

# Contract Procedure Rules

## CONTENTS

1. [Introduction](#)
2. [General](#)
3. [Compliance with Legislation and Standards](#)
4. [Signature/Sealing of Contracts](#)
5. [Form of Contract](#)
6. [Bonds and Liquidated Damages](#)
7. [Quotations](#)
8. [Tenders](#)
9. [General Tender Requirements](#)
10. [Tender Acceptance](#)
11. [Alterations to Tenders/Quotations and Post Tender Negotiations](#)
12. [Electronic Commerce](#)
13. [Purchasing Cards](#)
14. [Certification of Contracts](#)
15. [Exceptions to Contract Procedure Rules](#)
16. [Compliance, Contract Register and Annual Procurement Plan](#)
17. [Declaration of Interests](#)

# DRAFT

*These Rules constitute the Council's Standing Orders in relation to contracts under Section 135 of the Local Government Act 1972 and apply to all contracts (excluding property contracts), including those made in the course of the discharge of functions which are the responsibility of the Executive.*

## 1.0 INTRODUCTION

1.1 These terms will have the following meanings in the Contract Procedure Rules:-

<b>Constitution</b>	The Council's Constitution of which these Rules form part.
<b>Contract</b>	Any agreement (other than Property Contracts and contracts of employment) made between the Council and any other person which is intended to be legally enforceable and involves the acceptance of an offer made by one party to commit itself to an action or series of actions
<b>Contractor</b>	A person with whom the Council has a contract
<b>Council</b>	North Yorkshire County Council
<b>Director</b>	Chief Executive Officer Corporate Director Business and Environmental Services Corporate Director Adult and Community Services Corporate Director Children and Young People's Service Corporate Director Finance and Central Services
<b>CDFCS</b>	Corporate Director Finance and Central Services
<b>Consultancy Contract</b>	A contract with a consultant architect, engineer, surveyor or other professional consultant (excluding Counsel)
<b>EU</b>	European Union
<b>HLS</b>	Head of Legal Services
<b>Leasing Agreement</b>	A contract for the provision of finance to enable goods or services to be obtained and where ownership in those goods does not automatically pass to the Council at the end of the contract period.
<b>MEA</b>	Most Economically Advantageous
<b>Member</b>	A member of the Council or co-opted member on a Council committee
<b>Officer</b>	A Council employee or other authorised agent
<b>OJEU</b>	The Official Journal of the European Union
<b>Person</b>	Any individual, partnership, company, trust, other local authority, Government department or agency
<b>Procurement Strategy</b>	The Council's Procurement Strategy as agreed from time to time.
<b>Property Contract</b>	A contract which creates an estate or interest in land or buildings
<b>Responsible Officer</b>	The Officer who is responsible for the procurement and/or management of a Contract
<b>Rules</b>	These Rules

# ***DRAFT***

<b>Tenderer</b>	A person who has expressed an interest in tendering for a Contract or who has tendered for a Contract
<b>YPO</b>	The Yorkshire Purchasing Organisation

## 1.2 References in these Rules to:-

- (a) any legislation (e.g. Act, Statutory Instrument, EU Directive) include a reference to any amendment or re-enactment of such legislation;
- (b) the value of any contract are to the total estimated aggregate gross value payable over the full period of the contract without any deduction for income due to the Contractor or the Council;
- (c) the singular include the plural and vice versa;
- (d) the masculine include the feminine and vice versa;
- (e) Directors, the CDFCS and the HLS shall be taken to include such Officers as are designated by those officers to undertake the duties and responsibilities set out in these Rules, except in the case of the following Rules:-
  - (i) Director - **Rules 3.3**
  - (ii) CDFCS - **Rules 2.1, 2.4, 2.5 and 2.10**
  - (iii) HLS - **Rules 2.1, 2.4 and 2.5**

where delegation is not permitted. A record of all duties and responsibilities as delegated under these Rules is to be maintained by each Director, the CDFCS and the HLS

## 2.0 GENERAL

**2.1** These Rules are made by the Council on the advice of the CDFCS (in consultation with the HLS) under Article 14.02 of the Constitution.

**2.2** These Rules apply to all contracts **except:-**

- (a) contracts of employment and
- (b) property contracts.

**2.3** The Council has made Financial Procedure Rules under Article 14.01 of the Constitution which shall be applied in conjunction with these Rules.

**2.4** The CDFCS (in consultation with the HLS) shall, as a minimum annually, review the application and effect of these Rules and shall propose such updated Rules to the Council as the CDFCS may consider appropriate.

**2.5** The CDFCS and the HLS have produced a *Procurement Manual* which provides detailed guidance on procurement techniques and the effect of the Rules. The Manual also sets out important issues to be considered in the procurement context including, but not limited to, the following:

- TUPE
- Sustainability
- Equalities

**2.5.1** The CDFCS has also produced a *Finance Manual* which gives advice on financial procedures.

- 2.6** Where a contract for the acquisition or hire of goods or services involves any form of leasing agreement to finance the transaction then the CDFCS shall undertake the negotiation of terms and authorise the arrangement in accordance with Rule 8.3 of the Financial Procedure Rules.
- 2.7** Directors shall ensure that all documentation relating to contracts is retained in accordance with the Council's Records Retention and Destruction Schedule
- 2.8** Where the Council has awarded a contract to any person to supervise or otherwise manage a contract on its behalf such a person shall be required to comply with these Rules as if he were an Officer of the Council.

## **3.0 COMPLIANCE WITH LEGISLATION AND STANDARDS**

- 3.1** Every contract shall comply with all relevant applicable legislation and government guidance including:-
- (a) EU Law
  - (b) Acts of Parliament
  - (c) Statutory Instruments
- 3.2** Where relevant, every contract shall specify that materials used, goods provided, services supplied or works undertaken (as the case may be) shall comply with applicable standards. Such standards are, in order of priority:-
- (a) EU Standards
  - (b) British Standards implementing international standards
  - (c) British Standards
- 3.3** Directors shall ensure that the Council has the legal power to enter into any contract and that the Council does not purport to enter into any contract which is ultra vires.

## **4.0 SIGNATURE/SEALING OF CONTRACTS**

- 4.1** Every written contract must be either signed or sealed in accordance with this Rule and where contracts have a value exceeding £50,000 they must be either sealed, or signed by two Officers as described below.
- 4.2** The HLS and such of her staff as she may designate are authorised to sign any such contract.
- 4.2.1** The HLS also authorises such contracts to be signed by Directors (or by an Officer authorised by a Director to sign on the Director's behalf) up to and including the financial limits in **Rule 4.3** provided that:-

- (a) appropriate authority exists for the Council to enter into the contract, and
- (b) the contract is either:-
  - (i) in a nationally recognised form, or
  - (ii) a standard form prepared or approved by the HLS, or
  - (iii) is otherwise in a form approved by the HLSand
- (c) any variations to approved forms of contract must themselves be approved by the HLS, whether or not they are effected by amending the contract itself or by correspondence

**4.3** The financial limits relating to **Rule 4.2** are:

- (a) Business and Environmental Services Directorate and Adult and Community Services Directorate  
£500,000
- (b) Children and Young People's Service Directorate  
£200,000
- (c) Finance and Central Services Directorate, Chief Executive Officer's Unit  
£50,000

**4.4** Contracts that exceed the financial limits specified in **Rule 4.3** shall be signed by:

- (a) the HLS (or a Legal Services' Officer authorised by her); and
- (b) an authorised signatory in the relevant Directorate (or another Legal Services' Officer authorised by the HLS).

**4.5** Only the HLS (or a Legal Services' Officer authorised by the HLS) may seal a contract on behalf of the Council, in each case being satisfied that there is appropriate authority to do so.

## **5.0 FORM OF CONTRACT**

**5.1** Every contract exceeding £100 in value shall be evidenced in writing (by the use of an order form, exchange of correspondence or other written medium).

**5.2** Every contract exceeding £20,000 in value shall be documented by a written form of agreement. Wherever appropriate and possible, such written agreements shall be made on the basis of terms and conditions agreed by the HLS (in consultation with the CDFCS). Such terms and conditions may be incorporated into standard order conditions. The Council may accept different terms and conditions proposed by a Contractor provided that the advice of the HLS as to their effect has been sought and considered.

**5.3** The written form of agreement for all contracts exceeding £20,000 in value must clearly specify the obligations of the Council and the Contractor and shall include:-

- (a) the work to be done or the goods or services to be supplied
- (b) the standards which will apply to what is provided
- (c) the price or other consideration payable
- (d) the time in which the contract is to be carried out
- (e) the remedies which will apply to any breach of contract

**5.4** Where considered appropriate by the CDFCS, term contracts, standing offers and framework contracts may include a financial limit above which value, work to be done or goods or services to be supplied shall be subject to a separate procurement exercise in accordance with these Rules.

**5.5** The written form of agreement for all contracts exceeding £20,000 in value must include the following or equivalent wording:-

- (a) “If the Contractor:-
  - (i) Has offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of this Contract or any other Contract with the Council, or
  - (ii) Has committed any offence under the Prevention of Corruption Acts 1889 to 1916, or
  - (iii) Has committed an offence under Section 117 (2) of the Local Government Act 1972.

The Council may terminate the Contract immediately and will be entitled to recover all losses resulting from such termination”.

- (b) “If the Contractor is in persistent and/or material breach of contract the Council may terminate the Contract and purchase the materials (or goods or services as the case may be) from a third party and the Council may recover the cost of doing so from the Contractor”

**5.5.1** Other standard clauses are contained in the Procurement Manual relating to, for example, freedom of information, data protection, equalities, sustainability and best value; these are not mandatory for each such written agreement referred to in Rule 5.5 above, but should be included where appropriate.

## **6.0 BONDS AND LIQUIDATED DAMAGES**

**6.1** Directors (in consultation with the CDFCS) shall consider whether to include provision for the payment of liquidated damages by a Contractor for breach of contract in all contracts which exceed £20,000 in value.

**6.2** Where considered appropriate by a Director (in consultation with the CDFCS), the Contractor will be required to provide a performance bond to secure the performance of the contract. Such performance bonds should provide for a sum of not less than 10% of the total value of the contract or such other sum as the CDFCS considers appropriate.

**6.3** Agreements made under Section 38 or Section 278 of the Highways Act 1980 shall always include provision for a bond in respect of such sum as the Corporate Director Business and Environmental Services shall consider appropriate except where:-

- (a) the identity of the developer renders the need for a bond unnecessary, or
- (b) adequate alternative security is provided, or
- (c) the Corporate Director Business and Environmental Services (in consultation with the CDFCS) agrees that it is inappropriate for a bond to be required.

## **7.0 QUOTATIONS**

**7.1** Subject to Rule 7.10, where the estimated value of a contract is £5,000 or less the invitation of quotations is not mandatory, but at least three quotations should be invited where it is considered that better value for money will be obtained by doing so.

**7.2** Subject to Rule 7.10, if the estimated value of a contract exceeds £5,000 but is less than £50,000 at least three written quotations must be invited from suitable potential Contractors. The estimated value of the contract shall be recorded in writing prior to quotations being sought.

**7.3** All potential Contractors invited to submit quotations shall be provided in all instances with identical information and instructions. Where considered appropriate, Directors may permit potential Contractors who have been selected to submit quotations under **Rule 7.2** to also submit variant quotations (ie quotations which do not comply with some or all of the requirements of the primary quotation). The same opportunity to submit variant quotations must be given to all potential Contractors.

**7.4** A written quotation may only be considered if:-

- (a) it has been received in a sealed envelope marked “quotation” and indicating the subject matter of the quotation and
- (b) it has been opened at the same time as other quotations for the same subject matter in the presence of at least two Officers authorised to open quotations

**7.5** Each Director shall maintain written records of all quotations received.

**7.6** Before quotations are opened it must be recorded in writing whether the lowest price or the MEA quotation should be accepted. Where both price and quality are to be factors (ie where MEA applies) the quality criteria must be identified and the weighting between price and quality established and recorded before quotations are opened.

**7.7** If:-

- (a) a quotation other than the lowest or the MEA quotation (as the case may be) is to be accepted, or
- (b) less than three quotations have been received,

the written approval of the Director (in consultation with the CDFCS or if the relevant Director is the CDFCS, in consultation with the Chief Executive Officer) shall be sought and obtained before the quotation is accepted.



- 7.8** Subject to Rule 7.10, a quotation for a price in excess of £50,000 may be accepted if (and only if):-
- (a) the original estimated price was less than £50,000 **and**
  - (b) the price quoted does not exceed that original estimated price by more than 10% **and**
  - (c) the written approval of the Director (in consultation with the CDFCS) has been obtained.

If the conditions at (a) and (b) are not met, Directors must seek tenders in accordance with **Rule 8**.

- 7.9** Where a quotation involves payment **to** the Council, the provisions of **Rules 7.6 and 7.7** shall apply except that the word “lowest” shall be replaced by the word “highest” in these paragraphs.

### **Consultancy Contracts**

- 7.10** Where the estimated value of a Consultancy Contract is £30,000 or less, at least one quotation should be invited, and up to three quotations should be invited where the Responsible Officer considers that better value for money will be obtained by doing so.
- 7.10.1** Where the estimated value of a Consultancy Contract exceeds £30,000 but is less than £100,000 at least three written quotations should be invited from suitable potential Contractors. The estimated value of the Contract shall be recorded in writing prior to quotations being sought.
- 7.10.2** Rule 7.8 shall apply to Consultancy Contracts subject to the figure of £100,000 being substituted for the figure of £50,000 in that Rule.

## **8.0 TENDERS**

- 8.1** If the estimated value of a contract is £50,000 or more written tenders must be invited in accordance with the following provisions of this Rule.
- 8.2** Before Directors invite tenders it must be recorded in writing whether the lowest price or the MEA tender is to be accepted. Where both price and quality are to be factors (i.e. where MEA applies) the quality criteria must be identified and the weighting between price and quality established and recorded before tenders are invited.
- 8.3** All potential Contractors invited to submit tenders shall be provided in all instances with identical information and instructions. Where considered appropriate, a Director may, (in consultation with the CDFCS) permit potential Contractors who have been selected to submit tenders under **Rule 8.1** to also submit variant tenders (ie tenders which do not comply with some or all of the requirements of the primary tender). The same opportunity to submit variant tenders must be given to all potential Contractors.
- 8.4** Directors must seek tenders on the basis of one of the following procedures:-

(a) **Open Tenders**

An invitation to tender notice must be given in at least one newspaper (which may be local, regional, or national but must be appropriate for the subject matter of the tender) and in a suitable trade journal where appropriate and, where required, in OJEU. The notice must specify brief details of the subject matter of the contract, how tender documents may be obtained and the tender closing date. This date must be at least 28 days after the publication of the first advertisement for the invitation to tender notice and, where relevant, at least 14 days after the last invitation to tender notice is published.

(b) **Restricted Tenders – Ad Hoc List**

If a Director (in consultation with the CDFCS) considers it appropriate that any invitation to tender shall only be made to a limited number of potential Contractors considered as being suitable to be invited to tender the following procedure shall apply:-

- (i) a notice must be given in at least one newspaper (which may be local, regional or national but must be appropriate for the subject matter of the contract) and in a suitable trade journal where appropriate and, where required, in OJEU. The notice must specify brief details of the subject matter of the contract and invite potential Contractors to apply to the Council to be considered for invitation to tender by the Council. Details must be included in the notice specifying how such expressions of interest are to be submitted and the closing date for their receipt by the Council which must be at least 28 days after the first advertisement for the contract is published and, where relevant, at least 14 days after the last advertisement is published
- (ii) the criteria which are to be applied in evaluating expressions of interest must be recorded in writing before the expressions of interest are considered
- (iii) after expressions of interest have been received the Director (in consultation with the CDFCS and such other Officers as are appropriate having regard to the subject matter and likely value of the contract) shall evaluate the expressions of interest received
- (iv) after evaluation, invitations to tender shall be sent to at least 4 Tenderers selected by the Director in consultation with the CDFCS or, if less than 4 Tenderers applied or are considered suitable, such Tenderers as have been selected by the Director (in consultation with the CDFCS)

(c) **Restricted Tenders - Standing List**

If a Director (in consultation with the CDFCS) considers it appropriate to maintain a standing list of suitable Contractors for particular types and/or values of work the following procedure shall apply: -

- (i) a notice must be given in at least one newspaper (which may be local, regional or national but must be appropriate for the subject matter of the contract) and in a suitable trade journal where appropriate and, where required, in OJEU. The notice must specify brief details of the subject matter of the contract and invite potential Contractors to apply to the Council to be considered for invitation to tender by the Council. Details must be included in the notice on how such expressions of interest are to be submitted and the closing date for their receipt by the Council which must be at least 28 days after the first advertisement for the contract is published and, where relevant,

at least 14 days after the last advertisement is published. Such notices must be repeated at intervals of no more than five years

- (ii) the criteria which are to be applied in evaluating expressions of interest must be recorded in writing before the expressions of interest are considered
- (iii) after expressions of interest have been received the Director (in consultation with the CDFCS and such other Officers as are appropriate having regard to the subject matter and likely value of such type of contract(s)) shall evaluate the expressions of interest received. The Director shall then maintain a list of such approved Contractors categorised by value and/or type of contract
- (iv) the Director may remove Contractors from an existing standing list where the Director and CDFCS and the HLS agree that such removal is appropriate, having regard to the conduct and/or status of the Contractor and all other relevant factors
- (v) the Director (in consultation with the CDFCS) may approve an application from a potential Contractor to be added to an existing standing list
- (vi) the inclusion of each Contractor on such lists shall be reviewed once in every five years from the date of inclusion
- (vii) invitations to tender shall be sent to at least 4 Contractors on the standing list or to all Contractors on a standing list if it includes less than 4 Contractors
- (viii) each Director shall maintain arrangements so as to provide the CDFCS, on request, with a report of tenders invited from standing lists which will include the names of persons invited to tender and the reasons for selection

## **9.0 GENERAL TENDER REQUIREMENTS**

### **9.1** A written tender may only be considered if:-

- (a) it has been received in a sealed envelope marked "Tender" and indicating the subject matter of the tender, and
- (b) the identity of the Tenderer cannot be ascertained from the Tender envelope, and
- (c) subject to 9.4, the tender has been returned to the HLS (or a person designated by her) before the tender closing date (which shall be a time and date when County Hall is open for business)

### **9.2** The HLS (or a person designated by her) shall be responsible for the reception and safe custody of tenders until they are opened.

### **9.3** Tenders must be opened at the same time and in the presence of the HLS (or a person designated by her) or, where Legal Services is undertaking the procurement, the CDFCS (or an Officer designated by him). Whoever opens the Tenders shall maintain a record of the tenders received. Such a record shall include the date and time of tender opening, the identity of the officer(s) present, the identities of tenderers and the tendered sums (where readily ascertainable). A copy of such a record shall be provided as soon as practicable to the Chief Internal Auditor.

### **9.4** If a Tender is received after the specified tender closing date it may not be considered unless the HLS is satisfied that the Tender was posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the tenderer **and** that other Tenders have not been opened.

**9.5** Where quotations and tenders are received in accordance with arrangements introduced for electronic commerce under **Rule 12** then the provisions of **Rule 9.1** shall not apply.

## **10.0 TENDER ACCEPTANCE**

**10.1** Where tenders are to be evaluated on the basis of MEA the Director shall record the evaluation model to be used to score the quality criteria referred to in **Rule 8.2** prior to the tenders being opened. The evaluation model should not be communicated to tenderers without the approval of the CDFCS (in consultation with the HLS).

**10.2** If:-

- (a) a tender other than the lowest or the MEA (as the case may be) is to be accepted, or
- (b) less than three tenders have been received

the written approval of the Director (in consultation with the CDFCS or, if the relevant Director is the CDFCS, in consultation with the Chief Executive Officer) must be obtained before a tender is accepted and a signed and dated record kept of the reasons for the action taken; HOWEVER, no such approval can be given in respect of (a) above where that contract is subject to the EU procurement regime other than in exceptional circumstances agreed by the HLS.

**10.3** Each Director shall maintain a written record of all successful tenderers in a form approved by the CDFCS.

**10.4** Where a tender involves payment to the Council, **Rules 8.2 and 10.2** shall apply except that the word “highest” shall be substituted for “lowest” in those Rules.

## **11.0 ALTERATIONS TO TENDERS/QUOTATIONS AND POST TENDER NEGOTIATIONS**

**11.1** Tenders may not be altered by Tenderers after the tender closing date except:-

- (a) where the Director is satisfied that arithmetical errors having been inadvertently made by the Tenderer, such errors can be corrected; or
- (b) where post tender negotiation is undertaken in accordance with **Rule 11.2**; or
- (c) where post tender clarification is undertaken in accordance with **Rule 11.4**.

**11.2** Post tender negotiations may be undertaken with selected tenderers in accordance with the following conditions:-

- (a) that the Director (in consultation with the CDFCS) considers that added value may be obtained
- (b) that post tender negotiations are permitted by law
- (c) that post tender negotiations are conducted by a team of suitably experienced officers approved by the Director and trained in post tender negotiations
- (d) that a record of the negotiations is kept by the Council

- (e) that a clear record of the added value obtained by the post tender negotiations is incorporated into the Contract with the successful tenderer

**11.3 Rules 11.1 and 11.2** shall also apply to alterations to quotations.

**11.4 Rules 11.1, 11.2 and 11.3** shall not operate to prevent clarification of any tender or quotation to the extent permitted by law and where such clarifications are sought the provisions of **Rules 11.2 (c) and (d)** shall apply except the word 'clarification' shall be substituted for the word "negotiation" in these Rules.

## **12.0 ELECTRONIC COMMERCE**

**12.1** Nothing in these Rules shall prevent:-

- (a) invitations to quote or tender being issued by use of the internet. A Director (in consultation with the CDFCS) may publish invitation to tender notices on appropriate internet web sites in substitution for publication in newspapers or trade journals.
- (b) receipt of quotations or tenders by use of the internet provided the Director and the CDFCS have agreed that suitable privacy and security mechanisms are in place for the receipt and opening of such submissions.

**12.2** For the avoidance of doubt, **Rule 9.3** shall apply to such electronic commerce transactions.

## **13.0 PURCHASING CARDS**

**13.1** Where purchasing cards are issued by the Council the following provisions shall apply:-

- (a) their use shall be subject to the procedures laid down by the CDFCS
- (b) cards shall only be issued to, and used by, Officers nominated by a Director (in consultation with the CDFCS)
- (c) for the purpose of **Rule 5.1** the payment invoice will constitute evidence in writing of the contract.

## **14.0 CERTIFICATION OF CONTRACTS**

**14.1** The Local Government (Contracts) Act 1997 clarified the power of local authorities to enter into certain contracts, including Private Finance Initiative contracts. Where contracts need to be certified under the 1997 Act, only the following Officers are authorised to do so: the Corporate Director Children and Young People's Service, the Corporate Director Business and Environmental Services, the Corporate Director Adult and Community Services and the Corporate Director Finance and Central Services.

## **15.0 EXCEPTIONS TO CONTRACT PROCEDURE RULES**

**15.1** A Director does not need to invite quotations or tenders in the following circumstances:-

- (a) purchases through the agency of YPO or other consortium or similar body, eg GCAT, in accordance with the approved purchasing methods of such a consortium or body, or

- (b) purchases at public auctions, or
- (c) the purchase of goods, works or services which are of such a specialised nature as to be obtainable from one contractor only except where the value of the contract exceeds the relevant EU threshold; or
- (d) the instruction of Counsel by the HLS, or
- (e) repairs to or the supply of parts for existing proprietary machinery or plant, or
- (f) social care contracts where:-
  - (i) the service is currently supplied by a contractor to the satisfaction of the Corporate Director Adult and Community Services or the Corporate Director Children and Young People's Service and where the foreseeable disruption to service users cannot justify the invitation of further quotations or tenders, or
  - (ii) the service is of a specialist or personal nature and where service users must be involved in the selection of the contractor and where the Corporate Director Adult and Community Services and the Corporate Director Children and Young People's Service considers it inappropriate for quotations or tenders to be invited, or
  - (iii) where the Corporate Director Adult and Community Services and the Corporate Director Children and Young People's Service is satisfied that the urgency of the need for the service prevents the invitation of quotations or tenders

**15.2** Specific exceptions to Contract Procedure Rules are permitted:-

- (a) where the HLS and the CDFCS agree that it is appropriate that the EU Negotiated Procedure or the EU Competitive Dialogue Procedure may be employed on a procurement exercise, or
- (b) in such other circumstances as the CDFCS and the HLS may agree in writing

**15.3** The Rules shall not require tenders or quotations to be sought (except if there is a legal requirement to do so):-

- (a) where a Director considers that emergency action is genuinely necessary to make a building or structure safe and/or water tight, or to preserve Council property, or
- (b) where a Director (in consultation with the CDFCS) considers that other urgent action is genuinely required

A written record, signed and dated by the Director, shall be kept of the reasons for the action taken under this Rule.

**16.0 COMPLIANCE, CONTRACT REGISTER AND ANNUAL PROCUREMENT PLANS**

**16.1** Every officer shall comply with these Rules and any unauthorised failure to do so may lead to disciplinary action.

**16.2** Each Director shall take all such steps as are reasonably necessary to ensure that Officers within their Directorate are aware of and comply with these Rules, the *Procurement Manual* and the *Finance Manual* referred to in Rule 2.5.

- 16.3** The CDFCS shall be responsible for monitoring adherence to these Rules.
- 16.4** Each Director shall nominate a representative to act as a key contact point in relation to procurement matters for the Directorate; such representatives shall be termed “**Procurement Champions**” in this Rule.
- 16.5** Procurement Champions are responsible for the production of an Annual Procurement Plan (‘**APP**’) which will be completed in such format as the CDFCS shall require and which will include the following details:
- (a) contracts for supplies and services which the Directorate intends to award in the next financial year
  - (b) in respect of each contract to be awarded:
    - (i) the Business Unit and Responsible Officer
    - (ii) the subject matter of the contract
    - (iii) the date the procurement process is expected to start
    - (iv) the date the contract is expected to start
    - (v) the duration of the contract
    - (vi) the contract’s annual value
    - (vii) the procurement methodology to be adopted
- 16.6** The Procurement Champions shall present their Directorate APP to the Corporate Procurement Members’ Working Group annually at such time as the CDFCS shall require (which will normally be at the commencement of the new financial year).
- 16.7** The Council has established, as part of its Corporate Procurement Strategy, a Contract Register (‘**the Register**’) the purpose of which is to:
- (a) record key details of all contracts with an aggregate value of £20,000 or more
  - (b) identify a contract reference number.
- 16.7.1** Procurement Champions shall ensure that:-
- (a) all relevant contracts are entered onto the Register and the appropriate contract number recorded
  - (b) the Register is maintained by entering new contracts onto it and removing expired contracts from it in line with the Council’s Records Retention and Destruction Schedule.
- 17.0 DECLARATION OF INTERESTS**
- 17.1** If it comes to the knowledge of a Member, Responsible Officer or other Officer that a Contract in which he has an interest (determined in accordance with the Members’ and/or Officers’ Code of Conduct as appropriate) has been or is proposed to be entered into by the Council, he shall immediately give written notice to the HLS.

# **Financial Procedure Rules**

## **CONTENTS**

1. **Introduction**
2. **Definitions**
3. **Powers and Duties of the County Council**
4. **Responsibilities**
5. **Medium/ Term Financial Strategy**
6. **Revenue Budget**
  - Budgetary control principles
  - Structure of the Revenue Budget
  - Setting a Budget/Precept
  - Incurring expenditure/collecting income
  - Monitoring of the Revenue Budget
  - Virement
  - Grant Applications and Claims
  - Outturn
7. **Capital Plan**
  - Budgetary control principles
  - Approving a Capital Plan
  - Incurring expenditure against the Capital Plan
  - Monitoring of the Capital Plan
  - Grant Applications and Claims
  - Outturn
8. **Services and Assets**
  - Responsibilities of a Director
  - Payment of Accounts
  - Assets - Leasing Agreements
  - Assets – Disposal
9. **Inventories and Stores**
10. **Miscellaneous matters**
  - Payroll, Pensions and other Emoluments
  - Travelling and Subsistence Allowances
11. **Income**
  - Fees and charges
  - Debt Write Off
12. **Petty Cash**

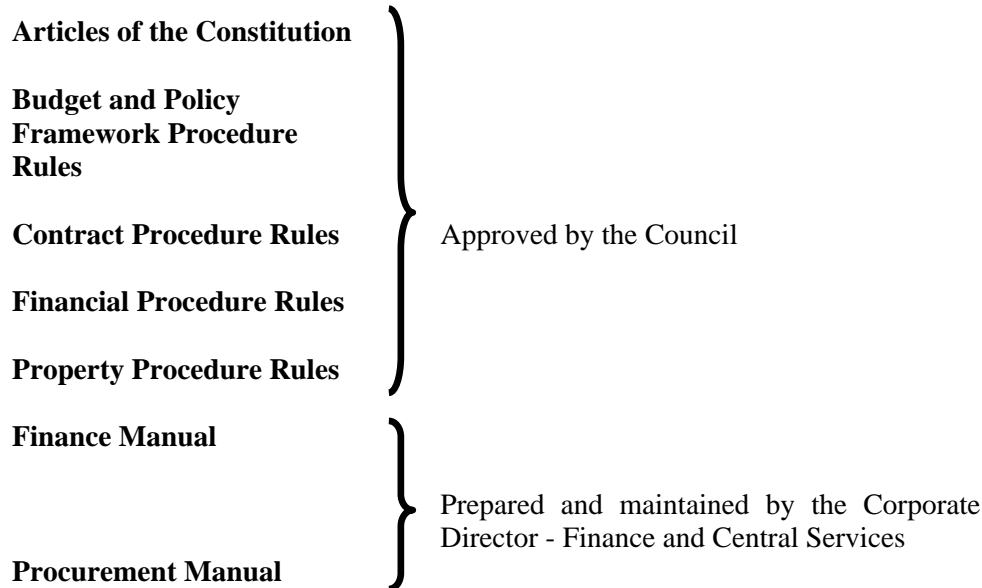


13. **Banking**
14. **Treasury Management**
15. **Voluntary Funds**
16. **Insurance**
17. **Risk Management**
18. **Internal Audit**
  - Rules and responsibilities
  - Counter Fraud Strategy
  - Money Laundering
19. **Revision of Financial Procedure Rules**

## 1.0 INTRODUCTION

1.1 These **Financial Procedure Rules** form part of the overall control framework within which North Yorkshire County Council operates. They aim to facilitate service delivery by setting out best practice for the administration of all financial matters throughout the Council, ensuring a high quality of financial information and enabling better decision making. They should not be viewed as a barrier to executive action and are constantly kept under review to ensure that they remain relevant to the day to day activities of the Council.

1.2 The financial control framework can be seen as a hierarchy established as follows:-



1.3 The Constitution defines the rules governing the procedures of the Council including Responsibility for functions, Contract Procedure Rules, the Property Procedure Rules and these Financial Procedure Rules.

1.4 The Constitution defines the framework within which the powers to make decisions, take action etc are delegated to the appropriate level in the organisation. In particular the Constitution: -

- ♦ requires all Directors to act within the terms of these Rules in the exercise of their delegated powers
- ♦ empowers the Corporate Director Finance and Central Services to act as the Proper Officer under Section 114 of the Local Government Finance Act 1988.
- ♦ empowers the Corporate Director Finance and Central Services to exercise the proper administration of the Council's financial affairs under Section 151 of the Local Government Act 1972.

1.5 The Contract Procedure Rules define the correct procedures to be followed when the Council enters into any contractual arrangement and should be read in conjunction with these Rules; the Property Procedure Rules define the correct procedures for the acquisition, disposal and redeployment of land and buildings.

1.6 The Finance Manual is a comprehensive document detailing all aspects of financial systems and procedures and is designed for use on a day to day basis by staff involved in any aspect of financial administration. Any new or revised instructions on financial matters issued by the Corporate Director Finance and Central Services will be incorporated into the Finance Manual.

- 1.7 Although all Finance and Central Services staff report to the Corporate Director Finance and Central Services they provide day to day support to all Directorates and Business Units. They are ready and willing to provide assistance to any Member or Officer regarding financial management, administration or budgetary control issues. In particular, their advice should be sought by anyone intending to create a new, or amend an existing, financial procedure.
- 1.8 The statutory responsibility for the creation and maintenance of the financial control framework throughout the Council rests solely with the Corporate Director Finance and Central Services. With the assistance of the Internal Audit Service the Corporate Director Finance and Central Services will monitor adherence to these Rules.
- 1.9 The application and content of these Financial Procedure Rules is constantly under review. The Corporate Director Finance and Central Services therefore welcomes feedback on the operation of these Rules, or any aspect of the Finance Manual, to ensure that they both remain effective and relevant to the day to day operational activities of the Council.

## 2.0 DEFINITIONS

- 2.1 In these Rules, unless the context otherwise requires:-

**Asset** is any asset including material and intellectual property, but excluding any estate or interest in land and buildings, (i.e. 'Property' as defined by these Rules)

**Budget Holder** is an officer nominated by a Director and/or Business Unit Head as being responsible for managing a defined sum of money (i.e. '**budget**')

**Business Unit Head** is an Officer responsible for a defined function or activity within a Directorate and who reports directly to the relevant Director

**CDFCS** means the Corporate Director Finance and Central Services, the officer appointed by the Council to exercise the powers defined in Section 151 of the Local Government Act 1972

**Council** means the North Yorkshire County Council

**CPR** means the Contract Procedure Rules

**Credit Control Manager** means the employee of the Council nominated to this post within the Finance and Central Services Directorate by the CDFCS

**Director** shall apply to any, or all, of the following Officers:-

Chief Executive Officer  
Corporate Director Business and Environmental Services  
Corporate Director Children and Young People's Service  
Corporate Director Adult and Community Services  
Corporate Director Finance and Central Services

**Executive** means the body described in Article 7 of the Constitution.

**Leasing Agreement** is a contract for the provision of finance to enable goods or services (but not Property) to be obtained and where ownership in any goods does not necessarily pass to the Council at the end of the contract period

**Officer** means any employee of the Council or other authorised agent

**Person** means any individual, partnership, company, trust, other local authority, Government department or agency

**Portfolio Holder** is the Councillor who, as a member of the Executive, has primary responsibility for a defined area of service(s)

**Property** refers to any estate or interest in land or buildings

**PPR** means the Property Procedure Rules

**Rules** means these Rules

**Services** means the provision by a contractor of any services or similar facilities or works for the Council

**2.2** Reference in these Rules to a Director or the CDFCS shall be taken to include such Officers as are designated by those Directors to undertake the duties and responsibilities set out in these Rules, except in the case of the following Rules:-

- |      |          |   |  |
|------|----------|---|--|
| (i)  | Director | - | <b>Rules 6.10, 6.11, 6.16, 7.9, 7.13 and 18.6</b>                                |
| (ii) | CDFCS    | - | <b>Rules 4.3, 4.4, 4.5, 4.6, 4.7, 4.16, 5.1, 6.16, 14.4, 14.7, 18.6 and 19.1</b> |

where delegation is not permitted. A record of all duties and responsibilities as delegated under these Rules is to be maintained, as appropriate, by each Director and the CDFCS.

**2.3** The Property Procedure Rules apply to the acquisition and disposal of Property.

**2.4** References in these Rules to

- (i) any legislation includes a reference to any amended or re-enactment of such legislation;
- (ii) the singular includes the plural and vice versa;
- (iii) the masculine includes the feminine and vice versa.

### **3.0 POWERS AND DUTIES OF THE COUNTY COUNCIL**

**3.1** Any power or duty of the Council in relation to these Rules may be exercised by a person or body which, under the Constitution, has delegated powers in that regard.

**3.2** For the purposes of **Rules 6 and 7** of these Rules 'policy' means any Council or Service commitment as expressed in financial terms and therefore implicit within any Revenue Budget and/or Capital Plan approved by the Executive and/or the Council.

### **4.0 RESPONSIBILITIES**

#### *Preamble*

*These Financial Procedure Rules have been approved with the intention of enabling the delegation of financial responsibility to the lowest appropriate level of management within the Council. They also set out the working arrangements by which the Council gives effect to its statutory financial responsibilities. In particular they define the role and responsibilities of any officer designated as a 'Budget Holder'.*

## **Rules**

- 4.1** These Rules are made by the Council and are subject to the relevant provisions of the Local Government Act 1972, the Local Government Finance Act 1988, the Local Government and Housing Act 1989 and Part 2 of the Local Government Act 2003. They set out the working arrangements by which the Council gives effect to its statutory financial responsibilities.
- 4.2** These Rules apply to all activities of the Council although the CDFCS may approve variations from the Rules to reflect specific circumstances. At present the only approved variations relate to primary/secondary/special schools operating under the approved LMS Contract Procedure Rules and LMS Financial Procedure Rules. No other variations from the Rules have currently been approved.
- 4.3** The CDFCS will, for the purposes of Section 151 of the Local Government Act 1972 and Section 114 of the Local Government Finance Act 1988, be responsible for the proper administration of the Council's financial affairs and the submission of reports to the Council (or any of its constituent parts) on the discharge of that responsibility.
- 4.4** The CDFCS has a statutory responsibility to ensure that adequate systems and procedures exist to account for all income due, and expenditure payments made on behalf of the Council and that controls operate to protect the assets of the Council from loss, waste, fraud or other impropriety. In addition to these Rules the CDFCS may discharge that responsibility in part by the issue and maintenance of financial instructions with which any Officer, together with any person employed by an organisation contracted to the Council, shall comply.
- 4.5** As 'Section 151' Officer of the Council the CDFCS shall be responsible for the production and certification of the Statement of Final Accounts in accordance with the Accounts and Audit Regulations 1996. The CDFCS shall also be responsible for all arrangements relating to the external audit of the Statement of Final Accounts in accordance with those Regulations. This responsibility also extends to financial information contained within any Statutory Plan published by the Council.
- 4.6** The CDFCS shall, in compliance with Section 114 of the Local Government Finance Act 1988 report to the Council if the Council, its Executive, a committee of the Council, an Officer of the Council or a joint committee on which the Council is represented:-
- (i) has made or is about to make a decision which involves or would involve the Council incurring expenditure which is unlawful;
  - (ii) has taken or is about to take a course of action which, if pursued to its conclusion would be unlawful and likely to cause a loss or deficiency on the part of the Council; or
  - (iii) is about to enter an item of account (in the ledger), the entry of which is unlawful.
- The CDFCS shall also make a report if it appears that the expenditure proposed by the Council in a financial year is likely to exceed the resources available to it to meet the expenditure.
- 4.7** The CDFCS shall, in compliance with Sections 25 – 28 of Part 2 of the Local Government Act 2003
- (i) submit a formal report to the County Council when the Council Tax precept is being made regarding the robustness of the estimates included in the annual Budget and the adequacy of the reserves for which the Budget provides (Section 25)
  - (ii) submit a report about the inadequacy of the reserves in accordance with the Section 27 requirements if the Secretary of State has set a minimum level of reserves for the Council under his Section 26 powers

(iii) ensure that the County Council has adequate budget monitoring arrangements in place throughout the year that includes a regular review of the planned level of reserves incorporated in the annual Budget / Precept setting calculations (Section 28)

**4.8** Every Director, Business Unit Head and Budget Holder shall be responsible for the observance of these Rules within their service area and for the training of staff under their supervision to enable them to comply with these Rules. This principle also applies to any instructions or guidance published in the Finance Manual, issued under the authority of these Rules.

**4.9** If any Director, Business Unit Head or Budget Holder employs a consultant, agency staff or an external contractor to undertake any duties which would normally be undertaken by an Officer of the Council they must ensure that every such person acts in accordance with these Rules. It is the responsibility of the Director, Business Unit Head, or Budget Holder (as appropriate) to ensure such persons are aware of this responsibility and are given training if appropriate to enable them to carry out these duties. Every agreement for such work should include adequate remedies to enable the Council to secure reimbursement if there is a failure to comply with these Rules which leads to a financial loss for the Council.

**4.10** The nature and format of all accountancy systems and related financial procedures and records must be in a form agreed with the CDFCS who shall have regard to the provision of Section 151 of the Local Government Act 1972, the Accounts and Audit Regulations 1996, and such other statutory provisions which, from time to time, shall affect the financial administration of the Council or its constituent services. The financial ledger maintained by the CDFCS will be regarded as the primary financial record of the Council, both for actual expenditure/income transactions as well as budget allocations and subsequent virements. The CDFCS shall be consulted at an early stage regarding proposed changes to any financial systems, procedures or records and his approval obtained before such changes are implemented.

**4.11** The principles referred to in **Rule 4.10** shall also be applied to any partnership or joint working arrangement with a third party whereby the Council agrees to allocate to, or receive (and then administer) funds from, a third party under the terms of the partnership or joint working arrangement. No funds should be allocated to, or received from, a third party on this basis without the agreement of the CDFCS as to the financial systems and procedures that will be adopted either by the Council or the third party. This Rule shall be deemed to apply to any proposal for the Council to act as the 'Accountable Body' for the purposes of administering any external funding for which the Council and its partners for that purpose have applied.

**4.12** Where appropriate, reports to the County Council, the Executive or any committees or sub-committees, must contain a financial statement or appraisal setting out the full financial implications arising from any proposals contained within the report. The financial statement or appraisal must be agreed with the CDFCS in advance of the report being distributed to Members.

Such reports may cover:-

(i) a new policy

(ii) a variation of existing policy, or

(iii) a variation in the means or timescale for implementing an existing policy

which may increase (or decrease) net expenditure in the current or subsequent years.

**4.13** Each Director, Business Unit Head and Budget Holder is responsible for the proper financial management of all resources allocated to them within their operational areas. They shall devise and implement such controls and procedures, in consultation with the CDFCS, as are necessary to carry out their duties and prevent loss, waste, fraud and other impropriety in relation to the assets or integrity of the Council.

- 4.14** Each Director and/or Business Unit Head shall define budgetary control policy for the resources (revenue or capital) allocated to their operational area and ensure it is enforced. This includes identifying Budget Holders for every revenue budget head, or capital scheme, and their limits of authority (see **Rules 6.11 and 7.9**). The same principle shall apply to any funds allocated to, or received from, a third party under a partnership or joint working arrangement (see **Rule 4.11**).
- 4.15** Failure to comply with these Rules, and any related instructions or guidance contained in the Finance Manual may lead to disciplinary action being taken against individual Officers.
- 4.16** The CDFCS shall be responsible for monitoring adherence to these Rules.

## **5.0 MEDIUM TERM FINANCIAL STRATEGY**

### *Preamble*

*In order for the Council to be able to plan the development of its services and determine priorities for the allocation of resources between those services it needs to undertake multi-year financial planning. The Council will do this by preparing a Medium Term Financial Strategy for incorporation in the Council Plan.*

### **Rules**

- 5.1** The CDFCS shall, in consultation with the Chief Executive Officer and other Directors, prepare a Medium Term Financial Strategy (**'the MTFFS'**) for consideration by the Council.
- 5.2** The CDFCS shall determine the format of the MTFFS and the timing of reports relating thereto, subject to any overriding requirements of the Council.
- 5.3** The MTFFS shall include the financial effects of all known commitments in the multi year period, together with any proposals for significant changes to the level of existing services, or for developing new services.
- 5.4** The MTFFS shall include the respective impacts of both revenue and capital expenditure, for that period on the level of Precept (and its Council Tax equivalent), any provisions or self-fund insurance arrangements, cash flow, working balances and treasury management policy.
- 5.5** For the purposes of this Rule the duration of the 'multi-year' period shall be determined from time to time by the Council based upon advice provided by the CDFCS in consultation with the Chief Executive Officer and other Directors.

## **6.0 REVENUE BUDGET**

### *Preamble*

*The Revenue Budget is an estimate of the annual income and expenditure requirements of the Council and thereby sets out the financial implications of its approved policies. Once approved by the Council it gives each Director the power to incur expenditure, and collect income, and also provides the basis on which the financial performance of the Council, and each Directorate, will be monitored. These Rules provide a comprehensive framework for the preparation, monitoring and reporting of the Revenue Budget against these criteria.*

## **Rules**

### **Budgetary Control Principles**

- 6.1** The Rules in this Section are based on the following budgetary control principles established by the Council:-
- (i) At Directorate and/or Business Unit level any under or overspending of Revenue Budget at the financial year end may be carried forward (subject to (iii))
  - (ii) mechanisms shall be defined by the CDFCS to ensure budgetary monitoring and control is carried out throughout the Council on a regular basis (see **Rule 6.16**)
  - (iii) that within these principles any designated Business Unit may be subject to any specific Regulations relating to their year end surpluses/deficits as shall be approved from time to time by the Council.
- 6.2** During the financial year the Executive has overall responsibility for all aspects of the Revenue Budget of the Council. To the extent therefore that any financial matter arising during a given financial year cannot be resolved at Directorate level, using the powers/responsibilities defined in this Rule, such matter shall be brought to the attention of the Executive at the earliest opportunity (see **Rules 6.16/6.17** below). If and when such matter is reported to the Executive it will be the responsibility of the CDFCS to provide specific advice to the Executive regarding how the financial implications of the matter might be addressed and/or resolved.

### **Structure of the Revenue Budget**

- 6.3** The Council will, when formally setting its annual Precept (see **Rule 6.4 - 6.7**), also approve an annual Budget for each Directorate. This 'Directorate' Budget will comprise a single sum (i.e. expenditure less related income) which typically will also be allocated across a range of functions and/or activities within each Directorate; the functions and/or activities identified will normally reflect the service areas, Business Units or other organisational arrangements adopted within the Directorate. These Budgets will be formally published, before the start of each financial year, in the approved Revenue Estimates Booklet of the Council and will represent the base line to which, in any given financial year, the Rules that follow in this Section shall apply.

### **Setting a Budget/Precept**

- 6.4** The CDFCS shall specify the format of the annual Revenue Budget and the timing of reports relating thereto, subject to any overriding requirements of the Council. In practice the overall Revenue Budget will comprise a number of budgets (usually based on defined Directorates) identified as appropriate to the financial management arrangements of the Council (see **Rule 6.3**).
- 6.5** The CDFCS shall be responsible for submitting any reports regarding the overall Revenue Budget of the Council that will enable it to comply with its statutory responsibility to determine an annual Precept. Once the Precept has been determined by the Council it shall be the responsibility of the CDFCS to notify the collecting authorities.
- 6.6** As part of the process of approving the overall Revenue Budget of the Council the Executive shall define the arrangements whereby each Directorate prepares its own budget for consideration by the Executive; these arrangements will be so defined as to enable the Revenue Estimates Booklet of the Council to fulfil the function referred to in **Rule 6.3**.



- 6.7** If required, under the terms of **Rule 6.6**, each Director shall prepare a draft Revenue Budget relating to their Directorate for the next financial year, in consultation with the CDFCS, for submission to the Executive. Any such draft Revenue Budget shall be accompanied by a joint report from the appropriate Director and the CDFCS, which shall specify any variations relative to existing budgets and policies together with any implications for future financial years.

#### **Incurring expenditure/collecting income**

- 6.8** From the start of each financial year:-
- (i) expenditure may be incurred within the overall Revenue Budget approved by the Council. Given the terms of **Rule 6.3**, this authority to spend is effectively applied at Directorate level.
  - (ii) similarly, the responsibility for making appropriate arrangements to collect any income reflected in approved Budgets shall be exercised at Directorate level.
- 6.9** Expenditure on behalf of the Council can only be committed against authorised budgets and in accordance with the policies for which the budget was established. Any significant commitment to continuing liabilities (including establishment changes - see **Rule 6.10**) in future years in excess of current budget provision or any proposed change in policy likely to affect the current approved budget and/or the MTFs (see **Rule 5.3**) shall be the subject of a report to the Executive prepared by the Director setting out clearly the full financial implications. Such proposals may relate to expenditure/income or both and this should be made explicit in any statement of financial implications (see **Rule 6.2**)
- 6.10** Any changes to the existing staffing arrangements either in terms of the number of posts and/or their grade shall be approved by the Director in consultation with the Portfolio Holder if they generate additional full year costs in excess of £50,000. Where staffing changes involve a package of changes, or cover more than one Business Unit or other service area within a Directorate a single approval should be sought before any commitments are made. The limit, for the purposes of this Rule, shall be determined by reference to the total value of the proposal including on-costs.

#### **Monitoring of the Revenue Budget**

- 6.11** Once the overall Revenue Budget of the Council for a given financial year has been approved by the Council, each Director shall define budgetary control policy within their own Directorate and ensure it is enforced including identifying responsible Budget Holders and the limits of their budgetary authority (see **Rule 4.14**).
- 6.12** A Budget Holder may only authorise expenditure from budgets under their direct control (see **Rule 6.11**). If he plans to order items to be charged against the budget of another Budget Holder, he is required to obtain the approval of the other Budget Holder before committing expenditure against that budget.
- 6.13** Throughout the financial year each designated Budget Holder shall monitor income (including any grants) and expenditure against those specific budgets for which they are responsible.
- 6.14** The CDFCS shall provide financial advice to assist Budget Holders to fulfil their responsibilities, consulting their Director in circumstances where it appears that variations to the approved budget will occur.
- 6.15** Budget Holders shall supply the CDFCS with sufficient information, as and when required, to enable accurate budget profiling and/or financial projections to be undertaken.

**6.16** In accordance with **Rule 6.1(i)**, budgetary control during a financial year shall be undertaken by a Director as follows:-

- (i) a Director shall maintain an ongoing review of all aspects of the budget (including income - see **Rules 12.1/12.2**) under his control; this review to be undertaken in conjunction with Business Unit Heads and/or Budget Holders and the CDFCS
- (ii) the results of (i) to be reported at least monthly to the Portfolio Holder for that Directorate
- (iii) that arising from (ii) the Director will be required to bring to the early attention of the Executive any significant matters which if left unresolved may lead to a budget overspending in the current or future years, together with proposals to address that potential situation
- (iv) the CDFCS shall report to the Executive at no less than quarterly intervals throughout the financial year on matters arising from (i) - (iii) above, in particular relating to
  - virements requiring approval (see **Rules 6.18 to 6.24**)
  - service under or overspends which may have implications for the planned outturn for the current (and future) financial year(s)
  - status of the contingency fund, cash flow and working balances

**6.17** If expenditure in excess of the approved net budget of a Directorate is incurred due to an emergency, this expenditure must be reported to the CDFCS as soon as practicable and to the Executive as soon as possible thereafter (see also **Rule 6.2**).

## **Virement**

### *Preamble*

*Virement is the transfer of budget provision between individually defined budget headings. It is a necessary facility to assist the effective day to day management of budgets. When the Council sets its overall Revenue Budget for a given financial year it will effectively approve a series of specific functional net budgets within each Directorate (see **Rule 6.3**)*

*For the purpose of defining the authorisation required for virement to take place within the approved Budget for each Directorate, reference will be made to a '**Division of Service**'. Once these Divisions of Service have been defined they will be used to analyse the Budget for a Directorate in the Revenue Estimates Booklet and thereafter constitute the base line from which any virements are recorded. Within a Division of Service, it is anticipated that more detailed budget headings (e.g. employees, premises) will be adopted for day to day budgetary control purposes.*

### **Rules**

**6.18** Each Director shall ensure that virement is undertaken as necessary to maintain the accuracy and efficacy of the regular budget monitoring process within his Directorate and inform the CDFCS as soon as practicable that such virements have taken place. Thereafter:-

- (i) the CDFCS will be responsible for ensuring that notified virements are reflected in the financial ledger of the Council at the earliest opportunity (see **Rule 4.10**)

- (ii) once such virements have been reflected in the financial ledger by the CDFCS they will be regarded as the base line (see **Rule 6.3** and **Preamble** above) from which any subsequent virements in that financial year are referenced.
- 6.19** Notwithstanding **Rules 6.20 to 6.24**, the approval of the Executive shall be required if any proposed virement involves one or more of the following:-
- (i) a change to current policy (see **Rule 6.9**)
  - (ii) a significant addition to recurring commitments in future financial years (see **Rule 6.9**)
  - (iii) any transfer of resources between the Revenue Budget and the Capital Plan (see **Rule 7.8(d)**)
- 6.20** Notwithstanding **Rules 6.21 to 6.24** below, the CDFCS has the right to refer any proposed virement to the Executive
- 6.21** Within a Division of Service, a Director may transfer any sums between defined budget headings (see **Preamble** to this Section) subject only to consultation with the Portfolio Holder and the CDFCS (see also **Rule 6.10** in relation to employee costs).
- 6.22** For transfers between Divisions of Service, if the sum involved is:-
- (i) less than £100,000 or 5% of the gross expenditure of the Division of Service from which the transfer is being made, whichever is the lesser amount, the virement may be actioned by a Director following consultation with the Portfolio Holder and the CDFCS.
  - (ii) equal to or greater than £100,000 or 5% of the gross expenditure of the Division of Service from which the transfer is being made, whichever is the lesser amount, the virement shall be subject to approval by the Executive.
- 6.23** Any virement where a change in the previously approved level of net expenditure for a Division of Service is directly related to, and fully offset by, a change in fees, income or other contributions from another authority, organisation or person may be actioned by a Director in consultation with the Portfolio Holder and the CDFCS.
- 6.24** Income received in excess of the budgeted amount for a Division of Service may be spent either within that Division of Service or its equivalent value transferred to another Division of Service; this can be achieved by virement in accordance with the arrangements specified in **Rules 6.21 or 6.22** respectively.

#### **Grant Applications and Claims**

- 6.25** The CDFCS shall be consulted, and certify if necessary, any application for revenue grant or external funding.
- 6.26** The CDFCS shall be responsible for the completion (where appropriate), authorisation and submission of any revenue grant or external funding claim forms to the relevant organisation(s) and, if necessary, the External Auditor, in accordance with any guidelines applicable to the claim(s) in question.
- 6.27** Certain grant claims are required to be audited, and an opinion provided on the accuracy of the expenditure being claimed, by the Chief Internal Auditor. Each Director shall ensure that records are retained to enable the Chief Internal Auditor to complete this work and provide explanations, as necessary, for any matters raised.

## **Outturn**

- 6.28** With the assistance of all Directors, the CDFCS shall report to the Executive on the outturn of income and expenditure, as soon as practicable after the end of the financial year.

## **7.0 CAPITAL PLAN**

### *Preamble*

*Capital expenditure is a necessary element in the development of the Council's services since it generates investment in new and improved assets. In conjunction with the **CORPORATE CAPITAL STRATEGY AND THE ASSET MANAGEMENT PLANNING FRAMEWORK**, these Rules provide a framework for the preparation and appraisal of schemes proposed for inclusion in the Capital Plan, appropriate authorisations for individual schemes to proceed and facilitate the overall management of the Capital Plan within defined resource parameters.*

### **Rules**

#### **Budgetary Control Principles**

- 7.1** The Council has defined a 'formulaic' model for the allocation of capital resources as between Directorates. Within the framework laid down by this approach, the Rules in this Section 7 are based on the following principles established by the Council:-

- (i) individual schemes shall be part of an approved Capital Plan before they proceed, that Plan reconciled, at both Directorate and Corporate level, to the resources defined under the formulaic model
- (ii) a scheme is defined as either
  - (a) a specific project whose cost, size, configuration, or policy significance requires it to be individually listed in the Capital Plan or
  - (b) an annual programme of planned expenditure for a consistent and designated purpose
- (iii) mechanisms shall be defined by the CDFCS to ensure that expenditure, and if appropriate, grant and other income is monitored and controlled at individual scheme as well as Directorate level
- (iv) any under or overspending of the approved Capital Plan at Directorate level at the financial year end may be carried forward
- (v) any scheme specific funding proposed by a Director must be compatible with the Treasury Management Policy Statement of the Council (see **Rules 14.3 and 14.5**)

- 7.2** During the financial year the Executive has overall responsibility for all aspects of the Capital Plan of the Council. To the extent therefore that any financial matter arising during a given financial year cannot be resolved at Directorate level, using the powers/responsibilities defined in this Section of the Rules, such matter shall be brought to the attention of the Executive at the earliest opportunity (see **Rules 7.13/7.14**). If and when such matter is reported to the Executive it will be the responsibility of the CDFCS to provide specific advice to the Executive regarding how the financial implications of the matter might be addressed and/or resolved.

## Approving a Capital Plan

- 7.3** The CDFCS shall determine the format of the Capital Plan and the timing of reports relating thereto, subject to any overriding requirements of the Council. In practice the approved Capital Plan will comprise a number of individual schemes each of which will be quantified in overall project terms or on an annualised basis, as appropriate.
- 7.4** Each Director shall prepare a draft Capital Plan for their service, in consultation with the CDFCS, for submission to the Executive. This Plan should: -
- (i) reflect a level of expenditure (i.e. the expenditure limit) commensurate with the funding attributable to that Directorate under the Council's 'formulaic' approach together with other resources available to the Directorate
  - (ii) identify planned expenditure, and funding, at proposed individual scheme level
- 7.5** The CDFCS shall be responsible for preparing an overall Capital Plan (i.e. an aggregate of the individual Directorate Capital Plans) for consideration by the Executive, and approval by the Council, the funding of which shall be compatible at all times with the Treasury Management Policy Statement of the Council.
- 7.6** Individual schemes shall only be included in a Directorate Capital Plan following a project appraisal process undertaken in accordance with the guidelines defined in the **Asset Management Planning Framework** and in accordance with the Property Procedure Rules.

## Incurring expenditure against the Capital Plan

- 7.7** Approval of the Capital Plan by the Council shall provide the following authorisations to Directors: -
- (i) Current Year
    - (a) to continue to incur expenditure on each scheme in progress at the start of the financial year, and/or to begin to incur expenditure on any approved new scheme starting in that year, providing that total expenditure on either type of individual scheme does not exceed the sum contained in the approved Plan for that scheme by more than 5% or £10,000 (whichever is the greater) and all necessary approvals have been received, where appropriate, from Government Departments and/or any external funding agencies (see **Rule 7.16/7.17**).
    - (b) the approval in (a) is subject to any additional expenditure on an individual scheme being met from within the sum total of a Directorate's Capital Plan expenditure limit for that year (as originally approved, or subsequently amended by the Executive) as derived from the process defined in **Rule 7.5**.
    - (c) to collect all grant and other income related to expenditure incurred on schemes in that year.
  - (ii) Subsequent Years
    - (a) to make any arrangements necessary for site purchase (but subject to the Property Procedure Rules), to seek planning permissions, to incur professional fees and preliminary expenses as appropriate and to seek any necessary approvals from Government Departments and/or external funding agencies. This approval is subject to any expenditure being met from within the Directorates' Capital Plan expenditure limit for the year in which it is incurred.

**7.8** Subject to a report by the appropriate Director, the approval of the Executive will be required if:-

- (i) any increase/decrease in the Directorate's previously approved Capital Plan expenditure limit for that year is necessary as a result of:-
  - (a) the cost variation on an individual scheme exceeding the parameters defined in **Rule 7.7**
  - (b) the inclusion of a new scheme
  - (c) the deletion or material modification of an existing approved scheme
  - (d) the loss or revision of any funding which materially affects the ability of a Directorate to undertake its approved Capital Plan
- (ii) the committed expenditure in later years of the Directorate's Capital Plan is increased for any of the reasons listed under (i) of this Rule
- (iii) an individual scheme requires expenditure in addition to any arising from the provisions in **Rule 7.7(ii)** to be committed more than one financial year in advance of the financial year in which the actual costs will be incurred.
- (iv) in accordance with **Rule 6.19(iii)** there is a proposed transfer of resources between the Revenue Budget and the Capital Plan.

### **Monitoring of the Capital Plan**

**7.9** Once an overall Capital Plan has been approved by the Council each Director shall define a budgetary control policy and ensure it is enforced including identifying responsible Budget Holders for each scheme in the Directorate Capital Plan and the limits of their budgetary authority (see **Rule 4.14**).

**7.10** Throughout the year each designated Budget Holder shall monitor expenditure and, if appropriate, grant and other income, on a scheme by scheme basis against the approved Directorate Capital Plan.

**7.11** The CDFCS shall provide financial advice to assist Budget Holders to fulfil their responsibilities, consulting their Director in circumstances where it appears that variations to the approved budget for a scheme will occur.

**7.12** Budget Holders shall supply the CDFCS with sufficient information, as and when required, to enable accurate cost/income profiling and/or financial projections of scheme costs/income to be undertaken.

**7.13** Budgetary control during a financial year shall be undertaken by a Director as follows:

- (i) a Director shall maintain an ongoing review of all aspects of the Capital Plan for their Directorate; this review to be undertaken in conjunction with Business Unit Heads and/or Budget Holders, the (if appropriate) and the CDFCS
- (ii) the results of (i) to be reported at least monthly to the Portfolio Holder for that Directorate
- (iii) that arising from (ii) a Director will be required to bring to the early attention of the Executive any significant matters which if left unresolved may lead to a scheme budget overspending together with proposals to address that potential situation (see **Rules 7.7/7.8**)

- (iv) notwithstanding the aggregate effect of variations in absolute cost, or cash flow, arising from individual schemes in a Directorate's Capital Plan, a Directorate shall not exceed the approved expenditure limit attributable to that Directorate under the formulaic approach in a given financial year. If it appears that this limit will be breached, the Director will be expected to make compensatory adjustments to the Directorate Capital Plan within that financial year or seek the approval of the Executive to manage the variance between successive financial years (see **Rule 7.8**)
- (v) the CDFCS shall report to the Executive at no less than quarterly intervals throughout the financial year on matters arising from (i) to (iv) above, in particular relating to scheme variations requiring approval (see **Rule 7.7/7.8**)

**7.14** Where an underspend relative to the Directorate's approved expenditure limit for the current financial year will result in a significant overspend in future financial years, the Director shall report the matter to the Executive at the earliest opportunity, together with proposals to address the situation.

**7.15** If expenditure in excess of the approved Directorate Capital Plan expenditure limit for that year is incurred due to an emergency, this expenditure must be reported to the CDFCS as soon as practicable and to the Executive as soon as possible thereafter (see also **Rule 7.2**).

### **Grant Application and Claims**

**7.16** The CDFCS should be consulted, and certify if necessary, any application for capital grant or external funding

**7.17** The CDFCS shall be responsible for the completion, (where appropriate), authorisation and submission of any capital grant or external funding claim forms to the relevant organisation and, if necessary, the External Auditor, in accordance with any guidelines applicable to the claim in question.

**7.18** Certain grant claims are required to be audited, and an opinion provided on the accuracy of the expenditure being claimed, by the Chief Internal Auditor. Each Director shall ensure that records are retained to enable the Chief Internal Auditor to complete this work and provide explanations, as necessary, for any matters raised.

### **Outturn**

**7.19** With the assistance of all Directors, the CDFCS shall report to the Executive on the outturn of expenditure (and funding if appropriate) of each scheme, as soon as practicable after the end of the financial year.

## **8.0 SERVICES AND ASSETS**

### ***Preamble***

*This Rule refers to the arrangements under which Budget Holders shall undertake the procurement of the services and assets they require and, where relevant, the disposal of surplus assets. **They do not apply to Property (ie land and buildings).** Property transactions are regulated by the **PROPERTY PROCEDURE RULES**. These Rules should be read in conjunction with the **CONTRACT PROCEDURE RULES** which describe in detail the procedures Officers must follow when procuring services, assets and property.*

## **Rules**

### **Responsibilities of a Director**

**8.1** A Director shall be responsible for:

- the procurement of all services and assets (but **not** property) relating to the provision of services by his Directorate
- ensuring that services and assets ordered are received and are of the correct quality
- ensuring that services and assets are only procured by Budget Holders if there is approved budgetary provision to cover the associated costs (see **Rules 6.11 and 7.9**)
- ensuring adherence to the approved Procurement Strategy of the Council
- the certification of invoices in accordance with arrangements approved by the CDFCS

### **Payment of Accounts**

**8.2** The CDFCS shall arrange the payment of all invoices which are certified duly payable.

### **Assets - Leasing Agreements** (see also **Contract Procedure Rule 2.6**)

**8.3** The CDFCS shall undertake the negotiation of terms for, and authorise the leasing of, any assets which the Council, or a Director within the context of his budgetary responsibility, has decided to acquire where the main purpose of the leasing agreement is to finance the transaction.

**8.4** A Director for whose service any assets have been acquired under a leasing agreement shall adhere to the terms and conditions of the relevant leasing agreement particularly as this relates to wear and tear, or residual condition of the asset at the end of the leasing period. A full inventory of all leased assets worth more than £250 must also be maintained by the Director (see **Rule 9.1**)

**8.5** Any assets subject to a leasing agreement must not be disposed of without the prior consent of the CDFCS who shall be responsible for notifying the lease company and obtaining their consent to disposal.

### **Disposal of Assets**

**8.6** Prior to the disposal of any asset, a Director must:-

- (i) ensure that the property or asset is of no use to any other Directorate ;
- (ii) for assets subject to a leasing agreement consult the CDFCS (see **Rule 8.5**);

**8.7** The procedures defined in the **Contract Procedure Rules** apply to the disposal of any assets of the Council. In particular no quotations or tenders for other than the highest price shall be accepted without reference to **Contract Procedure Rules 7.7 and 7.9** and/or **10.2 and 10.4** as appropriate. The provisions of **Contract Procedure Rule 11** shall also apply to any post tender negotiation or clarification.



**8.8** A Director may dispose of any asset if its estimated disposal value is £10,000 or less (see **Rule 8.9** and **9.3**). If the estimated disposal value:-

- (i) is greater than £10,000 but less than £100,000 then a Portfolio Holder may authorise the disposal following consultation with the Director and with the approval of the CDFCS.
- (ii) is £100,000 or greater then the approval of the Executive is required.

**8.9** A Director may dispose of a number of assets simultaneously if their aggregate estimated disposal value is £10,000 or less. If the estimated aggregate disposal value exceeds £10,000 then the provisions of **Rule 8.8** shall apply as appropriate.

## **9.0 INVENTORIES AND STORES**

**9.1** A Director shall maintain a written inventory (in a form approved by the CDFCS) of all assets used in his Directorate which belong to the Council whose individual cost or value exceeds £250. This Rule also applies to any asset acquired under a leasing agreement (see **Rule 8.4**).

**9.2** The Director shall be responsible for the custody of all stores, cash and financial documents used in his Directorate. Cash held on any Council premises should not exceed any sums for which the Council is insured.

**9.3** A Director may arrange for the disposal of unrequired stock or inventory items, up to a limit of estimated value of £10,000 in any period of three consecutive calendar months. Above that figure, **Rules 8.8** and **8.9** shall apply.

**9.4** A Director and the CDFCS shall be authorised jointly to write off stock and inventory deficiencies up to a limit of £10,000 in any period of three consecutive calendar months. The approval of the Portfolio Holder is required where the value is greater than £10,000 and the approval of the Executive is required where the value is £100,000 or greater.

## **MISCELLANEOUS MATTERS**

### ***Preamble***

*In addition to arrangements for the key aspects of financial administration (i.e. Revenue Budget, Capital Plan and Procurement) there are a range of other financial matters that require specific Financial Procedure Rules. These are covered in the remaining sections of this document.*

### **Rules**

## **10.0 PAYROLL, PENSIONS AND OTHER EMOLUMENTS**

**10.1** The calculation and payment of all salaries, wages, pensions, gratuities, compensation and other emoluments payable by the Council to its current and former employees shall be performed in accordance with arrangements approved by the CDFCS.

**10.2** Each Director shall be responsible for the certification of all amounts properly payable for pay and pensions in accordance with the arrangements approved by the CDFCS.

**10.3** The CDFCS shall be authorised to implement national and provincial pay awards with effect from their implementation dates.

## **Travelling and Subsistence Allowances**

- 10.4** The calculation and payment of all Travelling and Subsistence Allowances payable by the Council to its Members and employees shall be performed in accordance with arrangements approved by the CDFCS.
- 10.5** Each Director shall maintain a record of Officers authorised to certify claims on his behalf. Certification of a claim shall signify that the Director is satisfied that the allowance or expenses are properly payable by the Council in respect of duties performed by the claimant.

## **11.0 INCOME**

### **Fees and Charges**

- 11.1** Each Director shall be responsible for the establishment of fees and charges payable to the Council in respect of activities carried out by the Directorate. For practical purposes this responsibility should be linked to the budget management arrangements established in accordance with **Rules 4.12/4.13**.
- 11.2** Except where they arise from existing contracts which regulate the matter, fees and charges within the control of the Council shall be subject to review at least annually (or as otherwise agreed by the CDFCS) by a Director and the CDFCS except as provided in any specific agreements between the Council and relevant third parties. If a review results in a proposal to change the policy under which a fee or charge is determined the review shall be reported to the Executive before it is implemented.
- 11.3** A Director shall agree with the CDFCS the administrative arrangements for the collection of any money due to the Council. The collection of debts will be the responsibility of the CDFCS and shall be administered via the corporate debtor system linked to the financial ledger - any alternative arrangement requires the prior written approval of the CDFCS.
- 11.4** Income may NOT be used to directly offset payments due. All money received on behalf of the Council shall, as soon as practicable, be either banked for the credit of the Council's account or deposited with the CDFCS. The only exception to this arrangement is for LMS Schools as defined in **Rule 13.3**.

### **Debt Write-Off**

- 11.5** Approval to write off an individual debtor amount may be given by the CDFCS subject to the following limits:-
- (i) For a value up to and including £100, on the recommendation of the Credit Control Manager
  - (ii) For a value over £100 but less than £5,000 on the recommendation of a Director
  - (iii) For a value of £5,000 or more but less than £25,000 on the recommendation of a Director, after consultation with the relevant Portfolio Holder.
- 11.6** Write offs for an individual debtor worth £25,000 or more will require the approval of the Executive.
- 11.7** Approval to write off a number of debts simultaneously may be agreed as set out in **Rules 11.5 and 11.6** above, using the aggregate value of the amounts to determine the relevant threshold value.

## 12.0 PETTY CASH

### *Preamble*

*To assist designated officers to purchase minor items the CDFCS may grant petty cash advances. Before seeking such an advance a Budget Holder should consider using a Purchasing Card (see Contract Procedure Rule 13).*

### **Rules**

- 12.1 The CDFCS may make cash advances to Budget Holders to allow them to meet minor expenses, subject to such conditions as are deemed necessary.
- 12.2 Any cash shall be kept in a safe place at all times (see also **Rule 9.2**).
- 12.3 All petty cash advances in excess of £100 shall have an Imprest Bank Account unless the CDFCS has given specific written approval to alternative arrangements. An Imprest Bank Account set up under these circumstances is subject to **Rule 13.1**.
- 12.4 Individual petty cash purchases must not exceed £100 per item and must be supported where possible by authenticated receipts.
- 12.5 Payments from petty cash can only be made in respect of reasonable expenditure of a minor nature which is incurred for the benefit of the Council. The specific purposes for which petty cash expenditure can be incurred shall be defined by the CDFCS. Petty cash can be used either to reimburse expenditure previously incurred or to provide an advance to pay for known future expenditure.
- 12.6 No income received, other than reimbursement of approved petty cash expenditure, may be paid into a petty cash Imprest Account.

## 13.0 BANKING

- 13.1 All arrangements for the operation and supervision of the Council's bank account(s) shall be made by the CDFCS. No alternative bank account(s) may be opened without the prior written approval of the CDFCS. The purpose of any new bank account and the identity of the bank and details of the account shall be recorded in writing and retained on an appropriate file by the CDFCS. This Rule also applies to Imprest Bank Accounts (see **Rule 12.3**).
- 13.2 When the need for a bank account ceases then the CDFCS shall be notified immediately and the account closed in accordance with procedures agreed with the CDFCS.
- 13.3 Any bank accounts operated under the terms of the 'Bank Accounts for Schools' (BAFS) arrangements, established under the approved LMS scheme, are a permitted exception to **Rule 13.1**.

## **14.0 TREASURY MANAGEMENT**

- 14.1** The Council adopts the key recommendations in CIPFA's "Treasury Management in the Public Services Code of Practice" (**'The Code'**) 2001, as described in Section 4 of the Code.
- 14.2.** Accordingly, the Council will create and maintain, as the cornerstones for effective treasury management:
- (i) a Treasury Management Policy Statement (**TMPS**) stating the policies and objectives of its treasury management activities.
  - (ii) suitable Treasury Management Practices (**TMPs**) setting out the manner in which the Council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.
- 14.3** The County Council delegates responsibility for the implementation and monitoring of its treasury management policies and practices to the Executive and for the execution and administration of treasury management decisions to the CDFCS who will act in accordance with the Council's TMPS, associated TMPs as well as CIPFA's Standard of Professional Practice on Treasury Management.
- 14.4** The Executive shall receive reports on the treasury management policies, practices and activities including as a minimum, an Annual Treasury Management and Investment Strategy and associated report on Prudential Indicators in advance of the financial year, and an Annual Treasury Management and Investment Out-turn report after its close, in a form prescribed in the TMPs.
- 14.5** All money in the possession of the Council shall be under the control of the officer designated for the purposes of Section 151 of the Local Government Act 1972 (i.e. the CDFCS).
- 14.6** The CDFCS shall periodically review the Treasury Management Policy Statement and associated documentation and report to the Executive on any necessary changes, and the Executive shall make recommendations accordingly to the Council.

## **15.0 VOLUNTARY FUNDS**

### ***Preamble***

*A voluntary fund is any fund which is held or controlled by the Council as trustee for the benefit of a third party and/or for a specified purpose. Such funds may be administered solely, or in part, by an officer by reason of his or her employment with the Council.*

### **Rules**

- 15.1** The CDFCS shall be informed of the purpose and nature of all voluntary funds maintained or managed by any Officer in the course of their duties with the Council.
- 15.2** Voluntary funds registered with the Charity Commissioners shall have formal accounts prepared, be audited annually by a competent independent person and shall be submitted with an audit report to the appropriate body within 6 months of the accounting year end. A copy of the accounts and audit report shall be supplied to the CDFCS immediately after the meeting of the body. The CDFCS shall be entitled to verify that the reports have been made and to carry out such checks on the accounts as he/she considers appropriate.

**15.3** Voluntary funds not registered with the Charity Commissioners shall have formal accounts prepared and be examined annually by a competent officer independent of the fund. A copy of the accounts and Independent Examiner's Statement shall be supplied to the CDFCS immediately after the examination. The CDFCS shall be entitled to verify that the reports have been made and to carry out such checks on the accounts as he/she considers appropriate.

**15.4** Voluntary Funds, and any related bank accounts, shall be operated in accordance with procedures set out in the Finance Manual.

**15.5** Any funds administered under the terms of the Council's approved 'Disaster Appeal' arrangements will be governed by the terms of the 'Appeal' agreed at the time.

## **16.0 INSURANCE**

**16.1** The CDFCS shall effect all insurance cover on behalf of the Council.

**16.2** A Director shall promptly notify the CDFCS of:

- (i) any event which may result in a claim against the Council and/or its insurers
- (ii) any new risks which might require to be insured, together with changed circumstances affecting existing risks
- (iii) any action(s) taken under the terms of the Council's approved Risk Management Strategy which might affect the Council's current, and future, insurance arrangements (see **Rule 17**).

## **17.0 RISK MANAGEMENT**

**17.1** Each Director shall take the actions necessary to comply with the terms of the Council's approved Corporate Risk Management Policy and Strategy and the Directorate based derivatives thereof.

**17.2** These actions may relate to one or more of the following:-

- (i) using the Risk Prioritisation System (RPS) to identify and record risks in the Risk Register(s)
- (ii) reviewing current, and identifying new, risks and the potential impact thereof on the ongoing capacity of the Council to maintain its services
- (iii) determining, and effecting, an appropriate management response to those risks
- (iv) maintaining records of incidents and making such records available to the CDFCS in his capacity as the Council's Risk Management co-ordinator, as necessary (see also **Rule 16.2**).

## **18.0 INTERNAL AUDIT**

### ***Preamble***

*The Accounts and Audit Regulations 2006, issued under the provisions of the Local Government Finance Act 1982, apply to the Council. This Act requires the Council to maintain continuous, adequate and effective internal audit of its accounts. The following Rules provide the framework for this statutory duty to be discharged.*

### **Rules**

#### **Roles and Responsibilities**

- 18.1** Every Director, Business Unit Head and Budget Holder is responsible for the implementation and maintenance of all internal control procedures relating to financial systems and for achieving the economic, effective and efficient use of resources within their Directorate.
- 18.2** The Council has determined that the CDFCS shall be responsible for maintaining an adequate and effective internal audit of the activities of the Authority. Each Director shall therefore make arrangements for the CDFCS or his authorised internal audit representative to:-
- (i) enter at all reasonable times on any premises or land used by the Council;
  - (ii) have access to all correspondence, documents, books or other records relating to any financial or other transactions of their establishment or operational area;
  - (iii) require and receive such explanation(s) as he/she considers necessary to establish the correctness of any matter under examination;
  - (iv) require any officer of the Council to produce cash, stores, or other Council property under his/her control for inspection.
- 18.3** The CDFCS shall have regard to any relevant professional guidelines, International Auditing Standards and any audit standards issued by the Code of Practice for Internal Audit for local authorities in the United Kingdom.
- 18.4** The CDFCS shall be notified immediately by a Director, Business Unit Head **or** Budget Holder of any financial irregularity or suspected irregularity, or any circumstances which may suggest the possibility of irregularity in the exercise of any of the Council's functions. Such communications may be oral initially but must be confirmed promptly in writing.
- 18.5** The CDFCS shall determine the scope of any internal enquiries or investigations, subject to consultation with the appropriate Director.
- 18.6** The CDFCS, in consultation with the appropriate Director shall decide whether any matter under investigation should be referred for police investigation and take recovery action as appropriate on such matters.
- 18.7** If a suspected irregularity occurs involving staff who are the responsibility of the CDFCS, the CDFCS shall keep the Chief Executive Officer informed.
- 18.8** The CDFCS or his representative, shall at all times preserve and respect the confidentiality of information received in discharging tasks under this Section of the Financial Procedure Rules with regard to any Business Unit. Internal Audit staff shall have particular regard to the relationship of the Business Unit with any other Business Units within the Council.

- 18.9** The Chief Internal Auditor shall have the right to communicate directly with the Leader of the Council or the Chairman of the Audit Committee on any matter that he/she deems appropriate.

### **Counter Fraud Strategy**

- 18.10** The Chief Internal Auditor will lead on the Counter Fraud Strategy within the Council and will undertake a review of the Strategy on, as a minimum, an annual basis.

### **Money Laundering**

#### ***Preamble***

*Significant changes in the legislation concerning money laundering have broadened the range of activities caught by the statutory framework and, as a result, the obligations now impact on local authorities. Potentially any member of staff could be caught by the money laundering provisions if they suspect money laundering and either become involved with it in some way and/or do nothing about it. The Council has therefore established an internal Anti-Money Laundering Policy and supporting Guidance Note designed to prevent the risk of the Council being involved in money laundering and to enable staff to report suspicions of money laundering activity to the Chief Internal Auditor (as the Council's nominated Money Laundering Reporting Officer).*

- 18.11** All staff should have regard to the Council's Anti-Money Laundering Policy and supporting Guidance. A member of staff should consider, in line with the Policy and Guidance, reporting any transaction which involves the receipt of £10,000 or more of cash to the Council's Money Laundering Reporting Officer; notwithstanding such financial limit, any member of staff who has reasonable grounds to believe that money laundering is taking place (or is being attempted) in respect of a smaller amount of cash should report the matter to the Council's Money Laundering Reporting Officer.

### **19.0 REVISION OF FINANCIAL PROCEDURE RULES**

- 19.1** The CDFCS (in consultation with the Head of Legal Services) shall, as a minimum, annually review the application and effect of these Rules and shall propose such updated Rules to the Council as the CDFCS may consider appropriate.

# Property Procedure Rules

## CONTENTS

1. [Interpretation](#)
2. [General](#)
3. [Compliance with Legislation](#)
4. [Signature/Sealing of Property Contracts](#)
5. [Role of Surveyor](#)
6. [Acquisitions](#)
7. [Redeployment of Property](#)
8. [Disposals](#)
9. [Mortgages](#)
10. [Exceptions to Property Procedure Rules](#)



# DRAFT

*redployment of property.*

## 1.0 INTERPRETATION

1.1 These terms will have the following meanings in the Property Procedure Rules:-

<b>Acquisition</b>	The acquisition of Property by the Council, including the extension of an existing lease (other than by exercise of an option to renew) and the surrender or assignment of a lease to the Council but excluding a mortgage of property owned by a third party in favour of the Council
<b>Council</b>	North Yorkshire County Council
<b>CDFCS</b>	The Corporate Director- Finance and Central Services
<b>Director</b>	A Corporate Director of the Council including the Chief Executive Officer for the purposes of his group
<b>Disposal</b>	The disposal of Property by the Council, including the surrender or assignment of a lease by the Council, but excluding the granting of a mortgage in respect of property owned by the Council
<b>HLS</b>	The Head of Legal Services
<b>Officer</b>	A Council employee or other authorised agent
<b>Property</b>	Any estate or interest in land and/or buildings
<b>Property Contract</b>	A contract relating to Property including (but not limited to) transfers, leases, easements, tenancy agreements and licences
<b>Redeployment</b>	The use of Property by the Council for a purpose different to that for which it has hitherto been used
<b>Surveyor</b>	A professionally qualified surveyor or valuer employed or otherwise retained by the Council to provide expert advice on Property Contracts
<b>Tenderer</b>	A person who has expressed an interest in tendering for a Property Contract or who has tendered for a Property Contract

1.2 References in these Rules to:-

- (a) any legislation (e.g. Act of Parliament, Statutory Instrument, EU Directive) include a reference to any amendment or re-enactment of such legislation;
- (b) the singular include the plural and vice versa;
- (c) the masculine include the feminine and vice versa;
- (d) Directors, the CDFCS and the HLS shall be taken to include such Officers as are designated by them to undertake the duties and responsibilities set out in these Rules.

1.3 References in Rules 6.1, 7.2 and 8.1 to values for the purpose of the approvals which are necessary for Acquisitions, Disposals and Redeployments of Property are to the values estimated

# DRAFT

at the time the approval is given; any such approval is not invalidated by the fact that the actual Acquisition or Disposal figure differs from the estimated figure. The value of any transaction shall be taken to be the Surveyor's opinion as to the open market value as between willing parties.

- 1.4 Where these Rules refer to approvals being sought or given for the Acquisition, Disposal or Redeployment of Property, such approval may relate to one particular Property or to a particular description or class of Property; but where it relates to more than one Property, the value shall be calculated as the aggregate value of all of the Property of that description or class.

## 2.0 GENERAL

- 2.1 These Rules are made by the Council on the advice of the CDFCS, in consultation with the HLS.
- 2.2 These Rules apply to all Property Contracts, other than those entered into by school governing bodies under their delegated powers.
- 2.3 These Rules shall be applied in conjunction with the following documents:
- (a) Asset Management Planning Framework: Acquisition Process
  - (b) Asset Management Planning Framework: Redeployment Process
  - (c) Asset Management Planning Framework: Disposals
- 2.4 The Council has made Financial Procedure Rules ('FPR') which apply to budgetary and other issues relating to property; the FPR shall be applied in conjunction with these Rules. The Council has also made Contract Procedure Rules, but they do not apply to Property Contracts.
- 2.5 The CDFCS (in consultation with the HLS) shall, as a minimum, annually review the application and effect of these Rules and shall propose such amended Rules to the Council as the CDFCS may consider appropriate.
- 2.6 Property Contracts and documentation and correspondence relating to them shall be retained for the periods prescribed by the Council's Records Retention and Destruction Schedule.
- 2.7 Every Officer shall comply with these rules unless a waiver is granted under paragraph 9.1. Failure to comply may lead to disciplinary action.
- 2.8 Each Director shall ensure that Officers within their Directorate, and contractors working for the Council, are aware of and comply with these Rules and the documents referred to in Rule 2.3.
- 2.9 The CDFCS shall be responsible for monitoring adherence to these Rules.

## 3.0 COMPLIANCE WITH LEGISLATION

- 3.1 Every Property Contract shall comply with all relevant applicable legislation and government guidance including:-
- (a) EU Law
  - (b) Acts of Parliament
  - (c) Statutory Instruments
- 3.2 The HLS shall ensure that the Council has the legal power to enter into any Property Contract and that the Council does not purport to enter into any such contract which is ultra vires.

# **DRAFT**

## **4.0 SIGNATURE/SEALING OF PROPERTY CONTRACTS**

- 4.1** No Property Contract shall be completed unless proper approval has been given in accordance with these Rules.
- 4.2** Subject to Rules 4.3 and 4.4, every Property Contract must be: -
- (a) executed as a Deed by the HLS; or
  - (b) signed by the HLS (if the value is less than £50,000); or
  - (c) signed by the HLS and another officer authorised by HLS (if the value is £50,000 or more)
- 4.3** The CDFCS is authorised to sign Property Contracts comprising wayleaves, agricultural tenancy agreements or agricultural licences provided that:-
- (a) the Property Contract is in a nationally recognised form or in a form prepared or approved by the HLS; and
  - (b) two signatories are required if the value is £50,000 or more.
- 4.4** All Directors are authorised to sign licences provided that:-
- (a) the licence is for a period not exceeding one year; and
  - (b) the licence is in a form prepared or approved by the HLS.

## **5.0 ROLE OF SURVEYOR**

- 5.1** The CDFCS shall instruct the Surveyor to act on behalf of the Council in connection with Property Contracts in accordance with these Rules.

## **6.0 ACQUISITIONS**

### **6.1 Approval for Acquisitions**

- 6.1.1** Whenever it is proposed that Property should be acquired by the Council, the CDFCS is responsible for seeking the approval which is necessary in accordance with this Rule 6.1.
- 6.1.2** No approval shall be sought or given for the Acquisition of any Property unless there is adequate budgetary provision for the Acquisition and any expenditure consequent upon the Acquisition.
- 6.1.3** In respect of the Acquisition of Property **other than** by lease or licence for a rent or licence fee:

# DRAFT

- (a) the CDFCS may approve any Acquisition up to £250,000 in value;
- (b) the Executive Member for Corporate Affairs may approve any Acquisition up to £1,000,000 in value;
- (c) the Executive may approve any Acquisition and must approve any Acquisition over £1,000,000 in value.

## **6.1.4** In respect of the Acquisition of Property by lease or licence for a rent or licence fee:

- (a) the CDFCS may approve any Acquisition where the annual rent or fee is £25,000 or less;
- (b) the Executive Member for Corporate Affairs may approve any Acquisition where the annual rent or fee is £100,000 or less;
- (c) the Executive may approve any Acquisition and must approve any Acquisition where the annual rent or fee is more than £100,000.

For the purpose of this Rule, the annual rent or fee means the initial rent or fee payable by the Council (but ignoring any discount or rent-free period).

### **Approval for Rent Reviews**

## **6.1.5** The CDFCS may approve the completion of a rent review memorandum provided that the original lease included provisions for the rent review; in all other cases Rule 6.1.4 shall apply.

### **Variation of Lease Terms**

## **6.1.6** The CDFCS may approve any variation to the terms of an existing lease or licence (including the grant of a licence to assign or sublet), except that, if the variation would result in an increase to the rent or licence fee, Rule 6.1.4 shall apply.

## **6.2 Terms of Acquisition**

### **6.2.1** The CDFCS is responsible for determining the terms for the Acquisition of Property, and shall report such terms to the HLS.

### **6.2.2** The HLS is responsible for preparing and completing the documentation for the Acquisition of Property in accordance with the terms referred to in Rule 6.2.1, subject to any variations agreed with the CDFCS and subject also to such further terms as the HLS considers appropriate in the best interests of the Council.

## **7.0 REDEPLOYMENT OF PROPERTY**

### **7.1** As soon as a Director identifies the fact that a Property used by his/her Directorate is no longer required for its current use, the Director shall inform the CDFCS. The CDFCS shall thereupon enquire whether the Property is of use to any other Director in connection with the service(s) for which they are responsible.

### **7.2 Approval for Redeployment**

#### **7.2.1** Whenever it is proposed that Property should be redeployed by the Council, the CDFCS is responsible for seeking the approval which is necessary in accordance with this Rule 7.2.

#### **7.2.2** In the case of any Redeployment of Property which is **not** held by the Council on a lease or licence:

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- (a) the CDFCS may approve any Redeployment of Property up to £500,000 in value;
- (b) the Executive Member for Corporate Affairs may approve any Redeployment of Property up to £1,000,000 in value;
- (c) the Executive may approve any Redeployment, and must approve any Redeployment of Property over £1,000,000 in value.

## **7.2.3** In the case of any Redeployment of Property which is held by the Council on a lease or licence:

- (a) the CDFCS may approve any Redeployment where the annual rent or fee is £25,000 or less;
- (b) the Executive Member for Corporate Affairs may approve any Redeployment where the annual rent or fee is £100,000 or less;
- (c) the Executive may approve any Redeployment and must approve any Redeployment where the annual rent or fee is more than £100,000.

For the purpose of this Rule, the annual rent or fee means the rent or fee payable by the Council at the time of the Redeployment (but ignoring any discount or rent-free period).

## **7.3 Terms of Redeployment**

### **7.3.1** Once approval for Redeployment has been given, the CDFCS is responsible for arranging the Redeployment in accordance with the Redeployment Process Guidance which forms part of the Asset Management Planning Framework referred to in Rule 2.3(b).

## **8.0 DISPOSALS**

### **8.1 Approval for Disposals**

#### **8.1.1** Whenever it is proposed that Property should be disposed of by the Council, the CDFCS is responsible for seeking the approval which is necessary in accordance with this Rule 8.1.

#### **8.1.2** Subject to Rule 8.1.4, in respect of the Disposal of Property **other than** by lease or licence for a rent or licence fee:

- (a) the CDFCS may approve any Disposal up to £500,000 in value;
- (b) the Executive Member for Corporate Affairs may approve any Disposal up to £1,000,000 in value;
- (c) the Executive may approve any Disposal and must approve any Disposal over £1,000,000 in value.

#### **8.1.3** Subject to Rule 8.1.4, in respect of the Disposal of Property by lease or licence for a rent or licence fee:

- (a) the CDFCS may approve any Disposal where the annual rent or fee is £25,000 or less;
- (b) the Executive Member for Corporate Affairs may approve any Disposal where the annual rent or fee is £75,000 or less;
- (c) the Executive may approve any Disposal and must approve any Disposal where the annual rent or fee is more than £75,000.

For the purpose of this Rule, the annual rent or fee means the initial rent or fee payable to the Council (but ignoring any discount or rent-free period).

#### **8.1.4** Where any property is to be disposed of by sale or by long lease (ie 7 years or longer) at an undervalue the approval of the Executive is required, and where the amount of the undervalue is

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more than £2,000,000 the Disposal may only proceed with the prior consent of the Secretary of State.

## **The Right to Buy**

- 8.1.5** Where right to buy applications are made to the Council under the Housing Act 1985 the HLS, in consultation with the CDFCS, shall be responsible for the admission or denial of the application of the right to buy and, where the right to buy is admitted, the HLS shall dispose of the Property in accordance with the said Act.

## **External Consents to Disposal**

- 8.1.6** The CDFCS is responsible for obtaining such external consents (if any) as are required for a Disposal (except in relation to the disposal of school playing fields, for which the Corporate Director Children and Young People's Service shall be responsible for seeking any necessary approvals).

## **8.2 Terms of Disposal**

- 8.2.1** The CDFCS is responsible for determining the terms for the Disposal of Property and shall report such terms to the HLS.

- 8.2.2** The HLS is responsible for preparing and completing the documentation for the Disposal of Property in accordance with the terms referred to in Rule 8.2.1 subject to any variations agreed with the CDFCS and subject also to such further terms as the HLS considers appropriate in the best interests of the Council.

- 8.2.3** Except where the approval of the Executive has been obtained in accordance with Rule 8.1.4, the CDFCS shall ensure that whenever terms for a Disposal of a Property are being determined, the best consideration for the Disposal shall be obtained by the Council pursuant to Section 123 of the Local Government Act 1972.

## **8.3 Method of Disposal**

- 8.3.1** The CDFCS shall take such professional advice from the Surveyor as is necessary to ensure that the most appropriate disposal process is used.

- 8.3.2** The Surveyor's advice shall take account of all relevant factors relating to a Disposal including the following: -

- (a) the likely value of the Property;
- (b) the potential market for the Property;
- (c) the likelihood of obtaining alternative planning consents for the Property and their effect upon the valuation;
- (d) the costs of the Disposal process (including advertising and other marketing);
- (e) the time likely to elapse between offering the Property for Disposal and the projected completion date of the Disposal; and
- (f) all other relevant factors.

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## **8.4 Disposals by Tender**

**8.4.1** This Rule 8.4 applies to all Disposals of Property by tender whether the tender is subject to contract or is capable of immediate acceptance.

**8.4.2** A tender may only be considered if: -

- (a) it has been received in a sealed envelope marked “Tender” and indicating the Property referred to in the tender; and
- (b) the identity of the Tenderer cannot be ascertained from the tender envelope; and
- (c) subject to Rule 8.4.5, the tender has been returned to the HLS before the tender closing date (which shall be a time and date when County Hall is open for business)

**8.4.3** The HLS shall be responsible for the reception and safe custody of tenders until they are opened.

**8.4.4** Tenders must be opened at the same time and in the presence of the HLS who shall maintain a record of the tenders received. Such a record shall include the date and time of tender opening, the identity of the Officer present, the identities of Tenderers and the tendered amounts. A copy of such a record shall be provided as soon as practicable to the CDFCS.

**8.4.5** If a tender is received after the specified tender closing date it may not be considered unless the HLS is satisfied that the tender was posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the Tenderer **and** that other tenders have not been opened.

### **Tender Evaluation**

**8.4.6** Tenders shall be evaluated by the CDFCS in consultation with the Surveyor. The CDFCS shall accept the tender which offers the best consideration for the Property in accordance with Rule 8.2.3 above. The CDFCS shall ensure that the tender evaluation process is fair, and so far as consistent with the achievement of best consideration by the Council, that the basis on which tenders are to be evaluated has been established before tenders are opened. If all of the tenders are not submitted on the same basis (for example, if some tenders are conditional on planning permission being granted for a particular use of the property), then the CDFCS shall consult the Surveyor in relation to the evaluation of the bids, and a document will be produced by the CDFCS, setting out the reasoning which has been applied to determine which tender has been judged to offer the best consideration for the Property.

### **Alterations to Tenders**

**8.4.7** Tenders may not be altered by Tenderers after the tender closing date except where the CDFCS is satisfied that arithmetical errors having been inadvertently made by the Tenderer, the Tenderer can be invited to correct them.

### **Post Tender Negotiations**

**8.4.8** Post tender negotiation may be undertaken in accordance with the following conditions: -

- (a) The CDFCS considers that added value may be obtained;
- (b) the post tender negotiations are undertaken either with all Tenderers, or with such Tenderer(s) as the CDFCS considers it appropriate to invite having regard to the value of their tenders and any conditions attached to them;

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- (c) the post tender negotiations are conducted by a team comprising the Surveyor and suitably experienced Officers approved by the CDFCS and trained in post tender negotiations;
- (d) a record of the negotiations and any added value obtained from them is kept by the CDFCS; and
- (e) any such added value obtained by the post tender negotiations is incorporated into the Property Contract with the successful Tenderer.

## **9.0 MORTGAGES**

- 9.1 The CDFCS may instruct the HLS to enter into a mortgage of property owned by a third party where it is considered appropriate for the Council to secure its interests in respect of a grant or loan made to such a third party.
- 9.2 In respect of mortgages of property owned by the Council:-
  - (a) only the Executive may approve such a mortgage and
  - (b) the terms of the mortgage shall be determined by the CDFCS in consultation with the HLS.
- 9.3 The HLS shall take such steps as are necessary to discharge a mortgage (whether the Council is mortgagee or mortgagor) upon the instruction of the CDFCS.

## **10.0 EXCEPTIONS TO PROPERTY PROCEDURE RULES**

- 10.1 The CDFCS and the HLS may agree specific waivers to the Property Procedure Rules, other than Rules 6.1, 7.2, 8.1 and 9.2.