenue budget shall be constructed to ensure that resource allocation properly reflects the service plans and priorities of the full council. The budget shall enable the council, through its cabinet and officers, to plan, authorise, monitor and control the way money is allocated and spent.
- 3 The council shall not budget for a deficit or accept any budgetary proposals that are contrary to statute law.
- 4 The council shall operate a MTFS, which shall be revised annually by cabinet to ensure that it is preparing for events in advance.
- 5 All budget holders shall ensure that there exist systems of control, which are operated to provide;
 - a) Specific budget approval for all expenditure,

- b) Budget managers are consulted in the preparation of the budgets for which they will be held responsible and accept accountability within delegations set by the cabinet for their budgets and the level of service to be delivered, and
- c) A monitoring process is in place to review regularly the effectiveness and operation of budget preparation and to ensure that any corrective action is taken.

3.4 Resource Allocation

- 1 The council's needs and aspirations shall be carefully prioritised and its resources allocated to enable it to fulfil all legal responsibilities. Resources may include staff, money, equipment, goods and materials.
- 2 All officers responsible for any part of the council's resources shall maintain and apply controls to ensure that resources are;
 - a) Acquired in accordance with the law, these FCRs and by the use of an approved authorisation process,
 - b) Used only for the purpose intended, to achieve the approved policies and objectives, and are accounted for properly,
 - c) Held securely for use when required, and
 - d) Used with the minimum level of waste, inefficiency or loss for other reasons.
 - e) Allocated efficiently and that they can demonstrate value for money

3.5 Capital Programmes

- 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.
- 2 Capital expenditure shall form part of the council's investment strategy and should be carefully prioritised in order to maximise the benefit of scarce resources within the Government's controls on the financing capacity of the authority.
- 3 All officers responsible for capital programmes shall ensure that;
 - a) Approval is obtained for the programme of capital expenditure,
 - b) Expenditure on capital schemes is subject to the preparation and approval of a capital finance report by the Chief Finance Officer or his/her nominee detailing the cost estimate, project plan, progress targets and associated revenue expenditure,
 - c) Accountability for each proposal is accepted by a named manager,

- d) Monitoring of projects' progress is undertaken, comparisons made with approved budget and action taken to deliver the project on time, to standard and within budget.

3.6 Maintenance of Reserves

- 1 The council shall decide on the advice of the CFO and in accordance with the MTFS the level of general reserves it wishes to maintain prior to setting the level of council tax. Reserves shall be maintained as a matter of prudence to enable the council to provide for unexpected events and protect it from overspending. Reserves for specific purposes may also be maintained, such as the purchase or renewal of capital items.
- 2 The CFO shall ensure that;
 - a) Reserves are maintained in accordance with the "Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice", and the council's agreed accounting policies.
 - b) For each reserve established, the purpose, usage and basis of transactions should be clearly identified, and
 - c) Reserves are established and used only following authorisation of the Chief Finance Officer and in accordance with the MTFS

4 Risk Management and Control of Resources

4.1 Purpose

- 1 All officers involved in risk management and control of the council's resources shall take appropriate action concerning:
 - a) The need for adequate risk management and insurance, and
 - b) Provision of adequate controls.
- 2 Officers should undertake all actions in accordance with this rule and with section 4 of the council's Detailed Procedures.

4.2 Risk Management and Insurance

- 1 Risk shall be defined as the chance or possibility of loss, damage, injury or failure to achieve objectives caused by an unwanted or uncertain action or event. The council shall manage its risk through a planned, commercially balanced and systematic approach to its identification, evaluation and control. The objectives of risk management shall be to safeguard the council's position and to ensure the continued financial and organisational well-being of the organisation.
- 2 The Audit Committee shall have overall responsibility for approval of the council's risk management strategy, and shall promote a culture of risk management awareness throughout the authority.
- 3 The council's risk management and insurance officers shall ensure;

- a) Procedures are in place to identify, assess, prevent or contain material known risks, and these procedures are operating effectively throughout the authority,
 - b) A monitoring process is in place to review regularly the effectiveness of risk reduction strategies and the operation of these controls.
 - c) Managers are made aware of their responsibility for managing relevant risks and are provided with relevant information on risk management initiatives,
 - d) Provision exists for losses resulting from the risks that remain,
 - e) Procedures require investigation of claims within required timescales,
 - f) Acceptable levels of risk are determined and insured against where appropriate, and
 - g) The council has identified business continuity plans for implementation in the event of disaster that results in significant loss or damage to its resources or significant interruption to the provision of services.
4. Managers shall ensure that they perform their duties in accordance with the councils risk management framework.

4.3 Internal Controls

- 1 The council shall operate a set of internal controls appropriate to the size and complexity of the organisation and its operations.
- 2 These shall be adequate to ensure that the council is able to undertake and monitor compliance with the council's statutory obligations, and to protect both the organisation and its officers from financial, administrative and commercial risks.
- 3 The system of internal controls shall be established in order to provide measurable achievement of:
 - a) Efficient and effective operations,
 - b) Reliable financial information and reporting,
 - c) Compliance with laws and regulations, and
 - d) Risk Management

4.4 Risk Management.

- 1 The council's officers shall ensure;
 - a) Key controls are reviewed regularly to enable the council to make a formal statement annually to the effect that it is satisfied that the systems of internal control are operating effectively,

- b) Managerial control systems include defining policies, setting objectives and plans, monitoring financial and other performance and taking appropriate anticipatory and remedial action. The key objective of these systems is to promote ownership of the control environment by defining roles and responsibilities,
- c) Financial and operational control systems and procedures include for; physical safeguards for assets, segregation of duties, authorisation and approval procedures, and information systems, and

5 Audit Requirements

5.1 Purpose

- 1 All officers involved in any way with the council's finances, resources or management should cooperate and comply with reasonable action regarding:
 - a) Internal audit,
 - b) External audit, and
 - c) Preventing fraud and corruption,
- 2 Officers should undertake all actions in accordance with this rule, along with:
 - a) Section 5 of the council's Detailed Procedures,
 - b) The council's anti-fraud and anti-corruption policies and strategy, and
 - c) The council's Confidential Reporting Policy (Whistleblowing).

5.2 Internal Audit

- 1 The council, through its Chief Internal Auditor, shall maintain an internal audit service, which complies with the requirements of section 151 of the Local Government Act 1972 and the Accounts and Audit Regulations 2003. It shall provide an independent and objective appraisal function for reviewing the system of internal control. It shall examine, evaluate and report on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources.
- 2 The internal audit function shall be properly maintained and resourced so as to operate efficiently and in accordance with the principles contained in;
 - a) CIPFA's Code of Practice for Internal Audit in Local Government in the United Kingdom, and
 - b) Any other statutory obligations and regulations.
- 3 The council, through its cabinet and Executive Directors, shall ensure;
 - a) Internal audit is independent in its planning and operation, and

- b) The Chief Internal Auditor has direct access to the Head of Paid Service, CFO and all levels of management and directly to elected members,

5.3 External Audit

- 1 The council's accounts are to be scrutinised by external auditors, who must be satisfied that the statement of accounts 'presents fairly' the financial position of the council and its income and expenditure for the year in question and complies with the legal requirements.

5.4 Preventing Fraud and Corruption

- 1 The council shall not tolerate fraud and corruption in the administration of its responsibilities, whether from inside or outside the authority. All officers of the council shall adhere to legal requirements, rules, procedures and practices concerning propriety and accountability of their actions, and to require this from those to whom they are responsible.
- 2 The council shall require all individuals and organisations with which it has any dealings to act towards it with integrity and without thought or actions involving fraud and corruption.
- 3 The head of paid service shall ensure;
 - a) The council has an effective anti-fraud and anti-corruption policy which maintains a culture that will not tolerate fraud or corruption,
 - b) All members and officers act with integrity and lead by example,
 - c) Managers are required to deal swiftly and firmly with those who defraud or attempt to defraud the authority or who are corrupt,
 - d) High standards of conduct are promoted amongst members by the standards committee,
 - e) The maintenance of registers of interests for members and officers in which any hospitality or gifts accepted shall be recorded,
 - f) Confidential reporting (Whistleblowing) procedures are in place and operate effectively, and
 - g) Compliance with legislation including but not limited to the Public Interest Disclosure Act 1998.
- 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.
- 5 Each Directorate shall maintain a register of officers' interests and of any gifts or hospitality received by them, which are declared in accordance with this paragraph.

6 Assets

6.1 Purpose

- 1 All officers involved in any way with the council's finances, resources or management should take appropriate action to secure;
 - a) Security, including equipment stocks and stores,
 - b) Intellectual property,
 - c) Treasury management, and
 - d) Staffing.
- 2 Officers should undertake all actions in accordance with this rule and with section 6 of the council's Detailed Procedures.

6.2 Security

- 1 The council holds assets in the form of property, vehicles, equipment, furniture and other items worth many millions of pounds. It is important that all assets are safeguarded and used efficiently in service delivery, and that there are arrangements for the security of both assets and information required for service operations. An up-to-date asset register is a prerequisite for proper fixed asset accounting and sound asset management.
- 2 The council shall create and maintain controls to ensure that;
 - a) Resources are used only for purposes for which they are provided,
 - b) All resources are available for use when required,
 - c) Items no longer required are disposed of in accordance with legal requirements and with the council's rules so as to maximise benefits,
 - d) A terrier of property is maintained,
 - e) An asset register is maintained for the authority, assets are recorded when they are acquired by the authority and this record is updated as changes occur with respect to the location and condition of the asset,
 - f) All staff are aware of their responsibilities with regard to safeguarding the authority's assets and information, including the requirements of the Data Protection Act and software copyright legislation, and
 - g) All staff are aware of their responsibilities with regard to safeguarding the security of the council's computer systems, including maintaining restricted access to the information held on them and compliance with the council's computer and internet security policies.
- 3 Inventories shall be maintained to cover all items of plant, equipment, furniture and fittings whose value is believed to exceed £50 in value. Each Head of Service or Service Manager shall maintain a record of all such items under his or her control, to be kept in the form prescribed by the council's "Asset Management Procedure" and maintained in a place where it may be protected from fire, flood or other damage. The inventory shall be reviewed at least annually or if any item passes permanently into or out of the service.

6.3 Intellectual Property

- 1 The council's intellectual property shall include all inventions, developments and writing created by its employees and contractors - subject to the terms of contract – created during the course of their employment, including the development of corporate software and systems.
- 2 All managers shall inform all staff engaged in work that may result in the creation of intellectual property of the requirement of Financial and Contract Rule 6.31 above

- 3 Where intellectual property is or has been created, the Executive Director whose directorate has been responsible for the creation of any item of intellectual property shall inform the Assistant Director for Legal and Constitutional Services of the full extent and nature of the intellectual property created.

6.4 Treasury Management

- 1 All borrowing and investment shall be undertaken by the Chief Finance Officer, or an officer acting on their behalf and shall be in accordance with the CIPFA code of practice.
- 2 All investment of money is to be made in the council's name or in that of one or more nominees approved by the full council.
- 3 Wherever possible, all trust funds and the funds of charities for which the council undertakes to act shall be held in the council's name or in the name of the charitable or other trust.
- 4 Imprest accounts shall be provided to relevant council officers. They may be operated jointly with the officers of partner organisations providing it is agreed that the council's FCRs shall be followed at all times. These accounts shall only be used for petty cash items whose value does not exceed the threshold set out in the council's assets procedure.

6.5 Staffing

- 1 In order to provide the highest level of service, it is crucial that the council recruits and retains high calibre, knowledgeable staff, qualified to an appropriate level.
- 2 The council, through its cabinet and Executive Directors, shall ensure that a budget exists to cover all its staff, and shall create and maintain controls to ensure that;
 - a) An appropriate staffing budget is produced,
 - b) Procedures are in place for forecasting staffing requirements and cost
 - c) Controls are implemented that ensure staff time is used efficiently and to the benefit of the authority
 - d) Checks are undertaken prior to employing new staff to ensure that they are appropriately qualified, experienced and trustworthy.

7 Financial Systems and Procedures

7.1 Purpose

- 1 All officers involved in the council's financial systems and procedures should act in accordance with this rule and with section 7 of the council's Detailed Procedures.

7.2 General

- 1 The council shall operate systems relating to the control of its assets, including purchasing, costing and management systems. It is increasingly reliant on computers for its financial management information. The information must therefore be accurate and the systems and procedures sound and well administered. They should contain controls to ensure that transactions are properly processed and errors detected promptly.
- 2 The Chief Finance Officer has a professional responsibility to ensure that the council's financial systems are sound and must therefore be notified of any new developments or changes.
- 3 The council shall create and maintain controls to ensure that;
 - a) Basic data exists to enable objectives, targets, budgets and plans to be formulated,
 - b) Performance is communicated to the appropriate managers on an accurate, complete and timely basis,
 - c) Early warning is provided of deviations from target, plans and budgets that require management attention,
 - d) Operating systems and procedures provide security for equipment and data,
 - e) Officers maintain high levels of security within the computerised and other systems to which they have access,
 - f) Access to computerised and other systems holding the council's data is provided to officers only to the extent required for them to undertake their duties, and
 - g) Officers access the council's computerised systems only in accordance with passwords and privileges supplied to them by the Chief Finance Officer or other officer appointed to control these systems.

8 Income, Ordering and Payment

8.1 Purpose

- 1 All officers involved with the council's income and expenditure should take appropriate action regarding;
 - a) Income,
 - b) Ordering and paying for goods, works and services,
 - c) Payments to the council's employees and members,
 - d) Taxation, and
 - e) Trading accounts.

- 2 Officers should undertake all actions in accordance with this rule and with section 8 of the council's Detailed Procedures.

8.2 Income

- 1 The council requires effective income collection systems to ensure that all income due is identified, collected, receipted and banked properly. Wherever possible, income should be obtained before goods or services are supplied, as this maximise the council's cash flow and avoids the time and cost of administering debts.
- 2 Officers shall act to ensure that;
 - a) Income due to the council is identified and charged correctly, in accordance with an approved charging policy, which is regularly reviewed,
 - b) All income is collected from the correct person, promptly, using the correct procedures and appropriate stationery,
 - c) All money received by an employee on behalf of the council is paid immediately to the Chief Finance Officer or, as he or she directs, to the council's bank or National Giro account, and properly recorded.
 - d) Responsibility for cash collection should be separated from that for:
 - (i) Identifying the amount due, and
 - (ii) Reconciling the amount due to the amount received
 - e) Effective action is taken to promptly pursue and collect non-payment within defined timescales,
 - f) Formal approval for debt write-off is obtained,
 - g) Appropriate write-off action is taken within defined timescales,
 - h) Appropriate accounting adjustments are made following write-off action,
 - i) All appropriate income documents are retained and stored for the defined period in accordance with the council's document retention schedule,
 - j) An officer who is not involved in the collection or banking process reconciles money collected and deposited to the bank account.

8.3 Ordering and Paying for Work, Goods and Services

- 1 Public money should be spent with demonstrable probity and in accordance with the council's approved budget and policies. The council has a statutory duty to achieve best value in part through economy and efficiency. The council's rules and procedures should help to ensure that services obtain value for money from purchasing arrangements.

- 2 Every officer and member of the authority has a responsibility to declare any links or personal interests that they may have with purchasers, suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the council, in accordance with appropriate codes of conduct.
- 3 Official orders must be in a form approved by the Chief Finance Officer. They must be issued for all work, goods or services to be supplied to the council, except for supplies of utilities, periodic payments - such as rent or rates - petty cash purchases or other exceptions specified by the Chief Finance Officer. They must conform to requirements for central purchasing and the standardisation of supplies and materials.
- 4 Standard terms and conditions on official orders shall not be varied without the prior approval of the Chief Finance Officer.
- 5 Apart from petty cash, schools' own bank accounts and other payments from advance accounts, the normal method of payment shall be by cheque bank automatic clearance transfer, or other approved instrument. The Chief Finance Officer shall make payment from the council's bank or National Giro account.
- 6 The use of direct debit or other methods of payment shall require the prior written agreement of the Chief Finance Officer.
- 7 Official orders shall not be raised for any personal or private purchases, nor must personal or private use be made of the council's contracts.
- 8 All officers shall ensure that goods, works and services required by the council are;
 - a) Requisitioned and ordered only in accordance with passwords and access levels assigned to individual officers as agreed by the Chief Finance Officer,
 - b) Authorised by an officer who holds an appropriate access level to the council's ORACLE, I-PROCUREMENT or other software following confirmation that;
 - (i) The incurring of the expenditure has been authorised by an appropriate officer who holds the correct level of authority to incur the expenditure,
 - (ii) Uncommitted revenue budget is available from which to make payment for the items ordered,
 - (iii) The payment is for a utility or other commodity for which a revenue budget exists,
 - c) The items obtained will be provided to another area of the council to which it has been agreed that a charge will be made,
 - d) An amount has been set aside in an approved capital programme, or the council has a legal liability to make the payment.

- e) At all times the council's rules and procedures for use of the ORACLE, I-PROCUREMENT or other software shall be followed unless the Chief Finance Officer has approved otherwise.
 - f) Correctly recorded and coded in accordance with the procedures for use of the council's ORACLE, I-PROCUREMENT and other systems,
 - g) Ordered in accordance with the council's rules and procedures for tenders and contracts, and
 - h) Checked upon receipt wherever possible to ensure they are in accordance with the order. Goods should not be received by the person who placed the order
- 9 Payments for goods, works and services should normally be made only following receipt of the items ordered by the council. Officers should ensure that payments are made only for items;
- a) Ordered by the council,
 - b) Provided to it in accordance with the terms of a contract,
 - c) Are the subject of a grant or other funding agreement, or
 - d) Form a legal liability of the council,
- 10 They should further ensure that payments are made only;
- a) For the correct price, quantity and quality standards specified in the council's official order, and,
 - b) To the correct firm or person, for the correct amount and are properly recorded, regardless of the payment method,
- 11 All expenditure should be:
- a) Evidenced with appropriate documents retained and stored for the defined period, in accordance with the council's document retention schedule,
 - b) Accurately recorded against the appropriate budget including the correct treatment of value added tax,
 - c) Undertaken in the most efficient manner bearing in mind the requirements of e-business, e-commerce and electronic purchasing.

8.4 Payments to Employees and Members

- 1 Staff costs are the largest item of expenditure for most council services. It is therefore important that payments are accurate, timely, made only where they are due for employees' services to the council and that payments accord with individuals' conditions of employment. It is also important that all payments are accurately and completely recorded and accounted for and members' allowances are authorised in accordance with the scheme adopted by the full council.

- 2 All council officers shall act to ensure that
 - a) Proper authorisation procedures are in place and that there is adherence to corporate timetables in relation to:
 - (i) Officers joining or leaving the council's workforce,
 - (ii) Variations to salaries and wages resulting from changes in rates of remuneration, hours worked or promotions of existing staff, and
 - (iii) Enhancements, allowances and honoraria to be paid to staff,
 - b) Frequent reconciliations are made between the council's payroll, the approved budget, and the bank account,
 - c) Payroll documents are retained and stored for the defined period in accordance with the document retention schedule, and
 - d) All procedures comply with Inland Revenue regulations.

8.5 Taxation

- 1 The council is responsible for ensuring its treatment of tax is undertaken efficiently in order to avoid penalties for incorrectly accounting.
- 2 All officers need to be aware of the importance of correct treatment of taxes and shall ensure that;
 - a) Budget holders are provided with relevant information and kept up to date on tax issues,
 - b) Officers responsible for any form of taxation, including VAT, are instructed on required record keeping,
 - c) All taxable transactions are identified, properly carried out and accounted for within stipulated timescales,
 - d) Records are maintained in accordance with instructions, and
 - e) Returns are made to appropriate authorities within stipulated timescales.

8.6 Trading Accounts and Business Units

- 1 Trading accounts and business units have become important, as local authorities have developed a more commercial culture. Under best value, authorities are required to keep trading accounts for services provided on a basis other than straightforward recharge of cost. They are also required to disclose the results of significant trading operations in the Best Value Performance Plan (BVPP).

9 External Arrangements

9.1 Purpose

- 1 All officers involved in the council's financial management should take appropriate action regarding:
 - a) Partnerships,
 - b) External funding, and
 - c) Work for third parties.
- 2 Officers should undertake all actions in accordance with this rule and with section 9 of the council's Detailed Procedures.

9.2 Partnerships and Purchasing Consortiums

- 1 Partnerships are likely to play a key role in delivering community strategies and in helping to promote and improve the well-being of the area. The council works in partnerships and consortia with others – public agencies/bodies, private companies, community groups and voluntary organisations. The council still delivers some services, but its distinctive leadership role is to bring together the contributions of the various stakeholders. The mutual objective is to deliver a shared vision of services based on user wishes.
- 2 The council will mobilise investment, bid for funds, champion the needs of their areas and harness the energies of local people and community organisations. Local authorities will be measured by what they achieve in partnership with others.
- 3 The main reasons for entering into a partnership are:
 - a) The desire of the council to improve services and the well being of the population of Walsall
 - b) The desire to find new ways to share risk,
 - c) The ability to access new resources,
 - d) To provide new and better ways of delivering services, and
 - e) To forge new relationships.
- 4 A partner is defined as either:
 - a) An organisation (private or public) undertaking, part funding or participating as a beneficiary in a project, or
 - b) A body whose nature or status gives it a right or obligation to support the project.
- 5 Partners participate in projects by:
 - a) Acting as a project deliverers, partners, stakeholder or sponsors, solely or in concert with others,
 - b) Acting as a project funder or part funder, and/or

- c) Being the beneficiary group of the activity undertaken in a project.
- 6 Partners have common responsibilities;
- a) To be willing to take on a role in the broader programme appropriate to the skills and resources of the partner organisation,
 - b) To act in good faith at all times and in the best interests of the partnership's aims and objectives,
 - c) Be open about any conflict of interests that might arise,
 - d) To encourage joint working and promote the sharing of information, resources and skills between public, private and community sectors,
 - e) To hold confidentially any information received as a result of partnership activities or duties that is of a confidential or commercially sensitive nature, and
 - f) To act wherever possible as ambassadors for the project.
- 7 All council officers shall act to ensure that partners;
- a) Are made and remain aware of the council's responsibilities under its Financial and Contract Rules, associated procedures and policies,
 - b) Undertake appropriate risk management processes,
 - c) Ensure that project appraisal processes are in place to assess the viability of the project in terms of resources, staffing and expertise,
 - d) Agree and accept formally the roles and responsibilities of each of the partners involved in the project before the project commences, and
 - e) Communicate regularly with other partners throughout the project so that problems can be identified and shared to achieve their successful resolution.
- 8 A purchasing consortium is generally two or more public bodies working together jointly to purchase without the key characteristics of partnership working.
- 9 All partnerships and purchasing consortium purchases must be procured in accordance with these rules, except in the case of a purchasing consortium where another Public Body's constitution is followed and the procedure followed represent Best Value and good practice in the view of the council's corporate procurement unit.
- 10 Where the council enters into a contract with a partner, the Executive Director responsible for the creation of that contract shall inform all other Executive and Assistant Directors of the contract's requirements. All council officers shall comply with the requirements of the partnership contract except, where:
- a) The contract specifically excludes or limits compliance, or
 - b) Compliance in any specific instance would be unlawful, contrary to ministerial advice or an external grantor's conditions of funding.

11 In the case of schools, they shall not be required to comply with such partnership contracts where their governors act;

- a) In accordance with the Education Framework and Standards Act or other legislation providing specific freedom of action to schools, or
- b) As a body corporate in matters to which the local management delegations do not pertain.

9.3 External Funding

- 1 External funding is potentially a very important source of income, but funding conditions need to be carefully considered to ensure that they are compatible with the council's aims, objectives and priorities.
- 2 Local councils are increasingly encouraged to provide seamless service delivery through working closely with other agencies and private service providers.
- 3 Funds from external agencies such as the NRF, National Lottery and the Single Regeneration Budget provide additional resources to enable the council to deliver services to the local community. However, in some instances, although the scope for external funding has increased, such funding is linked to tight specifications and may not be flexible enough to link to the council's overall plan.
- 4 All council officers shall act to ensure that;
 - a) All conditions of funding and any statutory requirements can be and are fully met,
 - b) Responsibilities of the accountable body are clearly understood,
 - c) Funds are acquired only to meet the priorities approved in the policy framework by the full council,
 - d) Any match-funding requirements are given due consideration prior to entering into long-term agreements, and
 - e) Future capital and revenue budgets reflect grantors' requirements.

9.4 Work for Third Parties

- 1 Current legislation enables the council to provide a range of services to other bodies. Such work may enable a unit to maintain economies of scale and existing expertise. Arrangements should be in place to ensure that any risks associated with this work is managed properly and that such work is within the scope of the law.
- 2 All council officers shall act to ensure that they;
 - a) Cost proposals in accordance with guidance provided by the Chief Finance Officer.
 - b) Consult the Monitoring Officer or his nominee regarding the appropriate form of contract, and

- c) Follow the council's procedures regarding the financial aspects of third party contracts and the maintenance of the contract register.

10 Preparing to Purchase

10.1 Purpose

- 1 Before officers commence the process of purchasing any goods, works or services, they shall first:
 - a) Assess how much the proposed purchase is likely to cost,
 - b) Determine what authority is required prior to purchase,
 - c) Determine which officer shall be responsible for the purchase,
 - d) Establish whether existing contracts and purchasing arrangements exist,
 - e) Seek the advice and assistance of the council's corporate procurement service for all purchases exceeding £50,000 in value, and
 - f) Establish whether the European Union Public Procurement regime will regulate procurement.
- 2 Officers should undertake preparations to purchase in accordance with this rule and with section 10 of the council's Detailed Procedures.

10.2 Value of Purchase

- 1 The value of any purchase of goods, works and services shall be the total value of the contract to be let throughout the whole of that contract's proposed duration. The items to be obtained shall not be artificially divided or separated to form a number of smaller purchases. This shall apply whether the purchase is funded from;
 - a) Grants made to the council,
 - b) Contributions by the council's partners,
 - c) The council's own capital or revenue funds, or
 - d) Leasing arrangements.
- 2 The value of a contract shall include all duties and taxes but shall exclude value added tax.

10.3 Thresholds for Officers' Authority to Purchase

- 1 Only officers holding appropriate authority to approve purchase as set out below shall decide that purchases are to be made or that major projects should be undertaken;
 - a) The cabinet shall approve or delegate to specified officer(s) authority to enter into any commitment which forms a key decision or whose value is likely to be £500,000 or more,

- b) Executive or Assistant Directors shall have authority to approve all commitments (actual or anticipated) of £150,000 or more but less than £500,000,
- c) Head of Service or Service Managers shall have authority to approve all commitments less than £150,000.
- d) Executive or Assistant Directors after consultation with the Chief Finance Officer and the Monitoring Officer, may authorise the signing or applying of the council's seal where
 - (i) the commitment is not a key decision and
 - (ii) it has no consideration and
 - (iii) it involves no discernable money spend,provided the entering into the commitment is in the best interests of the council and does not put the council at risk.

- 2 Before any commitment is made to utilise the council's capital resources, the Officer Responsible for the purchase or project shall ensure that in consultation with the Chief Finance Officer a joint Capital Finance Report is approved in compliance with the Council's Financial Procedure Rules.

10.4 Determination of Officer Responsible for Projects or Purchase

- 1 Every purchase should be the responsibility of a named officer, whose identity is known to the Head of Service, Assistant Director or Executive Director responsible for the service.
- 2 All projects exceeding £150,000 should be under the control of an Assistant Director or Executive Director, who shall nominate in writing an officer to take day-to-day project lead responsibility.

10.5 Use of Existing Council Contracts

- 1 Officers shall:
 - a) Use the council's existing contracts for the provision of goods, works and services unless there is a compelling business case not to do so, in which case the advice of the council's Legal Services officers and/or Corporate Procurement service shall be sought,
 - b) Seek the advice of Legal Services officers in relation to the making of all contracts giving sufficient time to enable legal advice to be given,
 - c) Make use of existing arrangements between the council and purchasing consortia for the supply of goods, works or services, and,
 - d) Utilise government procurement schemes such as GCAT and SCAT, wherever an Executive or Assistant Director agrees to this.

10.6 Application of E U Procurement Directives

- 1 Under European and United Kingdom law, the council is legally obliged to procure most of its goods, works and services under the EU regime. This regime sets out a detailed and complex procurement methodology with which all public authorities, including councils have to comply. It includes the placing of notices in the Official Journal of the European Union ("OJEU"), through which to invite tenders and inform others of contracts let.
- 2 The EU regime lays down thresholds. Procurements of goods, works and services in excess of the relevant threshold must be undertaken only in accordance with the EU regime's requirements. The threshold depends upon the nature of the purchase.
- 3 The advice of the council's Corporate Procurement Service and Legal Services shall be sought prior to officers proceeding with any contract where;
 - a) Goods and services is anticipated to exceed £100,000 and / or
 - b) Works is anticipated to exceed £3,000,000, or
 - c) Is likely to be extended to more than one of the council's services or establishments and exceed these values because of this.
- 4 The total anticipated value of the purchase must be used for calculation. This is determined by multiplying the anticipated annual value by the number of years over which the contract is anticipated to run, including any options to extend the contract's scope or duration.
- 5 It is unlawful artificially to separate – disaggregate - contracts in order to avoid the EU procurement regime. This means contracts of similar nature, or those contracts that could be obtained under a single procurement, shall not be separated unless there is compelling justification for this. In any event, the advice of the council's corporate procurement service and Legal Services officers shall be sought before deciding upon disaggregating any contract.
- 6 The EU regime permits the undertaking of post tender negotiation, which is negotiation after receipt of tenders, only under very limited circumstances. Officers should seek the advice and assistance of legal services if it is proposed to undertake such negotiation prior to seeking tenders.

11 Choosing Firms to Quote or Tender

11.1 Purpose

- 1 Officers choosing firms to provide quotations or tenders they should be mindful of:
 - a) General considerations,
 - b) Unified standing list of contractors and consultants, and the
 - c) Special list.

- 2 Officers should undertake selection of firms to provide tenders or quotations in accordance with this rule and with section 11 of the council's Detailed Procedures.

11.2 General Considerations

- 1 Officers shall choose, in accordance with the requirements of these Financial and Contract Rules, whether to select potential tenders by;
 - a) Making direct contract with a reasonable number of firms known to be able to provide the goods, works or services, or
 - b) Placing advertisements in the relevant local, national or specialist publications.
- 2 Before making such a decision they shall consider amongst other things;
 - a) The impact that the EU procurement regime has upon the procurement,
 - b) Which method represents value for money and the achievement of best value,
 - c) Sustainable procurement, and
 - d) The equality impact.
- 3 Where officers are in any doubt regarding the impact of the EU procurement regime they should consult with the Corporate Procurement service and Legal Services.
- 4 Decisions regarding firms to be invited to provide quotations or tenders to the council shall be made by officers holding appropriate authority as set out in Rule 10.4 above, and shall be based upon:
 - a) The maintenance by the council of a Unified Standing List of contractors and consultants,
 - b) Seeking invitations to quote or tender from firms whose names appear in the council's Unified List of Contractors and Consultants,
 - c) The need to invite capable firms to offer prices to the council,
 - d) Rotation of invitations so that each eligible firm receives appropriate opportunity to quote or tender against those known to offer good value,
 - e) Use of a Special List for larger contracts where this may provide appropriate competition, and
 - f) Creation of competition between a reasonable number of firms known to provide the required goods works or services at appropriate price and quality.

11.3 Unified Standing List of contractors and consultants

- 1 The Assistant Director for the Built Environment shall maintain a unified standing list of contractors and consultants. This list shall be:

- a) Divided into appropriate categories,
 - b) Contain the names of firms technically and financially competent to provide services or undertake works to given values who have also satisfied the council's requirements regarding their equality, race relations and health and safety practices,
 - c) Updated on a regular basis so that each category is reviewed at least once in every five years, and.
 - d) Exclude any firm, which the Assistant Director for the Built Environment reasonably believes to have committed an action, which might warrant its being removed from the list.
- 2 Executive Directors, Assistant Directors, Heads of Service or Service Managers shall select firms from the unified standing list from whom to invite quotations or tenders wherever the category of goods, works or services is found in the unified standing list.
 - 3 Where a Head of Service or Service Manager has compiled the list of firms from whom tenders are to be sought, an Executive or Assistant Director shall be invited to add a further name to the list of firms to be invited to tender for larger contracts.
 - 4 Wherever possible, the choice of firms from the appropriate category of the unified standing list shall be rotated to ensure that each firm receives at least one invitation to tender during the life of the relevant category of the lists. Officers shall ensure that the list of the firms invited to provide tenders or quotations shall be a mix of those firms whose ability to provide value for money is known and of those for whom it is not known.

11.4 Special List

- 1 A special list of firms to be invited to provide quotations or tenders may be created only where the appropriate Executive or Assistant Director to whose service the special list applies agrees in writing to its use. This is to be used as a means of selecting a small number of firms from whom tenders are to be sought.
- 2 All those who apply to be included on a special list shall be asked to provide written evidence only of their financial, technical and legal capacity to undertake the required provision of goods, works or services.
- 3 Unless the council's advertisement has stated that the special list shall comprise only a specified number of firms, every firm found able to provide the required items shall be invited to submit a tender.
- 4 Wherever the council is required by law to procure in accordance with the EU regime, the means of selecting firms to tender shall only be in accordance with that regime.

12 Special Contracts

12.1 Purpose

- 1 Officers responsible for purchasing goods, works or services should be aware of the special circumstances that pertain to the following provisions:
 - a) Social care and supported housing,
 - b) Consultants,
 - c) Appointment of legal counsel or advisers,
 - d) Specifying sub-contractors to a major contractor,
 - e) Schedule of rates contracts, and
 - f) Instances where quotations and tenders shall not be required.
- 2 Officers should undertake these purchases in accordance with this rule and with section 12 of the council's Detailed Procedures.

12.2 Social Care

- 1 The Executive Director whose responsibilities includes Social Care may issue rules to govern purchases relating to 'social care', which fall within European Union Services Part B, following consultation and agreement with the Chief Internal Auditor.
- 2 These rules shall:
 - a) Reflect the structure of the market for social care services, and
 - b) Balance the need to achieve Best Value with the need to enter into contracts rapidly to meet individual service users' needs.
- 3 Officers shall procure services only in accordance with these Financial and Contract Rules, and the Detailed Procedures supporting them, except where the Executive Director with responsibility for Social Care issued such rules.

12.3 Consultants

- 1 The selection and appointment of all consultants shall be in accordance with this rule and the council's "Special Circumstances Procedure". No capital finance report shall be required when a consultant undertakes work in advance of a scheme being approved providing capital is expended upon consultants only where the work forms part of an approved capital scheme.
- 2 Consultants shall be required to provide, to the satisfaction of the Corporate Risk Manager, adequate insurance to indemnify the council against possible errors in the advice they provide, and shall only commence work for the council following a written contract for the appointment being entered into by the consultant and the council.

12.4 Appointment of Legal Advisors and Experts

- 1 Where an Executive Director seeks to appoint external legal advisors and experts, following consultation with the Monitoring Officer, the following rules shall apply:
 - a) Tenders shall not be required for the engagement of counsel, medical experts, the clergy and such other experts as are required in contemplation or anticipation of court proceedings.
 - b) Tenders shall not be required for the instruction of legal advisers. Were the anticipated spend on legal services is in excess of £50,000, an estimation of fees and or hourly rates shall be obtained from sufficient legal advisers to demonstrate Best Value having regard to the nature of the specialist legal advice and assistance required.

12.5 Specifying Sub Contractors to a Major Contract

- 1 Where officers choose a firm to be named or nominated as a sub-contractor in a contract, they shall ensure that the sub-contractor is selected in accordance with these Financial and Contract Rule 13 below.
- 2 They shall also ensure that the specification, against which firms may be asked to provide quotations or tenders, shall include requirements that the successful firm shall;
 - a) Agree to its nomination as a sub-contractor,
 - b) Enter into a contract with the main contractor that indemnifies the main contractor against his obligations under his contract with the council, and
 - c) Provide indemnity to the council to the level specified.

12.6 Schedule of Rates/Call off Contracts

- 1 Where the council wishes to enter into a schedule of rates/call off contract or where items are to be provided only as needed, the Officer Responsible for the purchase shall;
 - a) Value the goods, works or services to be provided as the maximum that could be anticipated over the total life of the proposed contract,
 - b) State in the quotation or tender documents the anticipated value of the contract,
 - c) Inform all those from whom quotations or tenders are sought that the council does not undertake to purchase goods, works or services to any specified value,
 - d) Implement a procedure to ensure that items are called off in accordance with the contracts terms and the prices offered, and
 - e) Ensure that the above stipulations are inserted into both the letter of appointment and contract documents.

12.7 Impracticality of Seeking Quotations or Tenders

- 1 Neither quotations nor tenders shall be required where the council's "Special Circumstances Procedure" recognises that seeking competitive quotations or tenders is inappropriate or impractical.
- 2 Only where goods, works and services fall into the categories shown in the "Special Circumstances Procedure", or where items are sought as a matter of urgency under Financial and Contract Rule 1.6 above, shall officers act other than in accordance with Rule 13 below.

13 Seeking Quotations or Tenders

13.1 Purpose

- 1 Before officers seek quotations or tenders for the purchase of any goods, works or services, they shall first determine:
 - a) Whether quotations or tender are to be sought,
 - b) If electronic tendering is appropriate,
 - c) Sureties,
 - d) Tender documentation,
 - e) Return and Opening of Tenders
 - f) Assessment of Tenders
 - g) Acceptance of Tenders
 - h) More than one tender is to be accepted
- 2 Officers shall seek quotations or tenders only in accordance with this rule and with section 13 of the council's Detailed Procedures.
- 3 Before officers seek quotations or tenders for the purchase of any goods, works or services, they shall first determine:
 - a) The whole life value of the purchase,
 - b) That appropriate level of resources are dedicated to the intended purchase in order to achieve an effective, efficient and on time procurement exercise is achieved,
 - c) Whether quotations or tender are to be sought, and
 - d) If electronic tendering is appropriate,
- 4 They shall also:
 - a) Formulate a written business case for all purchases exceeding £150,000,
 - b) Determine within the written business case a detailed scope of the purchase,
 - c) Whether a set specification or output specification will be used,
 - d) Whether Sureties are appropriate (subject to paragraph 13.4 below), and

- e) The detail of the tender documentation,

13.2 Quotation or Tender

- 1 Officers responsible for purchasing goods, works or services should seek quotations or tenders such that;
 - a) Officers shall not seek tenders or quotations until they have determined that no council wide or consortium contract exists for the goods, services or works required,
 - b) Where the value of the proposed purchase is less than £2,500, neither quotation nor tender shall be obtained subject to the overriding requirement of compliance with the council's finance and contract rules and procedures,
 - c) Written quotations shall be invited from at least four different firms for all goods, services or works whose value is estimated to be £2,500 or greater but less than £50,000,
 - d) Formal sealed tenders shall be invited from at least four firms who have demonstrated their technical and financial ability to provide goods, works or services where
 - (i) their value is estimated to be £50,000 or more or
 - (ii) for the supply for a period of three months or more whose value is estimated to exceed £20,000 in any one month.
- 2 Where tenders are to be sought in accordance with this rule, the officer responsible shall ensure that:
 - a) The tender is consistent with the council's approved policy;
 - b) Where the appropriate number of quotations or tenders was sought in compliance with these rules, but less than the required number of quotations or tenders has been received and it is considered appropriate to award the tender in any event. The relevant Executive Director or Assistant Director shall prepare a written authority to award setting out the firms invited quote/ tender, the responses received, grounds upon which the award is being made together and certifying that in his/her reasonable opinion that Best Value is being achieved for the council;
 - c) Where appropriate, a capital finance report has been approved, and,
 - d) Adequate financial provision exists in the council's approved budget or capital programme, or that external grant funding has been secured.

13.3 Electronic Tendering

- 1 Electronic tendering may be undertaken wherever the Chief Finance Officer has first agreed in writing that the Head of Service responsible for the purchase may use this method. Heads of Services using electronic tendering shall comply with the procedures set out by the Chief Finance Officer and Chief Internal Auditor.

13.4 Providing Sureties

- 1 Sureties, either in the form of a bond or retention fund shall be required for the successful completion of contracts for works whose tendered value is anticipated to exceed £150,000.
- 2 Where an Executive or Assistant Director agrees in writing that the council's assets will not be at risk should the contractor fail to complete the contract satisfactorily, this requirement may be waived.
- 3 In respect of all other contracts the Officer Responsible shall determine as to whether a surety is appropriate, having regard to the risks associated with the contract and the protection of the council's interests.

13.5 Tender Documentation

- 1 The Officer Responsible for any project or purchase shall ensure that each firm from whom the council seeks a tender receives a full description of:
 - a) The scope and nature of the works, services, goods or materials for which an offer is sought,
 - b) The contract terms and conditions including where appropriate any option to extend the contract length,
 - c) All general and particular trade standards to be applied,
 - d) The type, description and intended number of each item for which a price is to be offered,
 - e) The nature and make up of all prime costs, provisional sums and quantities,
 - f) Any requirement to submit dayworks or supplementary rates for labour, transport or materials,
 - g) The value of all contingency sums,
 - h) The criteria to be used in the evaluation of tenders
 - i) Whether tenders may include variant bids, in which case these shall only be considered at the council's discretion when accompanied by a compliant bid,
- 2 Officers shall inform each firm invited to tender of the latest date and time by which their tenders shall be returned to the council. They shall also provide clear statement stating that;
 - a) The firm submitting the tender to the council is solely responsible for that tender being received in accordance with these conditions

- b) No tender will be considered eligible unless it is submitted in the envelope furnished with the tender documents,
 - c) Envelopes or packages bearing any mark, or label identifying the tenderer, whether made by the tenderer, an agent or carrier, will be ineligible to be opened,
 - d) Only tenders received by the date and time specified as being the latest date and time for the receipt of tenders shall be considered eligible.
 - e) That the council shall not be bound to accept the lowest priced or any offer made to it, and
 - f) Where tenders include variant bids, these shall only be considered at the council's discretion but when accompanied by a compliant bid.
- 3 Each firm invited to tender shall also be made aware that the submission of a tender by them binds them to the contract terms and conditions set out in the tender documentation.

13.6 Return of Tenders

- 1 Officers responsible for projects and purchases shall arrange for their return in accordance with the council's "Quotations and Tenders Procedure" so that:
- a) Tenders whose estimated value is less than £150,000 shall be returned to and remain in the secure custody of the Head of Service or Service Manager responsible for the contract until the time appointed for their opening, and
 - b) Tenders whose estimated value is £150,000 or more shall be returned to and remain in the custody of the Monitoring Officer until the time appointed for their opening.
- 2 Tenders shall remain in the custody of an officer not otherwise connected with tenders' subsequent evaluation until;
- a) A Head of Service or Service Manager responsible for any tenders whose estimated value is less than £150,000 arranges for their opening by two officers designated in writing to undertake such duties, or
 - b) The Executive or Assistant Director responsible for tenders whose value is less than £500,000 arranges for their opening by two officers designated in writing to undertake such duties, or
 - c) The cabinet member to whose portfolio the project or purchase pertains opens those tenders whose value is anticipated to be £500,000 or more in the presence of the Monitoring Officer or an officer nominated in writing by him or her for this purpose.

13.7 Opening of Tenders

- 1 All eligible tenders shall be opened at the same time, which shall not be before the closing date and time as set out in the tender.

- 2 The persons responsible for opening tenders shall follow the requirements set out in the council's Detailed Procedures and ensure that a record is made of:
 - a) The name of each tenderer,
 - b) The amount or value of each tender including any variant offers, and
 - c) Those tenders ineligible to be opened because:
 - (i) Either they have been received after the latest date and time set for their receipt, or
 - (ii) The envelope includes the name of the sender.

13.8 Assessment of Tenders

- 1 Tenders shall be assessed as soon as possible after their opening, and in line with the following requirements;
 - a) Assessment shall only be in accordance with the criteria provided to those tendering,
 - b) Variant offers shall only be assessed where the tender includes an offer compliant with the council's tender specification and the council's tender documentation has indicated that variant bids are to be considered,
 - c) An appropriate method of dealing with any errors in tenders shall be used and shall be followed consistently, and tenderers' corrected figures shall be used in the assessment, and
 - d) A record shall be kept of all contacts with tenderers, particularly where post tender interviews have taken place.
- 2 The Officer Responsible for assessment shall produce a report, which shall be provided to the officer who is to accept the tender. This shall show for each tender received;
 - a) The costs and prices offered,
 - b) An assessment of the quality and other non-financial factors,
 - c) Whether the offer complies with the council's requirements, and
 - d) Whether a variant offer should be considered.
- 3 The report shall also advise the acceptor of the tender, which is believed to offer the best value to the council.

13.9 Acceptance of Tenders

- 1 Tenders may be accepted and contracts awarded by:
 - a) The Head of Service or Service Manager responsible for the purchase or project where the value is less than £150,000,
 - b) The Executive or Assistant Director responsible for the purchase or project where the value is less than £500,000, or

- c) By the Cabinet where the purchase or project is £500,000 or more
- 2 Cabinet may delegate the acceptance of a specific tender whose value is anticipated to be £500,000 or more to a named officer, who shall record his or her actions in a register to be kept within each directorate.
- 3 All appointments must be made in accordance with rule 14.2 and in any event if the tenderer is notified verbally prior to sending of the letter of appointment, in accordance with rule 14.2, the tenderer shall be advised that the appointment is subject to being confirmed in writing setting out the terms and conditions of appointment.

13.10 Accepting More than One Tender

- 1 Where more than one tender is accepted, the officer responsible for the purchase or project shall:
 - a) Ensure that the council enters into an appropriate written contract with each of the firms whose tenders have been accepted,
 - b) Specify to each firm appointed the terms of their engagement and the manner in which it is intended to divide the provision of goods, services or works,
 - c) Inform the Executive Director or Assistant Director responsible for the service of the arrangements.
- 2 At the completion of the contract period, the actual value of the goods, services or works provided by each of persons or firms involved shall be made known to the Chief Internal Auditor.

14 Making Contracts

14.1 Purpose

- 1 Officers shall ensure that appropriate contractual arrangements are made with the council's contractors who are to supply goods, works or services. In arranging for the making of contracts they shall consider amongst other things:
 - a) The need for a letter of appointment or official order,
 - b) The form which the contract will take,
 - c) Details necessary in the contract,
 - d) Items required in every contract, and
 - e) The need to maintain a register of contracts within their Service Area.
- 2 Officers should arrange for the making of contracts in accordance with the requirements of this rule and with section 14 of the council's Detailed Procedures.

14.2 Letter of Appointment

- 1 Every tenderer whose tender the council wishes to accept shall be sent a letter of appointment in accordance with this rule 14.2.1 except for where the tenderer has indicated that they wish to amend or vary the contract terms and conditions sent out with the tender in which case rule 14.2.5 shall apply. The letter of appointment shall take the place of an official order and shall specify amongst other things:
 - a) The appointment is made upon the conditions and prices offered in the tender, is Subject to Contract and does not form a legally binding offer or acceptance,
 - b) The extent of the goods, works or services tendered that the council wishes to accept,
 - c) That the appointment is subject to the tenderer returning to the council within 30 days of the letter of appointment
 - (i) two signed/sealed (as appropriate) copies of the non amended councils contract terms and conditions
 - (ii) all other specified documents to the council

(this rule 14.1.c shall not apply where the EU negotiated procedure has been followed).
 - d) The date for commencement of the works or services, or the first day on which goods are to be delivered,
- 2 The letter shall contain a provision stating that the tenderer accepts the appointment upon the council's terms and conditions of tender and contract together with a section for the tenderer to sign and date the letter.
- 3 In building and works contracts only, the letter shall invoke the terms of the tender to form a contract until such time as a formal sealed contract is created.
- 4 The officer responsible for the project shall obtain a reply to the letter of appointment. This shall be signed by the tenderer and indicate acceptance of the appointment under the council's terms and conditions prior to the commencement of any works or services, or the delivery of any goods.
- 5 Where the tenderer has indicated that they wish to amend or vary the contract terms and conditions sent out with the tender the letter of appointment shall specify as provided for in 14.2.1 a) to c) only. Neither the provision of goods, works or services shall commence, nor shall dates be agreed for their commencement until the council has agreed all amendments or variations to the contract terms and conditions in writing and the tender as stated in writing his acceptance of the agreed contract terms and conditions.

14.3 Signature or Sealing of the Contract

- 1 The contract between the council and the accepted contractor or contractors shall be made in writing:
 - a) Where the value of items to be provided is less than £50,000, in value and sealed tenders have not been sought, the council's official order shall be used, which shall include all the terms under which the contract is to be let,
 - b) Where the value is £50,000 or more, or sealed tenders have been received, a formal contract document shall be signed by both parties to evidence their agreement to all the terms and conditions under which the contract is to be performed,
 - c) Where the value is £500,000 or more a formal written contract shall be made under the council's seal. The Seal is applied by the Assistant Director for Legal and Constitutional Services or his/ her nominated representative, the applying of the Seal is an administrative function and not a legal review of the contract or the tendering exercise, and
 - d) Where the contract has no consideration (no discernable money is being spent by the parties) the council's official seal shall be used.
- 2 Contracts shall be signed by:
 - a) The Head of Service or Service Manager responsible for the purchase or project where the value is less than £150,000,
 - b) The Executive or Assistant Director responsible for the purchase or project where the value is less than £500,000.
- 3 Wherever a contract is to be made under the council's Seal the Executive or Assistant Director, Head of Service or Service Manager responsible shall, at the earliest practical opportunity, provide the council's Assistant Director for Legal Services with;
 - a) Written confirmation of compliance with these rules and the exercise of authority by the Executive Director or Assistant Director or Head of Service, and
 - b) For contracts of £500,000 or more , a copy of the cabinet resolution
 - (i) accepting the tender and awarding the contract or
 - (ii) delegating authority to an officer to accept the tender and award the contract,

14.4 Items Required in Every Contract

- 1 Every contract made by the council shall include the following requirements;
 - a) Wherever a British Standard or equivalent European Union norm exists, the contract shall require that only goods pertaining to that specification shall be used,

- b) Evidence of the contractor holding a sufficient level of insurance shall be provided,
 - c) Wherever the contract includes construction of a building, landscape or engineering works, compliance with Contract Design and Maintenance (CDM) regulations shall be included,
 - d) The contractor's health and safety policy shall be obtained,
 - e) The contractor's race relations and anti-discrimination policies shall be obtained, and
 - f) A clause ensuring that the council may revoke the contract in the case of corrupt activity or behaviour by the contractor.
 - g) A clause setting out when final payment, release of retention monies, release of a bond or surety is to occur.
- 2 Except where there exists a legal requirement to do otherwise, all contracts for a value in excess £50,000 shall be of a form approved by the council's Legal Services. Every contract shall be in writing, and shall specify;
- a) The work, services, matters or things to be executed, supplied or done,
 - b) The price to be paid, with a statement of discounts or other deductions,
 - c) The time, or times, within which the contract is to be performed, and
 - d) Whether the period during which the contract is to be performed may be extended.
- 3 Where a contract does not include for its extension, the Executive Director or Assistant Director responsible for the service shall approve any extension in writing, providing that;
- a) No extension shall be provided to a contract let under the EU procurement regulations except to the extent that the original tender has provided for that extension, or
 - b) The extension is by way of a short-term urgent matter and offers value for money.

14.5 Register of Contracts

- 1 Each Executive Director shall keep and maintain a register of all contracts entered into by that directorate. It shall be the responsibility of the officer undertaking each procurement to ensure compliance with this requirement to the Executive Director's satisfaction. The responsible officer shall include the following details;
- a) Name of the contractor(s),
 - b) The nature of the goods/services purchased,

- c) The estimated value of the contract,
 - d) The date of the contract,
 - e) The date of the cabinet decision or delegation of approval for acceptance of the tender and/or award of the contract, or
 - f) The name of the officer awarding/signing the contract stating under which sub-paragraph of rule 13.9 of this rules the officer has authority to award the contract,
- 2 The officer responsible for the procurement shall provide the Chief Internal Auditor and Corporate Procurement service with the details aforesaid within 14 days of the contract having be signed or sealed.
 - 3 A copy of every signed contract for value of £50,000 or more and any subsequent amendments/ variations thereto shall be sent to legal services for filing purposes.

15 Variations Extensions Payments and Disputes

15.1 Purpose

- 1 Officers shall ensure that appropriate arrangements are put in place to control the making of variations to contracts, extensions to the contract, payments to contractors, and the treatment of disputes with contractors. They shall consider amongst other things:
 - a) The need for appropriate officers to take charge of contract management, issue of certificates and making of payments as required by the terms of the contract,
 - b) The need to control, document and price variations made to the contract,
 - c) Presentation of contractors' final accounts to the Chief Internal Auditor before releasing final payments,
 - d) Withholding liquidated damages in accordance with the contract terms,
 - e) Identifying and communicating claims and disputes, and
 - f) Reporting on completed contracts.
- 2 Officers should arrange for the operation of contracts in accordance with the requirements of this rule and with section 15 of the council's Detailed Procedures.

15.2 Contract Management

- 1 Every Head of Service or Service Manager responsible for a council contract shall ensure that;
 - a) Appropriate systems are maintained to ensure the day-to-day control and supervision of the provision of goods, works or services to be made under the contract,

- b) An officer with appropriate technical qualifications is in charge of any works contract,
 - c) Payments to the contractor are made only in accordance with the terms of the contract,
 - d) Certificates or other documents required under the contract are signed by appropriate officers and presented prior to the making of payments to the contractor, and
 - e) Appropriately qualified officers issue certificates evidencing the substantial or practical completion of works and the correction of defects to these at the times required under the contract.
- 2 Where variations are made to a contract they shall be;
- a) Specified by the officer responsible for the purchase or project,
 - b) Added to or removed from the items to be provided in accordance with the requirements of the contract between the council and the contractor or supplier,
 - c) Agreed with the contractor or supplier,
 - d) Priced in accordance with the contract schedule or figures offered in the tender,
 - e) Evidenced in a document signed by the Officer Responsible for the purchase or project, and
 - f) Agreed by the Executive or Assistant Director, the Head of Service or Service Manager responsible for the contract where their value is in excess of £50,000 or half the contract sum.
- 3 Where these variations require additional funding or a change to the council's capital programme, the Chief Finance Officer approval in writing shall be obtained prior to the variation being approved.

15.3 Liquidated Damages and Contractor's Final Accounts

- 1 Contracts shall also require:
- a) Where appropriate liquidated damages to be paid to the council by the contractor wherever the provision of goods, works or services is not completed within the time set out in the contract documents,
 - b) The contractor's final account shall be made available to the Chief Internal Auditor wherever the contract's value is £150,000 or more along with details relating to obtaining authority, planning, tendering, award, operation and payments relating to the project,
 - c) The Chief Internal Auditor shall be informed seven working days before final payment, a release of retention monies, release of a bond or surety is to occur to a contractor where the contract value is £50,000 or more, so that he may choose to examine all relevant documentation, and

- d) Final payment, release of retention monies, release of a bond or surety to the contractor shall be withheld until the Chief Internal Auditor has completed such examination as he may choose to undertake.

15.4 Disputes

- 1 Wherever an officer believes that the council may have a claim against a contractor for any form of compensation other than liquidated damages, this matter shall be reported to the Assistant Director for Legal and Constitutional Services at the earliest opportunity.
- 2 Prior to payment of the contractor's final account, the Officer Responsible for the contract shall report to the Executive Director or Assistant Director responsible for the contract and to the Assistant Director for Legal and Constitutional Services;
 - a) Any claim that a contractor may have against the council regarding the conduct of the contract or actions which may have taken place during the contract period, and
 - b) Any matter that is disputed between the council and a contractor that has not been resolved in accordance with the terms of the contract,
- 3 Officers responsible for contracts shall not admit any liability or responsibility for matters, which are disputed, nor make any payment prior to the matter being discussed having obtained in writing the approval of Assistant Director for Legal and Constitutional Services.
- 4 The Chief Finance Officer shall be informed in writing of the possible financial consequences of any dispute.

15.5 Reports on Contracts' Progress and Completion

- 1 The Officer Responsible for a project or purchase of £150,000 or more shall report to the Executive or Assistant Director under whose purview the contract has been undertaken on a quarterly basis. The report shall be in writing and detail:
 - a) A comparison of the contract's final cost with the amount tendered,
 - b) The estimated time to complete the project and any liquidated damages or retentions that have been withheld from the contractor, and
 - c) Whether there has been any dispute regarding the contract and whether any claim is likely to be made against the Council.
- 2 Upon the completion of all projects or purchases of £150,000 or more the Officer Responsible shall report to the Executive or Assistant Director under whose purview the contract has been undertaken. The report shall be in writing and detail:
 - a) A comparison of the contract's final cost with the amount tendered,
 - b) Any delay in completion of the project and any liquidated damages or retentions that have been withheld from the contractor,

- c) Whether there has been any dispute regarding the contract and whether any claim is likely to be made against the council,
- d) Any findings or conclusions made by the Chief Internal Auditor in the examination of the contractor's final account, and
- e) Any findings or conclusions made by the Chief Internal Auditor in the examination of the contractor's final account.

16 Sales Lettings and Disposals

16.1 Purpose

- 1 Officers shall ensure that appropriate arrangements are put in place to control sales and letting of the council's land and property, and disposal of the council's assets. They shall consider:
 - a) Ensuring money is banked and appropriate officers informed,
 - b) Obtaining a cabinet resolution before undertaking land or property transactions with a value of £500,000 or more,
 - c) The method by which land and property is offered for sale or lease, and
 - d) Means of disposing of items surplus to the council's requirements.
- 2 Officers should arrange for the making of sales and leases and for the disposal of items surplus to the council's requirements in accordance with this rule and with section 16 of the council's Detailed Procedures.

16.2 Sales of Council Assets

- 1 Officers responsible for the sale of any council asset, other than items covered in the council's standard fees and charges, shall create systems for the control of these activities and ensure that;
 - a) The Chief Finance Officer is notified of all estimates and actual sales and receipts,
 - b) The Chief Internal Auditor is provided the opportunity to examine all sales and receipts, and
 - c) Monies received are banked in accordance with Finance and Contract Rule 8.2.

16.3 Acquisition and Disposal of Land

- 1 Only following a cabinet resolution to that effect shall officers;
 - a) Arrange for the acquisition or disposal of land, where that action may form a 'key decision' under the council's constitution,
 - b) Make a compulsory purchase order,
 - c) Commence negotiations for the sale of land suitable for residential purposes,

- d) Acquire or dispose of land and buildings whose value is anticipated to be £500,000 or more, and
 - e) Lease land and property whose value is anticipated to be £50,000 or more in a calendar year.
- 2 Where the cabinet's authority is not required, purchases, sales or leases of any land to another body or person shall be undertaken in accordance with the council's "Sales Lettings and Disposals" procedure. All disposals shall be recorded in a registrar of sales and leases to be maintained by the Chief Finance Officer or an officer nominated in writing to undertake that role.
- 3 The Executive or Assistant Director responsible for the sale of land or property shall determine whether this shall be undertaken by:
- a) Public auction,
 - b) Informal tender, or
 - c) Formal tender.
- 4 The Chief Finance Officer or an officer nominated in writing to undertake these duties shall;
- a) Control all sales and leases of the council's land and buildings,
 - b) Maintain appropriate confidentiality,
 - c) Provide reports on sales and leases to the cabinet and council as part of the annual capital programme, and
 - d) Ensure that the council receives best consideration or the agreement of the Secretary of State.

16.4 Asset Disposal

- 1 Where goods, or services are sold as part of a service's normal trading activities, the council's approved scale of charges shall be followed in accordance with Finance and Contract Rule 8.2 and with the "Sales Lettings and Disposals" procedure.
- 2 Obsolete, non-repairable or unnecessary resources should be disposed of in accordance with the law and the regulations of the authority.
- 3 The council, through its cabinet and Executive Directors, shall create and maintain controls to ensure that;
 - a) Assets for disposal are identified and disposed of at the most appropriate time, and only when it is in the council's best interests. Wherever appropriate, best price should be obtained, bearing in mind other factors, such as environmental issues. For items of significant value, disposal should be by competitive tender or public auction, and
 - b) Procedures offer adequate protection to staff involved in the disposal from accusations of personal gain.

- 4 Where a Head of Service or Service Manager wishes to dispose of goods or materials surplus to that service area's requirements, he or she shall;
 - a) Ascertain whether any other area of the council may have need of these items and, if so, arrange for their transfer,
 - b) Where items have a commercial value believed to exceed £50, arrange to receive sealed bids so as to obtain best consideration,
 - c) Where items have a commercial value below £50, arrange for their disposal, and
 - d) Maintain records of all items of which they have disposed.

17 Trading within the Council and with its Partners

17.1 Purpose

- 1 Officers shall ensure that appropriate arrangements are put in place to control the sourcing of goods, works and services from the council's own service areas, and the provision of these to partner organisations. They shall consider amongst other things:
 - a) Obtaining goods and services from the council's own resources,
 - b) Providing works, goods and services to other areas of the council,
 - c) Trading with other partner organisations,
 - d) Making grant agreements, and
 - e) Ensuring appropriate action where the council acts as the accountable body for other organisations.
- 2 Officers should arrange for the regulation of provisions between one service area and another in accordance with this rule and with section 17 of the council's Detailed Procedures.

17.2 Trading Within the Council

- 1 Executive Directors, Assistant Directors, Heads of Service or Service Managers shall determine whether to obtain goods, works or services from the council's own resources where these are available. In making their decisions whether to use the council's own service they shall consider;
 - a) The requirement to provide best value for the council's stakeholders,
 - b) The effect of their choice upon their own budget,
 - c) Any effect their decision would have upon the council's other service areas, in particular its public sector enterprise units,
 - d) Requirements under the Transfer of Undertakings Public Enterprise (TUPE) regulations,
 - e) The need to provide services of appropriate quality and deliver these in a timely and efficient manner, and,

- f) The decision to obtain goods, works or services from within the council's own resources or by purchasing them from outside organisations should represent the best interests of the council as a whole rather than those of an individual service area.
- 2 Where a Head of Service or Service Manager is asked to offer items to another part of the council, a partner, or an external body, an estimate of the cost of making this provision should be obtained upon which to base any offer. Where an offer is subsequently accepted, items to be obtained in connection with the provision shall be procured in accordance with these rules and with the council's "Quotations and Tenders Procedure".
- 3 When any goods, works or services are provided by one area of the council to another;
 - a) The amount, quality and cost of the items to be provided shall be agreed and contained in a service level agreement (SLA),
 - b) The duration of the agreement shall also be documented along with the period of notice that either manager shall give to the other before ceasing provision or receipt of items,
 - c) The value and extent of each internal provision and the means by which best value has been determined shall be made known to the council's Chief Finance Officer and its Executive Management Team, and
 - d) The Chief Executive shall arrange for the resolution of any disputes relating to service level agreements.

17.3 Provisions to Partners and Outside Bodies

- 1 The council shall only provide goods, works or services to other organisations where:
 - a) It is legally entitled and empowered to do so,
 - b) The service concerned is able to do this without adversely affecting the other services it currently provides,
 - c) The cost of providing the service is less than the income to be obtained or there is an accepted social reason for making the provision,
 - d) The council holds appropriate indemnity regarding the items to be provided,
 - e) The contract is made in writing, and
 - f) An Executive Director has approved in writing the action.

17.4 Provision of Grants

- 1 The council shall provide assistance by way of grants (cash or in kind) to outside organisations only in accordance with the agreement of the Executive Director responsible. All grants shall be included in budgets and reported to the cabinet.
- 2 A contract shall be made in writing with every body to which the council provides a grant . This shall include:
 - a) The value(market value) of the grant to be provided,
 - b) Times at which that grant shall be released,
 - c) Conditions necessary for providing and or continuing the grant, and
 - d) Duration of the grant.
- 3 Where the contract to provide a grant is made in return for the recipient organisation agreeing to undertake any actions, whether that agreement is construed as a contract or otherwise, the requirements for officers to obtain any quotations or tenders prior to entering into that contract shall not pertain.

17.5 The Council as Accountable Body

- 1 Wherever the council is appointed as the accountable body to any organisation that is incorporated at law as a separate legal entity such as a company or charity, it shall:
 - a) Ensure the organisation acts only in accordance with the rules laid down by the funder or grantor body who has agreed the appointment,
 - b) Make a written contract with each organisation for which it acts as Accountable Body setting out the duties and responsibilities of both organisations including compliance with rule 17.5 above, and requiring the following:
 - c) Where the organisation intends to make contracts, the council shall impose a requirement upon the organisation within the Accountable Body agreement that it shall procure and contract only in accordance with the council's Financial and Contract Rules and Procedures except where the Executive or Assistant Director who is responsible for the funding stream has previously waived this requirement in writing.
 - d) That the organisation shall only enter into contracts whose value exceeds £50,000 in consultation with and following the written approval of the council's relevant Executive Director or his/her nominated representative subject to the relevant Executive Director imposing at his discretion a lower limit, and
 - e) Ensure that all financial and other records pertaining to the body for which it is accountable are made available to the chief internal auditor.

- f) For the purposes of the council's Financial and Contract Rules and Procedures the organisation's chairman or managing director shall be deemed the appropriate decision making person in place of council officers. In the case of the cabinet's approval being needed, the managing board of the organisation shall be deemed the appropriate decision making body.
- 2 Where the council acts as the accountable body for any consortium or organisation, which does not itself hold incorporated status or possess a separate legal identity, then the council shall:
 - a) Be responsible for collection of all monies due,
 - b) Make all payments on the organisation's or consortium's behalf,
 - c) Comply at all times with these Financial and Contract Rules and Detailed Procedures, and
 - d) Enter into all contracts in its own name.
- e) act in accordance with the accountable body protocol
- 3 The council shall enter into contracts on behalf of any organisation for which it acts as accountable body where this enables the council to suffer and recover value added tax, which could otherwise not be recovered by that organisation. Prior to making such contracts, officers shall consult the Chief Finance Officer to ensure that such actions;
 - a) Are not contrary to the law or HM Customs and Excise requirements,
 - b) Comply with the grantor's conditions, and
 - c) Will not cause additional financial burden to the council.