

The Report of the Executive

The Executive met on Tuesday, 24 February 2015 commencing at 11.00 am. Present: County Councillor John Weighell in the Chair. County Councillors Arthur Barker, Gareth Dadd, Tony Hall, Carl Les, Don Mackenzie, Chris Metcalfe and Clare Wood.

Also in attendance: County Councillors Andrew Backhouse, Derek Bastiman, Liz Casling, David Jeffels, Patrick Mulligan, Janet Sanderson and Elizabeth Shields.

The Executive met on Tuesday, 17 March 2015 commencing at 11.00 am. Present: County Councillor Carl Les in the Chair. County Councillors Arthur Barker, Gareth Dadd, Tony Hall, Carl Les, Don Mackenzie, Chris Metcalfe and Clare Wood.

Also in attendance: County Councillor John Savage

The Executive met on Tuesday, 28 April 2015 commencing at 11.00 am. Present: County Councillor John Weighell in the Chair. County Councillors Arthur Barker, Gareth Dadd, Tony Hall, Carl Les, Don Mackenzie, Chris Metcalfe and Clare Wood.

1. Highways Infrastructure Asset Management Plan (HIAMP) Policy: The Highways Infrastructure Asset Management Policy describes the County Council's commitment to highway infrastructure asset management. The asset management policy aims to demonstrate to the public and all stakeholders, including senior decision makers, elected members, practitioners and service providers, how it supports the County Council's corporate objectives. It provides a visible commitment to achieving the benefits that can be delivered through asset management.

The adoption of the asset management policy is fully in line with the Department for Transport's Highway Maintenance Efficiency Programme requirements and a draft copy is attached at Appendix 1. The policy has been developed in line with the Local Transport Plan 3, adopted in 2011 and will complement and further enhance our established asset management based approach to highways maintenance and management. A Highway Infrastructure Asset Management Strategy is also being developed and this will be the subject of a further report in the coming months.

The draft asset management policy was considered by members of the Transport, Economy and Environment Overview and Scrutiny Committee at their meeting 15 April and by the Executive on 28 April 2015.

It is anticipated that the formal adoption of a Highway Infrastructure Asset Management Policy will be a key part of the Department for Transport's (DfT) highway efficiency self-assessment questionnaire. The outcome of the self-assessment process later this year will determine part of the County Council's highway maintenance capital allocation for 2016/17. The County Council, as highway authority, has a statutory duty to maintain the highway under the Highways Act 1980 and the development of this policy will support the Council in fulfilling its duty. Consideration has been given to the potential for any adverse equality impacts arising from the recommendation. It is the view of officers that the recommendation does not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010. A copy of the 'Record of Decision that Equality Impact Assessment is attached as Appendix 2.

The Highway Infrastructure Asset Management Strategy is also being developed which will influence the County Council's approach to highway maintenance work and therefore may impact on the public, will be the subject of a further equalities assessment.

The Executive RECOMMENDS:

That County Council approve the Highway Infrastructure Asset Management Policy.

2. Constitution Review 2015 - Tranche One: A full review of the Constitution is usually undertaken every four years and this is now due. Tranche One of the review was considered by the Members' Constitution Working Group on 15 April 2015 and by the Executive 28 April 2015. The issues set out in this report reflect Members' views.

Proposed Amendments to the Constitution: The proposed changes are summarised as follows:-

- (a) Update of the Contract Procedure Rules
- (b) Update of the Members' Looked After Children's Group terms of reference
- (c) Update of the Protocol on Audio/Visual Recording and Photography at Public Meetings.
- (d) Proposals to change the current process for Disciplinary/Capability Dismissal Appeals.
- (e) Changes to clarify appeal arrangements for Chief Officers and Chief Executive

Update of the Contract Procedure Rules: Changes to the Contract Procedure Rules necessitated by the Public Contracts Regulations 2015, this came into force on 28 February 2015. The Assistant Chief Executive (Legal and Democratic Services) exercised his delegated authority to implement these changes at the time on the understanding that they would be reported retrospectively to the Executive 28 April 2015 and County Council 20 May 2015. The changes are as follows:

- New definitions of 'Contracts Finder', 'Services and Supplies', 'Works' and 'Social and Other Specific Services' have been included to assist with clarity based on the new Public Contract Regulations.
- The definition of EU Threshold has been amended to capture the introduction of a new threshold for Social and Other Specific Services Contracts.
- The old level of £20,000 for various activities has been amended to £25,000 throughout due to the introduction of a mandatory £25,000 threshold at which procurement processes for public sector contracts (other than central government contracts) now have to be:
 - a. conducted electronically,
 - b. if advertised are advertised on Contract Finder,
 - c. contract award is recorded on Contracts Finder.
- A new rule in Quotations (8.3) has been added to capture the requirement for

quotations between £25,000 and £100,000 (if advertised) to be advertised on Contracts Finder

- The Open Tenders rule (10.1) has been amended to capture the new requirement that Pre-Qualification Questionnaires (PQQ) are not to be used for below Services Threshold (£172,514) procurements.
- The Restricted Tenders rule (10.2) has been amended to capture the ability for Works Contracts and Social and Other Specific Services Contracts with a value between £172,514 and the relevant EU Thresholds for Works Contracts and Social and Other Specific Services Contracts to include a PQQ stage.
- The OJEU Tenders rule (10.3) has been amended to capture the new time limits for receipt of tenders.
- The rule in respect of Competitive Dialogue (rule 10.6) has been amended to include the other new procedures that have been introduced by the new regulations.
- A new rule has been added in Tender Evaluation and Acceptance (12.8) to capture the requirement for Contract Award Notices to be sent no more than 30 days after the award of the contract for OJEU Tenders.
- The Exceptions to Contract Procedure Rules (16) has been amended to reflect the abolition of 'Part B Services' and to capture the new category of Social and Other Specific Services Contracts (rule 16.1(f)) and to reflect the ability to use different processes when inviting tenders in respect of Social and Other Specific Services Contracts above the value of £625,050 (rule 16.1(g)).
- A new rule 17.10 has been added to capture the requirement to record all contracts awarded, with a value in excess of £25,000, on Contracts Finder.
- The rule in relation to the Gateway Process has been amended slightly to capture the introduction of a separate threshold in relation to Social and Other Specific Services Contracts. The level in 18.4(b) has been aligned with the EU Threshold for Services (£172,514) at the moment but this will be reviewed in the wider review of the CPRs in May.

Appendix 3 shows the consequential tracked changes to the Constitution.

Update of the Members' Looked After Children's Group Terms of Reference: The changes proposed to the remit and terms of reference for the Looked After Children Members' Group are highlighted in **bold** below:

"The Looked After Children Members' Group is not a Committee of the Executive but a non-decision making member working group responsible for supporting the Executive, and the Council as a whole, in its role as corporate parent. The group will regularly report to the Lead Executive Member for Children's Services on a quarterly basis on corporate parenting issues, and at any stage, should any issues arise in the interim which they consider should be drawn to the attention of the Executive. The report of the Looked After Children Members' Group shall be reported to the Executive and full Council as

part of the quarterly monitoring process.

The Looked After Children Members' Group may refer any issues directly to the Young People Overview and Scrutiny Committee.

The Looked After Children Members' Group will present an annual report directly to the Council at the Annual Council meeting.

The Looked After Children Members' Group will comprise between five and ten members, appointed annually by the Executive, and may include members and co-opted members from the Young People Overview and Scrutiny Committee. **The quorum for this meeting will be 3.** *(Note that if an item of work for the Young People Overview and Scrutiny Committee involves scrutiny of a decision or work that has involved or been significantly influenced by the Looked After Children Members' Group, those members of the Looked After Children Members' Group who are also members of the Young People Overview and Scrutiny Committee will not be able to participate in the scrutiny process for that item).* The Chairman of the Group will be appointed by the Executive.

The role of the Looked After Children Members' Group will include providing advice on all aspects of the Council's responsibilities as a Corporate Parent and in relation to looked after children on any specific issues they are required to consider. This includes:

- a) educational attainment and the work of the "virtual" Head Teacher;
- b) health issues including the provision of advice and education on issues such as relationships, sexual education, teenage pregnancies and life style choices around levels of physical activity, diet, drugs and alcohol abuse and smoking;
- c) crime prevention programmes and the work of the Youth Offending Teams;
- d) safeguarding, sexual exploitation and radicalisation of children; including Children missing from home and Looked after Children**
- e) performance against key indicators for the quality, stability and outcomes of Looked After arrangements for all children and young people in the preceding year;
- f) issues affecting looked after children who are disabled;
- g) the transition arrangements for all looked after children as they enter adulthood;
- h) how the Council and partners engage with young people, for instance through groups such as Young Person's Council, Flying High;**
- i) the recruitment and retention of social workers and staff and the morale of all service staff and officers;
- j) the work of the Young People's Champion;
- k) any other relevant matter considered appropriate by the Lead Member for consideration by the Group.

The Looked After Children Members' Group will undertake inspections under Regulation 33 of residential homes. This will involve reporting any concerns from the

residential homes and receiving any concerns raised by officer inspections of residential schools.”

Update of the Protocol on Audio/Visual Recording and Photography at Public Meetings: The Protocol was implemented In May last year in response to guidance from Government, and in anticipation of impending legislation. This issue is the subject of the Openness of Local Government Regulations 2014 and so the Protocol has been updated to reflect present requirements. The proposed changes are set out in Appendix 4.

Proposals to Change the Current Process for Disciplinary/Capability Dismissal Appeals: The Constitution states that the terms of reference for the Employment Appeals Committee are as follows:

- “1. To hear and determine appeals against decisions of officers of the Council, here provision exists for appeals to a member level body, or of relevant decisions of the Governing Bodies of voluntary aided schools where the Governing Body so requests in respect of:-

All dismissals, except

- appeals against dismissals on the ground of redundancy and against selection for redundancy, which shall be determined by a Chief Officer or Senior Manager s/he has authorised to act in his/her place in consultation with an HR adviser, and
- appeals against dismissals under the Council's Attendance Management
- Policy shall be determined, in consultation with a Member to be drawn from the Appeals Committee and an HR Adviser, by a senior manager who has
- not previously been involved in the matter, and who is duly authorised to determine the appeal in accordance with paragraph 3.7 of the Officers' Delegation Scheme.

Group grievances or collective disputes.

2. To exercise all functions (including, but not limited to, hearing and determination) in relation to appeals by the Chief Executive Officer against decisions of the Chief Officers Appointments and Disciplinary Committee to take disciplinary action against him/her short of dismissal.
3. To exercise all functions (including, but not limited to, hearing and determination) in relation to appeals by the Chief Executive Officer against decisions of the Leader and/or the Chief Officers Appointments and Disciplinary Committee, on appraisal of the Chief Executive Officer, not to award an increment.”

Hearings by the Appeals Committee do not under normal circumstances require a full re-hearing of the case or full consideration of the original evidence. The remit of the Appeals Committee is to satisfy itself that the decision taken to dismiss was reasonable in the circumstances and that due process was followed. In doing so the Appeals Committee must be satisfied that:-

- The rules of Natural Justice have been applied
- There was a thorough and fair investigation

- The Disciplinary Procedures have been followed or there are justifiable reasons if this was not possible
- The sanction imposed was reasonable in the circumstances

Members Appeals can only decide whether or not to uphold the Appeal being heard, and has no authority to apply any different sanctions to the case. Therefore if an Appeal is upheld, the employee is entitled to return to work with no sanction on their record. The current practice is resource-heavy in terms of admin support from Democratic Services to arrange panels, copy/send out the Bundles and clerk the Appeal Hearings.

All other Appeals for NYCC are either Officer only or Officer with a Member sitting on the Panel as follows:

- Attendance dismissal Appeals are heard by at least one Officer of appropriate seniority (who is Chair) and one Member not previously involved in the case.
- Probationary dismissal Appeals are heard by at least one Officer of appropriate seniority.
- Redundancy Dismissal Appeals are heard by a Chief Officer (or Senior Manager authorised to act in his/her place) not previously involved.

All Managers who Chair or sit on Panels attend a full days training course on Hearings, and complete training on the relevant Policies, which includes both online learning as well as a class room based briefing. This ensures all Officers making decisions in employment relations cases have been appropriately trained and are aware of the relevant NYCC Policies, as well as ACAS and legislative requirements/principles relevant to the decision being taken.

Currently, due to the Panel being constituted of Members who understandably have many other commitments, the time-frame for Appeals taking place is often well past the employee's final day of employment. Usually by the time the Appeal is held, the employee has found alternative work and the Service has filled the resulting vacancy, meaning that when an Appeal is upheld, reinstatement on a practical level is very difficult. In recent cases this resulted in settlement via compromise agreements being necessary. Even in cases where the service does not recruit, or recruits on a temporary basis there is pressure on staff to cover, cost can be incurred on the service due to temporary staff arrangements and service delivery may be inconsistent and/or at a reduced level. An approach is needed where the Appeal is held swiftly following the original decision to dismiss so any outcomes of the disciplinary appeal process can be effectively managed, including reinstatement, without adverse impact on the individual, their colleagues or the service.

Councillors currently on the Committee have found it a challenge to get sufficient time away from their primary function as a Councillor to attend required training. Attendance at training is looked for by Employment Tribunal (ET) Judges when cases progress to court and is seen as an important requirement in case law and practice around disciplinary and appeals. To date training has been arranged 3 times over recent years but each time has been cancelled due to Members of the Appeal Panel being unable to attend.

The current Appeals Panel has two possible outcomes either uphold or over-turn the appeal. There is no option to up-hold the appeal whilst applying an alternative sanction. This means there is a polarised outcome for each appeal, with the employee either still losing their job or being re-instated without any blemish on their record. This has been an issue in past cases, resulting in inconsistency. In one case a number of staff had committed the same

misconduct to differing degrees, resulting in some staff receiving final written warnings and one being dismissed. The dismissed employee appealed which was upheld, resulting in them being reinstated without any warning on their record. It has also resulted in service concerns whereby staff have been reinstated with no sanction having previously being dismissed for what the service consider to be safeguarding issues and the service then having to put them back into a post where they have access to the same client group. In such situations the service has felt the need to put in place alternative working and supervision arrangements sometimes at additional costs to mitigate what it considered to be a risk which the member of staff has not wanted to be subject to. This again resulted in a settlement via a compromise agreement.

The current Appeal Panel is a council Committee and is by default a very formal process. Both staff and managers find this formality difficult on occasion and it brings with it an adversarial atmosphere which can get in the way of a full and open consideration of the issues. Whilst all Hearings in NYCC are formal and decision-making is taken seriously, the Appeal Committee can be over-facing to employees especially those without representation. An Officer / Member Panel will still ensure objectivity of decision, whilst potentially being more 'approachable' to those making their case and in a format which mirrors the original dismissal hearing so is at least a known process.

The current Committee considers very few dismissal appeals because, for the size of the workforce, there are relatively few conduct and capability dismissals with the majority of dismissals for sickness/ill health (appeals heard by officer/member panel of 2) and redundancy (appeals heard by officer only panel of 2).

To illustrate in 2013/14 there were (excluding schools):

- 167 sickness/ill health cases resulting in 32 dismissals and 1 appeal
- 38 redundancy dismissals with 1 appeal.
- 11 capability cases resulting in 2 dismissals and no appeals
- 177 disciplinary cases resulting in 51 sanctions (including 19 final written warning/dismissals) resulting in 2 appeals
- 14 probation cases resulting in 8 dismissals and 1 appeal.

Any dismissal appeal process should review the decision to dismissal and consider whether the investigation has been sufficiently thorough, whether the allegations were found on the balance of probability and be convinced that the decision to dismiss was reasonable in the circumstances. It is not to re-hear the case but is to check the manager's decision and the process undertaken. If there were procedural errors efforts should be made by the appeal process to rectify these. By checking the manager's decision to dismiss, the appeal process in effect holds them to account for their management approach and action. This arguably has more impact if it takes place within the management hierarchy by a more senior manager in this case a member of Management Board. Whilst managers currently attending appeals to present their decision may be interested in how members view them this has no direct impact on them, whereas feedback from a member of Management Board to them and their director/senior manager will have a more direct consequence.

An important part of a manager's role is managing staff and arguably holding managers to account for this is a function of senior management not politicians. In NYCC, the Chief Executive has delegated authority for staff management as Head of Paid service and dismissals and any appeals can be seen as part of this delegated management function as it is for other dismissals.

Arrangements in Other Authorities: The current arrangements are not without difficulties as detailed and experience from other authorities suggests there may be better alternative processes (see appendix 5). Benchmarking of other Shire Councils as well as Councils in the area shows that 14 Councils in the benchmarking exercise have Member Panels for dismissal appeals, 12 have moved to Officer Appeal Panels for dismissals, 2 have hybrid arrangements whereby the employee can choose between a Member Appeal Panel and an Officer Appeal Panel, and one has a mixed Panel of 2 Members and a Senior Manager who chairs the of Appeal Panel.

Proposed Panel Composition: 3 Person Panel of 2 Officers and 1 Councillor. It is proposed that appeals for conduct/capability dismissals move to the same process as for sickness/ill health dismissal appeals, which have worked well for many years. This arrangement is also in line with the standard (non-dismissal) Disciplinary Appeal arrangement of a 2 Officer panel with HR advice. This means a Panel of 2 officers of appropriate seniority (including a member of Management Board) and 1 Councillor, chaired by the officer with a Head of HR/Principal HR Adviser advising the Panel and the Panel members having no prior involvement in the service area or the case. Under this proposal:

- The Appeal will be held as quickly as possible after the decision to dismiss, ideally within/shortly after the notice period. This will enable better management of any decision to uphold the appeal, and have less impact on service delivery team.
- Where cases progress to Employment Tribunal (ET) an Officer will attend Currently because the Chair is a Councillor the ET and preparation for be problematic as it requires days out of their schedule.
- All members of appeal panels will attend appropriate training and be available for appeals, allocating a full day for the panel itself as well as preparation time
- Officers who chair Panels will have had sufficient training and experience, with training being recorded and available as evidence at ET as required. Steps are in place to ensure all Officers get experience on panels prior to Chairing.
- There will be a small pool of councillors able to sit on appeal panels and attend training to ensure the Council is not reliant on one or two councillors for all Appeals and that the process does not create delays. This approach will allow flexibility for Appeal dates to ensure Appeal panels are held in a timely manner as soon as possible after the decision to dismiss.
- The panel will have alternative sanctions available to it and can reinstate with a lower sanction as appropriate including redeployment as an alternative to Dismissal.
- Democratic Services resource will not be required to administrate the process or clerk the Hearing. This will substantially reduce costs of photocopying, diary management, and clerking.

The proposal carries benefits compared to the current arrangements, notably because the Panel includes only one Member it should be easier to set up and not suffer from delay following the original decision to dismiss. Also because the Panel mirrors the current Disciplinary Panel arrangements, employees who have had their case considered at a Disciplinary Hearing will be familiar with the arrangement, and not be put off by an unduly formal setting. A new case review stage (see below) provides a further check on management action prior to formal appeal and the ability to take pre-emptive action if

needed.

Consultation on the proposal: UNISON have been fully involved and are supportive of the proposal on the basis that it is a pilot for two years to provide sufficient number of cases to go through the changed arrangements with a formal review undertaken jointly with them. They have asked for additional changes to the disciplinary and capability procedures including the appeal stage in order to better support their members. These are:

- Documentation to be exchanged 15 days before the Panel for both disciplinary/capability hearings and appeal panels.
- Wording strengthened in the disciplinary policy on the length of time taken to investigate cases particularly where staff are suspended, so it is clear that cases should not be allowed to drift. Both UNISON and HR understand that in cases where the employee is off sick or the police are involved lengthy delays can arise.
- UNISON to review with Assistant Chief Executive (Business Support) the list of suspensions on a quarterly basis. Whilst these are not usually large in number it is important staff are not suspended for long periods of time unless there is an unavoidable reason such as police involvement and pending criminal proceedings.
- A case review stage be built into the disciplinary/capability process to take place prior to any appeal to allow senior HR and UNISON officers to look at individual cases and be clear these have been managed appropriately and that anything needing to take place prior to an appeal can be actioned.

With these changes UNISON are comfortable that the proposed alternative Panel will hold managers to account in dismissal decisions and ensure that such decisions have been conducted fairly and are reasonable in the circumstances. The proposal was considered by the Members Workforce Planning Group on 4th March 2015. There was robust discussion and a variety of views both for and against the proposal. In addition the views of all existing members of the current committee (not substitutes) have been sought and 2 are supportive of the changes and 2 not. County Councillors Patmore (current Chairman) and Blackburn are supportive of the proposals. County Councillor Blackie is not and County Councillor Randerson, whilst having personal reservations, given the support of UNISON, is not opposed to the pilot.

The Disciplinary/Capability Policies require no change to accommodate this proposal, as these states that all employees are entitled to Appeal against the decision made by the Disciplinary/Capability Panel but do not give any detail as to the constitution of the Appeal Panel itself. The Panels and Appeals Procedure will need amending to state that: *Disciplinary/capability appeals against dismissal will be heard by a Director/Assistant Chief Executive (who will act as Chair) and one other officer, and one Member who have not been previously involved in the case, advised by a Head of HR / Principal Adviser.*

The Council Constitution includes reference to the Employment Appeals Committee for hearing Appeals against Dismissal (excluding redundancy and ill health/absence) and will need amending to enable the pilot panel to be tested by adding the following exemption for a two year period:

Appeals against dismissals under the Council's Capability or Disciplinary Policies shall be determined, in consultation with a Member to be drawn

from the Appeals Committee, by a Corporate Director / Assistant Chief Executive and one other officer who has not been previously involved in the matter and who is duly authorised to determine the appeal in accordance with Officers delegation scheme. The appeal panel will be advised by a Head of HR / Principal HR Adviser who has had no previous involvement in the case, and who will not take part in decision-making.

It is proposed that the one councillor for the new panel is drawn from the membership of the Employment Appeals Committee on a rota basis, working down the rota for cases to be heard. The Employment Appeal Committee will still exist for the pilot period as it retains the remit to hear collective disputes and be the dismissal appeal body for the post of Chief Executive. The consequential changes to the Constitution are shown as tracked changes in appendix 6.

Changes to clarify appeal arrangements for Chief Officers and Chief Executive:

On 25 March 2015 the Department for Communities and Local Government wrote to all Chief Executives to inform them that the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 have been laid in Parliament, to come into force on 11 May 2015. It is stated that these Regulations will simplify and localise the disciplinary processes for the most senior officers of a Council namely the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (the Statutory Chief Officers). The Regulations remove the requirement that a Designated Independent Person be appointed to investigate and make a recommendation on disciplinary action against these senior staff.

The Regulations provide that in place of the Designated Independent Person process, the decision will be taken by full Council, who must consider any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned. The Regulations provide that in the case of a proposed disciplinary action against one of these officers, the Council is required to invite the Independent Persons from the Council's Standards Committee to a panel to consider the matter and make recommendations to the full Council.

These Regulations require all Councils to modify their Standing Orders to implement these Regulations no later than the first ordinary meeting of the Council after the Regulations came into force on 11 May 2015. A copy of the Statutory Instrument is attached at Appendix 7.

It is proposed to incorporate these Regulations into the Constitution which will change the existing arrangements that the Chief Officers Appointment and Disciplinary Committee will consider whether to appoint a Designated Independent Person in progressing a disciplinary matter against the Chief Executive. These proposals will need to be amended to state that that Committee will consider advising full Council on matters relating to disciplinary action which may result in dismissal against the statutory officers and that the Independent Persons of the Standards Committee will be invited to attend that meeting. Those Independent Persons will be full Members of the Panel with full voting rights. It is proposed that the Panel should be called the Chief Officers Disciplinary Panel and that their views and recommendations will be taken into account when any matter is referred to full Council. At least two Independent Persons shall be appointed to the Panel, which will be treated as a committee of the Council. In order to comply with the political proportionality rules which state that political group with an overall Council majority gets the majority of seats on the Committee it would be necessary to either increase the size of the Panel by one additional Conservative Councillor or to ask the Council to agree to exempt the Panel from the strict political balance calculation.

In the event of allegations of a disciplinary or capability nature which may result in dismissal being made against one of the Statutory Chief Officers, the Chief Officers Disciplinary Panel will consider the issue and will appoint an Independent Investigating Officer. If the proposal is dismissal, full Council will then consider this and come to a decision. In so doing they must take into account:

- (a) any advice, views or recommendations of the Panel;
- (b) the conclusions of any investigation into the proposed dismissal; and
- (c) any representations from the relevant officer.

If the proposal is a sanction less than dismissal, the Chief Officers Disciplinary Panel will determine this and refer the case to be dealt with in accordance with the arrangements detailed below.

In the event of dismissal of Statutory Chief Officers and Chief Officers not covered by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, relating to "redundancy, permanent ill health, or infirmity of mind or body," the Chief Executive would chair the initial panel, and any subsequent appeal would be to the Chief Officers Appointments and Disciplinary Committee.

In the event of the allegations of misconduct against the Chief Executive which will result in sanctions less than dismissal and/or dismissal of the Chief Executive, relating to, redundancy, permanent ill health, or infirmity of mind or body," the Chief Officers Appointments and Disciplinary Committee would hear the initial case on the basis of recommendations made by the Leader of the County Council. Any subsequent appeal would be to the Employment Appeals Committee.

In the event of any allegation of misconduct against Statutory Chief Officers, it is proposed that the Chief Executive will appoint an Investigating Officer, who will carry out a preliminary investigation. The Chief Executive will then form an opinion based on the outcome of the preliminary investigation, as to the level of misconduct. If the allegation may result in dismissal, then the Chief Executive will refer the case to be dealt with in accordance with the arrangements detailed in paragraph 8.1.8.

In the event of allegations of misconduct against Statutory Chief Officers which will result in sanctions less than dismissal, and for all allegations of misconduct against other Chief Officers not covered by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, it is proposed that the Chief Executive will appoint an Investigating Officer and will chair any Hearing. Any appeals against sanctions imposed will be referred to the Chief Officers Appointments and Disciplinary Committee.

Currently the Chief Officers Appointments and Disciplinary Committee does not cover Chief Officer Appeals in its terms of reference. Therefore the reference in the Council's Constitution within Schedule 1 relating to the Chief Officers Appointments and Disciplinary Committee needs amending to include responsibility for appeals made by Chief Officers. The proposed amendment is as follows:

Chief Officers Disciplinary and Capability:

To hear and determine all appeals made by Chief Officers who are not covered by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, of the Council, against decisions made by the Chief Executive Officer in respect of:

- a) Disciplinary and capability action (up to and including dismissal),

- b) Redundancy and sickness absence/ill health dismissals
- c) Dismissals for some other substantial reason.
- d) Grievance/Resolving Issues at Work issues

The Committee will be advised by a Head of HR not previously involved.

To hear and determine all appeals made by Statutory Chief Officers, of the Council, against decisions made by the Chief Executive Officer in respect of:

- a) Capability action (less than dismissal),
- b) Disciplinary action (less than dismissal)
- c) Redundancy and sickness absence/ill health dismissals
- d) Grievance/Resolving Issues at Work issues

The Committee will be advised by a Head of HR not previously involved.

Appeals for Statutory Chief Officers against dismissal by Full Council will need further consideration in light of emerging guidance.

The purpose of these Regulations are seen to reduce the potential financial burden of the necessity of appointing a Designated Independent Person in dealing with any disciplinary matters against a statutory officer. As the Statutory Instrument has been laid before Parliament and is due to be implemented, the Council will need to implement these changes into its Constitution. The consequential changes to the Constitution are shown as tracked changes in appendix 8.

Consultation Undertaken and Responses: The cross party Members' Working Group Constitution met 15 April to consider these changes, Members comments were noted and the changes requested are reflected here, and on this basis the proposals detailed have Members' support. UNISON were consulted at an earlier stage regarding the changes proposed to the current process for Disciplinary/Capability Dismissal Appeals as explained earlier.

Human Resources Implications: The changes proposed to the process for Disciplinary/Capability Dismissal Appeals will ensure that arrangements are streamlined and that they take place in a more timely manner. The changes to clarify appeal arrangements for Chief Officers and Chief Executive reflect the changes imposed by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which require that the provisions set out in section 8 of this report, come into force no later than the first ordinary meeting of the Council after 11 May 2015.

The Executive RECOMMENDS:

- a) That County Council notes the changes to the Contract Procedure Rules following the change in legislation since the last meeting of County Council 18 February 2015.

That County Council approve:-

- b) The changes proposed to the remit and terms of reference for the Looked After Children Members' Group;
- c) The changes proposed to the Protocol on Audio/Visual Recording and Photography at

Public Meetings;

- d) The proposed changes to the current process for Disciplinary/Capability Dismissal Appeals
- e) The changes proposed to clarify appeal arrangements for Chief Officers and Chief Executive

3. Appointments to Committees and Outside Bodies

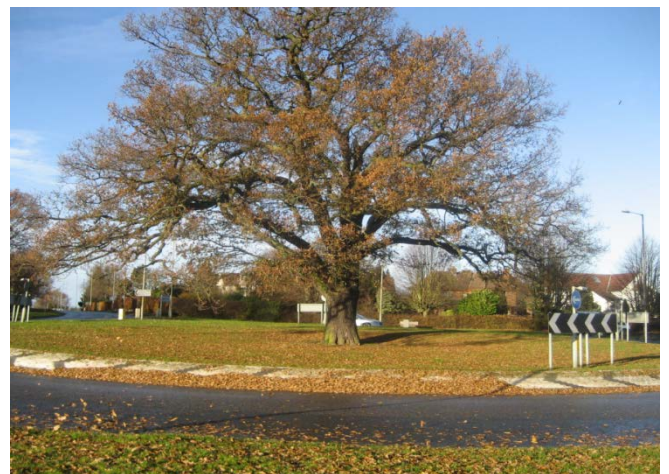
The Executive RECOMMENDS:

Any proposals for the reallocation of seats, if necessary to achieve political proportionality or for changes to memberships or substitute memberships of committees, or other bodies to which the Council makes appointments put forward by the relevant political group, prior to or at the meeting of the Council, be agreed.

JOHN WEIGHELL
Chairman

County Hall,
NORTHALLERTON.
12 May 2015

Highways Infrastructure Asset Management Policy



2015

Background Documents: Draft	Issue Reference: Version 2.1
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Title	Highways Infrastructure Asset Management Policy
Document Type	Policy
Author	DG Huzzard
Approved By (including date)	
Approval Date	
Issue Date	
Review Date	
Reviewing Officer	
Links to other NYCC documents	Local Transport Plan (3) Highway Maintenance Plan Highway Safety Inspection Manual

Document Control	Date	Version	Comment
Approved Document			
Under Development	March 2015	2.1	B Mason
Under Development	March 2015	2.0	DG Huzzard
Initial Concept	February 2015	1.0	DG Huzzard

Scope

This policy will form the basis for strategy development for the management and maintenance of Highways Infrastructure related assets.

Legislation and Standards

In addition to a general Duty of Care, there are a number of specific pieces of legislation which provide the basis for powers and duties relating to highway maintenance.

The Highways Act 1980 sets out the main duties of highway authorities in England and Wales. In particular, Section 41 imposes a duty to maintain highways maintainable at public expense, and almost all claims against authorities relating to highway functions arise from the alleged breach of this section.

Section 58 provides for a defence against action relating to alleged failure to maintain on grounds that the authority has taken such care as in all the circumstances was reasonably required to secure that the part of the highway in question was not dangerous for traffic.

Other duties and powers are prescribed by:

The New Roads and Street Works Act 1991
Road Traffic Regulation Act 1984
Traffic Signs, Regulations & General Directions 2002
Road Traffic Act 1988
The Traffic Management Act 2004
Railways and Transport Safety Act 2003

Further Documentation

UK Roads Liaison Group / Highways Maintenance Efficiency Programme (HMEP)

Highway Infrastructure Asset Management Guidance

Well-maintained Highways: Code of Practice for Highway Maintenance and Management

Management of Highway Structures

Well Lit Highways

Management of Electronic Traffic Equipment

CIPFA

Code of Practice on Transport Infrastructure Assets – guidance to support asset management, financial management and reporting (2013)

Policy Statement

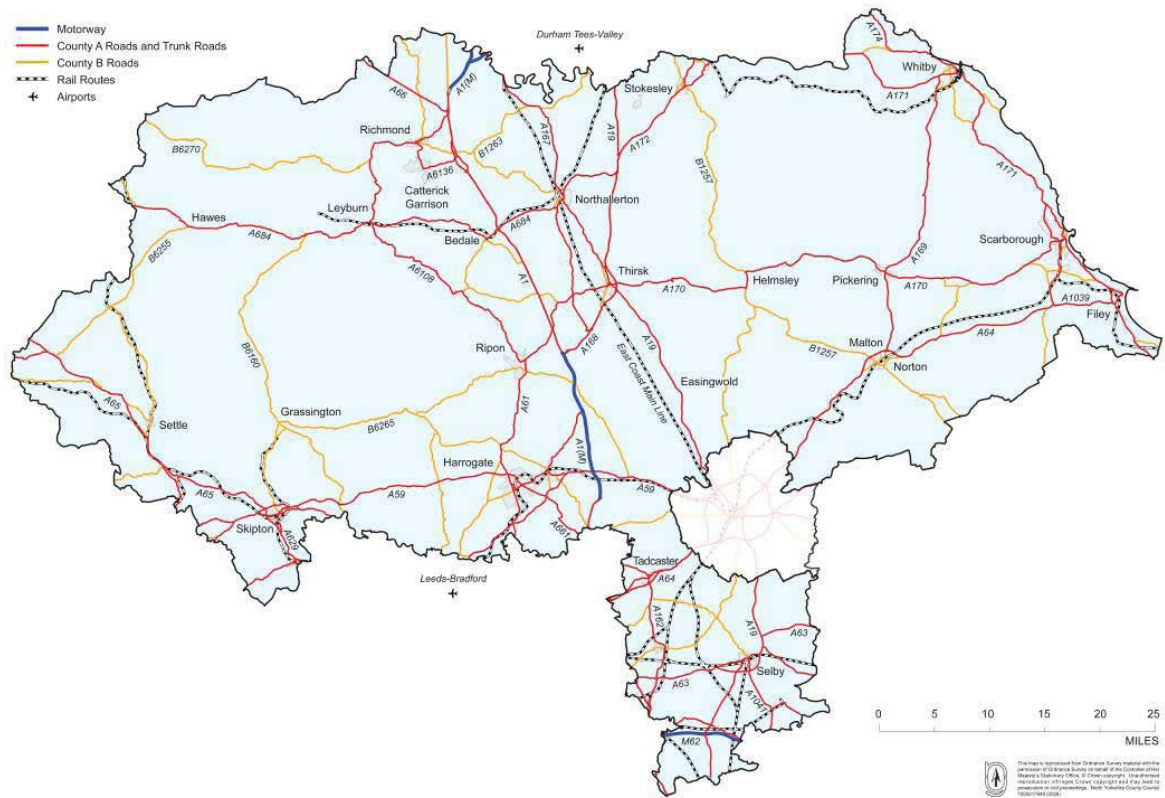
This policy has been developed with the primary aim of providing guidance to those officers responsible for developing strategies for the management and maintenance of highways infrastructure related assets.

Equality Impact Assessment

An Equality Impact Assessment is not required. A Highway Infrastructure Asset Management Strategy is also being developed which will influence our approach to highway maintenance work and therefore may impact on the public and this will be the subject of a further equalities assessment.

Background

Main Transport Infrastructure in the County of North Yorkshire



At over 9000km in length and with an annual highway maintenance budget (capital and revenue) of approaching £50M, the highway network in North Yorkshire is one of the longest of any Highway Authority in the Country. Managing this vast highway asset is therefore vital to achieving the best possible value for money and delivering the best possible outcomes for the users of the highway network, both the residents of North Yorkshire and visitors.

Every business, resident or visitor to North Yorkshire uses the highway network in some way every day of the year and over 5 Billion kilometres are travelled on the County Councils roads every year.

Asset Management is not a new concept but is a strategic approach for addressing the many competing demands associated with managing the highway network. For many years highway authorities have been operating their networks and making the best use of the data and systems available to them.

The culture of continual improvement has been embedded within our systems since the late 1980s and since that time we have improved our data collection and storage processes.

Recent developments in technology have afforded greater benefit by allowing more in depth analysis of condition data to support improved alignment of service delivery with the changing needs of our stakeholders.

Policy for Highways Infrastructure Asset Management

The County Council recognises the vital role played by North Yorkshire's local highway network in supporting the authority's vision -

"We want North Yorkshire to be a thriving county which adapts to a changing world and remains a special place for everyone to live, work, and visit"

The County Council is committed to making the best use of its budgets, and advocates an asset management approach for the maintenance of the county's local highway network, in order to help deliver the best long term outcomes for local communities.

The Highway Infrastructure Asset Management Strategy will set out how highway asset management will be delivered in North Yorkshire. This strategy will take into account current and projected financial pressures and will explain how available funds and resources should be utilised to maximise their benefit.

Through its Local Transport Plan (LTP3), in order to further support its vision and duties, the County Council developed a series of local transport objectives. To help meet these objectives, the Highway Infrastructure Asset Management Strategy will seek to:

Support flourishing local economies by delivering reliable and efficient transport networks and services (local economies)

Well maintained highways are essential to the local economy. Reliable journey times for customers, for the delivery of goods and for staff travel are essential to good business. Well maintained roads also reduce the costs of damage and wear and tear on business vehicles. Asset management optimises the planned maintenance over the lifecycle of the highway to contribute to the best possible outcomes for the available funding and also reduces disruption to traffic resulting from unplanned reactive maintenance works.

Reduce the impact of transport on the natural and built environment and tackling climate change (environment and climate change)

A key element of asset management is to integrate sustainable solutions and treatments, which minimise waste and landfill arising from highway maintenance works. Asset management also allows improved highway condition and reduced delays for vehicles at unplanned roadworks which contribute towards improved vehicle fuel efficiency and therefore carbon emissions.

Improve transport safety and security and promote healthier travel (safety and healthier travel)

Asset management, by ensuring that we have the best possible maintenance outcomes for the available funding, contributes towards minimising accidents and incidents (resulting in injury and / or damage to vehicles and property) directly attributable to the condition of the highway network. Good asset management, by helping to ensure good networks for active travel (cycling and walking), also helps people to make healthier travel choices.

Promote greater equality of opportunity for all by improving people's access to all necessary services (access to services)

An effectively maintained local highway network is essential to all modes of travel used to access local services (car, bus, community transport, cycling and walking) and hence contributes towards providing people with easier travel and access to these local services.

Ensure transport helps improve quality of life for all (quality of life)

A well maintained highway network reduces the impact of traffic on communities (e.g. traffic noise), improves the visual amenity of places and generally contributes to an improved quality of life for residents, visitors and travellers.

Record of decision that Equality Impact Assessment is not required (March 2015)	
Directorate and service area	Business and Environmental Services Highways and Transportation
Name and contact of officer(s) taking decision that EIA not required Barrie Mason Ext. 2137	
What are you proposing to do? Adopt a Highway Infrastructure Asset Management Policy	
Why are you proposing this? The Highways Infrastructure Asset Management Policy describes the County Council's commitment to highway infrastructure asset management.	
Does the proposal involve a significant commitment or removal of resources? The proposal will direct the use of existing resources.	
Will this proposal change anything for customers or staff? What will change? It provides a visible commitment to achieving the benefits that can be delivered through asset management.	
Will the proposal make things worse for people with protected characteristics (age, disability, sex, disability, gender reassignment, religion or belief, pregnancy or maternity, marriage or civil partnership)? (Customers, staff etc). How do you know? Do you have any evidence to support your assessment? <p>The policy has been developed in line with the Local Transport Plan and will complement and further enhance our established asset management based approach to highways maintenance and management. As such the adoption of this policy will not impact negatively on any individual's use of the highway.</p> <p>A Highway Infrastructure Asset Management Strategy is also being developed which will influence our 'on the ground' approach to highway maintenance work and therefore may impact on the public. The strategy will be the subject of further equalities impact assessment work as it is developed.</p>	
If there might be a negative impact on people with protected characteristics can this impact be reduced? How? <p>-----</p>	
Could the proposal have a significant negative impact on some people with protected characteristics or a less severe negative impact on a lot of people	

with protected characteristics? If “Yes” more detailed analysis should be undertaken and an EIA completed.		
No		
Does the proposal relate to an area where there are known inequalities (e.g. disabled people’s access to public transport)?		
No		
Could the proposal have a greater negative impact on people in rural areas?		
No		
Could the proposal have a worse impact on people with less money?		
No		
Will the proposal have a significant effect on how other organisations operate (e.g. partners, funding criteria, etc). Do any of these organisations support people with protected characteristics?		
No		
Do the answers to the previous questions make it reasonable to conclude that there will be no or very limited adverse impacts on people with protected characteristics?	Yes	
Will there be no or limited adverse impacts on people in rural areas?	Yes	
Will there be no or limited adverse impacts on people with low incomes?	Yes	
Further analysis and full EIA Required		No
Decision not to undertake EIA approved by (Assistant Director or equivalent)	Barrie Mason	
Date:	19.03.15	

Contract Procedure Rules

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*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 those stated in **Rule 2.2**), 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:-

ACE(LDS)	means Assistant Chief Executive (Legal and Democratic Services)
CD-SR	means the Corporate Director - Strategic Resources
Constitution	means the Council's Constitution of which these Rules form part.
Contract	means any agreement 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 and subject to the exceptions in Rule 2.2
<u>Contracts Finder</u>	<u>means the web-based portal as described in the PCRs</u>
Contractor	means a person or entity with whom the Council has a contract
Contract Register	means the register of Contracts maintained by the Council as set out in Rule 17.8
Council	means North Yorkshire County Council
CPG	means the Corporate Procurement Group
Director	means the Chief Executive Officer; Corporate Director Business and Environmental Services; Corporate Director Health and Adult Services; Corporate Director Children and Young People's Service; Corporate Director - Strategic Resources as the context requires
DPC	means a Directorate Procurement Champion
E-Sourcing system	means the Council's chosen E-sourcing system (currently YORtender) or an approved alternative
EU	means the European Union
EU Threshold	means the current threshold above which the PCR's apply, currently £172,514 for services and supplies <u>£625,050 for social and other specific services</u> and £4,322,012 for works
FPP	means the Forward Procurement Plan maintained as described in Rule 17.5

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Framework Agreement means an agreement with one or more public sector bodies which establishes an arrangement for:

- (i) multiple orders to be placed with one Contractor (a single supplier framework), or
- (ii) a framework of multiple Contractors to engage in further competitions (a multiple supplier framework)

Gateway Process means the Council's value based gateway procurement process that combines assessment and understanding of various aspects of value with appropriate review and scrutiny at defined points in the procurement cycle

Internal Audit means the Council's appointed internal auditors (currently Veritau)

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ITT means an Invitation to Tender

Leasing Agreement means 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

LDSO means a Legal and Democratic Services Officer

MEAT means the Most Economically Advantageous Tender

Member means a member of the Council or co-opted member on a Council committee

Officer means a Council employee or other authorised agent

OJEU means the Official Journal of the European Union

Participant means a person or entity participating in a procurement process, who has expressed an interest in tendering for a Contract or who has tendered for a Contract

PCR means the Public Contracts Regulations 2015

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

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PQQ means the Pre-Qualification Questionnaire

Procurement Manual means the manual to accompany these Rules which provides detailed guidance on procurement techniques and the effect of the Rules

Procurement Strategy means the Council's Procurement Strategy as agreed from time to time.

Property Contract means a contract which creates an estate or interest in land or buildings

Responsible Officer means the Officer who is responsible for the procurement and/or management of a Contract

Rules means these Contract Procedure Rules

Services or Supplies means as defined in the PCRs

Social and Other Specific Services means those services defined as such in the PCRs

Works means as defined in the PCRs

YPO means 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 including any options or extensions to 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 CD-SR and the ACE(LDS) 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 8.8, 8.9, 12.2, 16.1(b) and (h), 16.3 and 18.1
 - (ii) CD-SR - Rules 2.1, 2.4, 2.5, 8.8, 8.9, 12.2, 16.1(b) and (h), 16.3, 17.3 and 18.1
 - (iii) ACE(LDS) - Rules 2.1, 2.4, 2.5, 8.8, 8.9, 12.2, 16.1(b) and (h) and 16.3

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 CD-SR and the ACE(LDS).

2.0 GENERAL

2.1 These Rules are made by the Council on the advice of the CD-SR (in consultation with the ACE(LDS)) under Article 14.02 of the Constitution.

2.2 These Rules apply to all Contracts for **Works, Supplies, Services or Social and Other Specific Services** but do not apply to:-

- (a) contracts of employment;
- (b) property contracts (which are covered by the Property Procedure Rules); and

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Services or Supplies means as defined in the PCRs¶
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Social and Other Specific means those services defined as such in the PCRs¶
Specific ServicesInternal Audit means the Council's appointed internal auditors (currently Veritau) ¶

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- (c) financial instruments (including, but without limitation, shares, bonds, bills of exchange, future or options contracts) (which are covered by the Financial Procedure Rules).

- 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 CD-SR (in consultation with the ACE(LDS)) shall review the application and effect of these Rules and make an annual report or as required but no less than once per year to the Audit Committee recommending such amendments to the Rules as are considered appropriate.
- 2.5 The CD-SR and the ACE(LDS) have produced a Procurement Manual which provides detailed guidance on procurement techniques and the effect of the Rules. The Procurement Manual also sets out important issues to be considered in the procurement context. These Rules should be read in conjunction with the Procurement Manual.
- 2.5.1 The CD-SR 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 CD-SR shall undertake the negotiation of terms and authorise the arrangement in accordance with Rule 9.3 of the Financial Procedure Rules.
- 2.7 Directors shall ensure that all documentation relating to Contracts and procurement processes (including quotations) 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.
- 2.9 Wherever possible and appropriate procurement shall be undertaken using the standard precedent documents contained in the Procurement Manual applying to PQQ's, ITT's or to submit quotations. Wherever alternative documents are to be used they must be approved by ACE(LDS) in consultation with CPG (or DPCs) as appropriate.

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 including, but without limitation, the Public Contracts Regulations 2015.
- 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

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(b) British Standards implementing international standards

(c) British Standards

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4.0 POWERS AND KEY DECISIONS

4.1 In consultation with the ACE(LDS) Directors shall ensure that the Council has the legal power to enter into any Contract and that in respect of all Contracts, regardless of whether they involve the procurement or provision by the Council of ~~Works, Supplies, Services or Social and Other Specific Services~~ Directors shall ensure that no Contract shall be entered into which is ultra vires.

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4.2 Directors shall ensure that a written record of the decision to procure a Contract is made and, where such a decision comprises a Key Decision under the Constitution, Directors shall ensure that it is entered on to the Forward Plan and treated as a Key Decision in all respects.

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 £25,000 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 ACE(LDS). 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 ACE(LDS) as to their effect has been sought and considered.

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5.3 The written form of agreement for all contracts exceeding £25,000 in value must clearly specify the obligations of the Council and the Contractor and shall include:-

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(a) the work to be done or the ~~Supplies, Services or Social and Other Specific Services~~ to be provided

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(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 CD-SR, term contracts and framework contracts may include a financial limit above which value, work to be done or ~~Supplies, Services or Social and Other Specific Services~~ to be supplied shall be subject to a separate procurement exercise in accordance with these Rules.

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5.5 The written form of agreement for all contracts exceeding £25,000 in value must include the following or equivalent wording:-

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(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 the Bribery Act 2010, 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 Supplies, Works, Services or Social and other Specific Services from a third party and the Council may recover the cost of doing so from the Contractor.”

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- 5.6 The standard clauses contained in the Procurement Manual relating to the Freedom of Information Act 2000 and the Data Protection Act 1998 shall, wherever possible, be included in all Contracts exceeding £25,000 in value.

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- 5.7 Other standard clauses are contained in the Procurement Manual relating to, for example, equalities, the Public Services (Social Value) Act 2012, 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 SIGNATURE/SEALING OF CONTRACTS

- 6.1 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.

- 6.2 The ACE(LDS) and such of his staff as he may designate are authorised to sign any such contract.

- 6.2.1 The ACE(LDS) 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 £500,000 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 ACE(LDS), or
 - (iii) is otherwise in a form approved by the ACE(LDS); and
- (c) any variations to approved forms of Contract must themselves be approved by the ACE(LDS), whether or not they are effected by amending the Contract itself or by correspondence

- 6.2.2 Contracts that exceed £500,000 shall be signed by:

- (a) the ACE(LDS) (or a Legal and Democratic Services' Officer authorised by him); and
- (b) an authorised signatory in the relevant Directorate (or another Legal and Democratic Services' Officer authorised by the ACE(LDS)).

6.2.3 Only the ACE(LDS) (or a Legal and Democratic Services' Officer authorised by the ACE(LDS)) may seal a Contract on behalf of the Council, in each case being satisfied that there is appropriate authority to do so.

7.0 BONDS AND LIQUIDATED DAMAGES

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- 7.1 Directors (in consultation with the CD-SR) shall consider whether to include provision for the payment of liquidated damages by a Contractor for breach of Contract in all contracts which exceed £100,000 in value. Such consideration shall be recorded in the Gateway Processes (Gateway 2).
- 7.2 Where considered appropriate by a Director (in consultation with the CD-SR), 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 CD-SR considers appropriate.
- 7.3 Agreements made under Section 38 (adoption of new highways) or Section 278 (development of existing highways) 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 CD-SR) agrees that it is inappropriate for a bond to be required.

8.0 QUOTATIONS

- 8.1 Where the estimated value of a contract is £5,000 or less the invitation of quotations is not mandatory, but written quotations should be invited where appropriate and best value should always be sought.
- 8.2 If the estimated value of a contract exceeds £5,000 but is less than £100,000 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. Quotations with a value exceeding £5,000 should be invited using the E-Sourcing System and quotations above £25,000 **must** be invited using the E-Sourcing system.

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8.3 If a Director, in consultation with the DPC, considers it to be appropriate that any ITQ shall be available to all potential Participants then a notice advertising the opportunity shall be published through the E-Sourcing System and on Contracts Finder and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract. The notice shall specify brief details of the Contract, how the ITQ documents may be obtained and the closing date for receipt of quotations by the Council.

8.4	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 8.2 to also submit variant quotations (i.e. 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.	Deleted: 3
8.5	A written quotation may only be considered if:- <ul style="list-style-type: none"> (a) it has been received electronically through the E-Sourcing System, or (b) it has been received in a sealed envelope marked "Quotation" and indicating the subject matter of the quotation and (c) it has been opened after the expiry of the deadline for submissions and at the same time as other quotations for the same subject matter in the presence of at least two Officers authorised to open quotations. 	Deleted: 4
8.6	Before quotations of a value in excess of £25,000 are requested it must be recorded in writing whether the lowest price or the most economically advantageous quotation should be accepted. Where both price and quality are to be factors (i.e. where the most economically advantageous quotation applies) the quality criteria must be identified and the weighting between price and quality established and recorded before quotations are requested. The criteria should be stated in the request for quotation sent to suppliers.	Deleted: 5 Deleted: 0
8.7	Price/quality quotation evaluation models shall be lodged with Internal Audit before any quotations are opened. The Director shall evaluate quotations using the evaluation model lodged with Internal Audit.	Deleted: 6
8.8	If a quotation other than the lowest or the most economically advantageous quotation (as the case may be) is to be accepted, the written approval of the Director (in consultation with the CD-SR or if the relevant Director is the CD-SR, in consultation with the Chief Executive) shall be sought and obtained before the quotation is accepted.	Deleted: 7
8.9	A quotation for a price in excess of £100,000 may be accepted if (and only if):- <ul style="list-style-type: none"> (a) the original documented estimated price was less than £100,000 and (b) the price quoted does not exceed that original documented estimated price by more than 10% and (c) the written approval of the Director (in consultation with the CD-SR) has been obtained. <p>If the conditions at (a), (b) and (c) are not met, Directors must seek tenders in accordance with Rules 9 and 10.</p>	Deleted: 8
8.10	Where a quotation involves payment to the Council, the provisions of Rules 8.5 and 8.7 shall apply except that the word "lowest" shall be replaced by the word "highest" in these paragraphs.	Deleted: 9
8.11	Quotations may be altered only in accordance with Rules 13.1 and 13.2 .	Deleted: 0

Financial Stability

- 8.12 Before a Contract is awarded after a quotation exercise such steps shall be taken, in conjunction with the CD-SR, as are reasonably necessary (having regard to the subject matter, value, duration of the Contract and other relevant factors) to complete a risk assessment of the potential Contractor's financial stability.

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9.0 TENDERS

- 9.1 If the estimated value of the Contract is £100,000 or more electronic tenders shall be invited in accordance with the provisions of this Rule.
- 9.2 If the estimated value of the Contract exceeds the relevant EU Threshold the additional requirements for OJEU Procurements, set out in **Rule 10.3**, shall be followed.

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General Requirements

- 9.3 Before Directors invite tenders it shall be recorded in writing for all Contracts whether the Contract will be awarded on the basis of price or the Most Economically Advantageous Tender (MEAT), a combination of price and quality.
- 9.4 If a Contract is to be awarded on the basis of the MEAT, the criteria to be used in the assessment of the quality elements of the tenders and the weighting between price and quality shall be established and recorded in writing before tenders are invited. For all Contracts, the tender assessment criteria, sub-criteria and weightings shall be stated in the ITT.
- 9.5 If a Contract is to be awarded on a price only basis it shall be recorded whether the award will be made on the basis of the lowest price or any other tendered price. Where a tender involves payment to the Council, the provisions of this Rule shall apply except that the word "lowest" shall be replaced by the word "highest".
- 9.6 All Participants invited to submit tenders shall be provided with identical instructions and information.
- 9.7 Where considered appropriate, a Director may, in consultation with the DPC, permit Participants to submit variant tenders (i.e. tenders which do not comply with some or all of the requirements of the primary tender). The same opportunity to submit variant tenders shall be given to all Participants. Variant tenders shall only be considered if the Participant also submits a compliant primary tender.
- 9.8 Evaluation models for PQQ's and ITT's shall be lodged with Internal Audit before any submission documents are opened. The evaluation model shall not be divulged to Participants.
- 9.9 Directors shall invite tenders on the basis of one of the options identified in **Rule 10**.

10.0 OPTIONS FOR TENDER

Tenderers shall be invited on the basis of one of the following options:

10.1 Open Tenders

10.1.1 If a Contract (including a Contract for Social or Other Specific Services or a contract for Works) has a value in excess of £100,000 but below £172,514, then the following procedures shall apply:-

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- (i) A notice advertising the opportunity shall be published through the E-Sourcing System and Contracts Finder and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract. The notice shall specify brief details of the Contract, how the ITT documents may be obtained and the closing date for receipt of tenders by the Council.
- (ii) The deadline date for the return of tenders shall be at least 28 days after the publication of the first advertisement of the ITT and, where relevant, at least 14 days after the last ITT advertisement is published.
- (iii) The criteria which are to be applied in the evaluation of the tenders shall be recorded in writing before ITT's are issued and shall be included in the documents provided to all Participants.
- (iv) The evaluation of the tenders shall be carried out by Officers, nominated by the Director in consultation with the DPC, who are considered appropriate having regards for the subject matter and value of the Contract.
- (v) The evaluation model shall be lodged with Internal Audit before any submission documents are opened, The evaluation model shall not be divulged to Participants.

10.2 Restricted Tenders

10.2.1 Only in the case of Social or Other Specific Service contracts or Works contracts in excess of £172,514, if a Director, in consultation with the DPC, considers it appropriate that any ITT shall be restricted to selected Participants by issuing a PQQ to all potential Participants followed by an ITT to those Participants selected at the PQQ stage then the following procedures shall apply:

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- (i) A notice advertising the opportunity and inviting expressions of interest shall be published through the E-Sourcing System and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract. The notice shall specify brief details of the Contract and invite potential Participants to complete and submit a PQQ to the Council in order to be considered to be invited to tender. The notice shall include details as to how PQQ's are to be submitted and the closing date for their receipt by the Council.
- (ii) The deadline date for return of PQQ's shall be at least 28 days after the publication of the first advertisement of the opportunity and, where relevant, at least 14 days after the last advertisement is published.
- (iii) The selection criteria which are to be applied in the evaluation of the PQQ's shall be recorded in writing before the PQQ's are invited and shall be included in the documents provided to all Participants.
- (iv) The evaluation of the PQQ's shall be carried out by Officers, nominated by the Director in consultation with the DPC, who are considered appropriate having regards for the subject matter and value of the Contract.

- (v) After evaluation of the PQQ's, ITT's shall be published to at least five Participants or, if less than five potential Participants applied or are considered suitable, such Participants as have been selected by the Director.
- (vi) The deadline date for the receipt of tenders shall be at least 28 days after the date of dispatch of the ITT's.
- (vii) The criteria which are to be applied in the evaluation of the tenders shall be recorded in writing before ITT's are published and shall be included in the documents provided to all Participants.
- (viii) The evaluation of tenders shall be carried out by Officers, nominated by the Director in consultation with the DPC, who are considered appropriate having regards for the subject matter and value of the Contract.
- (ix) The evaluation model shall be lodged with Internal Audit before any submission documents are opened. The evaluation model shall not be divulged to potential Contractors.

10.3 OJEU Tenders

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Tenders for Contracts which exceed the EU Threshold shall be invited and awarded as prescribed in **Rule 10.1.1(i) to (v)** or **Rule 10.2.1(i) to (ix)** but taking into account the following amendments:

10.3.1 Open Tenders: the deadline date for the return of tenders shall be a minimum of 35 days after the publication of the first advertisement of the ITT. The actual deadline date shall be determined having taken into consideration the complexity of the Contract and the time required for the completion of the tender documents by Participants. The requirement for 35 days may be reduced to 30 days when using the E-Sourcing System. Where a Prior Information Notice (PIN) has been published the minimum time limit may be reduced to 15 days.

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10.3.2 Restricted Tenders: the deadline date for the return of PQQ's shall be at least 30 days after the publication of the first advertisement of the opportunity. The deadline date for the receipt of tenders shall be at least 30 days after the date of publication of the ITT. The requirement for 30 days may be reduced to 25 days after the publication of the first advertisement of the opportunity for the return of the PQQ and reduced to 25 days for the return of the ITT after the date of its publication when using the E-Sourcing System. Where a PIN has been published the minimum time period may be reduced to 10 days for return of ITT.

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10.4 Framework Agreements

10.4.1 If a Director considers it appropriate to establish a Framework Agreement then the Framework Agreement shall be established using the procedures set out in either **Rule 10.1.1(i) to (v)** or **10.2.1(iv) to (ix)**.

10.4.2 Where the value of the proposed Framework Agreement exceeds the EU Threshold, the procedure prescribed by the PCR's shall apply to all aspects of the procurement and to the subsequent operation of the Framework Agreement including, but not limited to:-

- (i) the procurement methodology;
- (ii) the placement of orders under the Framework Agreement;

Deleted: 10.3.3 The minimum deadline dates for **Open and Restricted tenders** may be reduced to a period generally not less than 36 days and in any event not less than 22 days if a Prior Information Notice (PIN) has been published in accordance with the PCR's.¶¶

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- (iii) further competition between Contractors appointed to the Framework Agreement.

10.4.3 The duration of a Framework Agreement shall be limited, as prescribed by the PCR's, to a maximum of four years including any extension periods.

10.5 Approved Lists

10.5.1 If a Director considers it appropriate to maintain a list of suitable Contractors for particular types of ~~Work and/or Supplies and/or Services and/or Social and Other Specific Services~~, where the estimated value of the ~~Work and/or Supplies and/or Services and/or Social and Other Specific Services~~ is below the relevant EU Threshold, the list of suitable Contractors shall be established using the procedures set out below:-

- (i) A notice inviting expressions of interest shall be published through the E-Sourcing System and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract. The notice shall specify brief details of the Contract and invite potential Participants to apply to the Council to be considered for inclusion on the approved list by the Council. The notice shall include details as to how expressions of interest are to be submitted and the closing date for their receipt by the Council.
- (ii) The deadline date for the return of expressions of interest shall be at least 28 days after the publication of the first advertisement of the expressions of interest and, where relevant, at least 14 days after the last advertisement is published.
- (iii) The selection criteria which are to be applied in the evaluation of the expressions of interest shall be recorded in writing before expressions of interest are invited and shall be included in the documents provided to all Participants.
- (iv) The evaluation of expressions of interest shall be carried out by Officers, nominated by the Director in consultation with the DPC, who are considered appropriate having regards for the subject matter and value of the Contract. The Director shall then maintain a list of such approved Contractors categorised by ~~Works/Supplies/Services/Social and Other Specific Services~~ type and value as may be applicable.
- (v) The Director shall review the performance of all Contractors on the approved list at regular intervals, not exceeding 12 months from the date of appointment of the Contractor to the approved list.
- (vi) The Director may remove Contractors from an approved list where the Director and CD-SR agree that such removal is appropriate, having regards for the conduct, performance and/or status of the Contractor in relation to those standards identified in the original expressions of interest.
- (vii) The Director may, after consultation with the CD-SR approve an application from a potential Contractor to be added to an existing approved list.
- (viii) ITT's or Invitations to Quote shall be invited in accordance with **Rule 10** or **Rule 8**.

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- (ix) The Director shall maintain records of the tenders or quotations invited from an approved list such that the names of the Contractors invited to tender, the selection process and Contracts awarded to each Contractor are available for inspection.
- (x) Approved Lists may remain in force for a maximum of five years. Before the expiration of the Approved List a replacement shall be established, if appropriate, in accordance with **Rule 10.5**.

10.6. ~~Dynamic Purchasing Systems, Competitive Dialogue Procedure, Competitive Procedure with Negotiation and Innovation Partnership Procedure~~

Where a Director, in consultation with the CD-SR, agrees that it is appropriate, ~~a Dynamic Purchasing System, the Competitive Dialogue Procedure, the Competitive Procedure with Negotiation or the Innovation Partnership Procedure~~ may be used for the invitation ~~of~~ tenders in accordance with the requirements of the PCR's.

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11.0 RECEIPT AND OPENING OF TENDERS

11.1 A written tender may only be considered if:-

- (a) it has been received electronically through the E-Sourcing System, or
- (b) (where permitted) it has been received in hard copy in a sealed envelope marked "Tender" and indicating the subject matter of the tender, and the identity of the Participant cannot be ascertained from the tender envelope,
- (c) and subject to **Rule 11.4**, it has been returned electronically through the E-Sourcing System or to the ACE(LDS) (or a person designated by him) in accordance with the instructions contained in the ITT before the tender closing date.

11.2 The ACE(LDS) (or a person designated by him) shall be responsible for the reception and safe custody of tenders until they are opened.

11.3 Tenders, whether electronic or hard copy must be opened at the same time and in the presence of the ACE(LDS) (or a person designated by him) or, where Legal and Democratic Services is undertaking the procurement, the CD-SR (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 Participants and the tendered sums (where readily ascertainable). A copy of such a record shall be provided as soon as practicable to the Director inviting the tenders and to Internal Audit.

11.4 If a Tender is received after the specified tender closing date it may not be considered unless the ACE(LDS) is satisfied that the Tender was submitted electronically or 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 Participant and that other tenders have not been opened.

12.0 TENDER EVALUATION AND ACCEPTANCE

12.1 The Director shall evaluate tenders using the evaluation model lodged with Internal Audit in accordance with **Rules 9.8, 10.1.1(v) and 10.2.1(ix)**.

- 12.2 If a tender other than the MEAT or the lowest price is to be accepted the written approval of the Director, after consultation with the CD-SR, shall be obtained and a signed and dated record kept of the reasons for the action taken shall be made however, no such approval can be given where the Contract is subject to PCR's other than in exceptional circumstances agreed by the ACE(LDS).
- 12.3 Each Director shall maintain an electronic or written record of all successful Participants in a form approved by the CD-SR in accordance with the Council's Document Retention Policy.
- 12.4 If, as a result of the tender evaluation process the Director is satisfied that an arithmetical error has been made inadvertently by a Participant such an error may, after consultation with the Participant, be corrected. The Director shall record any such correction in writing.
- 12.5 Before a Contract is awarded the Director shall, in consultation with the CD-SR, complete a risk assessment to ascertain the financial stability of the successful Participant. The risk assessment shall take into account the subject matter, complexity, duration, value and any other such factors as may be deemed to be relevant. This shall be undertaken in accordance with the Gateway Process (Gateway 3).
- 12.6 On completion of the evaluation of the tenders received and once all internal approvals have been obtained, the Director shall write to all Participants informing them of the outcome of the tender evaluation and providing feedback on the content of their tender. Where appropriate such feedback shall be given in accordance with the PCR's.
- 12.7 For OJEU tenders the Director shall wait a minimum of ten days from the date of issue of the letters notifying the Participants of the result of the evaluation before completing the Contract with the successful Participant.

12.8 For OJEU tenders the Director shall send for publication a Contract Award Notice stating the outcome of the procurement procedure no more than 30 days after the award of the contract.

12.9 Where the tender involves payment to the Council **Rule 12.2** shall apply except that the word "highest" shall be substituted for "lowest" in that Rule.

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13.0 POST TENDER NEGOTIATION AND CLARIFICATION

13.1 Post tender negotiations may not be undertaken where the value of the Contract exceeds the relevant EU Threshold.

13.2 Post tender negotiations with selected tenderers shall only be carried out where:-

13.2.1 post tender negotiations are permitted by law; and

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13.2.2 the Director in consultation with the CPG considers that added value may be obtained; and

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13.2.3 that post tender negotiations are to be conducted by a team of suitably experienced officers approved by the Director and who have been trained in post tender negotiations; and

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13.2.4 a comprehensive, written record of the negotiations is kept by the Council; and

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13.2.5 a clear record of the added value to be obtained as a result of the post tender negotiations is incorporated into the Contract with the successful Participant.

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- 13.3 **Rules 13.1 and 13.2** shall not operate to prevent clarification of all or part of any tender to the extent permitted by law and where such clarifications are sought the provisions of **Rules 13.2.3 and 13.2.4** shall apply, except that the word "clarification" shall be substituted for the word "negotiation" in these Rules.

14.0 PURCHASING CARDS

- 14.1 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 CD-SR
- (b) cards shall only be issued to, and used by, Officers nominated by a Director (in consultation with the CD-SR)
- (c) for the purpose of **Rule 5.1** the payment invoice will constitute evidence in writing of the contract.

15.0 CERTIFICATION OF CONTRACTS

- 15.1 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 Health and Adult Services and the CD-SR.

16.0 EXCEPTIONS TO CONTRACT PROCEDURE RULES

- 16.1 A Director does not need to invite quotations or tenders in accordance with **Rules 8, 9 and 10** in the following circumstances:-

- (a) purchases via framework agreements which have been established by other public sector bodies or consortia (including, but not limited to YPO) and where such framework agreements are lawfully accessible to the Council, except where the requirements of the individual framework require a further competition to be conducted; or
- (b) purchases at public auctions (including internet auction sites, e.g. Ebay) where the Director is satisfied that value for money will be achieved; or
- (c) the purchase of Supplies, Works, Services or Social and Other Specific 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 ACE(LDS); or
- (e) repairs to or the supply of parts for existing proprietary machinery or plant except where the value of the Contract exceeds the relevant EU Threshold; or

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(f) ~~Social or Other Specific Services~~ Contracts with a value below the EU Threshold where:-

- (i) the service is currently supplied by a Contractor to the satisfaction of the ~~relevant~~ Corporate Director is considered to be offering value for money 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 Health and Adult 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 ~~relevant~~ Corporate Director is satisfied that the urgency of the need for the service prevents the invitation of quotations or tenders in which case consideration shall be given to the duration of that service; or

(g) Contracts which are classifiable as '~~Social and Other Specific Services Contracts~~' under the PCR's, ~~with a value in excess of the EU Threshold for Social and Other Specific Services Contracts, in which case the appropriate process in accordance with the provisions of the PCRs shall be followed.~~

(h) Contracts where the Director with the agreement of the ACE(LDS) and the CD-SR agree that for reasons of extreme urgency brought about by unforeseeable events unattributable to the Council, the timescales for obtaining quotations or tenders cannot be met. A written record shall be signed and dated by the Director, whenever this rule applies.

16.2 Where any of the exceptions set out in (a) to (h) above are applied a written record of the decision and justification shall be signed and kept as part of the Gateway Process.

16.3 Waivers

16.3.1 Specific exceptions to Rules 8, 9 and 10 are permitted in such other circumstances as the CD-SR and the ACE(LDS) may agree.

16.3.2 Requests for waivers shall be made using a form prescribed by the ACE(LDS) and the CD-SR which shall specify the reasons for the request and include a completed risk assessment of the proposal.

16.3.3 The ACE(LDS) shall maintain a register of all requests made under this Rule and the responses given to them.

17.0 COMPLIANCE, CONTRACT REGISTER AND FORWARD PROCUREMENT PLANS

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

17.2 Each Director, CPG and/or the DPC's 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.

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(i) the service is currently supplied by a Contractor to the satisfaction of the Corporate Director Health and Adult Services or the Corporate Director Children and Young People's Service, is considered to be offering value for money 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 Health and Adult Services or the Corporate Director Children and Young People's Service considers it inappropriate for quotations or tenders to be invited, or¶
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(iii) . where the Corporate Director Health and Adult Services or 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 in which case consideration shall be given to the duration of that service¶

- 17.3 The CD-SR shall be responsible for monitoring adherence to these Rules.
- 17.4 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 “**Directorate Procurement Champions**” in this Rule.
- 17.5 **DPC’s** are responsible for the production of a FPP which will be completed in such format as CPG shall require.
- 17.6 The DPC’s shall each present an updated FPP to their respective directorate management teams quarterly for approval throughout the year.
- 17.7 An annual report on procurement matters, such report to include an annual procurement plan and actions arising from the annual procurement plan, will be presented to a meeting of the Corporate and Partnership Overview and Scrutiny Committee.
- 17.8 The Council maintains a Contract Register the purpose of which is to:

- (a) record key details of all contracts with an aggregate value of £25,000 or more; and
- (b) identify a contract reference number.

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17.9 DPC’s shall ensure that:-

- (a) all relevant contracts (including those Contracts to which **Rule 16** applies) are entered onto the Contract Register and the appropriate Contract number recorded
- (b) the Contract 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.

Contracts Finder

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17.10 When a Contract in excess of £25,000 is awarded the Director shall ensure that such information as is prescribed in the PCRs is published on Contracts Finder.

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18.0 GATEWAY PROCESS REPORTS INCLUDING NOTIFICATION OF SECTION 151 OFFICER AND MONITORING OFFICER

18.1 When a procurement is being considered which is expected to exceed the financial value thresholds specified in **Rule 18.2** then the Responsible Officer must complete the necessary Gateway Process report for consideration by the relevant Directorate Management Team or the relevant Director, the Assistant Director with responsibility for finance within that Directorate, and the DPC. No procurement should commence before the Gateway Process report is approved. The report shall include the estimated “whole life” financial value of the contract, the procurement methodology and any other relevant factors including, but without limitations, any TUPE implications. The Assistant Director with responsibility for finance will enter details on a register of procurements approved under this Rule which will be available to the CD-SR and the ACE(LDS).

18.2 The whole contract financial value thresholds for the purposes of **Rule 18.1** are:

- (a) Works contracts - £100,000

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- (b) ~~Social and Other Specific Services Contracts and Supplies and Services~~ contracts £100,000.

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18.3 When a procurement is being considered which is expected to exceed the financial value thresholds specified in **Rule 18.4** then the Responsible Officer must ensure the necessary Gateway Process report prepared in accordance with **Rule 18.1** is also considered by the ACE(LDS) or by a LDSO authorised by him. No procurement should commence before the Gateway Process report is approved.

18.4 The whole Contract financial value thresholds for the purpose of **Rule 18.3** are:

- (a) ~~Works~~ Contracts - £1m

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- (b) ~~Supplies and Service Contracts and Social and Other Specific Services~~ Contracts - £172,514

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18.5 No action leading towards procurement, including any steps to undertake a further competition under an existing framework arrangement, shall be undertaken until confirmation of the process has been given under the terms set out in **Rule 18.1 and 18.3**.

19.0 CONTRACT MONITORING

19.1 The Responsible Officer shall take all such steps as are appropriate to monitor and review the performance of the Contract, having regard to its value, nature, duration and subject matter. As part of the monitoring and review process the Responsible Officer shall maintain adequate records of Contract performance and details of review meetings with the Contractor. Such records and details shall be made available to Internal Audit whenever required and shall be recorded in any relevant Gateway Process report (Gateway 4). Such records shall also be used on the basis for any permitted extension to the Contract.

Contract Variation

19.2 Contracts may be varied in accordance with the terms of that Contract. Any proposed variations which have the effect of materially changing the Contract must be approved by the ACE(LDS), whether or not they are effected by amending the Contract itself or by correspondence.

20.0 TRAINING FOR PROCUREMENT

20.1 Any officer involved in procurement activities shall have received a level of formal training commensurate with the nature of the procurement activity being undertaken.

21.0 DECLARATION OF INTERESTS

21.1 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 ACE(LDS).

APPENDIX B

North Yorkshire County Council

Protocol on Audio/Visual Recording and Photography at Public Meetings

The County Council is committed to being open and transparent in the way it conducts its decision making. Recording is welcomed at County Council and committee and sub-committee meetings which are open to the public. The County Council understands that some members of the public attending its meetings may not wish to be recorded. The Chairman of the meeting will facilitate this by ensuring that any such request not to be recorded is respected by those making the recording.

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The County Council encourages the following as good practice:-

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1. Anyone wishing to record is asked, prior to the start of the meeting, to notify the Democratic Services Officer whose details are set out on the Agenda.

2. We ask that the recording be overt (ie clearly visible to anyone at the meeting) but non-disruptive.

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3. All those visually recording a meeting are requested to focus only on recording councillors, officers and those members of the public speaking to the meeting.

4. Any member of the public has the right not to be recorded. Agendas for meetings will make it clear that recording can take place. If any member of the public at the meeting does not wish to be recorded, the Chairman will ask them to make this known.

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5. Any children or young people clearly under the age of 18 who are present at the meeting are not to be filmed unless their parents/guardians have given their written consent.

6. The Chairman of the meeting will ask anyone filming/recording to suspend recording, and if needed call for an adjournment of the meeting if, in his/her opinion, continuing to record/film would prejudice proceedings. The circumstances in which this might occur include:-

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- recording is disrupting the business of the meeting;
- there is public disturbance or a suspension of the meeting;
- the meeting has resolved to exclude the public for reasons which are set down in the County Council's Constitution;
- a member of the public participating in the meeting objects to being recorded.

7. The recording and reporting on meetings of the County Council, its committees and sub-committees is subject to the law and it is the responsibility of those doing the recording and reporting to ensure compliance. This will include the Human Rights Act, the Data Protection Act and the laws of libel and defamation. We ask that the recording should not be edited in a way that could lead to misinterpretation or misrepresentation of the proceedings or infringement of the County Council's values or in a way that ridicules or shows a lack of respect for those in the recording. The

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County Council ~~ask that~~ any recording in breach of ~~this~~ be removed from public view. The County Council will have no liability for material published by any other person unless it is itself undertaking the publication through its offices.

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Please contact, in advance of the meeting, the Democratic Services Officer whose details are set out on the Agenda if the recording you wish to ~~make~~ involves equipment which is larger than a smart phone, tablet or compact camera, or if you have special requirements eg ~~need~~ to move around the room to record or film from different angles. The use of lighting for filming/flash photography will be allowed ~~but we ask that this is~~ arranged via the Democratic Services Officer prior to the meeting. The County Council ~~requests~~ contact in advance ~~to~~ ensure the meeting ~~runs smoothly~~ and there is a safe environment ~~in which~~ to transact the business.

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Shire Council Benchmarking

Surrey: Only appeals for collective disputes go to members. Dismissal appeals go to officer panel which has operated successfully for a number of years.

Somerset, Worcestershire, Nottinghamshire : Members hear some types of dismissal appeals

Devon: employees have option of Members or Chief Officer appeal, as Member availability is very limited so process takes longer. Chief Officers are far more likely to be able to hear an appeal quickly. This has reduced the number of Member appeals.

Dorset: moved from member appeals about a year ago to hybrid panel of three, a director and two members. The director is decision maker, in consultation with the two members. Work really well so far.

Norfolk: Members involved in dismissal hearings and jointly with unions for final stage grievances.

Gloucestershire: moved 3 years ago to Officer appeal hearings.

Sussex: trialled using Officers for dismissal appeals and final stage grievances.

Warwickshire: trialled using Officers for dismissal appeals and final stage grievances

Kent: Officer appeal panels – seen as a better use of officers time with officers trained and experienced in assessing and managing these. A panel of 2 senior officers is easier/quicker to organise and officers take the role of attending any subsequent ET etc. All activity is reported to the relevant Committee 6 monthly (since moved to annual). Trade Unions were not keen on the move but have since been satisfied that the process is at the least as rigorous if not more so.

Vale of Glamorgan: A small panel (Head of HR, Managing Director and Leader) works well and has improved speed and informality of the process

Buckinghamshire: Changed approach 2 years ago to panel of a Strategic Director (direct report to CEO) and a Service Director (reporting to a Strategic Director) with HR providing support.

Derbyshire: moved to Strategic Directors hearing all appeals subject to a 12 month review. The trade unions were unconvinced, but metrics show little difference in the outcomes

Hertfordshire: Moved to officer panel in 2010 which is working well. Members only hear appeals for Chief Officers and Assistant Directors.

Wiltshire: changed about 5 years ago to officer only via a separate appeals policy which applies to majority of staff policies. This went through the committee process to be ratified and there was no desire from members to be involved. This was because that there were very small numbers per year, a lot of training for members who may never be involved, and a lot of time required for the appeal panels and so members agreed not to be involved in the future.

Cornwall: Corporate Directors are responsible for such matters better fitted to their delegated operational responsibilities.

APPENDIX D

EMPLOYMENT APPEALS COMMITTEE

TERMS OF REFERENCE OF THE EMPLOYMENT APPEALS COMMITTEE

1. To hear and determine appeals against decisions of officers of the Council, where provision exists for appeals to a member level body, or of relevant decisions of the Governing Bodies of voluntary aided schools where the Governing Body so requests in respect of:-

- Group grievances and Collective Disputes

Comment [SS1]: This moved up in the document.

Exceptions:-

- a) appeals against dismissals on the ground of redundancy and against selection for redundancy, which shall be determined by a Chief Officer or Senior Manager s/he has authorised to act in his/her place in consultation with an HR adviser, and
 - b) appeals against dismissals under the Council's Attendance Management Policy shall be determined, in consultation with a Member to be drawn from the Appeals Committee, by a senior manager who has not previously been involved in the matter, and who is duly authorised to determine the appeal in accordance with paragraph 3.7 of the Officers' Delegation Scheme. The appeal will be advised by an HR adviser who has had no previous involvement in the case and who will have no role in decision-making and
 - c) Appeals against dismissals under the Council's Capability of Disciplinary Policies shall be determined, in consultation with a Member to be drawn from the Appeals Committee, by a Corporate Director / Assistant Chief Executive who has not been previously involved in the matter and who is duly authorised to determine the appeal in accordance with Josie – need to check the Officers delegation scheme to ensure this is the same. The appeal panel will be advised by a Head of HR / Principal Adviser who has had no previous involvement in the case, and who will not take part in decision-making.
2. To exercise all functions (including, but not limited to, hearing and determination) in relation to appeals by the Chief Executive Officer against decisions of the Chief Officers Appointments and Disciplinary Committee to take disciplinary action against him/her short of dismissal.

Comment [SS2]: Changed wording here to make it clear HR only advising

Comment [SS3]: This is new working

3. To exercise all functions (including, but not limited to, hearing and determination) in relation to appeals by the Chief Executive Officer against decisions of the Leader and/or the Chief Officers Appointments and Disciplinary Committee, on appraisal of the Chief Executive Officer, not to award an increment.

Notes:

1. No member of the Chief Officers Appointments and Disciplinary Committee shall sit on the Employment Appeals Committee when the Employment Appeals Committee is hearing appeals by the Chief Executive Officer against decisions of the Chief Officers Appointments and Disciplinary Committee to take disciplinary action against him/her short of dismissal.

CHIEF OFFICERS APPOINTMENTS AND DISCIPLINARY COMMITTEE

Delegated Powers

Appointments

1. Where a vacancy occurs in the position of Chief Executive Officer, to:
 - a. interview all qualified applicants for the post; or
 - b. select a shortlist of such qualified applicants and interview those on the shortlist; and (in either case)
 - c. having carried out such interviews, either appoint (NB Note 1 below) one of the candidates to the vacancy, or decide not to appoint any of the candidates, but instead to take such further action in relation to the filling of the post as the committee may determine.
2. Where a vacancy occurs in the position of any Chief Officer other than the Chief Executive Officer, to appoint a sub-committee (NB Note 4 below) to perform the functions set out at 1 (a)-(c) above in relation to that vacant post.
3. To consider the outcome of the annual appraisal of the performance of the Chief Executive Officer by the Leader of the Council where the outcome will affect the terms and conditions of the Chief Executive Officer and to determine any necessary changes to such terms and conditions. Where, on appraisal of the Chief Executive Officer, the Leader and/or the Chief Officers Appointments and Disciplinary Committee determines that an increment should not be awarded, the Chief Executive Officer will have a right of appeal to the Employment Appeals Committee.

Note: for the avoidance of doubt, issues such as the award (or non-award) of an increment within the grade band of the Chief Executive Officer will not amount to a change in his/her terms and conditions necessitating a referral to this Committee.

4. Subject to the sub-paragraphs below, to consider from time to time the terms and conditions of Chief Officers and make necessary changes to them:
 - a) The determination of the remuneration and other terms and conditions which shall apply to a Chief Officer post on appointment must comply with the Pay Policy Statement, provided that if it is proposed to make an appointment on terms and conditions which do not comply, the matter shall be referred to full Council for consideration as to whether the Pay Policy Statement should be amended prior to a final offer being made to any candidate.
 - b) Any amendments proposed to Chief Officer remuneration and other terms and conditions, which would comprise an amendment to the Pay Policy Statement, shall be considered by the Chief Officers Appointments and Disciplinary Committee (or, in the case of Assistant Directors and Assistant Chief Executives, by the Chief Executive), and recommended by them to full Council for approval.

CHIEF Executive Officer Disciplinary and Capability

5. To exercise all functions (save as may be delegated elsewhere) of investigating and disciplinary committee as prescribed in the Joint Negotiating Committee National Salary Framework & Conditions of Service for Local Authority Chief Executives and as detailed in the Council's Disciplinary Policy and Procedure for the Chief Executive Officer, in relation to disciplinary action in respect of the Chief Executive Officer on the grounds of conduct, capability or for other substantial reasons; in this regard such delegation including, but not limited to:

- a) the initial investigation and consideration of allegation(s) relating to the conduct or capability of the Chief Executive Officer, or other substantial issue(s) which may require investigation;
- b) the determination of whether the allegation(s) require any informal or formal action and whether the appointment of a Designated Independent Person to investigate the allegation(s) is required;
- c) where necessary, the appointment of a Designated Independent Person to investigate the allegation(s);
- d) the consideration of whether precautionary action is required (including the power to suspend the Chief Executive Officer, subject always to the legal requirements regarding such suspension) and, if so, the determination of the extent and terms of such precautionary action;
- e) the receipt and consideration of Designated Independent Person reports;
- f) where appropriate, the referral of the matter back to the Designated Independent Person for further investigation and report;
- g) the hearing and determination of the allegation(s) at a disciplinary hearing, including the decision as to whether any disciplinary action (including dismissal) is necessary after consideration of the Designated Independent Person's report.

Chief Officers Disciplinary and Capability:

To hear and determine all appeals made by Chief Officers, including Statutory Officers, of the Council, against decisions made by the Chief Executive Officer in respect of:

- a) Disciplinary action (including dismissal),
- b) Capability (including dismissal),
- c) Some other substantial reason.

Comment [SS4]: This is new to reflect Chief Officers process

Notes:

1. Full Council must approve, in advance, any offer of appointment as, or any notice of dismissal to, the Chief Executive Officer.
2. Action under 2 above is to be reported to full Council at the first available opportunity.
3. NB also Rules 5 and 6 of the Staff Employment Procedure Rules.
4. Any Sub-Committee must include at least one member of the Executive.

S T A T U T O R Y I N S T R U M E N T S

2015 No. 881

LOCAL GOVERNMENT, ENGLAND

**The Local Authorities (Standing Orders) (England)
(Amendment) Regulations 2015**

<i>Made</i>	- - - -	<i>25th March 2015</i>
<i>Laid before Parliament</i>		<i>25th March 2015</i>
<i>Coming into force</i>	- -	<i>11th May 2015</i>

The Secretary of State for Communities and Local Government, in exercise of the powers conferred by sections 8, 20 and 190(1) of the Local Government and Housing Act 1989^(a) makes the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and come into force on 11th May 2015.

(2) In these Regulations—

“the 2001 Regulations” means the Local Authorities (Standing Orders) (England) Regulations 2001^(b).

Amendments relating to approval of dismissal of certain officers

2.—(1) The 2001 Regulations are amended as follows.

(2) In regulation 5, after “the appointment or dismissal of the head of the authority’s paid service” insert “, or the dismissal of the authority’s monitoring officer or chief finance officer,”.

(3) For regulation 6 substitute—

“Standing orders in respect of disciplinary action

6. No later than the first ordinary meeting of the authority falling after 11th May 2015 a local authority must, in respect of disciplinary action against the head of the authority’s paid service, its monitoring officer or its chief finance officer—

- (a) incorporate in standing orders the provisions set out in Schedule 3 or provisions to the like effect; and
- (b) modify any of its existing standing orders in so far as is necessary to conform with those provisions, in particular by removing from its existing standing orders the provisions which were set out in Schedule 3 as it was immediately before the date

^(a) 1989 c. 42. Section 20 was amended by section 119 of, and Schedule 6 to, the Local Democracy, Economic Development and Construction Act 2009 (c. 20).

^(b) S.I. 2001/3384. There are no relevant amendments.

that the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came into force, or provisions to the like effect.”.

(4) Regulations 7 (investigation of alleged misconduct) and 10 (transitional and consequential provisions) are omitted.

(5) In Schedule 1 (provisions to be incorporated in standing orders relating to staff)—

(a) in paragraph 4 of Part 1 (authority with mayor and cabinet executive) and in paragraph 4 of Part 2 (authority with leader and cabinet executive), in each case for paragraph (1) substitute—

“(1) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the head of the authority’s paid service, the authority must approve that appointment before an offer of appointment is made to that person.

(1A) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the head of the authority’s paid service, as the authority’s chief finance officer, or as the authority’s monitoring officer, the authority must approve that dismissal before notice is given to that person.”;

(b) for paragraph 4 of Part 4 (authority operating committee system), substitute—

“4.—(1) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the head of the authority’s paid service, the authority must approve that appointment before an offer of appointment is made to that person.

(2) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the head of the authority’s paid service, as the authority’s chief finance officer, or as the authority’s monitoring officer, the authority must approve that dismissal before notice of dismissal is given to that person.”.

(6) For Schedule 3 (provisions to be incorporated in standing orders in respect of disciplinary action) substitute the Schedule set out in the Schedule to these Regulations.

Transitional and saving provisions

3.—(1) Where, before the date on which these Regulations come into force, anything was being done in respect of an allegation of misconduct in accordance with—

(a) regulation 7 of the 2001 Regulations, including that regulation as applied by regulation 10(1)(b) of the 2001 Regulations; or

(b) the provisions set out in paragraph 4 of Part 1 of Schedule 1 to the Local Authorities (Standing Orders) Regulations 1993(a), or Schedule 3 to the 2001 Regulations (or provisions to the like effect) incorporated in the local authority’s standing orders,

the provisions mentioned in paragraphs (a) and (b) shall continue to apply in respect of the allegation of misconduct in question.

(2) Anything which, before the date on which the local authority incorporated or modified provisions in standing orders in accordance with the 2001 Regulations as amended by regulation 2, was being done by, to or in relation to an officer in accordance with a provision mentioned in paragraph (1) may be continued after that date by, to or in relation to that officer in accordance with that provision.

(a) S.I. 1993/202. The Local Authorities (Standing Orders) Regulations 1993 were repealed by S.I. 2001/3384 subject to savings specified in regulation 8(3) of S.I. 2001/3384

(3) Nothing in these Regulations shall apply in relation to the standing orders of the New Forest National Park Authority as provided for in Part 1 of Schedule 3 to the New Forest National Park Authority (Establishment) Order 2005(a).

Signed by authority of the Secretary of State for Communities and Local Government

Kris Hopkins

Parliamentary Under Secretary of State

Department for Communities and Local Government

25th March 2015

SCHEDULE

Regulation 2

“SCHEDULE 3

Regulation 6

Provisions to be incorporated in standing orders in respect of disciplinary action

1. In the following paragraphs—

- (a) “the 2011 Act” means the Localism Act 2011(b);
- (b) “chief finance officer”, “disciplinary action”, “head of the authority’s paid service” and “monitoring officer” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001(c);
- (c) “independent person” means a person appointed under section 28(7) of the 2011 Act;
- (d) “local government elector” means a person registered as a local government elector in the register of electors in the authority’s area in accordance with the Representation of the People Acts;
- (e) “the Panel” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972(d) for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;
- (f) “relevant meeting” means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and
- (g) “relevant officer” means the chief finance officer, head of the authority’s paid service or monitoring officer, as the case may be.

2. A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

3. The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

4. In paragraph 3 “relevant independent person” means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

(a) SI 2005/421. Article 16 of Part 1 of Schedule 3 of the Order applies regulation 7 of the 2001 Regulations to the New Forest National Park Authority, as if it were a local authority as referred to in the 2001 Regulations.

(b) 2011 c. 20.

(c) S.I. 2001/3384.

(d) 1972 c. 70.

5. Subject to paragraph 6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order—

- (a) a relevant independent person who has been appointed by the authority and who is a local government elector;
- (b) any other relevant independent person who has been appointed by the authority;
- (c) a relevant independent person who has been appointed by another authority or authorities.

6. An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

7. The authority must appoint any Panel at least 20 working days before the relevant meeting.

8. Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular—

- (a) any advice, views or recommendations of the Panel;
- (b) the conclusions of any investigation into the proposed dismissal; and
- (c) any representations from the relevant officer.

9. Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Authorities (Standing Orders) (England) Regulations 2001 ("the 2001 Regulations"), which require certain local authorities in England to make or modify standing orders so that they include certain provisions relating to staff and other matters.

Regulation 2 removes the provisions in the 2001 Regulations, except insofar as they apply in relation to the standing orders of the New Forest National Park Authority, relating to the "designated independent person" required to be appointed by a local authority before it could dismiss or discipline its head of paid service, monitoring officer or chief finance officer. It makes new provision about the procedure to be followed in such cases, which authorities are required to include in their standing orders. It also requires that the authority, when setting up its panel for the purpose of advising on matters relating to the dismissal of a relevant officer, invite independent persons who have been appointed under section 28(7) of the Localism Act 2011. The authority is required to appoint such independent persons to the panel in the specified priority order and the panel must have at least two members.

Regulation 3 makes transitional provisions in relation to regulation 2.

No impact assessment has been prepared in relation to these Regulations because no impact on the private or voluntary sectors is foreseen.

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (STANDING ORDERS) (ENGLAND) (AMENDMENT)
REGULATIONS 2015

2015 No. 881

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government (“the Department”) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Regulations amend the Local Authorities (Standing Orders) (England) Regulations 2001 (“the 2001 Regulations”) in order to make provision about the standing orders of local authorities in relation to staff and disciplinary procedures.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Section 8 of the Local Government Housing and Land Act 1989 (“the 1989 Act”) allows the Secretary of State by regulations to require certain local authorities to incorporate prescribed provisions in standing orders relating to their staff. Section 20 allows the Secretary of State by regulations to require certain local authorities to adopt prescribed procedural standing orders.
 - 4.2 Section 4 of the 1989 Act requires certain local authorities to designate one of their officers as the “head of paid service” and section 5 requires authorities to designate one of their officers as the “monitoring officer”. Section 6 of the 1989 Act and section 151 of the Local Government Act 1972 require authorities to have an officer with responsibility for financial administration, who is referred to in the 2001 Regulations as the “chief finance officer”.
 - 4.3 Section 28(6) of the Localism Act 2011 requires relevant authorities¹ other than parish councils to have in place arrangements under which allegations can be investigated and decisions on allegations can be made. The authority is required by section 28(7) of that Act to appoint an independent person whose views are to be sought, and taken into account, by the authority before making a decision on an allegation that it has decided to investigate.
 - 4.4 The 2001 Regulations require English county, district, and London borough councils, the Common Council of the City of London and the Isles of Scilly to make or modify standing orders to include certain provisions relating to staff and procedural matters. These include provision about the procedures for disciplinary action against

¹ “Relevant authorities” is defined at section 27(6) of the 2011 Act.

certain senior officers, and the appointment and dismissal of the head of paid service, its monitoring officer or its chief finance officer.

4.5 Article 16 of, and paragraph 3(2) of Schedule 3 to, the New Forest National Park Authority (Establishment) Order 2005 apply regulations 6 and 7 of the 2001 Regulations to the New Forest National Park Authority, as if it were a local authority as referred to in the 2001 Regulations.

5. Territorial Extent and Application

This instrument applies to councils in England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The most senior officers of a council i.e. the head of paid service, the monitoring officer, and the chief finance officer, have statutory responsibilities to discharge to their councils. Since they work with and report to the elected members, they discharge these responsibilities in a political environment. As a result, statutory protection requiring an appointment of a Designated Independent Person (DIP) to investigate any allegation of misconduct against these senior officers was introduced in the 2001 Regulations. Prior to 2001, a similar provision, but only in relation to the Head of Paid Service, was included in the Local Authorities (Standing Orders) Regulations 1993 (S.I. 1993/202). The DIP is appointed early in the procedure, when it appears to a council that an allegation of misconduct by the relevant officer requires to be investigated. No disciplinary action in respect of these most senior officers may be taken other than in accordance with a recommendation in a report made by a Designated Independent Person. In practice, often the DIP appointed by councils is a barrister with experience of employment law. The intention of this provision is to ensure that these officers can discharge their duties without any fear of being influenced by elected members and being dismissed without good reason.

7.2 There have been for some time concerns that the DIP process in its application to councils is in practice complex and expensive. It has placed councils as the employer at a great disadvantage in comparison to the position of the employee, particularly given that the recommendation of the DIP must be followed. The Local Government Association Group has estimated that the minimum legal cost of the process is £100,000, excluding the cost of the investigation, preparing the case and briefing lawyers². The DIP process is time consuming particularly where the council and the senior officer concerned could not agree on a DIP, where the process can take over 15 months to reach completion.

² By mutual agreements – Severance payments to council chief executives. Local Government report March 2010. This document is available at <http://archive.audit-commission.gov.uk/auditcommission/sitecollectiondocuments/Downloads/20100315bymutualagreementrep.pdf>.

7.3 In addition, where there are disciplinary actions against these most senior officers, there have been some suggestions that some councils prefer to negotiate severance payments rather than go through the formal DIP process. This is evidenced in the House of Commons Communities and Local Government Committee's report³, which highlights the view of the Local Government Association witness that undertaking a performance management process for top staff can currently be "very damaging and timing consuming." The Government believes that such a process is not appropriate as it defeats the purpose of having the DIP process in place. Councils ought to act in the best interest of local taxpayers and not be paying inflated sums to senior officers in order to avoid taking the costly and bureaucratic DIP route.

7.4 These Regulations simplify, as well as localise, the disciplinary process for the most senior officers by removing the bureaucratic and mandatory requirement that a DIP should be appointed. In place of the DIP process, the decision will be taken transparently by full council, who must consider any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned. This means that councils can consider and decide the best disciplinary process that will deliver value for money for their local taxpayers, whilst retaining independent scrutiny.

7.5 In the case of a proposed disciplinary action against one of the most senior officers, the council is required to invite independent persons who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2011 to form an independent panel. An independent panel will be formed if two or more independent persons accept the invitations, and councils should issue invitations in accordance with the following priority order:

- an independent person who has been appointed by the council and who is a local government elector,
- any other independent person who has been appointed by the council, and
- an independent person who has been appointed by another council or councils.

These requirements allow local people to be involved in the disciplinary process for senior officers and makes councils more accountable to their community.

7.6 The Regulations also make a provision limiting the remuneration that should be paid to independent persons on the panel to the level of the remuneration which they would normally receive as an independent person in the conduct regime. The conduct regime remuneration is a modest annual allowance or small meeting fee, and this approach ensures that the new process will not involve high costs.

7.7 The Regulations provide for the new arrangements for taking disciplinary action against the most senior council staff to be given effect by councils modifying their standing orders. Provision is made for councils to make this modification no later than at the first ordinary council meeting held after the 7 May 2015 elections. To achieve this the Regulations come into force on 11 May 2015.

³ Local Government Chief Officers' remuneration, published in September 2014. This document is available at <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcomloc/191/191.pdf>.

- ***Consolidation***

7.8 The Government intends to consolidate the relevant regulations regarding Standing Orders into a new set of Regulations, which we anticipate to include the preserved requirements under the Local Authorities (Standing Orders) Regulations 1993 (S.I. 1993/202), the 2001 Regulations, the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 (S.I. 2014/165) and these Regulations. However, we are unable to do this before this Parliament is dissolved. We, therefore, aim to consolidate these Regulations as soon as practicable in the new Parliament.

8. Consultation outcome

8.1 In February 2013 we sought the views of the Local Government Association (LGA), Lawyers in Local Government (formerly Association of Council Secretaries and Solicitors), the Society of Local Authority Chief Executives (SOLACE), the Association of Local Authority Chief Executives (ALACE), the Taxpayers' Alliance, the Chartered Institute of Public Finance and Accountancy (CIPFA), the Centre for Public Scrutiny (CfPS), District Councils' Network, and the Association of Democratic Services Officers (ADSO), over four weeks. These are the main representative organisations of those involved in the local government sector. Their views were invited on draft amendment regulations that provided for the abolition of the DIP process and for any dismissal decision of top officers to be taken by full council. Responses were received from LGA, SOLACE, ALACE, CfPS, Lawyers in Local Government, ADSO, CIPFA and a number of other partners, including councils. There was wide support for the abolition of the existing bureaucratic DIP process but none considered relying wholly on a full council decision would provide adequate safeguards for top staff against inappropriate dismissal. In May 2013, the Department officials met with officials from LGA to further discuss the Government proposals.

8.2 We sought the views of these partners in December 2013 for five weeks on revised draft regulations which provided that any decision to dismiss top staff must be taken by the full council, and that full council be required to consider any report about the proposed dismissal which a panel drawn from members of the council's independent remuneration panel (IRP) thought fit to put before the council. The Department received responses from most of these partners including the LGA, SOLACE and ALACE. Responses were also received from some councils and interested partners such as the Society of County Treasurers, the Association of Policing & Crime Chief Executives, and the Police and Crime Commissioners Treasurers' Society, all of which have been carefully considered before finalising the Regulations.

8.3 There was continuous support for the abolition of the existing DIP process, as well as general support for a panel to make a report to the full council before a dismissal decision is taken. However, concerns were raised about the skill set of the panel members, and the detailed prescription about how the panel might operate. A number of partners suggested that independent persons appointed for the purpose of propriety and conduct under section 28(7) of the Localism Act 2011 would be better placed than members of the council's IRP to fulfil the role of the proposed new panel given that their role relates to the consideration of disciplinary matters.

8.4 The LGA, in their response, accepted that the existing DIP process has “undoubtedly created a process that is overly bureaucratic and time consuming”. Whilst they support the removal of the existing bureaucratic statutory process, their preferred approach was to streamline the DIP process, requiring the appointment of DIPs from a list of qualified independent people that the LGA would keep. They believed that the list, which would operate as a “taxi rank” system, would remove the lengthy delays created by the current process and reduce costs by introducing fixed rate payments.

8.5 The Government accepts the view that independent persons appointed for the purposes of the members’ conduct regime under section 28(7) of the Localism Act 2011 would be better placed for the role proposed. It also accepts that the proposed process should be simplified, leaving significantly greater flexibility for individual councils. However, the Government does not accept that the LGA’s “taxi rank” approach would be suitable. Such an approach does not support the principles of localism and accountability that the new rules aim to achieve, in that dealing with disciplinary action against top officers would not be in the hands of the full council. This would also continue to put councils, as the employer, at a disadvantage in comparison to the position of the employee. Given the extensive engagement the Government has had with partners since 2013, the Government does not consider that any further consultations are necessary and has proceeded to make and lay these Regulations on the basis outlined above.

9. Guidance

9.1 These regulations are considered to be self explanatory. There are no plans to provide additional guidance.

10. Impact

10.1 An impact assessment has not been produced for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 The Regulations simplify the processes for dismissing the most senior council staff, in particular putting any decisions fully in the hands of the council’s members who are accountable to their electorate for the decisions they take. With these new arrangements it is expected that the performance management of the most senior staff will be both more effective and efficient with potentially lower costs in the case of departures/dismissals than currently.

11. Regulating small business

11.1 This instrument does not apply to small business.

12. Monitoring & review

12.1 The Regulations make amendments to the existing 2001 Regulations and the Department does not intend to put in place any formal mechanism for monitoring and reviewing these Regulations. Any issue arising from these Regulations will be

addressed through the Department's on-going dialogue with the Local Government Association.

13. Contact

Tayo Peters at the Department for Communities and Local Government
Tel: 03034442551 or email: tayo.peters@communities.gsi.gov.uk can answer any queries regarding the instrument.

APPENDIX F**CHIEF OFFICERS APPOINTMENTS AND DISCIPLINARY COMMITTEE****Delegated Powers****Appointments**

1. Where a vacancy occurs in the position of Chief Executive Officer, to:
 - a. interview all qualified applicants for the post; or
 - b. select a shortlist of such qualified applicants and interview those on the shortlist; and (in either case)
 - c. having carried out such interviews, either appoint (NB Note 1 below) one of the candidates to the vacancy, or decide not to appoint any of the candidates, but instead to take such further action in relation to the filling of the post as the committee may determine.
 2. Where a vacancy occurs in the position of any Chief Officer other than the Chief Executive Officer, to appoint a sub-committee (NB Note 4 below) to perform the functions set out at 1 (a)-(c) above in relation to that vacant post.
 3. To consider the outcome of the annual appraisal of the performance of the Chief Executive Officer by the Leader of the Council where the outcome will affect the terms and conditions of the Chief Executive Officer and to determine any necessary changes to such terms and conditions. Where, on appraisal of the Chief Executive Officer, the Leader and/or the Chief Officers Appointments and Disciplinary Committee determines that an increment should not be awarded, the Chief Executive Officer will have a right of appeal to the Employment Appeals Committee.
- Note: for the avoidance of doubt, issues such as the award (or non-award) of an increment within the grade band of the Chief Executive Officer will not amount to a change in his/her terms and conditions necessitating a referral to this Committee.
4. Subject to the sub-paragraphs below, to consider from time to time the terms and conditions of Chief Officers and make necessary changes to them:
 - a) The determination of the remuneration and other terms and conditions which shall apply to a Chief Officer post on appointment must comply with the Pay Policy Statement, provided that if it is proposed to make an appointment on terms and conditions which do not comply, the matter shall be referred to full Council for consideration as to whether the Pay Policy Statement should be amended prior to a final offer being made to any candidate.
 - b) Any amendments proposed to Chief Officer remuneration and other terms and conditions, which would comprise an amendment to the Pay Policy Statement, shall be considered by the Chief Officers Appointments and Disciplinary Committee (or, in the case of Assistant Directors and Assistant Chief Executives, by the Chief Executive), and recommended by them to full Council for approval.

CHIEF Executive Officer Disciplinary and Capability

5. To exercise all functions (save as may be delegated elsewhere) of investigating and disciplinary committee as prescribed in the Joint Negotiating Committee National Salary Framework & Conditions of Service for Local Authority Chief Executives and as detailed in the Council's Disciplinary Policy and Procedure for the Chief Executive Officer, in relation to disciplinary action in respect of the Chief Executive Officer on the grounds of conduct, capability or for other substantial reasons; in this regard such delegation including, but not limited to:

- a) the initial investigation and consideration of allegation(s) relating to the conduct or capability of the Chief Executive Officer, or other substantial issue(s) which may require investigation;
- b) the determination of whether the allegation(s) require any informal or formal action and whether the appointment of a Designated Independent Person to investigate the allegation(s) is required;
- c) where necessary, the appointment of a Designated Independent Person to investigate the allegation(s);
- d) the consideration of whether precautionary action is required (including the power to suspend the Chief Executive Officer, subject always to the legal requirements regarding such suspension) and, if so, the determination of the extent and terms of such precautionary action;
- e) the receipt and consideration of Designated Independent Person reports;
- f) where appropriate, the referral of the matter back to the Designated Independent Person for further investigation and report;
- g) the hearing and determination of the allegation(s) at a disciplinary hearing, including the decision as to whether any disciplinary action (including dismissal) is necessary after consideration of the Designated Independent Person's report.

Chief Officers Disciplinary and Capability:

To hear and determine all appeals made by Chief Officers, including Statutory Officers, of the Council, against decisions made by the Chief Executive Officer in respect of:

- a) Disciplinary action (including dismissal),
- b) Capability (including dismissal),
- c) Some other substantial reason.

Comment [SS1]: This is new to reflect Chief Officers process

Notes:

- 1. Full Council must approve, in advance, any offer of appointment as, or any notice of dismissal to, the Chief Executive Officer.
- 2. Action under 2 above is to be reported to full Council at the first available opportunity.
- 3. NB also Rules 5 and 6 of the Staff Employment Procedure Rules.
- 4. Any Sub-Committee must include at least one member of the Executive.