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Merton Council

Standards and General Purposes Committee Extraordinary Meeting Agenda

Membership

Councillors:

Peter McCabe (Chair)
Adam Bush (Vice-Chair)
Ben Butler
John Dehaney
Dickie Wilkinson
David Williams MBE JP
Hina Bokhari
Mary Curtin
Andrew Howard
Brenda Fraser
Nick Draper
Martin Whelton

Independent Persons:

Clive Douglas
Katy Willison

Substitute Members:

Omar Bush
Nick McLean
Jenifer Gould
Edward Foley
Caroline Cooper-Marbiah
Edith Macauley MBE

Date: Monday 28 June 2021

Time: 7.15 pm

Venue: Council Chamber, Civic Centre, Morden, SM4 5DX

For more information about the agenda please contact
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Standards and General Purposes Committee Extraordinary Meeting Agenda

28 June 2021

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Note on declarations of interest

Members are advised to declare any Disclosable Pecuniary Interest in any matter to be considered at the meeting. If a pecuniary interest is declared they should withdraw from the meeting room during the whole of the consideration of that matter and must not participate in any vote on that matter. For further advice please speak with the Managing Director, South London Legal Partnership.

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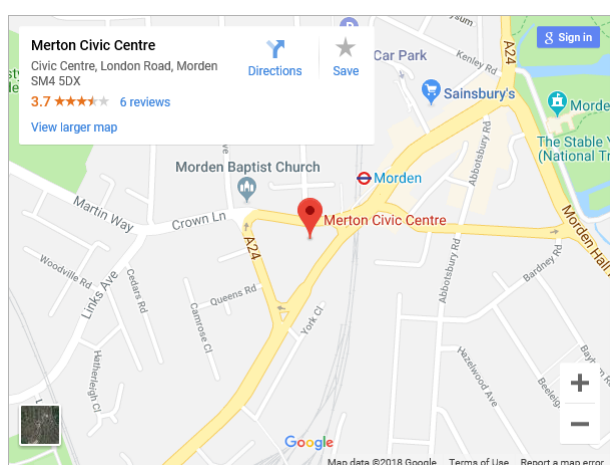
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Committee: Standards and General Purposes Committee

Date: 28 June 2021

Subject: Arrangements for returning to in-person Council and Committee Meetings

Lead officer: Andrew Robertson, Head of Democracy and Electoral Services, 0208 545 3409

Lead member: Councillor Tobin Byers, Cabinet Member for Finance

Contact officer: Amy Dumitrescu, Interim Democracy Services Manager, 0208 545 3357

Recommendations:

- A. That the Standards and General Purposes Committee discuss and agree the proposed arrangements for the return to in-person Council and Committee meetings

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. As a result of the expiry of the emergency legislation enabling council and committee meetings to be held virtually, Council is required to facilitate the return of in person meetings at the Civic Offices. Council has agreed that these meetings can resume as of 21 June 2021, the original date that the government had set for the lifting of all national Coronavirus restrictions, now currently postponed to 19 July 2021.
- 1.2. This report considers the arrangements for returning to in-person meetings and the options available for this.
- 1.3. As a small number of meetings will have taken place prior to the meeting of Standards and General Purposes Committee, any feedback from these meetings can also be considered during discussions.

2 DETAILS

- 2.1. Since April 2020 Council and committee meetings had been held virtually using Zoom and livestreamed to the Council's Youtube channel under section 78 of the Coronavirus Act.
- 2.2. Emergency legislation enabling these meetings to be held virtually expired on 7 May 2021 and therefore meetings were required to meet in person from that date. In an effort to continue the facilitation of virtual meetings a high court challenge was lodged; however the judgement received in late April confirmed that meetings should return to being held in person and that for Councillors to be recorded as being present at the meeting, they must attend in person.
- 2.3. A further post-script judgement was issued that access to these meetings must also be provided for members of the public to attend should they wish to.

- 2.4. At its Annual Meeting on 21 April 2021, Council agreed that, should the high court challenge be unsuccessful, meetings would resume in person from 21 June 2021, the date on which social distancing regulations were expected to be lifted. Whilst this date has now been postponed, the majority of meetings are able to be facilitated within Government guidance on social distancing as detailed below and therefore can continue to proceed in person as planned.

3 PROPOSALS

- 3.1 The following solutions are therefore proposed:

3.2 **All Council and Committee meetings will be held in the Council Chamber:**

The Council Chamber is the largest available room within the Civic Offices with a current capacity of 67 people if sitting 1+ metre apart, and 50 people if spaced 2 metres apart. The usual capacity with no social distancing in place is approximately 130 people. A capacity of 50 people enables all meetings except full council to be held in the Council Chamber with attendees sitting 2 metres apart. Risk mitigations will be in place including requiring attendees to wear masks at all times except whilst speaking or exempt, ventilation of the room, having a one way system in place, implementing a daily cleaning schedule, and the provision of hand sanitiser and wipes. Attendees will also be asked to take a lateral flow test 48 hours before the meeting.

3.3 **Suggested provisions for specific meetings**

3.4 **Full Council**

- 3.4.1 The usual attendance of Full Council is approximately 80 persons plus members of the public. It is currently not possible for this to be accommodated safely within the Council Chamber if facilitating some form of social distancing. As stated above, the maximum number who can be accommodated is 67 with participants sitting 1+ apart and 50 people if spaced 2 metres apart. Public health have advised that 50 people spaced 2 metres apart is the preferred option in order to minimise the risk of transmission.
- 3.4.2 The proposal therefore is that attendance at Full Council in the Chamber is limited to 45 Councillors plus the Chief Executive, Monitoring Officer and Democratic Services officers and a small number of public attendees (proposed to be limited to 3). All other officers and attendees would attend remotely via Zoom.
- 3.4.3 It would be open to members to agree that instead of the full complement of Cllrs attending, some members would not attend, provided that the meeting was quorate based on the numbers in physical attendance.
- 3.4.4 If this approach were adopted, members who did not attend the meeting in person would still be able to participate by Zoom. However, their attendance would not count towards the quorum or towards their attendance for the purposes of section 85 of the Local Government Act 1972 (“the six month rule”), and they would not be able to vote or move or second amendments.

3.5 **Licensing Sub-Committees:**

Licensing Sub Committees would continue to be held virtually as these meetings are constituted under the Licensing Act 2003.

3.6 **Planning Applications Committee:**

Planning Applications Committee would be held in person, whilst allowing for remote contributions by the public and applicants.

3.7 **Scrutiny:**

Scrutiny would be held in person in the Council Chamber.

3.8 **Consultative committees and community forums**

Consultative Committees and Community Forums would be held virtually whilst restrictions remain in place. Community Forums may benefit from a hybrid approach going forward if this can be facilitated in the current external venues.

3.9 Meetings not precluded from meeting virtually such as Leaders Strategy Group and Joint Cemetery Boards, would continue to meet virtually.

3.10 **Meetings will continue to be livestreamed**

3.10.1 All public meetings held on Zoom since April 2020 have been livestreamed to the Council's YouTube channel. This has allowed the public to continue to engage with the process through watching the meetings live and by joining the meetings to speak and ask questions.

3.10.2 Meetings have received between 20 and 554 views. Average in person attendance would be between 1 – 50 members of the public.

3.10.3 Retaining livestreaming of meetings would continue this increased public engagement with meetings, as well as enabling and encouraging those who wish to stay home to do so, rather than attend at the Civic offices.

3.11 **Retain remote attendance for some attendees**

3.11.1 Due to the reduced capacity of the Council Chamber when social distancing measures are in place, it is proposed that officers presenting reports, attending to observe or otherwise not specifically required to be present in the room continue to attend remotely.

3.11.2 Members of the public would be encouraged to continue to view meetings online and to attend remotely to speak or to ask questions; however, limited facilities would be made available for those members of the public who wished to attend in person as legally required. Meetings would therefore need to retain a small number of public gallery seating for members of the public to attend.

3.12 Members attending Remotely

- 3.12.1 It is proposed that members who wish to attend the meeting to observe but who are not on the committee are able to attend remotely, including those who wish to speak on a specific item. However, it should be noted that although their attendance would be recorded in the minutes it would not count towards the six month rule.
- 3.12.2 Consideration could also be given to allowing councillors who are members of the committee in question to attend remotely, provided there were sufficient numbers physically present for the meeting to be quorate. They could ask questions and participate in discussions but would not be able to vote and, as above, could not count their attendance for the purposes of the six-month rule. This would not apply to the chair of any meeting.
- 3.12.3 Although such attendance would not count formally as attendance, a note could be made in the minutes of such meetings, indicating that a member had participated remotely and consideration could be given to including a similar indication on the attendance details on the website. Members may consider that doing so would only be appropriate while the Covid restrictions remain in place.

3.13 Meetings with large attendee numbers

- 3.13.1 Meetings such as the Planning Applications Committee which attracted a large number of attendees for a particular item may pose a health and safety issue under the current guidelines. In person attendance would therefore need to be limited and a ticketing system could be setup for these purposes. In addition, for Planning Applications Committee, attendees could be held in a socially distanced waiting area outside the Council Chamber whilst other items were being considered and each group brought in only for their specific item. This approach has been used in the past for other large meetings. Attendees would continue to be encouraged to participate remotely where possible.
- 3.13.2 All current measures will be regularly reviewed depending on the Government guidance applicable at the time of the meeting.

3.14 Risk Mitigations in place for all meetings

- Hand sanitiser and cleaning wipes would continue to be provided
- The Chamber and Committee Rooms would be well ventilated.
- Masks would be required during meetings unless attendees are exempt or are speaking.
- Attendees would be asked to take a lateral flow test before attending the meeting.

- Water would not be provided, with attendees bringing their own water, pens and copies of papers. Name plates would not be provided to reduce transmission risk.
- The Council Chamber will be cleaned daily and all touchpoints as well as microphones will be cleaned each afternoon. In the event of a longer meeting (ie Planning Committee) Democratic Services staff are able to wipe down touchpoints, door handles etc whilst councillors have a mid-meeting break.

3.14.1 The suggested protocol is attached at Appendix A of the report.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1 In preparation for this report Democratic Services have met with political group office staff to obtain a steer on their group's views. A risk assessment has been written, and Public Health, Facilities and Health and Safety colleagues have also been consulted.
- 4.2 Group leaders have had sight of the report and had opportunity to comment.

4.3 TIMETABLE

- 4.3.1 The agreed options and protocol would be implemented immediately.

4.4 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 4.4.1 Zoom licence and host costs would continue to allow for livestreaming and remote access.

4.5 LEGAL AND STATUTORY IMPLICATIONS

- 4.5.1 As stated above, the flexibility of meetings regulations which allowed virtual meetings to take place have expired and therefore in order for decisions to be taken lawfully at meetings, there must a physical quorum and the ability for members of the public to attend in person should they choose.
- 4.5.2 A number of councils are seeking solutions to allow continued remote attendance and participation by councillors even though such attendance would not count toward the calculation of a quorum or attendance records for the purposes of section 85 of the Local Government Act 1972. As they would in effect not be in attendance, they also cannot vote.
- 4.5.3 There is no express legislative provision allowing councillors to participate remotely in their capacity as councillor and there may be some risk of challenge on the basis that people not present at the meeting in accordance with the 1972 Act requirements should not be able to participate in debates on matters. However, as the Council's constitution allows councillors who are not members of bodies to attend and speak at their meetings, as well as members of the public, it would seem illogical to deny that opportunity to members of those bodies. Therefore, although the law has not been tested in this respect here

would seem to be little risk in allowing this, particularly while Covid restrictions remain in place.

4.5.4 Elsewhere on this agenda is a report proposing a number of constitutional changes, including to the Council Procedure Rules. Depending on the view of members on the proposals contained in this report, it would be prudent to reflect any agreed arrangements in those rules.

4.5.5 It would be prudent to keep the matter under review in light of Government guidance and the evolving position nationally.

4.6 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

4.6.1 None for the purposes of this report

4.7 CRIME AND DISORDER IMPLICATIONS

4.7.1 None for the purposes of this report

4.8 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

4.8.1 A risk assessment has been produced on the return to in person meetings with input from both Health and Safety and Public Health.

4.9 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

4.9.1 Appendix A – Proposed protocol for public Council and Committee meetings

4.10 BACKGROUND PAPERS

4.10.1 None for the purposes of this report

London Borough of Merton
Guidance on attending meetings of the Council and Committees
during Covid-19 Restrictions

This guidance applies to all Council and Committee meetings held in public.

1. All meetings will be held within the Council Chamber where social distancing can be observed. The dates and times of meetings can be found on the Council's website.
2. Whilst attendance at the meetings is permitted, members of the public and those not directly involved within decision-making are encouraged to continue to view meetings online via the Council's Youtube channel or to participate remotely via Zoom.
3. Hand sanitizing solution will be available at the entrance/exit of the Chamber and all attendees are requested to use this on their way in and out of the meeting.
4. Cleaning wipes will also be made available for use.
5. Windows will be kept open at all times to ensure ventilation.
6. The Council Chamber will be cleaned before and after each meeting.
7. You will be required to wear a mask (unless you are exempt) at all times whilst in the Council Chamber except when you are speaking during the meeting itself.
8. Please arrange to arrive into the meeting room no more than 15 minutes prior to the start of the meeting and leave promptly once it has finished to minimise contact.
9. Please socially distance from all others who are not a part of your household at all times. Depending on the capacity of the meeting, seats will be appropriately marked to indicate which seats cannot be used.
10. Water will not be provided – please therefore bring your own with you.
11. Enter and exit the meeting room via the one-way system
12. Do not attend any meetings in person if you are experiencing Covid-19 symptoms.
13. Attendees are requested to take a lateral flow test (LFT) 24-48 hours prior to attending a meeting. Lateral flow tests should be registered on the NHS app. If you have a positive LFT result, you should not come to the meeting.

You can collect up to 2 boxes of 7 rapid tests to use twice a week at home from:

- [Merton libraries](#)
- Pharmacies: [find a pharmacy where you can collect rapid tests](#)
- NHS Test and Trace sites: [find a test site where you can collect rapid tests](#)

- Home delivery: If you can't use the other options, you can [order a box of tests online](#) or by calling 119

If testing at home, you will need to [register the results online](#) or by calling 119.

We recommend that you have a supervised test before you start testing yourself at home. [How to book a lateral flow test](#)

These measures will regularly be reviewed and updated depending on Government Guidance.

For any queries relating to this guidance please contact:

Democratic Services

Democratic.services@merton.gov.uk

0208 545 3357

Committee: Standards and General Purposes

Date: 28 June 2021

Wards: All

Subject: Member Complaints Process

Lead officer: Louise Round

Lead member: Councillor Tobin Byers

Contact officer: Louise Round: louise.round@merton.gov.uk

Recommendations:

- A. To recommend to Full Council the amended process for dealing with complaints against councillors set out in Appendix A (and shown in tracked change form in Appendix B);
 - B. Subject to the agreement of Full Council to the amended process, to agree to appoint a Hearings Subcommittee at the next meeting of this committee.
-

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. At its meeting in March 2021, the Committee agreed a revised code of conduct for members based on the model code drawn up by the Local Government Association. This was following consideration of the draft code by the cross party working group which was set up last year to oversee a review of the Council's constitution. The revised code is being considered by full Council on 7 July.
- 1.2. Under section 28(6) of the Localism Act 2011, the Council is obliged to adopt a procedure for dealing with complaints that councillors have breached the code of conduct. The Act does not specify the detail of any such procedure, beyond requiring that the arrangements include the appointment of an independent person whose views must be sought before making a final decision on any allegation which has been investigated. The Council has appointed two independent persons and they have both been members of the working group. The group has reviewed the current procedure and have recommended some changes which are reflected in appendix A. Most of the changes are simply drafting amendments to make the document clearer but there are a number more substantive points which are set out below.

2 DETAILS

Capacity (paragraph 4.2)

- 2.1. The new proposed code of conduct will only apply to conduct by a councillor when acting in that capacity or claiming to act in that capacity or giving the

impression they are acting in that capacity. This reflects the provisions of the Localism Act. The complaints process has been amended to make this clear because as currently drafted that limitation on its application is not expressly stated.

Filter Process (paragraphs 4.4 – 4.11)

- 2.1.1 Under the existing procedure, when a complaint is received the Monitoring Officer will carry out an initial assessment to decide whether or not code is triggered by the complaint and if so, whether it should be referred for formal investigation. Such an investigation would be carried out either by a member of the South London Legal Partnership, or in appropriate cases by an independent external investigator. Even if the Monitoring Officer concludes that if the facts alleged are found to be true they might amount to a breach of the code, this does not automatically mean that the matter will proceed to the investigation stage. Paragraph 4.8 of the procedure sets out a number of factors to be taken into account by the Monitoring Officer in reaching a decision on whether to investigate.
- 2.1.2 These include considering whether an investigation is proportionate and in the public interest, the availability of alternative means of resolving the complaint, the timing of any complaint and whether the conduct complained of is something which would more appropriately be judged by the electorate at the next election.
- 2.1.3 Some additional wording is being suggested to clarify some of the existing criteria and these are shown on the tracked changes version of the procedure at Appendix B. For the existing criterion which relates to complaints which are substantially similar to one which has previously been dealt with, additional wording is being suggested to exclude complaints from investigation where they are already subject to a separate process. On the question of timing, wording has been included to provide that cases relating to conduct which happened more than three months previously will not normally be investigated unless there is good reason for the delay.
- 2.1.4 Two new criteria are being proposed as follows:
- (i) Subject-matter – complaints which are really about Council services, its policies or performance will be referred to the relevant service area in accordance with the Council’s complaints procedure;
 - (ii) Member complaints – Complaints by Members against another Member will not usually be investigated if the Monitoring Officer considers that the complaint is of a kind which could be more appropriately addressed through political group processes, political party complaints procedures or informal mediation.

2.1.5 The first proposed change is self-explanatory but the second was the subject of some debate at the working group who recognised that ideally complaints between members should be resolved through discussions between and within the political groups but felt that it would be wrong to have an absolute bar on using the formal complaint processes for such issues. They also argued that there may be cases where complaints originate from one member but relate to matters other than the conduct of one member towards another member, for instance a failure to declare an interest, or misuse of council resources. Members should not be precluded from making complaints about such matters and this is reflected in the wording.

2.1.6 There was also some discussion about whether complaints by officers against members should be excluded from this process and dealt with under the member/officer protocol set out in part 5C of the constitution. This suggestion was welcomed in principle but at the moment the member/officer protocol does not cover the question of complaints by officers and so it was agreed that this suggestion should be revisited in conjunction with a refresh of the member/officer protocol.

Consultation with Independent Person (paragraph 4.5)

2.1.7 Under the current procedure, the Monitoring Officer is required to consult the Independent Person when considering the filter criteria in deciding whether to proceed to an investigation or to seek an informal resolution. This is not a legal requirement and the working group agreed that this should not be an absolute requirement at this stage, although the discretion to consult is retained. The Monitoring Officer is required to consult the Independent Person if she is minded to refer the matter for formal investigation.

Hearings (paragraph 7)

2.1.8 If an investigation is undertaken and the outcome of that investigation is that there is no breach of the code of conduct, then there is no requirement for a hearing and the matter is simply reported to the Standards and General Purposes Committee for information. However, if the conclusion of the investigating officer is that there has been a breach then the process currently requires that the report is submitted to the Standards and General Purposes Committee to decide whether there should be a hearing. The working group agreed that this stage should be omitted as it is hard to see how the committee could do anything other than refer the matter to a hearing unless it sought to challenge the contents of the report. If it did that, it would effectively be conducting a hearing in any event in which case any further hearing would either be superfluous or at risk of challenge if any of the same members who had first considered the matter were to be involved in the hearing. If this recommendation is accepted, on receipt of a report concluding that there had been a breach, the matter would proceed straight to a hearing.

2.1.9 The current process includes provision to appoint a subcommittee to deal with a hearing but this is on a case by case basis. The working group agreed that the nature of hearings would be such as to be more appropriately dealt with by a smaller group of members than the full complement of the Standards and General Purposes Committee. Therefore the default position should be a hearing by a hearings subcommittee. There would still be power for the full committee to conduct hearings but this would be by exception.

2.1.10 If this approach is agreed, it would be sensible to appoint a hearings subcommittee on a standing basis, given that matters may be referred straight to hearing as describe above, rather than have to convene a full meeting of the committee to appoint a subcommittee on a case by case basis. Accordingly, if full council agrees this proposed change, the next meeting of this Committee should appoint a hearings subcommittee. Such a subcommittee will be subject to the proportionality requirements contained in the Local Government and Housing Act 1989. The subcommittee does not have to be drawn from among the membership of its parent committee.

Hearings Procedure

2.1.11 The procedure for dealing with hearings is set out in the schedule to the complaints process. Some minor drafting changes have been made to this but the only actual change to the process is to give the chair of the hearing the power to vary the order of proceedings, in particular to combine the two stages of making findings of fact and considering whether the facts as found amount to a breach of the Code of Conduct.

3 ALTERNATIVE OPTIONS

3.1. The Committee could choose not to accept the recommended changes although these were considered to be an improvement on the processes as currently drafted for the reasons set out in this report.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. The changes proposed in this report have been the subject of consultation with the cross party working group and the Council's two independent persons.

5 TIMETABLE

5.1. If the Committee agrees the proposals set out in this report, they will be submitted for adoption by full Council on 7 July, together with other proposed constitutional changes and the new code of conduct. Committee would then be asked to establish a hearings subcommittee at its meeting on 22 July,

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. There are no financial implications arising from this report.

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. The statutory framework governing member conduct is set out in the Localism Act 2011 and the proposals contained in this report are compliant with it.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. None

9 CRIME AND DISORDER IMPLICATIONS

9.1. None

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

None

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Part 5A Addendum

PROCEDURE FOR DEALING WITH COMPLAINTS MADE AGAINST ELECTED OF CO- OPTED MEMBERS FOR BREACH OF THE MEMBERS CODE OF CONDUCT

1. Background

This procedure sets out the arrangements adopted by the Council pursuant to s,28(6) Localism Act 2011 as to how a complaint that an elected or co-opted member of this authority has failed to comply with the authority's Code of Conduct can be made and how the authority will deal with allegations of a failure to comply with the authority's Code of Conduct.

Under the Localism Act 2011 the authority must appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated and whose views can be sought by the authority at any other stage or by a member against whom an allegation has been made.

2. The Code of Conduct

The Council has adopted a Code of Conduct for members.

3. Making a Complaint

- 3.1 A complaint must be made in writing, preferably using the Complaint Form on the authority's website and emailed or sent to:

The Monitoring Officer
London Borough of Merton
London Road
Morden
Surrey
SM4 5DX

Or emailed to: louise.round@merton.gov.uk

- 3.2 The Monitoring Officer has statutory responsibility for maintaining the register of members' interests and is responsible for administering the system in respect of complaints of member misconduct. In the Monitoring Officer's absence, the Deputy Monitoring Officer will undertake this role.
- 3.3 The authority will not normally investigate anonymous complaints unless there is a clear public interest in doing so.
- 3.4 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and will keep the complainant informed about the progress of the complaint.

3.5 The Monitoring Officer will inform the member against whom a complaint has been made that a complaint has been made and will give details of the complaint to them. The Monitoring Officer has the discretion, which will only be exercised in exceptional circumstances, not to inform the member of the complaint at this stage if the Monitoring Officer is of the view that there is a risk that an investigation could be frustrated or a case prejudiced by the member knowing the details.

4. Will the complaint be investigated?

4.1 The Monitoring Officer will review every complaint received.

4.2 The complaint must be:

- against a person who was a member of the authority at the time of the conduct complained of; and
- in respect of conduct of that member while acting, claiming to act or giving the impression to a reasonable member of the public that they are acting in their official capacity as a member; and
- in relation to an alleged breach of the Code of Conduct in force at the relevant time.

4.3. If in the view of the Monitoring Officer the complaint does not fall within 4.2 above the matter will not be considered and the complainant will be informed that there will be no further action.

4.4 Where the complaint meets the above criteria, and in order to establish a preliminary view of the circumstances of the complaint and to decide whether it should be investigated and/ or whether there may be a course of action which could be taken to resolve the issues promptly without the need for formal action, the Monitoring Officer may consult or meet with any other relevant persons, which may include the Leader of the Council or Group Leaders, the Chief Executive or any other officers, the complainant and the member against whom the complaint has been made.

4.5 This decision will normally be taken within 14 days of receipt of the complaint. The complainant and the member against whom the complaint is made will be informed of the Monitoring Officer's decision and the reasons for that decision.

4.5 The Monitoring Officer may consult the Council's Independent Person at any point during her consideration of a complaint and must so consult where she considers a matter should be referred for formal investigation

4.6 In assessing whether a complaint should be investigated the following factors will be taken into consideration:

- *Public interest* – the decision whether to investigate will be a proportionate response to the issues raised and expected outcomes will take into account the wider public interest and the costs of undertaking an investigation. Complaints will only be investigated where the allegations are reasonably considered to be serious matters which justify the time and resources of an investigation;
- *Alternative course of action* – a complaint will only be investigated where there is no other action which could be taken which would achieve an appropriate outcome in the circumstances of the case (see paragraph 4.8 below);
- *Member’s democratic role* – where a complaint relates to a matter more appropriately judged by the electorate at the local elections, the Monitoring Officer will not normally refer these matters for investigation;
- *Previous action* - if the complaint or a substantially similar complaint has already been subject to a previous investigation or some other action relating to the code of conduct or other related process, the matter will ordinarily not be referred for further action. Complaints which are already the subject of other internal or external processes will not be investigated;
- *Vexatious/repeated complaints* – the Monitoring Officer will not refer for investigation a complaint that is the same or substantially the same as one previously made by the complainant or which is considered to be vexatious or frivolous or designed to harass or insult individuals;
- *Timing of the alleged conduct* – if there are significant delays between the incident complained of and the complaint the matter will not ordinarily be considered further unless there are very good reasons for the delay. Complaints should normally be made within three months of the date upon which the alleged misconduct occurred;
- *Ulterior motive* – no further action is likely to be taken if the complaint is considered to be motivated by malice, political motivation or retaliation, or can be characterised as being ‘tit-for tat’;
- *Subject-matter* – complaints which are really about Council services, its policies or performance will be referred to the relevant service area in accordance with the Council’s complaints procedure;
- *Member complaints* – Complaints by Members against another Member will not usually be investigated if the Monitoring Officer considers that the complaint is of a kind

which could be more appropriately addressed through political group processes, political party complaints procedures or informal mediation.

4.8 Where the Monitoring Officer considers that a complaint can be resolved without the need for a formal investigation she may take one or more of the following actions:

- asking the member to acknowledge that his/her conduct was unacceptable and to offer an apology or other remedial action by the authority.
- referring the matter to group leaders or officers
- asking the member to be attending training

4.9 Matters which might appropriately be dealt with as described in 4.8 above may include:

- Misunderstanding of procedures or protocols
- Misleading, unclear or misunderstood advice from officers
- Lack of experience or training
- A general deterioration of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect.
- Allegations and retaliatory allegations from the same individuals

4.10 If such action does not resolve the complaint, the Monitoring Officer will reconsider whether the complaint merits formal investigation.

4.11. The Monitoring Officer may in exceptional circumstances, refer a complaint to the Standards and General Purposes Committee to determine if an investigation is the appropriate course of action.

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

5. How is the investigation conducted?

5.1 If the Monitoring Officer in consultation with the Independent Person decides that a complaint merits formal investigation, she will appoint an investigating officer and agree a timescale in which to undertake

the investigation. This will normally take no more than 12 weeks from the appointment.

- 5.2 The investigating officer will contact the complainant and the member against whom a complaint has been made and undertake such investigation as is appropriate in all the circumstances.
- 5.3 At the end of the investigation, the investigating officer will produce a draft report and will seek comments and views on the draft report from the complainant and the member against whom the complaint has been made.
- 5.4 Having received and taken account of any comments which have been made, the Investigating Officer will send a copy of the final report to the Monitoring Officer.
- 5.5 If at any time the investigation is frustrated, for example, if significant witnesses are not available for interview, the Monitoring Officer shall decide what action to take, including, in consultation with the Independent Person, terminating the investigation. Such a decision will be reported to the Standards and General Purposes Committee.

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

- 6.1 The Monitoring Officer will review the Investigating Officer's report and if she is satisfied in consultation with the Independent Person that the report is sufficient, the Monitoring Officer will inform the complainant and the member concerned that she is satisfied that no further action is required. A copy of the investigating officer's final report will be given to the complainant and the member concerned. The report will be referred to the Standards and General Purposes Committee without question or debate, unless the member concerned requests that it not be reported.
- 6.2 If the Monitoring Officer is not satisfied that the investigation has been conducted properly, she may ask the investigating officer to reconsider his/her report.

7 What happens if the investigating officer concludes that there is evidence of a failure to comply with the Code of Conduct?

- 7.1 The Monitoring Officer will review the investigating officer's report and in consultation with the Independent Person, will either (a) refer the matter to the Hearings Subcommittee which is a sub-committee of the Standards and General Purposes Committee or (b) seek local resolution.
- 7.2 *Local resolution*

The Monitoring Officer may consider that the matter can

reasonably be resolved without the need for a hearing. In such a case, she will consult with the Independent Person and the complainant and seek to agree a fair resolution which helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards and General Purposes Committee for information but will take no further action.

7.3 *Monitoring Officer consideration of whether a matter proceeds to Local hearing*

If the Monitoring Officer considers, in consultation with the Independent Person, that the matter should be referred directly to a hearing or if, in accordance with paragraph 7.2 above, the member has failed to comply with the suggested informal resolution, she shall refer the matter to the Hearings Subcommittee which shall proceed to conduct a hearing in accordance with paragraphs 8-11 of this procedure and the hearings procedure attached as the schedule to this procedure.

7.4 Where the Monitoring Officer considers it appropriate, she may refer a complaint falling within paragraph 7.3 above to the full Standards and General Purposes Committee for hearing instead of to the Hearings Subcommittee and in such cases the provisions of paragraphs 8-11 below and the schedule shall apply.

8. Pre Hearing Process

8.1 Prior to a hearing, an officer from the Council's Democracy Services team will write to the member subject to the complaint ("the member") proposing a date for the hearing before the Hearings Subcommittee.

8.2 Democracy Services will outline the hearing procedure to the member and request a written response within a set time in relation to whether the member:

- Wants to attend the hearing
- Wants to be represented at the hearing by a solicitor, barrister or any other person
- Disagrees with any of the findings of fact in the investigation report in which case the member should be asked to set out those facts which are in dispute
- Wants to give evidence to the Hearings Subcommittee either verbally or in writing

- Wants to call relevant witnesses to give evidence to the hearing and to provide details of the witnesses
- Wants any part of the hearing to be held in private and reasons for the request
- Wants any part of the investigation report or other relevant documents to be withheld from the public and reasons for the request

8.3 Democracy Services will refer the member's response to the Monitoring Officer to comment in order to ensure that all parties are clear about the remaining factual disputes and can deal with these issues at the hearing. The Monitoring Officer will also ascertain from the investigating officer whether the complainant will be giving evidence at the hearing and whether the investigating officer will be calling any witnesses to give evidence.

8.4 The Monitoring Officer will prepare a report for the hearing which will:

- Summarise the allegation
- Outline the main facts of the case which are agreed
- Outline the main facts which are not agreed
- Indicate whether the member and the investigating officer will be present at the hearing
- Indicate the witnesses, if any, who will be asked to give evidence
- Outline the proposed procedure for the hearing
- Include the Investigating Officer's report
- Include the views of the Independent Person

9 The Hearing

9.1 The hearing is before the Hearings Subcommittee and the Independent Person will be in attendance to provide his/her views before a decision is made.

9.2 The procedure for local hearings is set out in the schedule. The Chair of the Hearings Subcommittee shall have discretion to vary that procedure if s/he considers it is reasonably necessary to do so in order to ensure a fair and efficient hearing.

9.3 The meeting of the Hearings Subcommittee will be open to the press and public unless confidential or exempt information under Part VA Local Government Act 1972 and the Subcommittee resolves to go into

private session having considered whether it is appropriate to do so, taking into account the public interest in the meeting being

- 9.4 The Hearings Subcommittee can determine the number of witnesses and the way in which witnesses can be questioned.
 - 9.5 If the member fails to attend the hearing, the Hearings Sub Committee can decide whether to proceed in the member's absence and make a determination or whether to adjourn the hearing to a later date.
 - 9.6 The Hearings Subcommittee will decide on the balance of probabilities whether it is more likely than not that the member is in breach of the Code of Conduct. The Hearings Subcommittee must seek the views of the independent person before making a decision on the allegation.
 - 9.7 If the Hearings Subcommittee concludes that the member did not fail to comply with the Code of Conduct, it will dismiss the complaint.
 - 9.8 If the Hearings Subcommittee concludes that the member did fail to comply with the Code of Conduct, the Subcommittee will then consider what action, if any, it should take. In doing this, the Hearings Subcommittee will give the member the opportunity to make representations to the Committee and will consult the Independent Person.
- 10. What action can the Hearings Subcommittee take where a member has failed to comply with the Code of Conduct?**
- 10.1 The Hearings Subcommittee may:
 - Issue a public censure or reprimand the member
 - Ask the member to apologise
 - Publish its findings in respect of the member's conduct
 - Report its findings to Council for information including a recommendation that the member be removed from any committee of the Council
 - Recommend to the member's Group Leader (or in the case of un- grouped members recommend to Council or to committees) that the member be removed from any or all committees of the council
 - Recommend to the Leader of the Council that the member be removed from the Cabinet or removed from particular portfolio responsibilities
 - Recommend to Council that the member be replaced in any Council appointed roles

- Instruct the Monitoring Officer to arrange training for the member
- Recommend to Council removal from all outside appointments to which the member has been appointed or nominated by the authority
- Withdraw facilities provided to the member by the Council, such as computer, website and/or internet access
- Exclude the member from the Council's offices or other premises with the exception of meeting rooms as necessary for attending council and committee meetings
- The Hearings Subcommittee has no power to suspend or disqualify the member or to withdraw members' allowances.

11. What happens at the end of the hearing?

- 11.1 At the end of the hearing the Chair of the Hearings Subcommittee will state the decision of the committee
- 11.2 As soon as practicable thereafter, the Monitoring Officer will prepare a formal decision notice in consultation with the Chair and send a copy to the complainant, the member, and make the decision notice available for public inspection unless, in a case where the Subcommittee's conclusion is that the member is not in breach of the code of conduct, the member requests that the notice of decision is not published

12. Revision of these arrangements

With the exception of paragraph 10 above, the Council has delegated the authority to amend these arrangements to the Standards and General Purposes Committee

13. Appeals

There is no right of appeal for the complainant or the member against a decision of the Monitoring Officer or the Hearings Subcommittee.

If the complainant believes that the authority has failed to deal with the complaint properly, they may wish to make a complaint to the Local Government Ombudsman.

Schedule to Part 5 A

PROCEDURE FOR HEARINGS BEFORE THE HEARINGS SUBCOMITTEE

1. Introductions
2. The Committee will consider whether to resolve to exclude the press and public from the hearing if one of the grounds set out in schedule 12A to the Local Government Act 1972 applies, taking into account the public interest in the hearing being open to the public.
3. The Chair of the Subcommittee will outline the hearing procedure. The Chair can depart from the procedure outlined below where he/she considers it expedient to do so in order to secure the fair consideration of the matter. This may include combining the stages of making findings of fact and considering whether such facts amount to a breach of the Code of Conduct.

Findings of Fact

4. The Subcommittee should consider whether there are any significant disagreements about the facts contained in the investigating officer's report. If there is no disagreement about the facts the committee can move on to the next stage of the hearing (go to paragraph 11)
4. Where there is a disagreement the investigating officer will be invited to make representations to support the findings of fact and with the Committee's permission, call witnesses to give evidence.
5. The member against whom the complaint has been made will be given the opportunity to challenge the evidence put forward by any witness called by the investigating officer by asking the witness questions.
6. The member will then be given the opportunity to make representations and with the Committee's permission, call any witnesses to give evidence.
7. The investigating officer will be given the opportunity to challenge the evidence put forward by any witness called by the member by asking the witness questions.
7. At any time, the Committee and independent person may question any of the people involved or any witnesses.
8. The Committee may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee in private will be shared with the meeting as a whole.

- 9 The committee may retire to consider its decision on a finding of facts in private.
- 10 Once the Committee has made its decision, the Chair will announce the Committee's finding of fact to the meeting.

Did the member fail to comply with the Code of Conduct?

11. The committee should then consider whether, based on the facts it has found, the member has failed to comply with the Code.
12. The member will be invited to make representations on the matter.
13. The investigating officer will be invited to make representations.
14. The independent person will be invited to express his or her views
15. The committee may, at any time, question the member, investigating officer or independent person on any point raised in the representations.
16. The member will be invited to make any final relevant points.
17. The committee may retire to consider its decision in private
18. Once the committee has made its decision, the Chair will announce the committee's decision to the meeting as to whether the member has failed to comply with the Code.

If there is a finding that the member has not failed to comply with the Code of Conduct

19. Where the committee decides that the member has not failed to comply with the Code, the committee can consider whether it wishes to make any recommendations to the authority.

If there is a finding that the member has failed to comply with the Code of Conduct

20. If the committee decide that the member has failed to comply with the Code, it will consider representations from the member, investigating officer and independent person as to:
 - Whether the committee should apply a sanction
 - What form any sanction should take.
21. The committee may question the investigating officer, member and independent person and take legal advice, to make sure they have the information they need in order to make an informed decision.

22. The committee may consider in private whether to impose a sanction and if, so what sanction it should be.
23. The Chair will announce the decision to the meeting.
24. The committee will also consider whether it should make any recommendations to the authority with a view to promoting high standards of conduct.

The written decision

25. As soon as practicable the Monitoring Officer will prepare a formal decision notice in consultation with the Chair and send a copy to the complainant, the member and make the decision available for public inspection unless, in a case where the Subcommittee's conclusion is that the member is not in breach of the code of conduct, the member requests that the notice of decision is not published.

Committee: Standards and General Purposes

Date: 28 June 2021

Wards: All

Subject: Constitutional Changes

Lead officer: Louise Round

Lead member: Councillor Tobin Byers

Contact officer: Louise Round: louise.round@merton.gov.uk

Recommendations:

A. To recommend to Full Council that it adopt the following amended parts of the Constitution attached as appendices A-H to this report*:

- (i) Part 1 – Summary and explanation
- (ii) Part 2 – Articles
- (iii) Part 3A – Responsibility for Local Choice Functions
- (iv) Part 3B – Responsibility for Non-Executive Council Functions
- (v) Part 4A- Council Procedure Rules
- (vi) Part 4B -Access to Information Procedure Rules
- (vii) Part 4C – Budget and Policy Framework Procedure Rules
- (viii) Part 4E – Overview and Scrutiny Procedure Rules

*Tracked changes versions of the appendices are available from Democracy Services on request. A table setting out the substantive proposed changes is attached as appendix I

- B. To recommend to Full Council that it adopts the Scheme of Delegation to Officers attached as appendix J to this report insofar as it relates to non-executive functions and to agree it will form Part 3E and replace existing parts 3E, 3F and 7B of the constitution;
- C. To note that the Cabinet has been recommended to adopt amended versions of Part 3c (Responsibility for Executive Functions), Part 4D (Cabinet Procedure Rules) and the Scheme of Delegation to Officers insofar as it relates to executive functions which if agreed, will also be submitted to Full Council for the sake of completeness; and
- D. To authorise the Monitoring Officer to make such consequential and minor drafting amendments as she considers reasonably necessary including, without limitation, to renumber the parts of the constitution as appropriate.
-

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. At its meeting in July 2020, this Committee agreed to carry out a review of the Council's constitution and appointed a cross party member working group ("the working group") to oversee that process. The working group has met on several occasions since then and the Standards and General Purposes Committee is now being asked to consider a number of proposed changes to the constitution. The parts in respect of which changes are being

recommended are:

- i. Part 1 – Summary and explanation
- ii. Part 2 – Articles
- iii. Part 3A – Responsibility for Local Choice Functions
- iv. Part 3B – Responsibility for Non-Executive Council Functions
- v. Part 4A - Council Procedure Rules
- vi. Part 4B - Access to Information Procedure Rules
- vii. Part 4C – Budget and Policy Framework Procedure Rules
- viii. Part 4E – Overview and Scrutiny Procedure Rules

In addition, a new Scheme of Delegation to Officers is being proposed.

- 1.2. A number of the changes which have been considered relate to matters which are executive functions and under the provisions of section 9E of the Local Government Act 2000 the responsibility of for agreeing them lies with the Leader. He may decide that decisions in relation to those matters shall be taken by the Cabinet as a whole, a cabinet subcommittee, an individual cabinet member or officers. At its meeting on 22 June, the Cabinet will be asked to consider those proposed changes which relate to executive functions. They do not require the approval of full Council but for the sake of completeness, if agreed, those changes will be submitted to Council on 7th July alongside any changes agreed by this Committee.
- 1.3. There are some parts of the constitution which have not been considered by the working group because of time constraints. These are the financial regulations, the officer employment procedure rules (some amendments to which were considered by this Committee last year), the Officer Code of conduct and a number of protocols. Revisions to contract standing orders are the subject of a separate report on the agenda, as are proposed changes to the procedure for dealing with complaints against members.
- 1.4. Many of the proposed changes to the parts referred to in paragraph 1.1 above are drafting changes suggested to make the meaning of clauses clearer or to bring them into line with agreed existing practice or to reflect legislative or structural changes. Attached as appendix J is a table which captures those changes which could reasonably be considered be significant or points of principle and the most substantive of these are discussed below. The majority relate to the proposed new scheme of delegation and the Council Procedure Rules

2 DETAILS

Scheme of Delegation to Officers (new part 3E)

- 2.1. The overall approach of the current constitution to delegations to officers is to provide that unless something is specifically reserved for a member body, it is by default delegated to officers. However, these provisions are currently spread across a number of parts of the constitution and as a result can be quite hard to follow. It is also difficult to understand what the parameters of that officer decision making are. Accordingly, it is proposed to bring all the delegations into one composite scheme, regardless of whether the functions in question are executive functions or non-executive functions. The proposed draft scheme of delegation is at Appendix J.
- 2.2. This committee is being asked to approve the new scheme for recommendation to Full Council insofar as it relates to non-executive functions. If adopted, the new scheme will replace parts 3E (scheme of delegation by cabinet), 3F (scheme of delegation by Full Council) and part 7B (Scheme of delegation to officers by chief executive) of the constitution.
- 2.3. The proposed new scheme is a move away from the current scheme which has all authority vested in the chief executive who onwardly delegates to chief officers. There is no legal requirement to structure delegations in this way and it is common practice to set out in broad terms which chief officers, including directors, have responsibility for which areas of council business.
- 2.4. Provisions allowing for urgent decision taking by officers are included, to be exercised in consultation with the relevant cabinet member or committee chair as the case may be. Such decisions will still need to be taken in accordance with the access to information rules contained in part 4B of the constitution.
- 2.5. The scheme of delegation in the constitution is complemented by departmental management schemes, setting out “onward delegations” and financial limits for decision taking within departments. If the proposed new scheme of delegation is approved, these will be reviewed to ensure they are consistent with that scheme and reflect changes in structure/ job titles etc. since they were last updated.

Council Procedure Rules (Part 4A)

- 2.5.1 These rules were the part of the constitution which underwent the most discussion at the working group as it would be fair to say that over the years and by agreement between the political groups, practice on the ground has departed slightly from the written word of the Constitution.
- 2.5.2 **Strategic Theme Debates.** (Rule 2.3.g) It is proposed that the order of business is changed slightly so that all aspects of the debate on a particular strategic theme should be taken as one agenda item rather than being divided into their constituent parts as is currently the case. If agreed, the

debate would then follow this format

- (i) Cabinet member presents the report on the strategic theme
- (ii) Cabinet Member answers any written questions from councillors on the strategic theme submitted three clear working days in advance and any oral supplementary questions (15 minutes for this aspect)
- (iii) Motions on the strategic theme moved and seconded
- (iv) Debate on the strategic theme proceeds in accordance with the normal rules of debate

2.5.3 Where motions are submitted on the strategic theme, those motions currently need to be with Democracy Services by 9am on the day before the meeting. The draft changes to rules propose moving that deadline to 3 clear days before the meeting which will bring it into line with the time limit for submitting non-strategic theme questions. The working group was not agreed on this and there was a view that this should only happen if the report itself were circulated earlier than is currently the case (it goes out with the agenda). The draft attach includes an aspiration to circulate the report earlier but does not make it a formal requirement.

2.5.4 On the question of which strategic theme should be considered at a particular meeting, the rules (note to 2.3 f) currently provide that the five themes in the Council's business plan should be considered "on a priority basis in rotation". In practice, this does not happen and the groups have previously agreed that each group can choose a theme (or, more often, a subset of it) and the number of choices allocated to each group is calculated on a broadly proportionate basis and agreed at the beginning of the four-year cycle. The note in the rules also refers to consultation on the order of business taking place at "the cross party committee" although no such committee exists. It is suggested amending the wording to the following and removing the reference to the cross party committee. Elsewhere in the rules (rule 3.4) there is a reference to a pre-meeting with the Mayor to discuss timetabling of the meeting and this would continue.

"The entitlement to select the strategic theme to be considered at each meeting shall lie with the leaders of all the political groups represented on the Council on a rotational basis or otherwise as agreed between them"

2.5.5 Alternatively, current practice would more accurately be reflected by the following wording:

"The entitlement to select the strategic theme to be considered at each meeting shall lie with the leaders of all the political groups represented on the Council and the number of choices allocated to each political group should, so far as is reasonably practicable reflect the respective sizes of each group. The schedule setting out the timing of each group's nomination shall be agreed at annual council. "

Members are asked to consider which option they consider most appropriate.

- 2.5.6 **Time limit for submitting non-strategic theme questions.** (Rule 12.4) Although the working group felt it was right to wait for the report on the strategic theme to be circulated before requiring questions on that theme to be submitted, the group agreed that there would be some merit in non-strategic theme questions being submitted earlier in order to allow them to be circulated with the agenda. Currently they are circulated, together with the written answers to them, on the day of the meeting. Including the questions with the agenda would allow members of the public to know in advance of the meeting the kinds of issue that might be discussed. So the proposal is that the questions should be submitted 7, rather than the current 3, clear working days before the meeting. One member of the group felt that if this proposal were to be adopted, the answers should also be answered earlier than is currently the case. No final view has been reached on this aspect.
- 2.5.7 **Time allotted for non-strategic theme questions.** (Rule 12.6). The group considered whether the current 15-minute limit should be extended but although there was a general consensus that some self-discipline both in answering the written question and in putting the supplementary question, on balance the time limit should remain. However, they did consider that the Mayor should have the discretion to add any unused public question time to the member question time and this has been included in the proposed changes.
- 2.5.8 **Varying Times and Dates of Meetings** (Rule 5.1) This is proposed for amendment to make it clear that the ability, in exceptional circumstances, for the chief executive to vary or cancel meetings requires the consent of the chair of the meeting in question, although they no longer need formally to request this.
- 2.5.9 **Arrangements for Meetings** (Possible new Rule 21) Elsewhere on the agenda is a report on the future conduct of meetings in which some proposals are made for continuing remote participation in meetings notwithstanding the recent ruling of the High Court that the Local Government Act 1972 requires physical attendance at meeting by councillors and for arrangements to be made to allow members of the public to attend in person. Depending on the outcome of the Committee's consideration of that paper, a new council procedure rule is being proposed in order to ensure the new arrangements are reflected on the face of the constitution.

Budget and Policy Framework Procedure Rules (part 4C)

- 2.5.10 **Decisions outside the budget or policy framework** (Rule 5). some changes have been made to clarify the process to be followed where a ground for call in of an executive decision is that the decision would be contrary to the policy framework or contrary to or not wholly in accordance with the budget. At the moment advice from the Monitoring Officer (MO) is required but it is unclear at what point that advice should be received and what follows thereafter. The proposed process is:
- (i) Non-compliance with the budget or policy framework cited as a separate ground for call in;
 - (ii) Call in goes to Overview and Scrutiny Commission who take advice from the MO or S.151 officer;
 - (iii) If the MO or S.151 Officer concludes decision is compliant, it can be implemented forthwith;
 - (iv) If the MO or 151 officer considers it is not compliant, they produce a report to the Cabinet which is sent to all councillors;
 - (v) Cabinet meets to decide whether to proceed;
 - (vi) If Cabinet wishes to proceed, it refers the matter to Council;
 - (vii) Council either:
 - a) confirms decision is within policy framework; or
 - b) amends policy framework to make decision compliant; or
 - c) remits to Cabinet to reconsider and if they wish to proceed, to require them amend decision so it is in compliance.

Overview and Scrutiny Procedure Rules (part 4E)

- 2.5.11 **Call in Provisions** (rules 16 and 17). The process for deciding whether a request for call in is valid has been amended. The current wording implies that the full meeting of the Commission agrees the request for call in whereas they only consider it once the “threshold “criteria have been met. That judgement is made by the Monitoring Officer under rule16(e).
- 2.5.12 Perceived non-compliance with the policy framework or budget has been added as a specific ground for call in to reflect the legislative requirements and to ensure consistency with the budget and policy framework rules referred to above.

3 ALTERNATIVE OPTIONS

- 3.1. The Committee could choose not to accept the recommended changes although this would mean that there would continue to be inconsistencies between the wording in the constitution and practice on the ground which is not good governance and relies on the memories of those involved in various discussions over the years. This is a risk when officers leave and when there is regular change in the make-up of the political membership of the Council.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The changes proposed in this report have been the subject of consultation with the cross party working group and the Council's two independent persons.

5 TIMETABLE

- 5.1. If the Committee agrees the proposals set out in this report, they will be submitted for adoption by full Council on 7 July.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. There are no financial implications arising from this report.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The legislative provisions governing the decision making processes of councils operating leader and cabinet executive arrangements are set out in chapter 2 of the Local Government Act 2000 and regulations made thereunder. The proposals in this report comply with those provisions.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. None

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

None

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Part 1

SUMMARY AND EXPLANATION

1. This Constitution is laid out in parts. This Part 1 is a summary and explanation and is not a substantive part of the document.
2. Part 2 comprises the sixteen (16) Articles of the Constitution. The Articles form the building blocks and foundation of the Council's Constitution.
3. Part 3 describes the Council's executive arrangements. Since the Local Government Act 2000 came into force, every local authority is required to choose a model of governance from a choice of four prescribed by Parliament. Part 3 essentially explains that the Council's functions fall into two categories – those matters that are the responsibility of the Cabinet and those which are the responsibility of the Full Council. It then sets out the committees to which the Full Council has delegated powers, and also sets out the powers the Leader has decided the Cabinet should reserve for itself. All other powers are delegated to officers in accordance with the Scheme of Delegation to Officers which forms Part 7.
4. Part 4 contains the procedural rules or "Standing Orders" which govern meetings of the Council, the Cabinet and Committees, the employment of staff and the award of contracts. It also contains the Council's financial regulations.
5. Part 5 is the Council's ethical governance framework. It sets out various codes of practice and protocols governing councillors ("members") and officers, some statutory and some voluntary.
6. Part 6 sets out the Members' Allowance Scheme adopted by Full Council. Members are volunteers who stand for election. They are not employees, but office holders. In order to recognise the level of voluntary responsibility they assume and the time commitment they make, the law permits them to be paid allowances. In deciding the amount of the allowances, the Council must take into account the recommendations of an Independent Remuneration Panel.
7. Part 7 sets out how the Council is organised and also gives details of which powers are delegated by Council and the Leader to officers of the Council's Corporate Management Team. This part also describes the role of the Corporate Management Team (CMT) and the Leader's Strategy Group (LSG). These two entities are not part of the Constitution. The CMT is the Chief Executive's meeting with the Council's most senior officers. The LSG is a meeting chaired by the Leader of the Council and brings together members of the Cabinet and members of CMT for planning the work of the Council and monitoring progress, but not for taking decisions.

8. How the Council Operates

The Council is composed of 60 councillors, who are elected every four years. Councillors, also known as members, are democratically accountable to residents of their ward. Their overriding duty is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors have to agree to follow a Code of Conduct to ensure high standards in the way they undertake their duties.

All councillors meet together as the Full Council. Meetings of the Council are normally open to the public unless confidential or exempt information is being discussed. At these meetings, councillors decide the Council's overall policies and set the budget each year. The Council also elects the Leader, sets up and makes appointments to the Overview and Scrutiny Commission and other committees, and confirms the appointment of the Chief Executive and the Monitoring Officer.

9. How Decisions Are Made

The Cabinet is the part of the Council that is responsible for most executive decisions. The Cabinet is made up of a maximum of 10 Councillors, including a Leader elected by the Council and a Deputy Leader appointed by the Leader. When major decisions are to be discussed or made, these are published in the Cabinet's forward plan in so far as they can be anticipated. If these major decisions are to be discussed with Council officers at a formal meeting of the Cabinet, the public will be able to attend, except where personal or confidential matters are being discussed. The Cabinet is required to make decisions, which are in line with the Council's overall policies and budget. If it wishes to make a decision that is outside the budget or policy framework, the decision must be referred to the Council as a whole to decide.

10. Overview and Scrutiny

The role of Overview and Scrutiny is to hold the Cabinet to account, to review and develop policy and to scrutinise the work and impact of external agencies on the local community.

This function is carried out by an Overview and Scrutiny Commission and Overview and Scrutiny panels, which support the work of the Cabinet and the Council as a whole.

They allow citizens to have a greater say in Council matters by holding public investigations into matters of local concern and making recommendations for improvement. This work advises the Cabinet and the Council as a whole on its policies, budget and service delivery. Indeed, the Cabinet or the Council may consult with them on forthcoming decisions and the development of policy.

The Overview and Scrutiny Commission also monitors executive decisions once they are made. In certain circumstances, they can 'call-in' a decision which has been made by the Cabinet but not yet implemented. This enables them to consider whether the decision is appropriate. They may recommend that the Cabinet reconsider the decision.

11. Community Forums

In order to give local citizens a greater say in Council affairs, four Community Forums have been created. Community Forums are open meetings which bring together people working and living in an area to discuss issues affecting them. They are advisory and consultative in nature and do not have decision making powers.

12. The Council's Staff

The Council has people working for it (called 'officers') to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. The Member/ Officer Protocol governs the relationships between officers and members of the Council. (Part 5)

13. Citizens' Rights

Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes. The local Citizens' Advice Bureau can advise on individuals' legal rights.

Where members of the public use specific Council services, for example as a parent of a school pupil or as a council tenant, they have additional rights. These are not covered in this Constitution.

Citizens have the right to:

- vote at local elections if they are registered;
- contact their local councillor about any matters of concern to them;
- obtain a copy of the Constitution;
- attend meetings of the Council and its committees except where, for example, personal or confidential matters are being discussed;
- petition to request a referendum on a mayoral form of executive;
- participate in the Council's public question time and contribute to investigations by the various Overview and Scrutiny Panels;
- find out, from the Cabinet's forward plan, what major decisions are to be discussed by the executive or decided by the Cabinet or officers, and when;
- attend meetings of the Cabinet where decisions are being discussed or decided;

- see reports and background papers, and any record of decisions made by the Council and Cabinet;
- file a complaint with the Council or the Ombudsman as appropriate; and
- inspect the Council's accounts and make their views known to the external auditor.

The Council welcomes participation by its citizens in its work. For further information on your rights as a citizen, please contact the Head of Democracy and Electoral Services.

14. Strategy Board/ Leader's Policy Group/ Leader's Strategy Group

It is recognised as good practice for senior councillors and officers to meet together on a regular basis to gain a shared understanding of key issues facing the Council and to ensure a corporate focus on key issues. This function is performed by the Leader's Strategy Group (LSG), more information about which is in Part 7.

Part 2

ARTICLES OF THE CONSTITUTION

Article 1 – THE CONSTITUTION

1.1 Powers of the Council

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

1.2 The Constitution

This Constitution, and all its appendices, is the Constitution of the Council of the London Borough of Merton, hereinafter referred to as Merton Council.

1.3 Purpose of the Constitution

The purpose of the Constitution is to:

- (a) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (b) support the active involvement of citizens in the process of local authority decision-making;
- (c) help councillors represent their constituents more effectively;
- (d) enable decisions to be taken efficiently and effectively;
- (e) create a powerful and effective means of holding decision-makers to public account;
- (f) ensure that no one will review or scrutinise a decision in which they were directly involved;
- (g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- (h) provide a means of improving the delivery of services to the community.

1.4 Interpretation and Review of the Constitution

The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

ARTICLE 2 – MEMBERS OF THE COUNCIL

2.1 Composition and Eligibility

- (a) **Composition.** The Council comprises 60 members, otherwise called councillors. Three councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Boundary Commission and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the London Borough of Merton or those living or working or occupying property in the Borough will be eligible to hold the office of Councillor.

2.2 Election and Terms of councillors

The regular election of councillors will be held on the first Thursday in May every four years beginning in 2002 unless other legislative provision is made. The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

2.3 Roles and Functions of all councillors

- (a) **Key roles.** All councillors will:
 - (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
 - (ii) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision-making;
 - (iii) effectively represent their communities and bring their communities' views into the Council's decision-making process, i.e. become the advocate of, and for, their communities;
 - (iv) respond to constituents' enquiries and representations, fairly and impartially and act as an advocate for constituents in resolving particular concerns or grievances;
 - (v) balance different interests identified within the ward or electoral division and represent the ward or electoral division as a whole;
 - (vi) participate in the governance and management of the Council; and
 - (vii) maintain the highest standards of conduct and ethics.

(b) **Rights and Duties**

- (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it.
- (iii) For these purposes, “confidential” and “exempt” information are defined in the Access to Information Procedure Rules in Part 4-B of this Constitution.

2.4 **Conduct**

Councillors shall at all times observe the Members’ Code of Conduct set out in Part 5A of this Constitution and any other member protocols agreed by the Council

2.5 **Allowances**

Councillors will be entitled to receive allowances in accordance with the Members’ Allowances Scheme set out in Part 6 of this Constitution.

Article 3 – CITIZENS AND THE COUNCIL

3.1 **Citizens’ Rights**

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

- (a) **Voting and Petitions.** Citizens on the electoral roll for the Borough of Merton have the right to vote and sign a petition to request a referendum for an elected mayor form of constitution.
- (b) **Information.** Citizens have the right to:
 - (i) attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
 - (ii) attend meetings of the Cabinet when key decisions, as defined in Article 13, are being considered except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;

- (iii) find out from the forward plan what key decisions will be taken by the Cabinet and when;
 - (iv) see reports and background papers, and any records of decisions made by the Council and the Cabinet except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
 - (v) inspect the Council's accounts and make their views known to the external auditor; and
 - (vi) inspect the Councillors' Register of Interests.
- (c) **Participation.** Citizens have the right to participate in the Council's meetings through Question Time and may be invited to contribute to investigations by the Overview and Scrutiny Commission or panels. The Council will also promote a network of community area forums aimed at enabling citizens to express views on local matters as part of its community leadership role. Citizens may also attend and address committees and sub-committees responsible for decisions on planning and licensing matters.
- (d) **Complaints.** Citizens have the right to complain to:
- (i) the Council itself under its complaints scheme;
 - (ii) the Local Government and Social Care Ombudsman after using the Council's own complaints scheme;

3.2 Citizens' Responsibilities

Citizens must not be violent, abusive or threatening to councillors or officers and must not willfully harm property things owned by the Council, councillors or officers. Persons who willfully refuse to operate within these "citizens' responsibilities" will be referred to the relevant authorities.

Citizens are encouraged to make conscientious use of their roles as voters and as members of a wider community by:

- (a) voting at every election;
- (b) respecting the expression of differing opinions in public debate;
- (c) promoting tolerance and respect between their fellow citizens; and
- (d) individually and collectively seeking information about the decision-making role of councillors whilst respecting the Council's procedures which give effect to a representative democracy.

Article 4 - THE FULL COUNCIL

4.1 Functions of the Full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any housing land transfer;
- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision-maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;
- (d) electing the Leader;
- (e) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- (f) appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council;
- (g) adopting an allowances scheme under Article 2.5;
- (h) changing the name of the area, conferring the title of Honorary Alderman or Freedom of the Borough;
- (i) confirming the appointment of the Head of Paid Service and the Council's Monitoring Officer.
- (j) agreeing which local choice functions shall be the responsibility of the executive (part 3A)
- (k) making, amending, revoking, re-enacting or adopting bylaws and promoting, or opposing, the making of local legislation or private Bills;
- (l) all other matters which, by law, must be reserved to Council.

4.2 Meanings

- (a) **Policy Framework.** The following plans and strategies constitute the Policy Framework. The Council by resolution may, from time to time (and without prior consideration by the Standards and General Purposes Committee, the Head of Paid Service or the Monitoring Officer in accordance with Article 15.2), add other plans and strategies to the Policy Framework.

- Business Plan
- Community Plan
- Equality and Community Cohesion Strategy
- Housing Strategy
- Local Plan
- Children and Young People's Plan
- Climate Change Strategy
- Wimbledon Town Centre Masterplan

(b) **Budget.** The budget is the Council's formally adopted financial plan for the year and includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

4.3 Council Meetings

There are four types of Council meetings:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings;
- (d) budget/council tax meetings.

Meetings will be conducted in accordance with the Council Procedure Rules in Part 4A of this Constitution.

4.4 Responsibility for Functions

The Council has set out in, Part 3, of this Constitution the delegation of responsibility for the Council's functions to committees. The scheme of delegation of those functions to officers is set out in Part 3E.

Article 5 - CHAIRING THE FULL COUNCIL

5.1 Role and function of the Mayor

The Mayor, or in the Mayor's absence, the Deputy Mayor will have the following roles and functions:

- (a) to be the ceremonial representative of the Council, taking precedence on all such occasions;
- (b) to attend such civic and ceremonial functions as the Council and he/she determines appropriate.

5.2 Selection of The Mayor and Deputy Mayor

The Mayor will be elected by the Council annually. Vacancies occurring during the year will be filled for the remainder of the municipal year.

The Deputy Mayor will be appointed by the incoming Mayor at the Annual Meeting each year.

5.3 Responsibilities

The Mayor, and in his or her absence the councillor chairing the meeting will have the following responsibilities:

- (a) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
- (c) to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which councillors who are not in the Cabinet are able to hold the Cabinet to account;
- (d) to promote public involvement in the Council's activities;
- (e) to be the conscience of the Council; and
- (g) to establish, following consultation, a timetable for meetings of the full Council and to manage the business of the meeting, so as to adhere so far as possible, to the timetable and to ensure the completion of business within the time available.

Article 6 – OVERVIEW AND SCRUTINY COMMISSION AND PANELS

6.1 Appointment of the Overview and Scrutiny Commission and Panels

The Council will establish Overview and Scrutiny bodies to discharge the functions conferred by Section 21 of the Local Government Act 2000 and any Regulations made under Section 32 of that Act, the Local Government Act 2003, the Health and Social Care Act 2001, the Police and Justice Act 2006, the Local Government and Public Involvement in Health Act 2007, which may include:

- (i) Overview and Scrutiny Commission;
- (ii) Sustainable Communities Overview and Scrutiny Panel;
- (iii) Healthier Communities and Older People Overview and Scrutiny Panel;
- (iv) Children and Young People Overview and Scrutiny Panel;

6.2 General functions

Within their terms of reference, the Overview and Scrutiny Commission and Panels may:

- (a) Review and scrutinise decisions after they are made by the Cabinet, Cabinet committees, sub-committees, Cabinet members and Council officers;
- (b) Make reports and/or recommendations to the full Council and/or the Cabinet and/or community forums in connection with the discharge of any functions;
- (c) Make reports or recommendations on any matter affecting the Council area or its inhabitants;
- (d) Participate in and make recommendations on the development of Council policy;
- (e) Be consulted as appropriate on key decisions, and on such other decisions as those making them see fit before these are made by the Cabinet, Cabinet committees, sub-committees, Cabinet members or Council officers;
- (f) Exercise the right to call-in, for reconsideration of decisions made but not yet implemented by the Cabinet and Officers in the case of key and non-key executive decisions (as defined by article 13(c));
- (g) In accordance with statutory regulations, review and scrutinise matters relating to the health service within the Council's area and to make reports and recommendations thereon to local NHS bodies;

- (h) In accordance with statutory regulations, review and scrutinise matters relating to local improvement targets within the Council's area and to make reports and recommendations thereon to Cabinet and/or the local strategic partnership;
- (i) In accordance with statutory regulations, review and scrutinise matters relating to the crime and disorder matters within the Council's area and to make reports and recommendations thereon to Cabinet and/or the community safety partnership;
- (j) To receive deputations in accordance with the Overview and Scrutiny Procedure Rules;
- (k) Appoint non-voting co-optees to the Overview and Scrutiny Commission and/or Policy Review Panels; and
- (l) Represent to the Council the interests of Merton people.
- (m) Receive references from councillors under the statutory Councillor's Call for Action, consider whether such matters should be the subject of formal scrutiny, and carry out scrutiny or refer appropriate matters to relevant scrutiny panels.

6.3 Specific functions

- (a) **Co-ordination.** The Overview and Scrutiny Commission shall co-ordinate the functions and work programs of its panels.
- (b) **Policy Development.** The Overview and Scrutiny Commission and Panels may participate in policy development. They may:
 - (i) Assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues;
 - (ii) Conduct research, community and other consultation in the analysis of policy issues and possible options;
 - (iii) Consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
 - (iv) Question members of the Cabinet, Chief Officers, Heads of Service or their nominees about their views on issues and proposals affecting the service area; and
 - (v) Liase with external organisations operating in the Council's area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

- (c) **Review & Scrutiny.** The Overview and Scrutiny Commission and Panels may:
- (i) Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
 - (ii) Review and scrutinise decisions made by the Cabinet, Cabinet Members, committees and council officers;
 - (iii) Question members of the Cabinet, chairs of committees, Chief Officers and Heads of Service or their nominees about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects as set forth in Part 4 of this Constitution;
 - (iv) Make recommendations to the Cabinet, Cabinet members and/or appropriate committee and/or Council arising from the outcome of the scrutiny process;
 - (v) Review and scrutinise the performance of public bodies in the area and invite reports from them all by requesting them to address the Overview and Scrutiny Commission and local people about their activities and performance; and
 - (vi) Question and gather evidence from any person (with their consent).
- (d) **Finance.** The Overview and Scrutiny Commission may exercise overall responsibility for the finances made available to it.
- (e) **Annual report.** The Overview and Scrutiny Commission must report annually to full Council on its workings and the workings of its panels, make recommendations for future work programs and amended working methods, if appropriate.
- (f) **Officers.** The Overview and Scrutiny Commission may exercise overall responsibility for the work programme of the officers allocated by the Chief Executive to support its work.

6.4 Proceedings of Overview and Scrutiny Commission

The Commission and its panels will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4-E of this Constitution.

Article 7 – THE CABINET

7.1 Role

The Cabinet will carry out all of the Council's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

7.2 Form and Composition

The Cabinet will consist of a maximum of 10 councillors, including the Leader elected by the Council and Deputy Leader(s), appointed by the Leader. The Cabinet may not include the Mayor or Deputy Mayor of the Council.

7.3 Leader

- (a) **Selection.** The Leader will be a Councillor elected to the position of Leader by the Council for a four year term. The Leader will be elected at the Annual Council Meeting or at the next meeting of the Council after a vacancy arises. The Leader shall hold office for four years or until:
- (i) they resign from office; or
 - (ii) they are no longer a Councillor; or
 - (iii) they are removed from office by resolution of the Council at an earlier date.
- (b) **Responsibility for Functions.** The Leader has responsibility for deciding which individual members of the Cabinet, Cabinet committees, officers or joint arrangements are responsible for the exercise of particular executive functions. Part 3-C sets out those matters for which the Cabinet or individual councillors have responsibility. The scheme of delegation of such executive functions to officers is in Part 7.
- (c) The Leader will determine the number of councillors who may be appointed to the Cabinet;
- (d) **Power to Reallocate.** The Leader will have the power to vary the allocation of portfolios held by Cabinet members meeting and to determine which Cabinet Member shall hold a lead role in respect of any cross cutting policy matter.

7.4 Deputy Leader

- (a) **Selection.** The Deputy Leader will be a Councillor appointed to the position of Deputy Leader by the Leader for a four-year term. The Deputy Leader shall hold office until the end of the term of office of the Leader or until:

- (i) they resign from office;
- (ii) they are no longer a Councillor; or
- (iii) the Leader, if he/she thinks fit, removes the Deputy Leader from office

Where a vacancy occurs in the office of Deputy Leader, the Leader must appoint another person in his/her place.

The Leader may choose to appoint two deputy leaders.

- (b) **Role.** The Deputy Leader is a Member of the Cabinet and will deputise for the Leader during his or her absence,

- (c) **Other provisions**

If for any reason:

- (i) the Leader is unable to act or the office of Leader is vacant, the Deputy Leader must act in his/her place; and
- (ii) no Deputy Leader is able to act or the office of Deputy Leader is vacant, the Cabinet must act in the Leader's place or must arrange for a member of the Cabinet to act in the place of the leader.

7.5 Other Cabinet Members

The members of the Cabinet shall be councillors appointed by the Leader. They will include the Deputy Leader. The Leader shall allocate specific portfolio responsibilities to the Members of the Cabinet who shall hold office until the next Annual Council meeting or until:

- (a) they resign from office;
- or
- (b) they are no longer councillors; or
- (c) they are removed from office by the Leader.

7.6 Assistant Cabinet members

The Leader may appoint assistant Cabinet members. The appointment of an Assistant Cabinet member will specify the areas of responsibility of the member and identify the Cabinet member whom the office holder is to assist. (Assistant Cabinet members are not members of the Executive and are not entitled to a special responsibility allowance under the Members Allowance Scheme in Part 6

Article 8 – REGULATORY AND OTHER COMMITTEES

8.1 Regulatory and other committees

The Council has established committees to discharge some of its non-executive functions. These committees are listed in Responsibility for Council Functions in Part 3B of this Constitution. The committees will follow the Council's Rules of Procedure set out in Part 4-A of this Constitution.

Article 9 – THE STANDARDS AND GENERAL PURPOSES COMMITTEE

9.1 Standards and General Purposes Committee

The Council has established a Standards and General Purposes Committee with membership, role and functions as set out in paragraph 1.1 of Part 3-B of this constitution. The Standards and General Purposes Committee may appoint a Hearings Subcommittee to hear complaints that councillors have breached the Code of Conduct

9.2 Proceedings

Proceedings of the Standards and General Purposes Committee and any Hearings Subcommittee shall take place in accordance with the relevant part of the procedure rules set out in Part 4 of this Constitution. The Standards and General Purposes Committee may agree procedures specifically for dealing with member complaints which differ from those procedure rules provided they comply with any statutory requirements.

Article 10 – COMMUNITY INVOLVEMENT AREA COMMITTEES AND COMMUNITY FORUMS

10.1 Creation

- (a) The Council will create, facilitate or participate in community partnerships, community forums, focus groups and service or user based consultative groups as part of its community leadership role and in order to aid transparent and accountable decision-making

- (b) The Council may appoint Area Committees as it sees fit if it considers that to do so will ensure improved service delivery in the context of best value and more efficient transparent and accountable decision-making

10.2 Form, Composition and Function

- (a) The community forums will be advisory and consultative in nature but will not have decision-making powers. They will have no budgets and will not be able to incur expenditure.
- (b) As the community forums will be advisory only, their composition need not reflect political balance.
- (c) The Council and the Cabinet will include details (if any) of the delegations to area forums in Part 3 of this Constitution, including the functions delegated, the composition and membership of the forums, budgets and any limitations on delegation.

10.3 Conflicts of Interest – Membership of Area Forums, Overview and Scrutiny Commission and Panels

- (a) **Conflict of interest.** If the Overview and Scrutiny Commission, or one of the Overview and Scrutiny Panels is scrutinising specific decisions made by a community forum of which the Councillor concerned is a member, then the Councillor may not speak or vote at the Overview and Scrutiny Commission or Panel meeting unless a dispensation to do so is given by the Standards Committee. This paragraph would only apply if a community forum were given decision-making powers.
- (b) **General policy activity.** Where the Overview and Scrutiny Commission or Panels are engaged in policy development or general review of a matter relating to a community forum of which a councillor is a member, s/he must declare his/her interest before the relevant agenda item is reached, but need not withdraw and may participate in the debate

10.4 Community Forums – Access to Information

- (a) Community Forums will comply with the Access to Information Rules in Part 4 of this Constitution.
- (b) Agendas and notices for Community Forum meetings which deal with both executive and non-executive functions, will state clearly which items are which.

10.5 Cabinet Members on Community Forums

A member of the Cabinet may serve on a Community Forum if otherwise eligible to do so as a Councillor.

Article 11 – JOINT ARRANGEMENTS

11.1 The Council or the Cabinet, in order to promote the economic, social or environmental well-being of its area, may:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

11.2 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more local authorities and/or their executives to exercise functions that are not executive functions in any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- (b) The Cabinet may establish joint arrangements with one or more local authorities to exercise functions that are executive functions. Such arrangements may involve the appointment of joint committees with those other local authorities.
- (c) The Cabinet may only appoint members of the Cabinet to a joint committee where the joint committee exercises executive functions.
- (d) The Cabinet may appoint members to a joint committee from outside the Cabinet where the joint committee exercises non-executive functions.
- (e) Details of any joint arrangements including any delegations to joint committees will be found in Part 3-C of this Constitution.

11.3 Access to Information

- (a) The Access to Information Rules in Part 4 of this Constitution shall apply to joint arrangements.
- (b) If all the members of a joint committee are members of the executive in each of the participating authorities, then its access to information regime is the same as that applied to the executive.
- (c) If the joint committee contains members who are not on the executive of any participating authority, then the access to information rules in Part VA of the Local Government Act 1972 will apply.

11.4 Delegation to and from other Local Authorities

- (a) The Council may delegate non-executive functions to another local authority or, in certain circumstances, the executive of another local authority, or to a health service body.
- (d) The Cabinet may delegate executive functions to another local authority or the executive of another local authority in certain circumstances.
- (c) The Cabinet may delegate executive functions to a health service body in accordance with the Health Act 1999 as amended
- (d) The decision whether or not to accept such a delegation from another local authority or health service bodies shall be reserved to the full Council.

11.5 Contracting Out

The Council and/or the Cabinet may contract or arrange for another body or organisation to carry out functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contacting principles, provided there is no delegation of the Council's discretionary decision making power.

Article 12 – OFFICERS

12.1 The Council shall appoint such staff as the Council thinks necessary for the proper discharge by the Council of its functions.

- a) Appointment of staff cannot be the responsibility of the Cabinet. Appointment of staff at Director and Chief Officer level is delegated to the Appointments Committee and appointments of officers below that level must be the responsibility of the Head of Paid Service or his/her nominee(s).
- b) Proper Officers have been appointed for the purposes of a number of specified statutory functions and a list of all such proper officers forms an appendix to the Scheme of Delegation to officers in Part 7 C of this Constitution

12.2 Chief Officers. The following posts are designated Chief Officers of the Council:

Post	Functions areas of responsibility
Chief Executive (and Head of Paid Service)	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers)</p> <p>Provision of professional advice to all parties in the decision-making process</p> <p>Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions.</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council) Policy best value and scrutiny</p> <p>Returning Officer at Local Elections and Acting Returning Officer at UK Parliamentary Elections</p>
Director of Corporate Services	Finance, ICT, Corporate Governance, Human Resources, Audit, Communications, Council Tax, Business Rates Council Tax and Housing Benefit and Customer Services
Director of Environment and Regeneration	Development control, the local plan, regeneration, highways and transportation, waste management, regulatory services
Director of Children, Schools and Families	Social and welfare services, child protection, Education and Children
Director of Community and Housing Services	Adult Education, training. Libraries, Housing and Adult Social Services

12.3 Head of Paid Service, Monitoring Officer and Chief Financial Officer.

- (a) The Council has designated the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Director of Corporate Services	Chief Finance Officer and Section 151 Officer
Managing Director of the South London Legal Partnership	Monitoring Officer Chief Legal Officer

- (b) Such posts will have the functions described in Article 12.4–12.6 below.
- (c) **Structure.** The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 7B of this Constitution.

12.4 Functions of the Head of Paid Service

- (a) **Discharge of functions by the Council.** The Head of Paid Service will if required report to Full Council on the manner in which the discharge of the Council's functions is coordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on functions.** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

12.5 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up- to-date version of the Constitution and will ensure that it is widely available for consultation by councillors, officers and the public.
- (b) **Ensuring lawfulness and fairness of decision-making.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Full Council or to the Cabinet in relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Standards and General Purposes Committee.** The Monitoring Officer will contribute to the promotion and maintenance of

high standards of conduct through provision of support to the Standards Committee.

- (d) **Proper officer for access to information.** The Monitoring Officer will ensure that executive decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (e) **Advising whether executive decisions are within the budget and policy framework.** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.
- (f) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors.
- (g) **Dispensations to Members under Section 33 Localism Act 2011.** The Monitoring Officer shall have delegated authority to grant a dispensation to members allowing them to refrain from declaring a disclosable pecuniary interest and to participate in discussions in and vote on matters in which they have such an interest.
- (h) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

12.6 Functions of the Chief Finance Officer

- (a) **Ensuring lawfulness and financial prudence of decision-making.** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Full Council or to the Cabinet in relation to an executive function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy

framework issues to all councillors and the Council Chair and will support and advise councillors and officers in their respective roles.

- (e) **Give financial information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

12.7 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer

The Council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in the officers' opinion sufficient to allow their duties to be performed.

12.8 Conduct

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 5 of this Constitution.

12.9 Employment

The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules set out in Part 4-H of this Constitution.

Article 13 – DECISION-MAKING

- 13.1 The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

13.2 Principles Of Decision-Making

All decisions of the Council will be made in accordance with the following principles:

- (a) proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights and equalities
- (d) a presumption in favour of openness;
- (e) clarity of aims and desired outcomes;

- (f) consideration and evaluation of alternatives;
- (g) irrelevant matters must be ignored.

13.3 Types Of Decision

(a) Decisions reserved to Full Council.

- (i) Decisions relating to the functions listed in Article 4.1 will be made by the Full Council and not delegated, except on grounds of urgency in cases where the law permits, in which case the Chief Executive shall be the decision maker,
- (ii) Urgency means a decision that is required where the interests of the Council would be prejudiced if a decision were not to be taken prior to the next scheduled ordinary meeting of the Full Council.
- (iii) If the Chief Executive takes a decision in accordance with this article 13.3, she shall report such instances to Full Council as soon as practicable

(b) Key Decisions

- (i) **Definition.** A key decision means an executive decision which is likely
 - a) to result in Merton Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
 - b) to incur expenditure valued at £500,000 or above; or
 - c) to be significant in terms of its effects on communities and groups of service users living or working in an area comprising one or more wards or electoral divisions in Merton; or
- (ii) **Procedure.** A decision taker may only make a key decision in accordance with the requirements of the Cabinet Procedure and Access to Information Rules set out in Part 4 of this Constitution.

(c) Non Key Executive Decisions

- (i) **Definition.** A non-key executive decision is an executive decision that:
 - Incurs expenditure of between £250,000-£499,999 or

- Is a significant one-off decision that would be a variation from council policy in respect of
 - a) the granting of a permission or licence; or
 - b) affecting the rights of an individual
 - (ii) **Procedure.** A decision maker may only make a non-key executive decision in accordance with the requirements of the Access to Information Procedure rules set out in Part 4B of this Constitution.
- (d) **Administrative Decisions (Non-key)**
- (i) **Definition.** A non-key administrative decision is an executive decision that:
 - Incurs expenditure of less than £250,000
 - has not been defined as a non-key delegated executive decision

13.4 Decision-Making by the Full Council

Subject to Article 13.8, the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.5 Decision-Making by the Cabinet

Subject to Article 13.8, the Cabinet and Cabinet committees will follow the Cabinet Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.6 Decision-Making by the Overview and Scrutiny Commission

The Overview and Scrutiny Commission and panels will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.7 Decision-Making by other Committees and Sub-Committees established by the Council

Subject to Article 13.8, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

13.8 Decision-Making by Council Bodies acting as Tribunals

The Council, a Councillor or an officer acting as a tribunal or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair process contained in Article 6 of the European Convention on Human Rights.

13.9 Access to information

All decision makers will follow the rules set out in Part 4B of the Constitution as far as those rules apply to them.

Article 14 – FINANCE, CONTRACTS AND LEGAL MATTERS

14.1 Financial Management

The management of the Council's financial affairs will be conducted in accordance with the financial regulations set out in Part 4 of this Constitution.

14.2 Contracts

Every contract made by the Council will comply with the Contract Standing Orders set out in Part 4 of this Constitution. Any contract entered into on behalf of the Council shall be made in writing. Such contracts must either be signed by at least two officers of the authority or made under the common seal of the Council attested by at least one officer. Such signatures may be applied electronically where the law permits.

14.3 Legal Proceedings

The Managing Director of the South London Legal Partnership is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Managing Director of the South London Legal Partnership considers that such action is necessary to protect the Council's interests.

14.4 Authentication of Documents

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Managing Director of the South London Legal Partnership or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

14.5 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Managing Director of the South London Legal Partnership. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Managing Director of the South London Legal Partnership should be sealed. The affixing of the Common Seal will be attested by the Managing Director of the South London Legal Partnership or another officer authorised by him/her.

- 14.6 In addition to the Seal being attested by any one of the officers referred to above documents of a ceremonial nature of those carrying some prestige (including Long Service Awards) shall also, if appropriate bear the signature of the Mayor or the Deputy Mayor in addition to that of the Chief Executive.
- 14.7 Except for documents sealed in accordance with 14.6, the entry of every sealing of a document shall be made and consecutively numbered in a book kept for that purpose and shall be signed by the person who has attested the Seal.
- 14.8 The Common Seal of the Council shall not be affixed to any document unless such sealing has been authorised by a resolution of the Council or a Committee to which the Council has delegated its powers in this behalf or by a decision of an officer authorised by the Council. A written instruction by an authorised officer shall be a sufficient authority for sealing any document necessary to give effect to such resolution or decision.

Article 15 – REVIEW AND REVISION OF THE CONSTITUTION

15.1 Duty To Monitor And Review The Constitution

The Head of Paid Service, the Monitoring Officer, and the Standards and General Purposes Committee will jointly and severally monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect.

15.2 Changes To The Constitution

- (a) **Approval.** Subject to (b) below, changes to the Constitution will only be approved by the Full Council following consideration of any recommendation or representation made by:
- the Head of Paid Service;
 - the Monitoring Officer and/or;

- the Standards and General Purposes Committee
- (b) Monitoring Officer may make minor or consequential changes to this constitution including to ensure legislative references are up-to-date and to ensure consistency of language.
- (c) **Change from a Leader and Cabinet form of executive to alternative arrangements, or vice versa.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.
- (d) **Change from a mayoral form of executive to another form of executive or to alternative arrangements, or from alternative arrangements to a mayoral form of executive.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals and must hold a binding referendum.”

Article 16 – SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

16.1 Suspension of The Constitution

- (a) **Limit to Suspension.** The Articles of this Constitution may not be suspended. The Council Procedure Rules may as specified in paragraph (b) below, be suspended by the full Council to the extent permitted within those Rules and the law.
- (b) **Procedure to Suspend.** A motion to suspend Council Procedure Rules will not be moved without notice unless at least one half of the whole number of Councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

16.2 Interpretation

The ruling of the Mayor or the Chair of any committee, subcommittee commission or panel as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

16.3 Publication

- (a) The Head of Democracy and Electoral Services will give a printed copy of this Constitution to each member of the authority upon delivery to him/her of that individual’s declaration of acceptance of office on the member first being elected to the Council.

- (b) The Head of Democracy and Electoral Services will ensure that copies are available for inspection at Council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Head of Democracy and Electoral Services will ensure that the summary of the Constitution is made widely available within the area including the Council's website and is updated as necessary.

SCHEDULE 1: DESCRIPTION OF EXECUTIVE ARRANGEMENTS

The following parts of this Constitution constitute the executive arrangements:

1. Article 6 (Overview and Scrutiny Commission and Panels and the Overview and Scrutiny Procedure Rules);
2. Article 7 (The Cabinet) and the Cabinet Procedure Rules;
3. Article 10 (Area Forums);
4. Article 11 (Joint Arrangements);
5. Article 13 (Decision-Making) and the Access to Information Procedure Rules;
6. Part 3 Responsibility for Functions.
7. Part 7 B Scheme of Delegation to Officers

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Part 3 – A

RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

1 Responsibility For Local Choice Functions

- 1.1 The Council has decided that the following local choice functions specified under The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 will be the responsibility of the Cabinet:
- a. All functions under a local Act specified as being the responsibility of the Executive, other than those specified or referred to in Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000;
 - b. Making arrangements pursuant to section 51A of the Education Act 2002 and regulations made thereunder ;
 - c. Making arrangements pursuant to section 94(1) and (4) of the School Standards and Framework 1998 Act; and the School Admissions (Appeals Arrangements) (England) Regulations 2012 (SI 2012/9)
 - d. Making arrangements pursuant to section 95(2) of the School Standards and Framework 1998 Act and the School Admissions (Appeals Arrangements) (England) Regulations 2012 (SI
 - e. Any function relating to contaminated land;
 - f. Discharging any function relating to the control of pollution or the management of air quality;
 - g. Serving an abatement notice in respect of a statutory nuisance;
 - h. Passing a resolution that Schedule 2 Noise and Statutory Nuisance Act 1993 should apply in the authority's area;
 - i. Investigating any complaint as to the existence of a statutory nuisance;
 - j. Inspecting the authority's area to detect any statutory nuisance;
 - k. Obtaining information under section 330 Town and Country Planning Act 1990 as to interests in land;
 - l. Obtaining particulars of persons interested in land under section 16 Local Government (Miscellaneous Provisions) Act 1976;
 - m. Making of agreements for the execution of highways works;
 - n. Determining any appeal against a decision made by or on behalf of the Council except those relating to:

- (i) appeals by officers against decisions made under the Council's Disciplinary, Grievance and Discrimination/Harassment/Victimisation procedures; and
- (ii) appeals against licensing determinations.

1.2 The Council has decided that the following local choice functions specified under The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 **will not be** the responsibility of the Cabinet:

- a. All functions under a local Act which are specified as being the responsibility of the Council;
- b. Determining appeals against decisions made by or on behalf of the authority relating to:
 - (i) appeals by officers against decisions made under the authority's Disciplinary, Grievance and Discrimination/Harassment/Victimisation procedures; and
 - (ii) appeals against licensing determinations.
- c. Appointing and revoking the appointment of any individual to:
 - (i) any office other than an office in which he or she is employed by the authority;
 - (ii) any body other than the authority or a joint committee of two or more authorities; or to
 - (iii) any committee or subcommittee of such a body.

Part 3 – B

RESPONSIBILITY FOR NON-EXECUTIVE COUNCIL FUNCTIONS

1. The Council has delegated the responsibilities and functions to the Committees and Sub-Committees named below. These Committees may consider and decide any matter of relevant non-executive business referred to the Committee by a Sub-Committee or a Director.

Meetings will commence at 7.15pm and end at 10.15pm with the exception of the Planning Applications Committee, Licensing Sub-Committee and Appeals Committee meetings, which are not subject to the three-hour guillotine.

Except for matters reserved to councillors, or other decision makers, all other matters relating to the Council's non-executive functions are delegated to officers in accordance with the scheme of delegation set out in part 3E of this constitution.

1.1 Standards and General Purposes Committee

a) Membership

12 councillors, excluding the Mayor and Leader.

Independent Persons are invited to attend in an advisory or non-voting capacity.

b) Role and functions

Promotion and maintenance of high standards of conduct and probity within the Council:

- To promote and maintain high standards of conduct and probity by councillors and co-opted members
- To receive reports from the Monitoring Officer on dispensations granted to councillors and co-opted members.
- To hear appeals from councillors and co-opted members where a dispensation has been refused by the Monitoring Officer.

Assistance to councillors and co-opted members

- To receive reports upon, monitor, manage and advise the Council on the implementation of the Council's Member Development Strategy and Member Development Programme, including training on the Member Code of Conduct.

Enforcement of the Code of Conduct

- To oversee the arrangements for the enforcement of the Council's Member Code of Conduct, including amendments to the procedure and assessment criteria.
- To oversee the maintenance of the Register of Members' interests, including approval of the form of declaration and guidance to members.
- To hear complaints made against Members when an investigation concludes that there may have been a breach of the code of conduct and to decide what action, if any, to take, in consultation with the Independent Person.
- To establish a Hearings Subcommittee for the purposes of considering cases where person when an investigation concludes that there may have been a breach of the code of conduct and for deciding what action, if any, to take, in consultation with the Independent Person.

Financial Governance and Audit Matters

- To approve the Council's statement of accounts, and to consider any reports produced by the Chief Finance Officer, in accordance with the duty to make arrangements for the proper administration of the Council's financial affairs
- To consider reports and receive recommendations from External Audit.
- To consider reports and receive recommendations from Internal Audit and the shared fraud partnership.
- To monitor the effectiveness, development and operation of risk management and governance.
- To formally agree the Annual Governance Statement and review the improvement plans.

Other functions

- To monitor and review the operation of the Council's Constitution as required by Article 15.1 of the Constitution, including the Financial Regulations, and to make appropriate recommendations to the Council in relation thereto.
- To monitor and receive regular reports on the operation of the Regulation of Investigatory Powers Act 1998 (RIPA).
- To maintain an overview of complaints handling and Local Government Ombudsman investigations, including receiving reports of payments exceeding £1000 to persons adversely affected by any maladministration on the part of the Council, as identified in a report by the Local Government Ombudsman.
- To determine (under Section 3A of the Local Government and Housing Act 1989) applications by Council employees for exemption from political restriction.
- To monitor amendments to and the operation of the Staff Code of Conduct.
- To assist in the appointment of independent persons.
- To discharge the Council's functions in relation to elections.
- To consider any issues, which is in the professional opinion of the Chief Executive or Chief Officers, should be referred to the Committee, and to report back decisions and recommendations.
- Except for matters reserved by statute for consideration by Full Council, to determine any matter which has been specifically referred to the Committee for consideration.
- To determine all other matters which are non-executive functions and which are not otherwise reserved to Council are not within the terms of reference of any other committee and which are not delegated to an officer.
- To exercise the function, powers and duties of the Council as trustee of trusts for which the Council is Corporate Trustee except insofar as those functions that have been delegated to Chief Officers of the Council.

1.2 **Appointments**

Committee (a) Membership:

10 Members (b) **Functions:**

- (i) To recommend the appointment of a Chief Executive and Head of Paid Service and the Monitoring Officer to the Council
- (ii) To interview and appoint Chief Officers as defined by the Officer Employment Procedure Rules and to approve statements specifying:
 - the duties of the officer concerned;
 - any qualifications or qualities to be sought in the person to be appointed;
 - to make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;
 - to make arrangements for a copy of the statements mentioned in sub paragraph (ii) to be sent to any person on request; and
 - to make arrangements to shortlist applicants for these posts and agree the assessments to be taken by shortlisted applicants.
- (iii) To determine the terms and conditions on which officers hold office (including the terms of dismissals), restructures, exits, statutory discretion relating to termination payments, reorganisations involving changes to staff responsibilities at Deputy Chief Officer and above.
- (iv) To deal with disciplinary matters in relation to the Head of Paid Service, Section 151 Officer and the Monitoring Officer
- (v) All other staffing matters that have not been delegated to any other decision maker
- (vi) To establish a sub-committee to perform any of these functions as appropriate

1.3 Planning Applications Committee

- (a) **Membership:** 10 Members (10 seats plus 1 Independent non-voting co-opted member to be appointed by the Planning Committee)
- (b) **Functions:**
 - (i) To hear and determine all applications received under the Town and Country Planning Acts, including heads of terms of any ancillary agreements
 - (ii) To hear and determine objections to new Tree Preservations Orders

- (iii) To exercise the Council's functions in relation to planning control and building control
 - (iv) To consider the implications of changes in legislation and powers relating to control over development and building control, and related enforcement matters
 - (v) To develop an annual work programme, set targets and a review mechanism through the year
 - (vi) To ensure all the work of the committee promotes the Council's commitment to equality of opportunity for councillors, staff and the local community
 - (vii) To ensure the work of the committee meets the needs and aspirations of the local community and is responsive to the wishes of the community at large
 - (viii) To arrange for the discharge of any of its functions by the Director of Environment and Regeneration
- (c) All matters relating to the exercise of this committee's functions are delegated to the Director of Environment and Regeneration except the following which are reserved to Committee: -
- (i) Where a written request is received from a Council Member that a particular application/applications should be determined by Committee;
 - (ii) Where objections have been received which cannot be overcome by conditions but where the application is considered to be in accordance with the Development Plan and so recommended for approval (minor developments or changes of use may be excluded from this exception)
 - (iii) Where the proposal is significantly contrary to the Development Plan Policy, unless recommended for refusal
 - (iv) Proposals which are subject to a Section 106 agreement that would contain any heads of terms or contributions that are not a standard requirement of the local plan or (for proposals where a standard requirement has been subject to modification through negotiation or otherwise) depart significantly from the standard requirement of the Local Plan; or applications for release or significant modification/variation from such obligations;

- (v) Where conflict arises between the officer's recommendation and the advice issued by English Heritage or other body with similar statutory status;
- (vi) Determinations in cases where an appeal has been lodged against non-determination which is subject to or may go to a Public Inquiry or Informal Hearing;
- (vii) Revocation/ modification of planning permission and discontinuance orders;
- (viii) Where the Council may be involved in compensation or service of a purchase notice (except in relation to stop notices):
- (ix) Where proposals accord with the Development Plan but are recommended for refusal;
- (x) Where the proposal involves the Council either as applicant or landowner and the scheme is not of a minor nature;
- (xi) Where enforcement action will follow on from a refusal of planning permission;
- (xii) Where an Environmental Impact Assessment has been provided or requested
- (xiii) Where the applicant is a Councillor
- (xiv) Where officers consider the application should be determined by the Committee
- (xv) Applications relating to major hazardous substances

1.4 Licensing Committee 2003 and Licensing Committee (Miscellaneous)

1.4.1 These separate committees will consist of the same membership and be scheduled to meet at the one after the other to deal with:

- (a) Licensing Committee (2003)
 - (i) All matters which can be dealt with by the Licensing Committee established by the Licensing Act 2003

- (b) Licensing Committee (Miscellaneous)
 - (i) Licensing matters which cannot be dealt with by the Licensing committee established under the Licensing Act 2003

1.4.2 Membership 12 Members

1.4.3 Functions – Licensing Committee (2003):

- (a) To discharge on behalf of the Council all of its licensing functions which are not reserved to full Council or another decision maker, pursuant to the provisions of:
- (i) the [Licensing Act 2003](#)
 - (ii) the [Gambling Act 2005](#)
- (b) To advise the Council on its Statements of Policy with respect to the exercise of its licensing functions relating to
- (i) the [Licensing Act 2003](#)
 - (ii) the [Gambling Act 2005](#)
- (c) To review the Statements of Policy at such times as it considers appropriate and report to Council when required.
- (d) To delegate functions to sub-committee(s) or officers as appropriate, having regard to guidance issued by the Secretary of State. The following delegations are in place in relation to Licensing Act 2003 functions:

Matter to be Dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		If a police objection	If no objection made
Application for premises licence / club premises certificate		If relevant representations made	If no relevant representations made
Application for provisional statement		If relevant representations made	If no relevant representations made
Application to vary premises licence / club premises certificate		If relevant representations made	If no relevant representations made

Matter to be Dealt with	Full Committee	Sub Committee	Officers
Application to vary a designated premises supervisor		If a police objection	All other cases
Request to be removed as a designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Application for interim authority		If a police objection	All other cases
Application to review premises licence / club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious etc.			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of an objection to a temporary event notice		All cases	
Determination of application to vary premises licence at community premises to include alternative licence condition		If a police objection	All other cases
Decision on whether to consult other responsible authorities on minor variation application			All cases
Determination of a minor variation			All cases
To raise representations on behalf of the Licensing Authority as a Responsible Authority			All cases

Delegation of licensing decisions and functions (Gambling Act 2005)

MATTER TO BE DEALT WITH	FULL COUNCIL	SUB-COMMITTEE	OFFICERS	DEMOCRATIC SERVICES & LEGAL SERVICES
Three year Licensing Policy	x			

MATTER TO BE DEALT WITH	FULL COUNCIL	SUB-COMMITTEE	OFFICERS	DEMOCRATIC SERVICES & LEGAL SERVICES
Policy not to Permit Casinos	x			
Validity of Applications or Representations			x	
Representations made by Licensing Authority			x	
Determination of Applications		x	When no hearing is required	
Dispensing with Hearings		Where all parties agree		Where all parties agree prior to hearing
Extending Times Limits		x		Where there is a need prior to hearing (consult with Licensing Committee Chair)
Consideration of Representations (opposing or supporting) and Notices (temporary use / occasional use)		x	x	
Procedure and Conduct of Hearings		x		
Issue of Notice of Hearing				x
Determining Relevance of Information		x		

1.4.4 Functions – Licensing Committee (Miscellaneous)

- (a) To deal with any other licensing matter which must be dealt with by a committee of the Council and cannot be dealt with by the Licensing Committee (2003) including but not limited to, matters under the London Local Authorities Act 1990 (as amended), London Local Authorities Act 1991, Scrap Metal Dealers Act 2013, Local Government (Miscellaneous

Provisions Act 1982, Animal Welfare Act 2006 (including its Regulations), Animal Boarding Establishments Act 1963, Zoo Licensing Act 1981, Riding Establishments Acts 1964 and 1970, Breeding of Dogs Act 1973.

- (b) To review the Statements of Policy on any other licensing matter at such times as it considers appropriate and report to Council when required.
- (c) To review the fees for any other licensing matter at such times as it considers appropriate and report to Council when required.
- (d) To deal with any matter which the Director of Environment and Regeneration considers appropriate to be referred to the Licensing Committee (miscellaneous)

1.5 Overview and Scrutiny Commission and Overview and Scrutiny Panels

- (a) **Membership of the Commission:** Membership 15, consisting of 4 statutory co-opted Members, 1 non-voting co-opted Member and 10 Councillors.
- (b) **Functions:** The functions of the Overview and Scrutiny Commission and Panels are set out in Article 6 of Part 1 of the Constitution and should be read in conjunction with the Overview and Scrutiny Commission Procedure Rules in Part 4-E.
- (c) Scrutiny panels and joint scrutiny panels membership and details are found within Overview and Scrutiny Commission Procedure Rules in Part 4-E

1.6 Borough Plan Advisory Committee

- (a) **Membership:** 6 Members (Members of the Cabinet and Assistant Cabinet members may not be appointed to this Committee)
- (b) **Functions:**
 - 1. To discharge the Council's responsibilities contained in the Local

Government Act 2000 and Planning and Compulsory Purchase Act 2004 (as amended) with respect to the Merton Local Plan specifically to make recommendations as appropriate to the Cabinet and Council on matters including:-

- (i) Local Development Scheme
 - (ii) Statement of Community Involvement
 - (iii) Development Plan Documents
 - (iv) Local Development Documents
 - (v) Area Plans and Supplementary Planning Documents
 - (vi) Strategic Environmental Assessment
 - (vii) Tests of Soundness of Development Plan Documents
 - (viii) Neighbourhood plans
2. To consider and advise the Cabinet and Council on the Report of the Inspector conducting the Independent Examination of Development Plan Documents of the Merton Local Plan.
 3. To advise the Cabinet and Council on the preparation of Local Plans prepared with adjoining boroughs, specifically the Joint Waste Development Plan Document.
 4. To advise the Cabinet and Council on other Strategic / London-wide spatial planning and transport planning matters.
 5. To consider the need for information, research, studies and investigations further to the preparation of the Merton Local Plan and to advise the Council on the resources required to prepare and review the Merton Local Plan.
 6. To consider new and emerging legislation relevant to the preparation and review of the Merton Local Plan.
 7. To consider and advise Cabinet and Council on buildings and structures to be included in the Local List, considering officer recommendations and consultation feedback.

1.7 Pensions Committee

- (a) **Membership:** 3 Councillors who shall be voting members plus two non-voting members comprising one staff representative and one pensioner representative to be appointed at the discretion of the Council

- (b) **Functions:**
 - (i) To review and approve all aspects of investment policy relating to the Pensions Fund, including agreeing the strategic asset and review the Investment Strategy Statement and amend it when necessary. This includes the authority to do the following;

 - (ii) To agree benchmarks and performance targets for the investment of the Fund's assets and review periodically;

 - (iii) To agree to transfer funds into mandates managed by the London Collective Investment Vehicle (CIV) as soon as appropriate opportunities become available;

 - (iv) To receive regular reports from the London CIV and to agree and resultant actions from a review of the investments held with the London CIV;

 - (v) To keep the performance of the investment managers under regular review and extend or terminate their contracts as required. To appoint new managers when necessary.

 - (vi) To agree policy guidelines for the exercise of voting rights attached to the Fund's shares;

 - (vii) To review the appointment of specialist advisors and service providers and make new appointments as necessary;

 - (viii) To consider the overall implications of the Council's policies for employment and benefits issues and their impact on the Pension Fund and agree any strategic changes;

 - (ix) To agree on the Pension fund's sustainable investment policy and consider the impact of the ESG on each investment decisions

- (c) The Director of Corporate Services is be authorised to take urgent decisions in relation to the pensions fund and investment strategy on behalf of the Committee, reporting back to next scheduled meeting of the Pensions Committee on any exercise of these powers

- (d) **Knowledge and understanding (including Training)**
Committee members are expected to attend/complete training arranged by the Fund in order to meet and maintain the Merton Pension Fund and the LGPS knowledge and skills requirements.

- (e) **Non-Voting Members**
 - i. The non-voting members of the Committee shall be appointed until the date of the next all council elections.

 - ii. Non-voting members shall not be entitled to send substitutes in their absence

 - iii. If a non-voting member does not attend for 2 consecutive meetings then unless that nonattendance is for a reason approved in advance by the Committee, their membership of the Committee shall automatically cease and the Director of Corporate Resources shall be entitled to appoint replacement members.

 - iv. If a non-voting member resigns or is otherwise unable to continue as a member, the Director of Corporate Resources shall be entitled to appoint a replacement member

1.8 Merton Health and Well Being Board

(a) Terms of Reference

1.1 Purpose

Merton Health and Wellbeing Board works in partnership to provide strategic leadership to improve health and wellbeing and reduce health inequalities. It promotes an integrated approach to delivery of priorities and engages on strategy development and service delivery. It focuses on prevention and the

achievement of positive outcomes across the determinants of health. The vision of Merton Health and Wellbeing Board is:

- i. A fair share of opportunities for health and wellbeing for all Merton residents.
- ii. This means the Health and Wellbeing Board will work to halt the rise in the gap in life expectancy between areas of Merton.

1.2 Context

The Health and Social Care Act required each local authority to establish a Health and Wellbeing Board from April 2013. It gave Boards statutory duties to encourage integrated working and to develop Joint Strategic Needs Assessments (JSNAs) and joint Health and Wellbeing Strategies. The Act permits the local authority to arrange for Health and Wellbeing Boards to exercise any functions that are exercisable by the authority. Health and Wellbeing Boards are also now required to produce and maintain a Pharmaceutical Needs Assessments and to agree the Better Care Fund Plan

1.3 Core Principles

Merton Health and Wellbeing Board agreed a set of core principles that underpin the work of the Board:

- Supporting everyone to take greater responsibility for their health and wellbeing
- Encouraging everyone to make a personal contribution
- Raising aspirations
- Recognising mental health as a cross cutting issue
- Focus on tackling the worst inequalities in health and wellbeing
- Promoting equalities and diversity.
- Working in partnership to achieve more

2. Responsibilities

- 2.1 The responsibilities of the Health and Wellbeing Board are to:
Improve health and wellbeing and narrow the gaps in health inequalities.

- 2.2 Encourage health, social care and health related services to work in an integrated way working with partners to identify opportunities for future joint commissioning.
- 2.3 Lead on signing off the Better Care Fund Plan.
- 2.4 Assess the needs of Merton's population through the Joint Strategic Needs Assessment (JSNA)
- 2.5 Agree the Merton Health and Wellbeing Strategy (that reflects the priorities identified in the JSNA) and undertake strategic monitoring, evaluation and refresh
- 2.6 Provide strategic priorities through the Health and Wellbeing Strategy to help align commissioning intentions. Specifically, Merton Council plans for commissioning and Merton Clinical Commissioning Group's Commissioning Plan are informed by the Health and Wellbeing Strategy and JSNA.
- 2.7 Ensure that strategic issues arising from the Safeguarding Adults Board and Merton Safeguarding Children Board inform the work of the Health and Wellbeing Board
- 2.8 Receive the annual report of the Safeguarding Adults Board and Merton Safeguarding Children Board and ensure partners respond to issues pertinent to the Board.
- 2.9 Request information from any individual member of the Health and Wellbeing Board that is needed to deliver on the Health and Wellbeing Board responsibilities.
- 2.10 Publish and maintain a Pharmaceutical Needs Assessment for Merton.
- 2.11 Comply with further statutory and other agreed responsibilities as required.

(b) Membership

- Cabinet Member for Adult Social Care and Health (Chair)
- Cabinet Member for Children Schools and Families
- Member of the Opposition

Under the governing legislation, the Leader of the Council is responsible for nominating the elected member representatives on the Board

- Merton Clinical Commissioning Group Chair (Vice Chair) Merton Clinical Commissioning Group Chief Officer
- Merton Clinical Commissioning Group Director of Commissioning
- Merton Clinical Commissioning Group GP
- Director of Housing and Communities (non-voting)

- Director of Children Schools and Families (non-voting)
- Director of Environment and Regeneration (non-voting)
- Director of Public Health (non-voting)

- Chief Executive of Merton Voluntary Service Council
- Representative of Health watch
- Community Engagement Network representative

- (All members have vote except where specified as non-voting).

(c) Merton Health and Wellbeing Board HWBB Community Sub-group

The Health and Wellbeing Board has established a The HWBB Community Sub-group will support the implementation of Merton's Local Outbreak Control Plan and to have oversight of work on the impact of COVID-19 on vulnerable communities,

1.9 South West London and Surrey Joint Health Overview And Scrutiny Committee (JHOSC)

(a) Terms of reference

- (i) The South West London and Surrey Joint Health Overview and Scrutiny Committee is established by the Local Authorities of **London Borough of Croydon, London Borough of Merton, London Borough of Richmond upon Thames, Surrey County Council, London Borough of Sutton, London Borough of Wandsworth**, and the **Royal Borough of Kingston upon Thames (constituent areas)** in accordance with s.245 of the NHS Act 2006 and the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
- (ii) It will be a standing Joint Overview and Scrutiny Committee or a sub-committee thereof which will undertake scrutiny activity in response to a particular reconfiguration proposal or strategic issue affecting some, or all of the constituent areas.
- (iii) The length of time a specific matter / proposal will be scrutinised for will be determined by the Joint Committee or Sub Committee.
- (iv) The purpose of the Standing Joint Committee is to act as a full committee or commission sub-committees to consider the following matters and carry out detailed scrutiny work as below:
 - a) To engage with Providers and Commissioners on strategic sector wide *proposals* in respect of the *configuration* of health services affecting some or all of the area of Croydon, Merton, Richmond upon Thames, Surrey County Council, Sutton, Wandsworth, and the Royal Borough of Kingston upon Thames (constituent area).
 - b) Scrutinise and respond to the consultation process (including stakeholder engagement) and final decision in respect of any reconfiguration proposals affecting some, or all of the constituent areas.
 - c) Scrutinise in particular, the adequacy of any consultation process in respect of any reconfiguration proposals (including content or time allowed) and provide reasons for any view reached.
 - d) Consider whether the proposal is in the best interests of the health service across the affected area.
 - e) Consider as part of its scrutiny work, the potential impact of proposed options on residents of the reconfiguration area, whether proposals will deliver sustainable service change and the impact on any existing or potential health inequalities.

- f) Assess the degree to which any proposals scrutinised will deliver sustainable service improvement and deliver improved patient outcomes.
- g) Agree whether to use the joint powers of the local authorities to refer either the consultation or final decision in respect of any proposal for reconfiguration to the Secretary of State for Health.
- h) As appropriate, review the formal response of the NHS to the Committees consultation response.
- (v) The Joint Committee will consist of 2 Councillors nominated by each of the constituent areas and appointed in accordance with local procedure rules. Each Council can appoint named substitutes in line with their local practices.
- (vi) Appointments to the Joint Committee will be made annually by each constituent area with in-year changes in membership confirmed by the relevant authority as soon as they know.
- (vii) A Chair and Vice Chair of the Joint Committee will be elected by the Committee at its first meeting for a period of one year and annually thereafter.
- (viii) The life of the Joint Committee will be for a maximum of four years from its formation in May 2018.
- (ix) For each specific piece of scrutiny work undertaken relating to consultations on reconfiguration or substantial variation proposals affecting all or some of the constituent areas, the Joint Committee will either choose to act as a full Committee or can agree to commission a sub-committee to undertake the detailed work and define its terms of reference and timescales. This will provide for flexibility and best use of resource by the Joint Committee.
- (x) In determining how a matter will be scrutinised, the Joint Committee can choose to retain decision making power or delegate it to a sub-committee.
- (xi) The overall size of each sub-committee will be determined by the main Committee and must include a minimum of 1 representative per affected constituent area.
- (xii) Where a proposal for reconfiguration or substantial variation covers some but not all of the constituent areas, in establishing a sub-committee, formal membership will only include those affected constituent areas. Non affected constituent areas will be able to nominate members who can act as 'observers' but will be non-voting.
- (xiii) The Committee and any sub-Committees will form and hold public meetings, unless the public is excluded by resolution under section 100a (4) Local

Government Act 1972 / 2000, in accordance with a timetable agreed upon by all constituent areas and subject to the statutory public meeting notice period.

(b) Rules of Procedure

Membership of Committee and Sub-Committees

- (i) The London Boroughs of Croydon, Merton, Richmond upon Thames, Sutton, Wandsworth and the Royal Borough of Kingston upon Thames and Surrey County Council will each nominate, 2 members to the JHOSC, appointed in accordance with local procedure rules.
- (ii) Appointments will reconfirmed annually by each relevant authority.
- (iii) Individual authorities may change appointees in accordance with the rules for the original nomination.
- (iv) Individual authorities will be strongly encouraged to nominate substitutes in accordance with local practice.
- (v) In commissioning Sub-Committees, membership will be confirmed by the JHOSC and can be drawn from the main Committee or to enable use of local expertise and skill, from non-Executive members of an affected constituent area.
- (vi) The membership of a sub-committee will include at least one member from each affected constituent areas. An affected constituent area is a council area where the proposals will impact on residents. Non affected areas can appoint 'observer' members to sub-committees but they will be non-voting.
- (vii) The JHOSC, may as appropriate review its membership to include authorities outside the South West London area whom are equally affected by a proposal for reconfiguration or substantial variation who can be appointed to serve as members of relevant sub-committees.

(c). Chairman

- (i) The JHOSC will elect the Chairman and Vice Chairman at the first formal meeting. A vote will be taken (by show of hands) and the results will be collated by the supporting Officer.
- (ii) The appointments of Chairman and Vice Chairman will be reconfirmed annually.
- (iii) If the JHOSC wishes to, or is required to change the appointed Chairman or Vice Chairman, an agenda item should be requested supported by four of the seven constituent areas following which the appointments will be put to a vote.
- (iv) Where a sub-committee is commissioned, at its first meeting a Chairman and Vice-Chairman will be appointed for the life of the sub-committee.

(d) Substitutions

- (i) Named substitutes may attend Committee meetings and sub-committee meetings in lieu of nominated members. Continuity of attendance is strongly encouraged.
- (ii) It will be the responsibility of individual committee members and their local authorities to arrange substitutions and to ensure the supporting officer is informed of any changes prior to the meeting.
- (iii) Where a named substitute is attending the meeting, it will be the responsibility of the nominated member to brief them in advance of the meeting.

(e) Quorum

- (i) The quorum of a meeting of the JHOSC will be the presence of one member from any five of the seven participating constituent areas.
- (ii) The quorum of a meeting of a Sub Committee of the JHOSC will be three quarters of the total membership of the sub-committee to include a minimum of two members.

(f) Voting

- (i) Members of the JHOSC and its sub Committees should endeavour to reach a consensus of views and produce a single final report, agreed by consensus and reflecting the views of all the local authority committees involved.
- (ii) In the event that a vote is required, each member present will have one vote. In the event of there being an equality of votes the Chairman of the JHOSC or its sub-committee will have the casting vote.

(g) JHOSC Role, Powers and Function

- (i) The JHOSC will have the same statutory scrutiny powers as an individual health overview and scrutiny committee that is:
 - accessing information requested
 - requiring members, officers or partners to attend and answer questions
 - Referral to the Secretary of State for Health if the Committee is of the opinion that the consultation has been inadequate or the proposals are not 'in the interests' of the NHS
- (ii) The JHOSC can choose to retain the powers of referral to the Secretary of State for Health for a particular scrutiny matter or delegate them to an established sub-committee.

(h) Support

- (i) The lead governance and administrative support for the JHOSC will be provided by constituent areas on an annual rotating basis.
- (ii) The lead scrutiny support for sub-committees will be provided by constituent areas on a per issue basis to be agreed by the sub-committee.
- (iii) Meetings of the JHOSC and its sub-committees will be rotated between participating areas.
- (iv) The host constituent area for each meeting of the JHOSC will be responsible for arranging appropriate meeting rooms and ensuring that refreshments are available.
- (v) Each constituent area will identify a key point of contact for all arrangements and Statutory Scrutiny Officers will be kept abreast of arrangements for the JHOSC.

(i) Meetings

- (i) Meetings of the JHOSC and its sub-committees will be held in public unless the public is excluded by resolution under section 100a (4) Local Government Act 1972 / 2000 and will take place at venues in one of the seven constituent areas.
- (ii) Meetings will not last longer than 3 hours from commencement, unless agreed by majority vote at the meeting.

(j) Agenda

- (i) The agenda will be drafted by the officers supporting the JHOSC or its sub-committees and agreed by the appropriate Chairman. The officer will send, by email, the agenda to all members of the JHOSC, the Statutory Scrutiny Officers and their support officers.

(ii) It will then be the responsibility of each borough to:

- publish official notice of the meeting
- put the agenda on public deposit
- make the agenda available on their Council website; and
- make copies of the agenda papers available locally to other Members and officers of that Authority and stakeholder groups as they feel appropriate.

(k) Local Overview and Scrutiny Committees

- (i) The JHOSC or its sub-committees will invite participating constituent areas health overview and scrutiny committees and other partners to make known their views on the review being conducted.
- (ii) The JHOSC or its sub-committees will consider those views in making its conclusions and comments on the proposals outlined or reviews.
- (iii) Individual Overview and Scrutiny Committees will make representations to any NHS Body where a consensus at the JHOSC cannot be reached.

(l). Representations

- (i) The JHOSC or its sub-committees will identify and invite witnesses to address the committee and may wish to undertake consultation with a range of stakeholders.
- (ii) As far as practically possible the committee or sub-committee will consider any written representations from individual members of the public and interest groups that represent geographical areas in South West London and Surrey that are contained within one of the participating local authority areas.
- (iii) The main Committee and any established sub-committees will consider up to 3 verbal representations per agenda item from individual members of the public and interest groups that represent geographical areas in South West London and Surrey that are contained within one of the participating local authority areas. Individuals must register to speak before 12pm on the day before the meeting takes place and will be given three minutes to make their representations to the committee.
- (iv) The Chairman or any committee or sub-committee will have the discretion to accept more or late speakers where s/he feels it is appropriate.

1.10 Joint Consultative Committee with Ethnic Minority Organisations

Membership: 5 Merton Councillors and representatives of Community Organisations

Constituted by: Council

Powers and Duties determined by: Council

Authority: Equality Act 2010 and Article 10.1(a) of the Constitution

Functions

- a) To advise and make recommendations upon strategic policy issues relating to:
 - (i) Issues of local concern to the ethnic minority communities
 - (ii) Provision of Council services and resources, with reference to the needs of local ethnic minority communities
 - (iii) The elimination of discriminatory practices and racial prejudice in the delivery of Council services
 - (iv) The promotion of equal opportunities and good relations between different groups
 - (v) Applications for financial grant from Merton Council, Central Government, EC and other external funding organisations in aid of projects affecting local ethnic minority people.
- b) To contribute to and monitor the Council's Equality and Diversity Statement and Policy and the Race Equality commitments of the Corporate Equality Scheme

1.11 Merton Standing Advisory Council on Religious Education

Authority: Section 390 of the Education Act 1996

(a) Role and functions

- a) To advise the LA on such matters concerned with school worship and with Religious Education according to an Agreed Syllabus as the LA may request or as the SACRE may see fit.
- b) These matters might include methods of teaching and choice of materials to deliver the Agreed Syllabus.
- c) To evaluate how well the Agreed Syllabus supports the provision of Religious Education provision in schools.
- d) To receive, and determine whether an application from a Head Teacher to vary the requirement for worship of a broadly or mainly Christian character, is appropriate for the whole school or for groups of pupils.
- e) To publish an annual report on the work of SACRE and to circulate this to Headteachers, to QCDA and to the appropriate Council Committee and senior officers in Children Schools and Families Department.
- f) To set up a Statutory Conference at any time if, in the opinion of SACRE, it becomes necessary to review the Authority's agreed syllabus and to do so at least every five years.
- g) To advise, if requested, on matters arising from the Authority's Complaints Procedures under Section 23 of the Education Reform Act 1988.

(b) Officers

The Director of Merton's Children, Schools and Families Department, or such other senior officer/s as s/he may designate, shall attend and participate in discussions in the SACRE as professional adviser/s and make appropriate arrangements to support the administration of the SACRE and its meetings.

(c) Membership

In accordance with the provisions of the Education Reform Act 1988 (Section 11(4)): The SACRE is to comprise four groups representing:

Committee A

Such religions and belief groups as, in the opinion of the Council, will appropriately reflect the principal religious and belief traditions in the Borough of Merton.

Committee B

The Church of England.

Committee C

Such associations representing teachers and headteachers as, in the opinion of the Local Authority, ought, having regard to the circumstances of the borough, be represented.

Committee D The Local Authority. Three elected Councillors, as nominated by the political groups represented on Merton Council at the Council's Annual meeting in May.

Part 4 – A

COUNCIL PROCEDURE RULES

1. ANNUAL MEETING OF THE COUNCIL

1.1 Timing

In a year when there is an ordinary election of councillors, the annual meeting will take place within 21 days of the retirement of the outgoing councillors. In any other year, the annual meeting will take place in March, April or May. The Annual Meeting shall commence at 7:15 p.m. and shall be held at Merton Civic Centre, London Road, Morden, Surrey, unless otherwise decided by the Chief Executive after consultation with the leader of each group of elected members represented on the Council.

1.2 Business

At the annual meeting, the Council will:

- (a) receive apologies for absence;
- (b) to receive declarations of pecuniary interest from members;
- (c) approve the minutes of the last meeting;
- (d) elect the Mayor of the Council;
- (e) receive the Mayor's appointment of Deputy Mayor and Mayor's Chaplain or other religious adviser for the ensuing municipal year.
- (e)
- (f) every four years (or at any other time when the office of Leader becomes vacant) elect the Leader of the Council and note, if known, the appointment by the Leader of the Deputy Leader and other appointments to the Cabinet including their portfolios;
- (g) appoint at least one Overview and Scrutiny Commission and such other committees as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are executive functions (as set out in Part 3, of this Constitution);
- (h) agree the scheme of delegation or such part of it as the Constitution determines it is for the Council to agree, as set out in Part 3 of this Constitution;
- (i) agree which committees to establish and make the appropriate appointments in accordance with Section 1.3 below;

- (j) announce and present awards as appropriate;
- (k) approve a programme of ordinary meetings of the Council for the year if not already done so; and

1.3 Selection of Councillors on Committees and Outside Bodies

At the annual meeting, the Council will:

- (a) decide which committees to establish for the municipal year;
- (b) decide the terms of reference for those committees;
- (c) decide the size and the allocation of seats to groups of elected members in accordance with the political balance rules set out in the Local Government and Housing Act 1989;
- (d) receive nominations of councillors to serve on each committee and outside body; and
- (e) appoint members to those committees and outside bodies where appointment has been reserved to the Council.

2. ORDINARY MEETINGS

2.1 Dates and Frequency

Ordinary meetings of the Council will take place in accordance with a programme decided at the Council's annual meeting, with the month of August to be regarded as the vacation month.

2.2 Time and Place

Ordinary meetings including Budget/Council Tax meetings of Council shall commence at 7:15 p.m. and finish three hours after commencement. at Merton Civic Centre, London Road, Morden, Surrey, unless otherwise decided by the Chief Executive after consultation with the leader of each group represented on the Council.

2.3 Order of Business

The business at an ordinary meeting shall include the following:

- (a) in the absence of the Mayor, to choose a member to preside to receive apologies for absence;
- (b) to approve minutes of last meeting;

- (c) to receive declarations of interest from members;
- (d) to receive announcements from the Mayor, Leader and Chief Executive.
- (e) Questions from the Public (this will not apply at the meeting of the Council convened to consider the budget and council tax in accordance with Rule 3.3 below or at the annual meeting of the council)
- (f) Questions from councillors relating to Strategic Themes other than the strategic theme to be the focus of the meeting in accordance with paragraph (g) below (questions are to be published in theme groups grouped together). (Questions must be submitted to the Chief Executive seven clear days before the meeting)

Review of the Strategic Themes Under the Council's business plan

(g) The entitlement to select the strategic theme to be considered at each meeting shall lie with the leaders of all the political groups represented on the Council on a rotational basis or otherwise as agreed between them :[or, alternatively:

“The entitlement to select the strategic theme to be considered at each meeting shall lie with the leaders of all the political groups represented on the Council and the number of choices allocated to each political group should, so far as is reasonably practicable reflect the respective sizes of each group. The schedule setting out the timing of each group’s nomination shall be agreed at annual council.

For the Strategic Theme selected for the meeting (the Strategic Theme”), the following will apply:

- The relevant Cabinet member or leader will prepare a report containing relevant performance indicators and other data, a summary of any key decisions taken since the Strategic Theme was last considered as well as any accompanying advice/ recommendations of Overview and Scrutiny Panels/ Commission and consultative fora and this shall **wherever possible be circulated seven clear working days before the meeting** as well as forming part of the agenda pack for the meeting.
- Non Cabinet members may submit motions relating to the strategic theme being considered at the meeting and such motions shall be submitted to the Chief Executive by 2pm on the day three clear working days before the day of the meeting.

- The relevant Cabinet Member or Leader may also bring to the meeting draft policies or strategies on a draft "green paper basis.
- The debate on the strategic theme will proceed as follows:
- The Cabinet Member/Leader will introduce his or her report(s)
- He or she will deal with any written questions on the strategic theme submitted to the Chief Executive by 2pm on the day three clear working days before the day of the meeting.in accordance with rule 12.4(a) and reply to any oral supplementary questions .

The time for answering questions related to the Strategic Theme shall be limited to 15 minutes. No further questions, supplementary questions or verbal answers will be permitted after expiry of that time.

- Any motions arising relating to the relevant strategic theme standing in the names of non-Cabinet members will be moved and seconded.
- The meeting will then debate the report(s) in the usual way and in accordance with these procedure rules.

(e) Reports of Community Fora

The reports of each Community Forum shall be considered by the Council in turn. In the course of approval of each report:

- The Chair of the Community Forum may make a report in relation to the report of the Forum.
- Councillors for the wards comprising the Community Forum may address the Council on matters arising from the report.
- For the Community Forum reporting at the meeting, the following will apply:
- Any reports to the Council and any recommendation to the Council or any Committee of the Council should be printed with the Council Reports.
- Any original motion relating to the report of a Community Area Forum must be submitted to the Chief Executive by 9am on the day before the meeting to enable time-tabling before meeting.
- The Leader or an appropriate Cabinet Member shall respond to any written questions relating to the report and may respond to the Chair of the forum and any ward members. (Questions must be submitted to Chief Executive in accordance with the deadline set out in 12.4(a))

- (f) Matters referred to Council by the Overview and Scrutiny Commission
- (g) Corporate Reports (Audit Commission, IdeA, Best Value Draft Final Reports, Standards Committee, Monitoring Officer etc.) which cover a range of corporate objectives and principles.
- (h) Any Notice of Motion
- (i) Functions of Full Council and other matters requiring a Council decision.
- (j) Presentation of petitions to the Mayor.
- (k) Motion for business of next meeting.

3. EXTRAORDINARY MEETINGS

3.1 Calling Extraordinary Meetings

The following may request the Proper Officer to call extraordinary Council meetings:

- (a) the Council by resolution;
- (b) the Mayor of the Council;
- (c) any five members of the Council if they have signed a requisition presented to the Mayor of the Council and he/she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition;
- (d) the Chief Executive; or
- (e) the Monitoring Officer.

3.2 Business

In consideration of the nature and purpose of extraordinary meetings, the business conducted at such meetings is limited to a single item, with no consideration of previous minutes or reports.

3.3 Budget/Council Tax Meetings

The business at a Budget/Council Tax meeting shall include the following:

- (a) in the absence of the Mayor and Deputy Mayor, choose a member to preside;
- (b) receive apologies for absence;

- (c) approve minutes of the last meeting;
- (d) receive any declarations of Interest from members;
- (e) receive a presentation of the Budget/Council Tax report from the relevant officer(s);
- (f) officers respond to questions from members addressed through the Mayor ;
- (g) to receive remarks from the Cabinet on the report;
- (h) Council to debate the report and take any motions and/or amendments.

- 3.4 A meeting to discuss the timetabling of the agenda for Council meetings may be arranged to provide relevant advice to the Mayor. Each group may nominate one representative to attend the timetabling meeting which shall be arranged by Democratic Services. However, the Mayor retains responsibility for the conduct of the meeting.
- 3.5 Chief Officers or their nominees may speak or respond to relevant questions at all Council meetings at the request of the Mayor or the person presiding as Chair of the meeting. However, care must be taken to ensure that officers are not drawn into political debate in the Council meetings.
- 3.6 All decisions relating to either the substantive budget motion/proposal or any amendments to it, will be to be taken via a recorded vote (Roll Call).

4. SUBSTITUTION FOR MEMBERS OF COMMITTEES AND SUB-COMMITTEES

4.1 When Permissible

Except in relation to except any Licensing Committee established under the Licensing Act 2003, each political group represented on the council may, at the AGM, appoint named substitutes who may attend where appointed members are unable to do so to all Council appointed committees;

4.2 Procedure

The appointed member must notify the Chair of the committee or sub-committee of their apologies and indicate the name of his or her substitute by noon on the day of the meeting.

- 4.3 The Chief Executive shall have the delegated authority to agree a change in the identity of any named substitute at the request of the leader of any political group represented on the Council.

4.4 Powers and Duties

Substitute members will have all the powers, including voting rights, and all the duties of any ordinary member of the committee but will not be able to exercise any special powers or duties exercisable by the person for whom they are substituting.

5. GENERAL RULES APPLYING TO ALL COUNCIL MEETINGS

5.1 Time and Place of Meetings

Although the time and place for the Council's meetings are to be established in accordance with paragraphs 1.1 and 2.2 above, the Chief Executive may vary the time and place of or cancel such meetings in exceptional circumstances to ensure the smooth operation of the Council. This may only be done with the

agreement of the Chair of the relevant meeting and after consultation, the Leaders of other political groups represented on the Council.

5.2 Notice of and Summons to Meetings

The Chief Executive will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear days before a Council meeting, the Chief Executive will send a summons to every member of the Council. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

5.3 Chair of Meeting

The Mayor or other person presiding at the meeting may exercise any power or duty of the Chair. Where these rules apply to committee and sub-committee meetings, references to the Chair or Mayor also include the Chair of committees and sub-committees. The powers of the Chair include:

- (a) To decide all matters of order, competence, relevancy, interpretation of standing orders relating to the conduct of the meeting and the appropriateness of Council questions;
- (b) To direct a Councillor to discontinue speaking if the Chair considers the Councillor is being repetitive or irrelevant, uses unbecoming language or is in some other way breaching the order of the meeting
- (c) To move that a member be heard not further under rule 16.3 and, if necessary to move that a member leave the meeting or that the meeting be adjourned, in accordance with Rule 16.4
- (d) To order the removal of a member of the public who is disruptive or the clearing of public areas in the event of a general disturbance. Re-admission shall be at the discretion of the Chair;
- (e) In the case of an equality of votes, the Chair of the meeting shall have a second or casting vote;
- (f) The decision of the Chair shall be final. Members shall address the Chair when speaking and not dispute the decisions of the Chair during the course of the meeting.

5.4 Quorum

- (a) The quorum of a meeting of the Council or of any non-executive committee will be one quarter of the whole number of members or a minimum of three members. The quorum for a meeting of the Cabinet, Cabinet committee or Cabinet sub-committee is governed by the Cabinet Procedure Rules.

- (b) Except where authorised by statute, business shall not be transacted in the absence of a quorum. During any meeting if the Chair counts the number of members present and declares there is not a quorum present, then the meeting will stand adjourned for 10 minutes. If after recommencing there is still no quorum, then the meeting will end immediately. Remaining business will be considered at a time and date fixed by the Chair. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

5.5 Duration of Meeting

- (a) Guillotine

If the business of the meeting has not been concluded by 3 hours, including any adjournments, after the start of the meeting, the Chair must interrupt the meeting and call for the vote immediately on the item under discussion. The vote will then be taken in the usual way without any further discussion.

- (b) If there remain other motions or recommendations on the agenda, they are deemed formally moved and seconded together with any amendments. No speeches will be allowed on these items and the vote will be taken in the usual way.

- (c) Where a report or motion contains a number of recommendations, they will be taken together unless the Mayor agrees there is a need for individual resolutions.

- (d) Recorded vote

If a recorded vote is called for during this process, it will be taken immediately.

- (e) During this the only other motions which may be moved are that a matter be withdrawn or that a matter be delegated or referred to an appropriate body or individual for decision or report.

- (f) Extending the Meeting

The foregoing provisions of this rule shall not apply if before the expiry of three hours the meeting has agreed that the meeting should continue beyond three hours, whether for a specified additional period or otherwise,

- (g) Close of the Meeting

When all motions and recommendations have been dealt with, the Chair will declare the meeting closed.

5.6 Declaration of Interests

Members shall abide by the Council's Code of Conduct. It is the responsibility of every member to declare any relevant interest at the beginning of the meeting or as the relevant item of business is reached.

6. MOTIONS ON NOTICE

6.1 Notice

Except for motions that can be moved without notice under Rule 7 above and motions relating to the strategic theme under consideration at the meeting moved under rule 2.3(g), written notice of every motion must be delivered to the Chief Executive not later than 5pm on the day which is seven clear working days before the date of the Council meeting. These will be maintained for public inspection.

6.2 Motions must be signed by at least three members except:

A single independent member may submit a motion without any further signatories.

A group with two members may submit a motion if both members of the group have signed it.

6.3 Motions set out in Agenda

Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the Members giving notice state, in writing, that they propose to move it to a later meeting or withdraw it. However, any motions submitted on the Strategic Theme being considered at the meeting in accordance with Rule 2.3 (g) or in respect of the reports of Community Forums under Rule 2.3(h) will be taken during in the course of the debate on those items.

6.4 Scope

Motions must be about matters for which the Council has a responsibility or which affect Merton, as determined by the Chief Executive.

7. MOTIONS WITHOUT NOTICE

The following motions may be moved without notice:

- (a) to appoint a Chair of the meeting at which the motion is moved;
- (b) in relation to the accuracy of the minutes;
- (c) to change the order of business in the agenda;

- (d) to refer something, including a matter raised by a question asked pursuant to Rule 11.9, to an appropriate body or individual;
- (e) to appoint a committee or member arising from an item on the summons for the meeting;
- (f) to receive reports or adoption of recommendations of committees or officers and any resolutions following from them;
- (g) to withdraw a motion;
- (h) with leave of the Mayor, to amend a motion;
- (i) to proceed to the next business;
- (j) that the question be now put;
- (k) to adjourn a debate;
- (l) to adjourn a meeting;
- (m) that the meeting continue beyond three hours in duration;
- (n) to suspend a particular Council Procedure Rule;
- (o) to exclude the public and press in accordance with the Access to Information Rules;
- (p) to not hear further a Member named under Rule 17.3 or to exclude them from the meeting under Rule 17.4; and
- (q) to give the consent of the Council where its consent is required by this Constitution.

8. RULES OF DEBATE

8.1 No Speeches until Motion Seconded

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

8.2 Right to Require Motion in Writing

Unless notice of the motion has already been given or is not required under Section 7, the chair may require it to be written down and handed to him/her before it is discussed.

8.3 Seconders's Speech

When seconding a motion or amendment, a member may reserve their speech until later in the debate.

8.4 Content and Length of Speeches

Speeches must be directed to the matter or subject under discussion or to a personal explanation or point of order. No speech may exceed four minutes without the consent of the Chair. In order to facilitate the smooth running of the meeting, the Mayor, Chief Executive and Group leaders may from time to time agree different lengths of speeches. The length may vary depending on whether the speaker is the mover of a motion or is exercising a right of reply. The Chief Executive will notify all councillors of any such agreement.

8.5 When a Member May Speak Again

A member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

- (a) to speak once on an amendment moved by another Member;
- (b) to move a further amendment if the motion has been amended since he/she last spoke;
- (c) if his/her first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);
- (d) in exercise of a right of reply;
- (e) on a point of order; and
- (f) by way of personal explanation.

8.6 Amendments to Motions

- (a) Amendment to motions or to recommendations in reports must be submitted in writing to the Chief Executive by 9am on the morning of the working day before the meeting, unless the Mayor has agreed that an amendment may be submitted after that time.
- (b) The Chief Executive will circulate copies of any amendments received by 5pm on the day of the meeting
- (c) An amendment to a motion must be relevant to the motion and will either be:

- (i) to refer the matter to an appropriate body or individual for consideration or reconsideration;
- (ii) to leave out words;
- (iii) to leave out words and insert or add others; or
- (iv) to insert or add words

as long as the effect of (ii) to (iv) is not to negate the motion.

Subject to paragraph (f) below:

- (d) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- (e) If an amendment is not carried, other amendments to the original motion may be moved.
- (f) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments may be moved.
- (g) After an amendment has been carried, the amended motion will be read out before accepting any further amendments, or if there are none, put to the vote.
- (h) The Mayor shall have discretion to allow debate on more than one amendment at once if in his or view to do so would facilitate the smooth running of the meeting, provided that votes on amendments shall be taken separately,

8.7 Alteration of Motion

A member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

A member may alter a motion which he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

Only alterations that could be made as an amendment may be made.

8.8 Withdrawal of Motion

A member may withdraw a motion which he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

8.9 Right of Reply

- (a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote unless the guillotine has fallen under Rule 5.5 (a).
- (b) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment.
- (c) The mover of the amendment has no right of reply to the debate on his or her amendment.

8.10 Motions which May be Moved during Debate

When a motion is under debate, no other motion may be moved except the following procedural motions:

- (a) to withdraw a motion;
- (b) with the leave of the Mayor, to amend a motion;
- (c) to proceed to the next business;
- (d) that the question now be put;
- (e) that the meeting continue beyond three hours in duration;
- (f) to refer something, including matter raised by a question asked pursuant to Rule 11.9, to an appropriate body or individual;
- (g) to exclude the public and press in accordance with the Access to Information Rules; and
- (h) to not hear further a member named under Rule 17.3 or to exclude them from the meeting under Rule 17.4.

8.11 Closure Motions

- (a) A member may move, without comment, the following motions at the end of a speech of another member:
 - (i) to proceed to the next business;
 - (ii) that the question be now put;
 - (iii) to adjourn a debate; or
 - (iv) to adjourn a meeting.

- (b) if a motion to proceed to the next business is seconded and the Mayor thinks the item has been sufficiently discussed, he or she will give the mover of the original motion a right of reply and then put the procedural motion to the vote. If the procedural motion is carried, the Mayor will move on to the next item of business on the agenda without taking a vote on the item currently under debate.
- (c) if a motion that the question be now put is seconded and the Mayor thinks the item has been sufficiently discussed, he/she will put the procedural motion to the vote. If it is passed, he/she will give the mover of the original motion a right of reply before putting his/her motion or amendment to the vote.
- (d) if a motion to adjourn the debate or to adjourn the meeting is seconded and the Mayor thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

8.12 Point of Order

A Member may raise a point of order at any time. The Mayor will hear them immediately. A point of order may only relate to an alleged breach of these Council Rules of Procedure or the law. The Member must indicate the rule or law and the way in which he/she considers it has been broken. The ruling of the Mayor on the matter will be final.

8.13 Personal Explanation

A Member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the Member which may appear to have been misunderstood in the present debate. The ruling of the Mayor on the admissibility of a personal explanation will be final.

8.14 Length of debates

The time available for the consideration of any matter before the Council shall, be as determined by the Mayor having had regard to the timetable for the meeting prepared in accordance with rule 3.4 the nature of the business and the time at which the decision is made. The Mayor shall at the commencement of the debate state the time available for the consideration of the matter if different from that set out in the prepared timetable and shall rule when the time available has expired, at which point, and if appropriate the matter under debate shall be put immediately to the vote.

9. PREVIOUS DECISIONS AND MOTIONS

9.1 Motion to Rescind a Previous Decision

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least six Members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

9.2 Motion Similar to One Previously Rejected

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least six Members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

10. VOTING

10.1 Majority

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room at the time the question was put.

10.2 Chair's Casting Vote

If there are equal numbers of votes for and against, the Chair of the meeting will have a second or casting vote. There will be no restriction on how that person chooses to exercise a casting vote.

10.3 Show of Hands

Unless a recorded vote is demanded under Rule 10.4, the Mayor will take the vote by show of hand or electronically, or if there is no dissent, by the affirmation of the meeting.

10.4 Recorded Vote

If six members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing or electronically and entered into the minutes, to show whether they voted for or against the motion or amendment, or abstained from voting. Before a recorded vote is taken the division bell shall be rung for one minute at the expiration of which period and before the vote is taken the doors of the Council Chamber shall be closed and thereon no member shall be allowed to enter the Chamber or to leave it until the conclusion of the vote.

NB All decisions relating to either the substantive budget motion/proposal or any amendments to it, will have to be taken via a recorded vote (Roll Call).

10.5 Voting on Appointments

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person. The nominees will be voted upon in alphabetical order.

In any situation where there is a contested vote on an appointment and there is an equality of votes in favour of two or more candidates, and where there is no other person with more votes in their favour, the decision as to who is elected shall be determined by casting vote of the Chair .

11. QUESTIONS BY THE PUBLIC

11.1 General

Members of the public, in accordance with these rules, may ask questions of Members of the Cabinet at ordinary meetings of the Council, but excluding Council meetings when tax or budget is on the agenda. The time during which Public Questions shall be taken shall not exceed 15 minutes. It shall not be in order to move for an extension of this time limit. When the time limit has expired, any remaining written replies will be taken as read.

11.2 Order of Questions

Questions will be asked in the order notice of them was received, except that the Mayor may group together similar questions.

11.3 Notice of Questions

A question may only be asked if notice has been given by delivering it in writing or by electronic mail, to the Chief Executive no later than seven working days before the day of the meeting. Each question must give the name and address of the questioner and must name the Member of the Cabinet to whom it is to be put.

11.4 Number of Questions

A resident or business ratepayer of the Borough may ask one written question (limited to 50 words) on any matter in relation to which the Council has a legal power or responsibility or which affects the borough . A resident or business ratepayer may ask one supplementary question at the meeting in clarification of an answer. The Mayor may reject a supplementary question on the grounds in Rule 11.5 below.

11.5 Scope of Questions

The Chief Executive has absolute discretion and may reject a question if it:

- is not related to a matter over which the Council has a legal power;
- is not about a matter for which the local authority has a responsibility or which affects the borough;
- is defamatory, frivolous or offensive;
- is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- requires the disclosure of confidential or exempt information.

11.6 Record of Questions

The Chief Executive will send a copy of the question to the Member to whom it is to be put. Rejected questions will include reasons for rejection. Copies of all questions will be circulated to all Members on the day of the meeting together with the written answers to those questions and will be made available to the public attending the meeting.

11.7 Asking the Question at the Meeting

The Mayor will invite the questioner to put the question to the Member named in the notice. If a questioner who has submitted a written question is unable to be present, either in person or remotely, in accordance with standing order 21 they may ask the Mayor to put the question on their behalf. The Mayor may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

11.8 Written Answers

Any questions, which cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the Member to whom it was to be put, will be dealt with by a written answer.

11.9 Reference of Question to the Cabinet or a Committee

Unless the Mayor decides otherwise, no discussion will take place on any question, but any Member may move that a matter raised by a question be referred to the Cabinet or the appropriate committee, including the Overview and Scrutiny Commission and Panels, or sub-committee. Once seconded, such a motion will be voted on without discussion.

12. QUESTIONS BY MEMBERS

12.1 On Reports of the Cabinet or Committees

A member of the Council may ask the Leader, a member of the Cabinet or the Chair of a Cabinet Committee any question without notice upon an item of the report of the Cabinet or a [Cabinet?] committee when that item is being received or under consideration by the Council

12.1 Questions on Notice at Full Council

Subject to Rule 12.3 , a Member of the Council may ask:

- the Leader;
- a member of the Cabinet; or
- the Chair of any committee or sub-committee.

a question on any matter in relation to which the Council has powers or duties or which affects Merton.

12.2 Questions on Notice at Committees and Sub-Committees

Subject to Rule 12.3, a Member of a committee or sub-committee may ask the chair of it a question on any matter in relation to which the Council has powers or duties or which affect Merton and which falls within the terms of reference of that committee or sub-committee.

12.3 Notice of Questions

A Member may only ask a question under Rule 12.1 if either:

- (a) the question relates to the strategic theme selected for debate or a report of a community forum at the meeting and they have given notice in writing of the question to the Chief Executive by 2pm on the day three clear working days before the date of the Council meeting (i.e. on the Thursday preceding a Council meeting to be held on a Wednesday if there are no intervening public holidays);
- (b) In respect of questions not relating to that strategic theme, they have given notice in writing of the question to the Chief Executive by 5pm on the day seven clear working days before the date of the Council meeting; or
- (b) the question relates to urgent matters, they have the consent of the Chair to whom the question is to be put and the content of the question is given to the Chief Executive by 12:00 noon on the day of the meeting.

12.4 Response

An answer may take the form of:

- (a) a written answer circulated to all members of the Council on the day of the meeting, or
- (b) where the desired information is in a publication of the Council or other published work, a reference to that publication.

12.5 Supplementary Question

A member asking a question under Rule 12.2 or 12.3 may ask one supplementary question, without notice of the member to whom the first question was asked. The supplementary question must arise directly out of the original question or the reply. Where the reply to the supplemental question cannot conveniently be given orally, a written answer may be circulated to all members of the Council.

12.6 Time Allotted

The time for answering questions not related to the Strategic Theme shall be limited to 15 minutes unless the time allotted for public questions has not been fully used in which case the Mayor shall have the discretion to add that unallocated time to the time allotted for member questions.

The time for answering questions asked on the Strategic Theme under paragraph 2.3(g) shall also be 15 minutes.

No further questions, supplementary questions or verbal answers will be permitted after expiry of the relevant allotted time. The written answers previously circulated will under paragraph 12.4(a) above together with the answers to any supplementary questions become part of the minutes of the Council meeting.

13. MINUTES

13.1 Signing the Minutes

The Mayor will sign the minutes of the proceedings at the next suitable meeting. The Mayor will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

13.2 No Requirement to Sign Minutes of Previous Meeting at Extraordinary Meeting

Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of

schedule 12 relating to signing of minutes.

13.3 Form of Minutes

Minutes will contain all motions and amendments in the exact form and order in which the Mayor put them.

14. RECORD OF ATTENDANCE

The attendance of those Members present during the whole or part of a meeting will be recorded by the Democratic Services officer. The record shall indicate whether the Member has attended in person or remotely in accordance with standing order 21.

15. EXCLUSION OF THE PUBLIC

Members of the public and press may only be excluded either in accordance with the Access to Information Rules in Part 4 of this Constitution or Rule 18 (Disturbance by Public).

16. MEMBERS' CONDUCT

16.1 Standing to Speak

When a Member speaks at Full Council, they must stand and address the meeting through the Mayor, unless they are taking part in a remote virtual meeting at which this rule shall not apply. If more than one Member stands, the Mayor will ask one to speak and the others must sit. Other Members must remain seated whilst a Member is speaking unless they wish to make a point of order or a point of personal explanation. The Council will respect the particular circumstances under which some Members remain seated when they speak.

16.2 Mayor Standing

When the Mayor stands during a debate, any Member speaking at the time must stop and sit down. The meeting must be silent.

16.3 Member Not to be Heard Further

If a Member persistently disregards the ruling of the Mayor by behaving improperly or offensively or deliberately obstructs business, the Mayor may move that the Member be not heard further. If seconded, the motion will be voted on without discussion.

16.4 Member to Leave the Meeting

If the Member continues to behave improperly after such a motion is carried, the Mayor may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on

without discussion.

16.5 General Disturbance

If there is a general disturbance making orderly business impossible, the Mayor may adjourn the meeting for as long as he/she thinks necessary.

17. DISTURBANCE BY THE PUBLIC

17.1 Removal of Member of the Public

If a member of the public interrupts proceedings, the Mayor will warn the person concerned. If they continue to interrupt, the Mayor will order their removal from the meeting room.

17.2 Clearance of Part of Meeting Room

If there is a general disturbance in any part of the meeting room open to the public, the Mayor may call for that part to be cleared.

18. PETITIONS

18.1 Petitions are to be presented to the Mayor without debate and then passed to the relevant Chief Officer for appropriate action.

18.2 The Chief Officer shall provide a written report on the subject matter of the Petition to the Members sponsoring the Petition. The reply shall also be published on the intranet/ internet and circulated with the minutes of the Council meeting to which the Petition was presented.

19. SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES

19.1 Suspension

All of these Council Rules of Procedure except Rule 10.4 and 14.2 may be suspended by motion on notice or without notice if at least one half of the whole number of Members of the Council are present. Suspension can only be for the duration of the meeting.

19.2 Amendment

Any motion to add to, vary or revoke these Council Rules of Procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

20. APPLICATION TO COMMITTEES AND SUB-COMMITTEES

All of the Council Rules of Procedure apply to meetings of the Council. None of the rules apply to meetings of the Cabinet, which are governed by the Cabinet

Procedure Rules in Part 4 of the Constitution. Only Rules 5-10 (but not or 8.14), 12.3, 14, 15, 16-21 (but not Rule 19.1) apply to meetings of committees and sub-committees. Meetings of the Planning and Licensing are not subject to the three hour guillotine and therefore Rule 5.5 (a) – (e) and 7 (m) do not apply to those committees.

21 REMOTE ATTENDANCE

- 21.1 The Council has the ability to allow remote participation in its meetings by virtual means via Zoom or other similar technology and in respect of such attendance the following provisions apply to meetings where the relevant facilities exist.
- 21.2 Members of the public, wishing to speak or ask a question at any meeting shall be offered the opportunity of doing so remotely;
- 21.3 Representatives of partner bodies, including those giving evidence at the Overview and Scrutiny Commission or any of its panels may do so remotely
- 21.5 Any member appointed to a Committee or Sub-Committee, with the exception of its chair may participate in a formal meeting of that body Committee remotely, but their presence would not amount to attendance at that meeting for the purposes of ascertaining whether the meeting of that body is quorate.
- 21.6 A member who is entitled to attend a meeting of a committee, sub committee or Cabinet but who is not a member of that body, may do so attend remotely.
- 21.7 Remote attendance by a member at a meeting under paragraph 21.5 or 21.6 above, shall not count as attendance for the purposes of S.85 of the Local Government Act 1972 (the 'six-month' attendance rule);
- 21.8 Paragraph 21.5 of this standing order does not apply to the Planning Applications Committee or the Licensing Committee or any of its subcommittees.

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Part 4 – B

ACCESS TO INFORMATION PROCEDURE RULES

1. Scope

These rules apply to all meetings of the Council, the Overview and Scrutiny Commission and Panels, the Standards and General Purposes Committee, all other committees and sub-committees and public meetings of the Cabinet and Cabinet sub-committee (together called meetings).

2. Additional Rights to Information

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

3. Right to Attend Meetings

Members of the public and media may attend all meetings subject only to the exceptions in these rules.

4. Notices of Meeting

The Council will give at least five clear working days notice, or any minimum amount of time set by statute, of any meeting by posting details of the meeting at the Merton Civic Centre, London Road (the designated office) and on the Council's website (www.merton.gov.uk).

5. Access to Agenda and Reports Before the Meeting

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office and on the Council's website at least five clear working days before the meeting.

If an item is added to the agenda later, the revised agenda and each such report will be available to the public and open to inspection as soon as the report is available to Councillors.

6. Supply of Copies

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and

- (c) any background documents identified in the report or supplied to councillors in connection with the report to any person on payment of a charge for postage and any other reasonable costs.

7. Access to Minutes etc. after the Meeting

The Council will make available copies of the following for six years after a meeting:

- (a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the council or of the Cabinet, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

8. Background Papers

8.1 List of Background Papers

The author will set out in every report a list of those documents (under the heading background papers) relating to the subject matter of the report which is his/her opinion;

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report but does not include published works or those that disclose exempt or confidential information as defined in rule 10 below.

8.2 Public Inspection of Background Papers

The Council will make one copy of each background paper listed in a report available for public inspection for six years after the date of the meeting concerned.

9. Summary of Public's Rights

These Access to Information Procedure Rules, as part of the Constitution, constitute the written summary of the public's rights to attend meetings and to inspect and copy documents. These Rules and

the entire Constitution are available at Merton Civic Centre and on the Council's website (www.merton.gov.uk).

10. Exclusion Of Access By The Public To Meetings

10.1 Confidential Information – Requirement to Exclude Public

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

Where it is proposed to exclude the public from a meeting of the Cabinet or any cabinet committee sections 17, 18 and 19 of these rules also apply

10.2 Exempt Information – Discretion to Exclude Public

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

Where it is proposed to exclude the public from a meeting of the Cabinet or any cabinet committee rules sections 17, 18 and 19 of these rules also apply

10.3 Meaning of Confidential Information

Confidential information means information given to the Council by a government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by reason of a Court Order.

10.4 Meaning of Exempt Information

Exempt information means information which falls within the seven categories below and is not prevented from being exempt by virtue of the two qualifications in paragraph 10.5 if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Category	Condition
1. Information relating to any individual	

<p>2. Information which is likely to reveal the identity of any individual</p>	
<p>3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).</p>	<p>“financial or business affairs” includes contemplated as well as past of current activities;</p>
<p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p>	<p>“employee” means a person employed under a contract of service; “labour relations matter” means – any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(b) (matters which may be the subject of a trade dispute, within the meaning of that Act); or any dispute about a matter falling within paragraph (a) above; and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;</p> <p>“office-holder”, in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is employee of the authority.</p>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	

<p>6. Information which reveals that the authority proposes (a) to give under any enactment a notice under of by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.</p>	
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution crime.</p>	

10.5 Qualifications to Exemption of Information

Information falling within paragraphs 10.4 is not exempt information if it falls within either of the following categories:

Category	Definition
<p>Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under the companies Act 1985; the Friendly Societies Act 1974; the Friendly Societies Act 1992; the Industrial and Provident Societies Acts 1965 to 1978; the Building Societies Act 1986; or the Charities Act 1993.</p>	<p>“registered” in relation to information required to be registered under the building Societies Act 1986(c), means recorded in the public file of any building society (within the meaning of that Act).</p>
<p>Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992(c)</p>	

11. Exclusion of Access by the Public to Reports

If the Chief Executive or the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with rule 10, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed.

Where it is proposed to exclude the public from a meeting of the Cabinet or any cabinet committee sections 18 and 19 of these rules also apply

12. Application of Rules to the Cabinet

- (a) **General Application.** Rules 13 – 24 apply to the Cabinet, its committees and sub-committees.
- (b) **Meetings to Take Key Decisions.** If the Cabinet or its committees meet to take a key decision then it must also comply with Rules 1 – 11 unless Rule 14 (general exception) or Rule 15 (special urgency) apply. A key decision is as defined in Article 13.3 of this Constitution.

13. Procedure Before Taking Key Decisions

Subject to Rule 14 (general exception) and rule 15 (special urgency), a key decision may not be taken unless:

- (a) a notice has been published in connection with the matter in question setting out the matters required by regulation 9 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; and
- (b) at least 28 clear working days have elapsed since the publication of the notice

14 General Exception

If a notice of a key decision has not been published in accordance with Rule 13 included in the forward plan, then subject to Rule 15 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until the proper notice period can be given;
- (b) the Chief Executive and the Leader have notified the Chair of the Overview and Scrutiny Commission and/or of the relevant panel, in writing, of the matter to which the decision is to be made;

- (c) the Chief Executive and the Leader have made copies of that notification available to the public at the offices of the Council and on the Council's website; and
- (d) at least five clear normal working days have elapsed since the Chief Executive and the Leader complied with (a) and (b)

Where such a decision is taken collectively, it must be taken in public unless it is likely that confidential or exempt information would be disclosed.

15 Special Urgency

If by virtue of the date by which a decision must be taken, Rule 14 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the chair of the body making the decision, obtains the agreement of the Chair of the Overview and Scrutiny Commission, or, in the absence of the Chair of the Overview and Scrutiny Commission, the Mayor or in his or her absence the deputy Mayor, that the taking of the decision cannot be reasonably deferred.

16 Report to Council

16.1 When the Overview and Scrutiny Commission can require a Report

If the Overview and Scrutiny Commission thinks that a key decision has been taken which is not in compliance with Rules 13-15 above it may require a report to be made by the Chief Executive and the Leader to the Council.

16.2 The Leader's Report to Council

The Leader will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of receipt of the written notice, or the resolution of the committee, then the report may be submitted to the meeting after that.

The report to council will set out particulars of the decision, the individual or body making the decision and if the leader is of the opinion that it was not a key decision the reasons for that opinion.

16.3 Quarterly Reports on Special Urgency Decisions

In any event, the Leader will submit quarterly reports to the Council on the executive decisions taken in the circumstances set out in Rule 15 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

17 Private Meetings of the Cabinet (Exempt Procedure)

Any meeting of the Cabinet or any Cabinet committee which is proposed to be held wholly or partially in private session in order to deal with exempt or confidential business may only proceed in respect of those items of business in accordance with the following rules

- 1) A notice of the intent to hold a private meeting must be published at least 28 clear days prior to the meeting and that notice must indicate the reasons for the meeting to be held in private.
- 2) A further notice must be published at least 5 clear days prior to the meeting and that notice must include:
 - a.) The reasons for the meeting to be held in private
 - b.) Any representations received about why the meeting should be open to the public; and
 - c.) A statement of responses to such representations

18 Exempt Urgency Procedure

Where the date of the meeting at which it is proposed to consider exempt or confidential information makes compliance with (17.1 above) impracticable the meeting may only be held in private where:

- a.) The Chair of the Overview and Scrutiny Commission (or in his/her absence The Mayor or in his or her absence the Deputy Mayor) has agreed that the meeting is urgent and cannot reasonably be deferred; and
- b.) a notice of that agreement is published as soon as reasonably practicable;

19 Record of Decisions

After any formal meeting of the Cabinet, whether held in public or private, the Chief Executive or his or her nominee, will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

20 Key Decisions by Individual Members of Cabinet and/or Officers

20.1 Publicity

Rule 13 above applies to decisions taken by individual members of the Cabinet and to officers whenever they take key decisions.

20.2 Record of Individual Decision

As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet or a key decision has been taken by an Officer, he/she will prepare, or instruct the Proper Officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of paragraphs 7 and 8 will also apply to the making of decisions by individual decision makers. This does not require the disclosure of exempt or confidential information or advice from a political adviser.

21 Recording and Publishing of Non-Key Executive Decision

21.1 The council is required to record and publish all Non-Key Executive Decisions (defined in Part 2, Article 13.3(c)(i) as decisions incurring expenditure of between £250,000-£499,999 or those significant one off decisions which constitute a departure from council policy in respect of the granting of permission or a licence or affecting the rights of an individual).

21.2 As soon as reasonably practicable after the non key executive decision has been taken by an officer, he/she will prepare, or instruct the Proper Officer to prepare, a record of the decision, that states:

- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest declared by any executive member consulted in relation to the decision; and
- a note of dispensation granted in respect of any declared conflict of interest.
- the date by which a request to call-in the decision must be received.

21.3 Any background papers must be retained and made available for inspection for a period of four years from the date of the decision. These requirements do not apply to confidential or exempt information.

21.4 Confidentiality or the fact that exempt information forms part of the decision not a reason for non-publication. The officer will still need to publish the information to the effect that a decision has been taken but the confidential or exempt details will not be made public.

21.5 Non-key executive officer decisions are to be subject to call-in and will therefore not be implemented until the call-in period has expired.

22. Overview and Scrutiny Commission's and Panels' Access to Documents

Subject to Rule 23.1 below, the Overview and Scrutiny Commission and panels will be entitled to copies of any document which are in the possession or control of the Cabinet and which contains material relating to:

- (a) any business transacted at a public or private meeting of the Cabinet, Cabinet committee or Sub-committee;
- or
- (b) any decision taken by an individual member of the Cabinet.

22.1 Limit on Rights

The Overview and Scrutiny Commission and relevant panels will not be entitled to:

- (a) any documents that are in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
- (c) the advice of a political adviser.

23 Additional Rights of Access for Panels and Members

23.1 Material Relating to Previous Business

All councillors will be entitled to inspect any document, which is in the possession or under the control of the Cabinet and contains material relating to any business previously transacted at a private meeting unless it appears to the Proper Officer that allowing such inspection:

- (a) would involve the disclosure of exempt information of a description within paragraph 10.4 above; or
- (b) would involve the disclosure of the advice of a political adviser or assistant.

Notwithstanding sub-paragraph (a) above, a document shall be available for inspection if it falls within category 3 (information relating to the financial or business affairs of any particular person (including the

authority holding that information)) except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract or category 6 (information which reveals that the authority proposes (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person or (b) to make an order or direction under any enactment).

23.2 Material Relating to Key Decisions

All councillors will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet, which relates to any key decision unless Rule 23.1 (a) or (b) above applies.

24 Nature of Rights

These rights of a councillor are additional to any other right he/she may have.

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Part 4 – C

BUDGET AND POLICY FRAMEWORK PROCEDURE RULES

1. The Framework for Executive Decisions

The Council will be responsible for the adoption of its budget and policy framework as set out in Article 4. Once a budget or a policy framework is in place, it will be the responsibility of the Cabinet to implement it.

2. Outline Budget Process - Discretion on Overview and Scrutiny Commission to Respond to Cabinet Proposals

- (a) After consulting stakeholders in a manner appropriate to the matter under consideration, the Cabinet will draw up initial proposals in relation to any plan, strategy or budget which forms part of the Council's budget and policy framework. Once drawn up the Proper Officer will serve copies of them on the Chair(s) of the Overview and Scrutiny Commission and panels together with dates when the Cabinet will consider them further, which shall be at least 6 weeks after service of the notice on the Chair(s).
- (b) Meetings of the Overview and Scrutiny panels and Commission will be convened to consider whether to respond to the Cabinet's initial proposals and whether any consultation by it is appropriate. In the event that the Overview and Scrutiny panels resolve to make comments on the Cabinet's initial proposals, the panels will forward these comments to the Overview and Scrutiny Commission, which will co-ordinate a joint Overview and Scrutiny response to Cabinet within the timescale set for decision by the Cabinet.
- (c) The Cabinet will finalise its proposals for the Council to consider, having taken into account the comments from the Overview and Scrutiny Commission. The report to Council will show the Cabinet's response to those comments.
- (d)
 - (i) Where the Cabinet has submitted a draft plan or strategy to the Council for its consideration and, following consideration of that draft plan or strategy, the Council has any objections to it, the Council must take the action set out in paragraph(ii)
 - (ii) Before the Council:
 - (a) amends the draft plan or strategy;
 - (b) approves, for the purpose of its submission to the Secretary of State or any Minister of the Crown for his approval, any plan or strategy (whether or not in the form of a draft) of which any part is required to be so submitted; or

(c) adopts (with or without modification) the plan or strategy;

it must inform the Leader of any objections which it has to the draft plan or strategy and must give to him instructions requiring the Cabinet to reconsider, in the light of those objections, the draft plan or strategy submitted to it.

(iii) Where the Council gives instructions in accordance with paragraph (ii) it must specify a period of at least five working days beginning on the day after the date on which the Leader receives instructions on behalf of the Cabinet within which the Leader may-

(a) submit a revision of the draft plan or strategy as amended by the Cabinet (the “revised draft plan or strategy”), with the Cabinet reasons for any amendments made to the draft plan or strategy, to the Council for the Council’s consideration; or

(b) inform the Council of any disagreement that the Cabinet has with any of the Council’s objections and the Cabinet’s reasons for any such disagreement.

(iv) When the period specified by the Council referred to in paragraph (iii) has expired, the Council must, when:

(a) amending the draft plan or strategy, or, if there is one, the revised draft plan or strategy;

(b) approving, for the purpose of submission to the Secretary of State of any Minister of the Crown for his approval, any plan or strategy (whether or not in the form of a draft or revised draft) of which any part is required to be so submitted; or

(c) adopting (with or without modification) the plan or strategy,

take into account any amendments made to the draft plan or strategy that are included in any revised draft plan or strategy, the Cabinet’s reasons for those amendments, any disagreement that the Cabinet has with any of the Council’s objections and the Cabinet’s reasons for that disagreement, which the Leader submitted to the Council or informed the Council within the period specified.

(v) Subject to paragraph (ix) where, before 8th February in any financial year, the Cabinet submits to the Council for its consideration in relation to the following financial year:

(a) estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in

accordance with any of sections 32 to 37 or 43 to 49, of the Local Government Finance Act 1992;

- (b) estimates or other amounts to be used for the purposes of such a calculation;
- (c) estimates of such a calculation; or
- (d) amounts required to be stated in a precept under Chapter IV of Part 1 of the Local Government Finance Act 1992,

and following consideration of those estimates or amounts the Council has any objections to them, it must take the action set in paragraph (vi).

- (vi) Before the Council makes a calculation (whether originally or by way of substitute) in accordance with any of the sections referred to in paragraph (v)(a), or issues a precept under Chapter IV or Part 1 of the Local Government Finance Act 1992, it must inform the Leader of any objections which it has to the Cabinet's estimates or amounts and must give him or her instructions requiring the Cabinet to reconsider, in the light of those objections, those estimates and amounts in accordance with the Council's requirements.
- (vii) Where the Council gives instructions in accordance with paragraph (vi), it must specify a period of at least five working days beginning on the day after the date on which the Leader received the instructions within which the Leader may:
 - (a) submit a revision of the estimates or amounts as amended by the Cabinet ("revised estimates or amounts"), which have been reconsidered in accordance with the Council's requirements with the Cabinet's reasons for any amendments made of the estimates or amounts, to the Council for the Council's consideration; or
 - (b) inform the Council of any disagreement that the Cabinet has with, any of the authority's objections and the Cabinet's reasons for any such disagreement.
- (viii) When the period specified by the Council referred to in paragraph (vii), has expired the Council must, when making calculations (whether originally or by way of substitute) in accordance with the sections referred to in paragraph (v)(a) or issuing a precept under Chapter IV of Part 1 of the Local Government Finance Act 1992, take into account:
 - (a) any amendments to the estimates or amounts that are included in any revised estimates or amounts;

- (b) the Cabinet’s reasons for those amendments;
 - (c) any disagreement that the Cabinet has with any of the Council’s objections; and
 - (d) the Cabinet’s reasons for that disagreement, which the Leader submitted to the Council or informed the Council of within the period specified.
- (ix) Paragraphs (v) to (vii) shall not apply in relation to:
- (a) calculations or substitute calculations which Council is required to make in accordance with section 52I, 52J 52T or 52U of the Local Government Finance Act 1992; and
 - (b) amounts stated in a precept issued to give effect to calculations or substitute calculations made in accordance with section 52J or 52U of that Act.
- (e) The Council’s decision will be publicised in accordance with Part 4-B and a copy shall be given to the Leader.

3. Decisions Outside the Budget or Policy Framework

- (a) The Cabinet, Cabinet Committees, Cabinet Members and any officers or joint arrangements discharging executive functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by full Council (referred to in these Rules as a “departure from the policy framework or the budget”), that decision may only be taken by the Council, subject to 4 below.
- (b) If the Cabinet, Cabinet Committees, Cabinet Members, any officers, or joint arrangements discharging executive functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Chief Finance Officer as to whether the decision they want to make would be contrary to the policy framework, or contrary to or not wholly in accordance with the budget.
- (c) If the advice of either of those officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 (urgent decisions outside the budget and policy framework) shall apply.

4. Urgent Decisions Outside the Budget or Policy Framework

- (a) A decision will be urgent if any delay is likely to seriously prejudice the Council's or the public interests.
- (b) The decision can only be taken if the decision taker (if an individual) or the chair of the body making the decision, obtains the agreement of the Chair, of the Overview and Scrutiny Commission that the taking of the decision cannot be reasonably deferred. If the Chair or Vice Chair of the Overview and Scrutiny Commission is unable to act, then the agreement of the Mayor or in his or her absence, the Deputy Mayor will suffice.

5. Call-In of Decisions Outside the Budget or Policy Framework (Overview & Scrutiny Procedure Rules 16 & 17)

- (a) Where the Overview and Scrutiny Commission is considering a call in of an executive decision which has been called in on the grounds that it is, or if implemented would be a departure from the policy framework or the budget, it shall seek advice from the Monitoring Officer and/or Chief Finance Officer.
- (b) If the conclusion of the Monitoring Officer and/or Chief Finance Officer is that the decision is not a departure from the policy framework or budget, the decision may be implemented forthwith.
- (c) If the advice from the Monitoring Officer and/or the Chief Finance Officer is that the decision is a departure from policy framework or the budget, they shall prepare a report to that effect and send it to the Leader and make copies available to every member of the Council.
- (d) If, having considered the matter, the Cabinet wishes to proceed with the decision, the Cabinet shall refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter.
- (e) At its meeting the Council will receive a report of the decision or proposals from the Cabinet and the advice of the Monitoring Officer and/or the Chief Finance Officer. The Council may either:
 - (i) endorse the decision as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all councillors in the normal way;
 - or
 - (ii) amend the Council's budget or policy framework to encompass the decision or proposal and agree to the decision with immediate

effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all councillors in the normal way.

or

- (iii) where the Council accepts that the decision or proposal is a departure from the policy framework or the budget, and does not amend the existing framework to accommodate it, it may require the Cabinet to reconsider the matter and to amend the decision so that, in the view of the Monitoring Officer and/ or the Chief Finance Officer, it complies with the policy framework or budget. .

6. The Policy Framework

- (a) Article 4.2 (in Part 2) lists the policy documents, plans and strategies which form part of the policy framework.
- (b) Plans, policies and strategies falling within article 4.2 and requiring ministerial approval will be approved first by the Full Council. The Cabinet has the power to agree any amendments required by the minister etc. and for implementing those plans, policies and strategies.

Part 4 – E

OVERVIEW AND SCRUTINY PROCEDURE RULES

1. THE ROLE OF OVERVIEW AND SCRUTINY

Without prejudice to any role prescribed by statute, the role of Overview and Scrutiny is to hold the Cabinet to account, to review and develop policy and to scrutinise the work and impact of external agencies on the local community

2. DISTRIBUTION OF OVERVIEW AND SCRUTINY FUNCTIONS

The responsibilities for the overview and scrutiny functions identified in Articles 6 of this Constitution will be distributed as follows:

- (a) The Overview and Scrutiny Commission shall be responsible for:
 - (i) Co-ordinating of the annual input of the overview and scrutiny panels to the Council's business plan and budget formulation processes;
 - (ii) Identifying issues for in-depth study by the commission and to set up task-and-finish groups for cross-cutting and/or strategic issues which fall outside the remit of a single panel (or which the panel does not regard as a priority);
 - (iii) Hearing call-ins of decision;
 - (iv) Putting forward suggestions for review topics to the scrutiny panels for consideration when panels set their work programmes;
 - (v) Keeping under review the effectiveness of the overview and scrutiny function and to recommend where appropriate changes in structure, processes or ways of working; and
 - (vi) Acting as a co-ordination mechanism with the Cabinet, to facilitate Overview and Scrutiny's contribution to Merton's strategic priorities
 - (vii) Receiving and considering references from councillors under the statutory Councillor's Call for Action, considering whether such matters should be the subject of formal scrutiny, and carrying out such scrutiny or referring appropriate matters to relevant scrutiny panels.
- (b) Within their terms of reference, the overview and scrutiny panels will be responsible for the following;
 - (i) Pre-decision scrutiny within their terms of reference;

- (ii) Performance monitoring and review within their terms of reference;
- (iii) Hearing call-ins of decisions that fall within their remit and have not been subject to pre-decision scrutiny;
- (iv) Review of the borough's draft business plan and budget, within a framework set by the scrutiny commission; and
- (v) To identify and carry out selectively, through task-and-finish groups, in-depth policy development or review projects, using agreed criteria, and within the framework of an overall programme of such projects
- (vi) Undertaking scrutiny activity in relation to any matter referred to it by the Overview and Scrutiny Commission following the consideration by the Commission of any Councillor Call for Action

3 TERMS OF REFERENCE

The Overview and Scrutiny Commission and panels will carry out the above functions within the following terms of reference:

<i>Title</i>	<i>Scope</i>
Overview & Scrutiny Commission	<ul style="list-style-type: none"> • Cross-cutting & strategic matters • Overall responsibility for scrutiny of the development of the budget and business plan • The overall approach to partnership arrangements • Responsibility for keeping scrutiny under review, including structures, processes, the Scrutiny Handbook and the Overview & Scrutiny Annual Report • Scrutiny of issues relating to Safer and Stronger Communities, including: <ul style="list-style-type: none"> • Formal crime and disorder scrutiny, including discharging the Council's responsibilities in respect of the Police & Justice Act 2006 • Safer communities, including the role of the crime and disorder reduction partnership, safer neighbourhood teams, antisocial behaviour, drugs and alcohol treatment, domestic violence and road safety • Stronger communities, including community leadership and community empowerment • Supporting the voluntary and community sector, including the Compact and capacity building • Community engagement, including active citizenship, involvement and consultation • Community cohesion

	<ul style="list-style-type: none"> • Diversity & equalities, as related to service delivery Scrutiny of issues relating to corporate capacity, including: <ul style="list-style-type: none"> • Financial monitoring • Communications • Legal • Human resources • IT • Customer service and • The performance monitoring framework
Sustainable Communities Overview and Scrutiny Panel	<p>Scrutiny of issues relating to Sustainable Communities, including:</p> <ul style="list-style-type: none"> • Housing, including housing need, affordable housing and private sector housing • Environmental sustainability, including energy, waste management, parks & open spaces and the built environment • Culture, including tourism, museums, arts, sports & leisure • Enterprise and skills, including regeneration, employment, adult education & libraries • Transport
Healthier Communities and Older People Overview and Scrutiny Panel	<p>Scrutiny of issues relating to Healthier Communities and Older People, including:</p> <ul style="list-style-type: none"> • Formal health scrutiny, including discharging the Council's responsibilities in respect of the Health and Social Care Act 2001 • Health, including promoting good health and healthy lifestyles, mental health and reducing health inequalities • Community care (adult social care and older people's social care) • Active aging • Access to care and health services
Children and Young People Overview and Scrutiny Panel	<p>Scrutiny of issues relating to Children and Young People, including:</p> <ul style="list-style-type: none"> • Children's social care, including child protection • Education, including school standards, special educational needs, the extended schools programme and the healthy schools initiative • Youth services and youth engagement, including the, young people 'Not in Education, Employment or Training' (NEET), and the Youth offending • Children's Centres

4. MEMBERSHIP

The Council will appoint members to the Overview & Scrutiny Commission and panels at its Annual Council meeting. All councillors except members of the Cabinet may be members of the Overview and Scrutiny Commission or panels. However, no councillor may be involved in scrutinising a decision in which he/she has been directly involved.

5. CO-OPTEEES

The Overview and Scrutiny Commission may appoint a number of people to participate as non-voting co-optees.

Co-optees appointed to the Commission or any panel shall undertake to be bound by the Council's Code of Conduct for Members.

6. EDUCATION REPRESENTATIVES

The Overview and Scrutiny Commission and the Children and Young People Overview and Scrutiny Panel shall include in its membership the following voting representatives when dealing with education matters:

- (a) one Church of England diocesan representative;
- (b) one Roman Catholic diocesan representative; and
- (c) two parent governors.

These representatives have automatic rights of co-option and voting powers in connection with matters concerning the duties and functions of the Council as a Local Education Authority. When the Commission and/or relevant Panel deals with other matters, these representatives may be present and may speak but will have no right to vote.

7. MEETINGS OF THE OVERVIEW AND SCRUTINY COMMISSION AND PANELS

There will be at least five ordinary meetings of the Overview and Scrutiny Commission each year. In addition, extraordinary meetings may be called from time to time, as and when appropriate. The Chair of the Commission has the power to convene additional meetings to consider business or to cancel a meeting for lack of business or to reschedule a meeting, having first consulted with the designated representatives of all groups recognised by the Council. In addition, extraordinary meetings of the Commission may be called by the proper officer if he/she considers it necessary.

The calendar of meetings for the Commission and Panels is set annually by full Council following consultation with their chair. In exceptional circumstances the Chief Executive may vary the date, time or place of any scheduled meeting or call-in meeting or cancel such a meeting with the consent of the Chair of the Commission or Panel and after consultation with the members of the body. The reasons for the variation shall be recorded at the rearranged or, in the case of cancellation, the next meeting.

8. QUORUM

The quorum for the Overview and Scrutiny Commission and panels will be one quarter of the whole number of members or a minimum of three members as prescribed by Rule 5.4 of the Council Procedure Rules in Part 4-A of this Constitution.

9. CHAIRING OVERVIEW AND SCRUTINY COMMISSION AND PANELS MEETINGS

- (a) **Selection.** The Council will appoint the Chair and Vice Chair of the Overview and Scrutiny Commission and any of its scrutiny panels at its Annual Council meeting. In each case the Chair and Vice Chair for each body will not be from the same political party. In the event of a vacancy during the council year, the Council will appoint a new Chair at the first meeting following the resignation of the Chair. All panel chairs are to be members of the Overview and Scrutiny Commission.
- (b) **Powers of the Chair.** The Chair of the Overview and Scrutiny Commission will have the powers:
- (i) To uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
 - (ii) To preside over meetings of the Commission/Panels so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
 - (iii) To ensure that the Commission/panel meeting is a forum for the debate of matters of concern to the local community and the place at which members who are not in the Cabinet are able to hold the Cabinet to account; and
 - (iv) To promote public involvement in the Commission/Panel's activities.

In addition, the Commission may confer powers for chairs of the Commission/ Panels that are

- (i) Designed to uphold the purposes of the constitution;
 - (ii) Designed to ensure that business can be carried out efficiently with regards to the rights of councillors and the interests of the community;
 - (iii) Designed to ensure that the meeting is a place for debate; and
 - (iv) Designed to promote public involvement in the Commission/Panel activities.
- (c) **Work Programme.** Subject to the coordination role of the Overview and Scrutiny Commission, the Overview and Scrutiny Commission and the panels will be responsible for setting their own work programme and in doing so shall take into account wishes of all members on that scrutiny body.

10. AGENDA ITEMS

- (a) Any member of the Overview and Scrutiny Commission or panel shall be entitled to give notice to the Proper Officer that he/she wishes an item relevant to the functions of the Commission or panel to be included on the agenda for the next available meeting of the Commission or panel. On receipt of such a request the Proper Officer will ensure that it is included on the agenda for the next available meeting, having due regard to the Access to Information provisions.
- (b) Any member of the Council wishing to include an item on the agenda of the Overview & Scrutiny Commission or a panel when they do not sit on the body concerned, may give written notice to the Proper Officer that they wish an item, other than an item for call-in, to be included on the agenda of the Commission or relevant panel. This item may be identified as a result of a 'Councillor Call for Action'. If the Proper Officer receives such a notification, then he/she will include the item for consideration by the Commission or panel on its first available agenda having due regard to the Access to Information Provisions.
- (c) For call-in requests, see Rule 17, below,
- (d) The Overview and Scrutiny Commission/panel will also respond, as soon as its work programme permits, to requests from the Council and or the Cabinet to review particular areas of Council activity.

11. PRE-DECISION POLICY DEVELOPMENT AND REVIEW OF THE FORWARD PLAN

- (a) The Overview and Scrutiny Panels will contribute to the development of Council policy by identifying and prioritising areas for policy development input, subject to work programme decisions of the Overview and Scrutiny Commission. In so doing, the panels will:
 - (i) examine and anticipate issues relevant to the Council's Policy Framework as set out in Article 4;
 - (ii) review the forward plan and consider which issues / reports / proposals they wish to examine in detail before a decision is made;
 - (iii) undertake a detailed examination of any proposal in (ii) above, investigating alternatives, timeframes, costings, consultation processes, seeking background or any other relevant information and formulating recommendations which may be passed to the decision-maker as is appropriate, before the formal decision is made;
 - (viii) consult with Cabinet members, Chief Officers, Heads of Service or their nominees.
- (b) The Overview and Scrutiny Commission and/or panels may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary, to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so.
- (c) The role of the Overview and Scrutiny Commission in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules Part 4-C.

12. PRE-DECISION POLICY REPORTS FROM OVERVIEW AND SCRUTINY COMMISSION

- (a) Once it has formed recommendations on proposals for policy development, the Overview and Scrutiny Commission will prepare a formal report and submit it to the Proper Officer for consideration by the Cabinet and/or the Council as appropriate.
- (b) The agenda for Cabinet meetings shall include a standing item for pre-decision policy matters referred to it by the Overview and Scrutiny Commission in accordance with Cabinet Procedure Rule 2.5(a).

- (c) The Cabinet and/or the Council as appropriate shall respond to the report of the Overview and Scrutiny Commission/panel within 2 months of it being considered at the meeting of Cabinet/ Council.
- (d) In preparing reports for Cabinet Meetings, Cabinet members and officers will have regard to the comments and issues raised by the overview and scrutiny pre-decision review process.

13. REVIEW AND SCRUTINY OF DECISIONS

- (a) The Overview and Scrutiny Commission or panel may review and scrutinise decisions made or actions taken in connection with the discharge of any Council functions. These reviews may take one of two forms:
 - (i) after the decision is made and implemented; or
 - (ii) after the decision is made but before it is implemented in accordance with Rules 16 and 17 governing 'call-in'.
- (b) In addition to reviewing relevant documentation for these reviews, the Commission or relevant panel may wish to question Cabinet members, Chairs of non-executive committees, Chief Officers, Heads of Service, or their nominees. In particular the Commission or panel may seek explanations about the following in relation to matters within their remit:
 - (i) any particular decision or series of decisions;
 - (ii) the extent to which the actions taken implement Council policy; and/or
 - (iii) their performance.
- (c) Members of the Cabinet, Chief Officers, Heads of Service or their nominees will be required to attend; where:
 - (i) the Chair of the Commission or panel informs the Proper Officer of the request in writing or electronically
 - (ii) the Proper Officer informs the member or officer in writing giving at least 5 working days notice of the meeting at which he/she is to attend;
 - (iii) the notice will state the nature of the item on which he/she is to attend and whether any papers should be produced. Where the Commission or panel seeks the production of a report, then the member or officer concerned will be given sufficient notice to allow for preparation of that documentation;

- (iv) Any member of the Cabinet , or any officer formally required to attend a meeting to answer questions is subject to a duty to do so. Where, in exceptional circumstances, an officer, or his or her nominee, is unable to attend on the specified date, then the Commission or panel will arrange an alternative date in consultation with the officer, or his or her nominee. Chief officers and heads of service should ensure that officers nominated to appear have the appropriate knowledge and responsibilities;
- (v) those appearing before the Commission or panel shall not be required to answer any questions which, in the opinion of the Monitoring Officer , could render the Council liable to legal proceedings in any court or tribunal;
- (vi) appearances before the Commission or panel will always be conducted in accordance with the member/officer protocol; and
- (vii) Any person required to attend a meeting to answer questions is not obliged to answer any question which he/she would be entitled to refuse to answer in court proceedings.

14. OVERVIEW AND SCRUTINY COMMISSION MEMBERS' RIGHTS TO DOCUMENTS

In addition to their rights as councillors, members of the Overview and Scrutiny Commission and panels have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 –B of this Constitution.

15. ATTENDANCE BY OTHERS AT POLICY DEVELOPMENT OR REVIEW MEETINGS

The Overview and Scrutiny Commission or panel may invite people other than those referred to in paragraph 13 above to address it, discuss issues and/or answer questions. It may for example wish to hear from residents, stakeholders and members and officers in other parts of the public sector and may invite such people to attend.

16. CALL-IN

- (a) **General.** Key decisions and Executive Non Key decisions (as defined by Articles 13(3)(b) and (c) of this constitution are subject to call in for consideration by the Overview and Scrutiny Commission before the decision is implemented. Call in should only be used in exceptional circumstances and a request for call in should only be agreed if either:

- a) there are reasons to consider that the decision concerned was contrary to the policy framework or contrary to or not wholly in accordance with the budget; or
- (b) There is evidence which suggests that the decision taken did not accord with the principles of decision making set out in Article 13.2 and repeated at paragraph d below; and
- (c) a proper and timely request for call-in has been made.
- (d) **Principles of Decision-Making.** All decisions of the Council will be made in accordance with the following principles:
 - (i) proportionality (i.e. the action must be proportionate to the desired outcome);
 - (ii) due consultation and the taking of professional advice from officers;
 - (iii) respect for human rights and equalities;
 - (iv) a presumption in favour of openness;
 - (v) clarity of aims and desired outcomes;
 - (vi) consideration and evaluation of alternatives;
 - (vii) irrelevant matters must be ignored.
- (e) **Requirements for Call-In Consideration**

In order to ensure that call-in is not abused, nor causes unreasonable delay, the following requirements must be fully satisfied before a matter will be considered for call-in:

- (i) at least three members of the Council must request call-in of the decision;
- (ii) the request for call-in must specify the reason for the call-in in sufficient detail to allow the Monitoring Officer to decide whether it is a valid call in
- (iii) the request for call-in must be received by the Chief Executive by 12 noon on the third working day following publication of the decision. The request for call-in should either be a signed paper copy or an electronic copy sent from the councillors own e-mail account;

- (iv) the decision for which call in consideration is requested must not have been subject to a prior call-in request.
- (f) **Publication of Decision.** When a decision is made by the Cabinet, a Cabinet Committee or an individual Cabinet member, or a key decision or a non-key executive decision (as defined in Article 13.3 (c) (i)) is made by an officer with delegated authority from the Cabinet or under joint arrangements, the decision will be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within 2 days of being made.

That notice will bear the date on which it is published and will specify when the decision will come into force, and may then be implemented, unless a proper and timely call in request has been made in accordance with this Rule

- (g) **Consideration of Call-In Requests.** Upon receipt of any call-in requests, the Monitoring Officer will assess the call-in form(s) and the specified evidence of the alleged breach or breaches of the principles of decision making to determine whether the requirements set out above have been met.

The Monitoring Officer will forward all call-in requests that comply with the above to the Chair of the relevant Overview and Scrutiny Commission/ panel for consideration by the Commission/ panel at the next scheduled meeting. If in the view of the Monitoring Officer, any delay in considering the call in would be likely to be prejudicial, s/he may arrange for a special meeting of the Commission or Panel to be called, having first consulted the Chair of that body.

- (h) **Outcomes of Call-In.** Having considered the called-in decision, and subject to paragraph (g) below, the Overview and Scrutiny Commission or Panel may:
 - (i) refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns. If it is referred back to an individual Cabinet Member or an officer exercising delegated authority, he/she shall then reconsider within a further 5 working days. If it is referred back to the Cabinet, the Chief Executive shall either call a meeting of the Cabinet on such date as he/she may determine, or place the matter on the agenda for the next scheduled meeting if, in his/her judgment, any resulting delay would not be prejudicial. The decision maker may amend the decision or not, before adopting a final decision which will be explained in writing or

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- (iii) decide not to refer the matter back to the decision making person or body, in which case the decision shall take effect immediately.
- (i) Where the Commission considers that that the decision is or would be contrary to the Policy and Framework or contrary to or nor wholly in accordance with the Budget, the provisions of paragraph 5 of the Budget and Policy Framework Procedure Rules set out in Part 4 C of this constitution shall apply
- (j) held.

17. CALL-IN AND URGENCY

- (a) The call-in procedure set out above shall not apply where the decision being taken is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests.
- (b) The decision taker (if an individual) or the Chair of the body making the decision shall obtain the agreement of the Chair, or in their absence the Vice Chair, of the Overview & Scrutiny Commission that the taking of the decision cannot be reasonably deferred. If the Chair or Vice-Chair of the Overview and Scrutiny Commission are unable to act then the agreement of the Mayor or the Deputy Mayor in his or her absence, will suffice.
- (c) The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision-making person or body, the decision is an urgent one, and therefore not subject to call-in. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- (d) The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary, within the Scrutiny Annual Report.

18. PROCEDURE AT OVERVIEW AND SCRUTINY COMMISSION MEETINGS

- (a) The Overview and Scrutiny Commission and/or panels shall consider the following business:
 - (i) apologies for absence;
 - (ii) minutes of the last meeting;
 - (iii) declarations of interest

- (iv) consideration of matters properly referred to the Commission for a decision in relation to call-in of a decision;
 - (v) responses of the Cabinet to reports of the overview and scrutiny committee;
 - (vi) consideration of matters in the forward plan; and
 - (vii) the business otherwise set out on the agenda for the meeting.
- (b) Where the Overview and Scrutiny Commission or panel conducts investigations (e.g. with a view to policy development), the Commission or panel may also ask people to attend to give evidence at committee meetings which are to be conducted in accordance with the following principles:
- (i) that the investigation be conducted fairly and all members of the commission or panel be given the opportunity to ask questions of attendees, and to contribute and speak;
 - (ii) that those assisting the Commission by giving evidence be treated with respect and courtesy; and
 - (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any investigation or review, the Commission shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.

19. INVOLVEMENT OF STAFFSIDE

When the Overview & Scrutiny Commission or any of its panels are in public session, representatives of Staffside may attend meetings and will be given the opportunity to present material, discuss issues and answer questions, in accordance with the agenda, to enable the Commission or panels to take account of issues raised and material presented in their reports and recommendations. Representatives of Staffside may only be present or contribute to meetings when confidential or exempt information is discussed with the permission of the Chair of the Commission or panel.

20. DEPUTATIONS AT MEETINGS

- (a) Any group or society likely to be affected by a matter which appears on an Overview and Scrutiny Commission / panel agenda may ask that a deputation should be received by that body. Such request shall be made to

the Chief Executive by telephone, email or letter by 12 noon on the day before the meeting to which it relates. The group or society making the request shall indicate the matter to which the request relates, the number (which shall not exceed 5), and names and addresses of the persons who will form the deputation and the member of the deputation who will speak for them.

- (b) On being called by the Chair, the person speaking for the deputation may speak for up to 5 minutes making such remarks as he / she thinks fit, provided that such shall relate to the matter indicated when the request was made, and that they do not make a personal attack upon any person.
- (c) The Commission / panel may, during a further period not exceeding 5 minutes for each deputation, ask questions of those attending. Such questions shall be asked and answered without discussion.
- (d) Thereafter the deputation shall withdraw, save that by resolution of the Commission / panel these times periods may be extended.
- (e) No deputation shall appear before the Commission or panel within 6 months after a deputation has appeared before the Commission / panel with the same or similar objects.
- (f) Deputations will not be received on subjects that have a general application to all or a substantial portion of the residents of the borough.
- (g) The Chair(s) shall have discretion to agree alternative arrangements to the procedure set out above in exceptional circumstances.
- (h) Political parties and / or political groups shall not be entitled to use this procedure.
- (i) Members of the Cabinet may attend and speak at Overview and Scrutiny Commission and panel meetings

21. PROVISIONS IN RESPECT OF HEALTH

- (a) The Overview and Scrutiny Commission (or the Healthier Communities and Older People Overview and Scrutiny Panel acting on behalf of the Commission) may review and scrutinise any matter relating to the planning, provision and operation of health services within its area and shall in carrying out the review and scrutiny of a particular matter:
 - i) have regard to any guidance issued by the Secretary of State;
 - ii) invite interested parties to comment on the matter;

- iii) take account of relevant information available to it and in particular relevant information provided by the Healthwatch Merton pursuant to a referral;
 - iv) an Overview and Scrutiny Committee when making reports and recommendations to the Council and/or the local NHS bodies shall include:
 - an explanation of the matter reviewed or scrutinised;
 - a summary of the evidence considered;
 - a list of the participants involved in the review or scrutiny;
 - any recommendations on the matter reviewed or scrutinised.
- (b) Where an Overview and Scrutiny Commission requests a response from a local NHS body to whom it has made a report or recommendation, that body shall respond in writing to the Commission within 28 days of the request.
- (c) When considering any proposal (with certain exclusions) for a substantial development or variation in respect of health services, then the local NHS body is required to consult the Overview and Scrutiny Commission. The local NHS body may specify a date for comments on the proposal and depending on the timescales it may be necessary to convene special meetings of the Overview and Scrutiny Commission.
- (d) If the Overview and Scrutiny Commission/ Healthier Communities and Older People Overview and Scrutiny Panel considers that the consultation by the local NHS body referred to above was inadequate in respect of content, time allowed, or reasons given then the Overview and Scrutiny Commission/panel may make a written report to the Secretary of State. The Overview and Scrutiny Commission/Healthier Communities and Older People Overview and Scrutiny panel may also send a written report to the Secretary of State setting out reasons why the proposal from the local NHS body is not in the interests of the health service within the Council's area.
- (e) The local NHS body is under a duty to provide the Overview and Scrutiny Commission/Healthier Communities and Older People Overview and Scrutiny Panel with such information (with exceptions) as it may reasonably require in order to discharge its functions.
- (f) The Overview and Scrutiny Commission/Healthier Communities and Older People Overview and Scrutiny Panel has powers to require officers of a local NHS body to attend before the Commission/Panel to answer such questions as appear to the Commission to be necessary for the discharge of its functions, with certain exceptions.

Merton External Scrutiny Protocol

Introduction

1. Under Merton Council's constitution, the role of Overview and Scrutiny is to hold the Executive to account, to review and develop policy and to scrutinise the work and impact of external agencies on the local community. Since the original legislation in 2000 that introduced overview and scrutiny to local authorities, councils have been granted additional powers under the Health and Social Care Act 2001 in order to scrutinise the provision of health services.
2. New legislation (the Police and Justice Act 2006 and the Local Government and Public Involvement in Health Act 2007) now grants similar powers to local authorities to enable them to scrutinise effectively both crime and disorder matters and the work of Local Strategic Partnerships (LSPs)¹. The Councillor Call for Action provision of the Local Government and Public Involvement in Health Act 2007 also provides a 'last resort' mechanism for overview and scrutiny to try to resolve persistent local service delivery issues of genuine community concern, where all efforts by a local councillor to find a solution through local action and discussion have been unsuccessful.
3. These powers are all intended to enable the overview and scrutiny function to hold service providers² to account for their performance, including their work with a local authority to meet specific local targets.
4. These are positive developments: if there is to be further devolution of public service delivery to enable residents' needs to be met more effectively, local government needs to strengthen its structures and processes of local accountability.
5. In order for the exercise of these new scrutiny powers to be effective, it is vital that all partners and stakeholders are engaged in the process and share a common understanding of Overview and Scrutiny's aims. This protocol has therefore been developed to embody that understanding and set out the rights and responsibilities that relate to the parties concerned.
6. Scrutiny of other organisations external to the Council – whether in the public, private or voluntary and community sector – is also a key element of Overview and Scrutiny's work and likely to increase in importance as councils and councillors develop their community leadership and place shaping role. For Overview and Scrutiny, this includes:
 - involving local people and community organisations in scrutiny activity;

¹ In Merton, this involves the work of two partnerships: Safer Merton (the Crime and Disorder Reduction Partnership) and the Merton Partnership (the LSP).

² For the purposes of this protocol, the term 'service providers' refers to all local agencies or organisations whose activity affects the people who live, work or learn in the borough of Merton

- developing a dialogue with service providers and other stakeholders outside the council;
 - taking up issues of concern to local people;
 - reviewing whether goals are being achieved; and
 - examining what can be done to solve problems and enhance performance and achievement.
7. This protocol is based on good practice principles for scrutiny and the standards set out below are intended to be applicable to all scrutiny activities involving organisations external to the Council.
8. A list of documents underpinning this protocol is set out at the end of this document.

Aims of Scrutiny

9. The overall aims of scrutiny in Merton are:
- To scrutinise the impact of the Council's own services and those of key partnerships and other service providers on those who live and work in or visit Merton, with a view to improving their well-being, improving services and helping to deliver the aims of Merton's Community Strategy.
 - To undertake the above work in accordance with the relevant legislation governing the operation of overview and scrutiny and with regard to best practice.

Underlying Principles of Scrutiny

10. The following underlying principles of scrutiny have been proved, in Merton and elsewhere, to assist in securing effective outcomes and adding value:

Collaboration

- Improvement in service delivery can best be achieved through partnerships between the Council and other service providers. This shared responsibility should be acknowledged in any scrutiny activity undertaken.
- Increasingly services are provided jointly or as the result of partnerships between the local authority and other public sector organisations or other partners. Scrutiny activities should therefore also reflect shared priorities, find shared solutions and be of mutual benefit.
- While scrutiny should be constructive and challenging, it will only be successful if all partners work together considerately, within a climate of mutual respect and good faith.
- Although collaboration is an underlying principle, Merton's Overview and Scrutiny Commission is independent of other service providers and partners.

Added Value

- It is vital that scrutiny brings something new to reviews of local service provision and does not duplicate the many other forms of performance management and inspection that exist for public service providers.
- Scrutiny activities should make a distinct and positive impact and only be carried out where objective review by elected lay representatives will help progress to be made.
- Scrutiny activities should have a clear purpose. There should be a focus on improving services for and improving the well-being of those who live and work in Merton.
- The scrutiny process should be proactive in seeking out issues to examine that will add most value.
- Scrutiny should be prepared to examine issues that cross service or agency boundaries and make appropriate recommendations to tackle such issues, while being mindful of their potential implications for external organisations.
- Scrutiny should aim to develop feasible recommendations providing value for money by securing benefits that outweigh the costs of implementation.

Clarity

- Scrutiny should be a transparent process and encourage open and honest discussion.
- Scrutiny activities should be well planned and timely.
- Scrutiny of particular issues should be time-limited.
- Processes and reports should be clear and accessible to the public.

Knowledge

- Scrutiny reports must be evidence-based in order to provide credible conclusions and recommendations.
- Although members of scrutiny reviews will want to be informed, and training should be provided where appropriate, the scrutiny process is not meant to be an “expert” review.
- The scrutiny process should also be impartial, in the sense that it should be driven by the evidence rather than by a particular standpoint.

Accessibility

- It is a fundamental role for the scrutiny process to ensure that there is full and equal access to the democratic process through public involvement and engagement.
- The views and ideas of service users (and non-users), service providers and organisations and other agencies with an interest in the subject under review are all valuable in effective scrutiny. Scrutiny should involve all stakeholders

and take account of views of service users and the public, with particular efforts to engage groups that are harder to reach.

- Constructive engagement and clear lines of communication should enable a two-way flow of information between scrutiny and all those involved, including feedback of results.

Providing information to scrutiny

11. Overview and scrutiny will respect the requirements and provisions of the Data Protection Act 1998. The provision of information to scrutiny will be governed by relevant legislation³ and established protocols for the sharing of data.
12. Requests for information from scrutiny will clearly identify why the information is needed and what it is to be used for to enable the request recipient(s) to identify the appropriate information to be provided.
13. To facilitate the scrutiny process, relevant information will be pro-actively provided and requests for information promptly dealt with.
14. Where information requested is readily available and routinely collected, it will be provided within two weeks of receipt of the request.

Notice of required attendance at scrutiny meetings and/or submission of written reports

15. Forward planning of Overview and Scrutiny Commission and its Scrutiny Panels' work programmes will normally ensure the provision of reasonable notice of requests for information/ the submission of written reports and/or required attendance of partners' personnel at meetings.
16. All requests will contain a clear explanation setting out what is required and will be accompanied by information about the purpose and nature of the scrutiny. Advice from participating organisations will be taken by the Overview and Scrutiny Commission and Scrutiny Panels as to who is best placed to attend on their behalf in view of the issue to be scrutinised.
17. While some organisations (such as local NHS bodies under the Health & Social Care Act 2001 and the bodies deemed to be 'responsible authorities' under the Police and Justice Act 2006) are required by legislation to attend scrutiny meetings

³ For example, under the Police and Justice Act 2006 (c. 48), Schedule 9 Amendments to the Crime and Disorder Act 1998, 5 (4), the provision to overview and scrutiny panels personal data (within the meaning of the Data Protection Act 1998) is excluded; and under the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, Statutory Instrument No.3048 (2002), so is the provision of confidential information which relates to and identifies a living individual.

if summoned, it is hoped that other organisations not under such obligation will be willing to engage constructively with scrutiny and attend when requested to do so.

Format, sign-off and final deadlines for written reports

18. Merton Council's standard scrutiny report format should be used for all written reports to the Overview and Scrutiny Commission and Scrutiny Panels. An electronic copy of the scrutiny report format, including advice to report authors, will be provided by a Democratic Services officer whenever a report is being requested.
19. All reports to the Overview and Scrutiny Commission/ Scrutiny Panels must be submitted, in the first instance, to the relevant Scrutiny Officer by the deadline stated in the timetable provided by the Democratic Services Officer to meet the requirements of Access to Information legislation.
20. Once received, the Scrutiny Officer will arrange internal sign-off of the covering report. This may include the addition of information on any legal, financial or other significant implications of the report for Merton Council.

Availability of meeting papers

21. Papers for meetings of the Overview and Scrutiny Commission and scrutiny panels will be sent by the Democratic Services Officer to the appropriate partner scrutiny lead and also to those who are providing reports and/or making presentations at each particular meeting. Papers are dispatched so as to allow at least 5 full working days between dispatch and the scrutiny meeting, in order to meet the requirements of Access to Information legislation and enable interested parties to read the documents.
22. Arrangements will be made with partnerships to ensure that participating organisations/member bodies receive agendas and relevant papers. Any other organisations wishing to receive papers on a regular basis can ask the Scrutiny Officer to add them to the distribution list.
23. Meeting papers can also be viewed on the Council's website at www.merton.gov.uk/committee

Style and conduct of meetings

24. Where external organisations are invited to attend scrutiny meetings, the meetings will be conducted in accordance with the principles and procedures set out in the Scrutiny Procedure Rules and Access to Information Procedure Rules of Merton Council's Constitution. In particular:
 - those attending scrutiny meetings will be given an indication of the likely time they will be asked to participate and the duration of their involvement in the meeting: as far as possible, all members of the panel will ensure that this is honoured;
 - those assisting a scrutiny panel by giving evidence will be treated with respect and courtesy;
 - meetings will be conducted fairly and non-aggressively and in a manner that seeks out information, rather than placing blame;
 - all members of the panel will be given the opportunity to ask questions of attendees, and to contribute and speak;
 - attendees are expected to maintain a positive and objective style of discussion and answer questions honestly and openly;
 - everyone who attends meetings is expected to use jargon-free language as far as possible; and
 - every person who attends a meeting to give evidence or answer questions shall identify themselves, state the capacity in which they attend and their authority to speak on behalf of any body or organisation and if required declare any personal interest in the business of the meeting.

25. Most overview and scrutiny panel meetings are ‘open’ and held in public in order to be as transparent as possible. But there is provision for meetings or parts of meetings to be held in private, with the press and public excluded, in order to consider exempt or confidential information (as defined by the Local Government Act 1972).⁴ Advice is available from the Scrutiny Team if all or some of evidence to be submitted to a panel might fall into either of these categories.

The involvement of other organisations/groups and members of the public

26. The input of other organisations and groups is recognised as being essential to the success of scrutiny.
27. Where organisations or groups are formally invited, in advance of the relevant Panel meeting, to make a presentation to - or ask questions at - the Panel on a scrutiny matter, the appropriate partner lead(s) will normally be notified at the earliest opportunity. In any event, formal presentations should normally be indicated on the agenda.
28. Organisations/groups and any other members of the public attending meetings (as either representatives of organisations/groups or as individuals) will not be required to provide their questions in advance of the meeting.
29. Where scrutiny seeks to engage with the third sector (voluntary and community groups), it will respect the principles of the Merton Compact.⁵

Reports and recommendations

30. Where the Overview and Scrutiny Commission or a Scrutiny Panel makes a written report, including any recommendations, to a partner organisation, the report shall include:
- an explanation of the matter reviewed or scrutinised;
 - a summary of the evidence considered;
 - a list of the participants involved in the review or scrutiny exercise; and
 - any recommendations on the matter reviewed or scrutinised, including an indication of the costs associated with implementing the recommendations.
31. The written report provided to a relevant partner authority must exclude any confidential information, and may exclude any relevant exempt information (as defined in the Local Government Act 1972). The Overview and Scrutiny Commission or Scrutiny Panel may replace so much of the document as discloses the information with a summary which does not disclose that information. The Overview and Scrutiny Commission or Scrutiny Panel must do so if, in

⁴ More details can be found in the Council’s constitution, Part 4B, ‘Access to information procedure rules’, paragraphs 10.1-10.5.

⁵ http://www.merton.gov.uk/mertoncompact_bookletv3.pdf

consequence of excluding the information, the published document or the copy provided to the partner authority would be misleading or not reasonably comprehensible.

32. Where appropriate and possible, draft reports will be circulated to the relevant body/bodies with an invitation to comment, in writing and to a deadline, on the report's factual accuracy.
33. Final reports and recommendations may also be forwarded to other Council committees, organisations and to the media, as the Overview and Scrutiny Commission/Scrutiny Panel may determine.
34. Partner organisations receiving reports and recommendations from the Overview and Scrutiny Commission/Scrutiny Panels are expected to respond within a period of two months (except for statutory health bodies which are obliged by legislation to respond within four weeks). Arrangements will be made to ensure that relevant bodies receive copies of such reports or recommendations directly, in advance of their appearing on the next available partnership agenda.

How partners will 'have regard to' and/or consider and respond to Overview and Scrutiny reports and recommendations

35. The Local Government and Public Involvement in Health Act 2007 gives the Council's overview and scrutiny function specific new powers to require relevant partners to have regard to a scrutiny report or any of its recommendations that relate to a local improvement target which a) is specified in Merton's Local Area Agreement; and b) relates to a relevant partner authority. These powers are in addition to powers (under the Health and Social Care Act 2001 and the Police and Justice Act 2006) that already exist requiring consideration of reports and recommendations and a response from health service bodies and the authorities responsible for crime and disorder strategies.
36. However, it is expected that all organisations will, in support of the aims of scrutiny and in the spirit of the principles set out in paragraph 10, consider and respond to all Overview and Scrutiny reports and recommendations addressed to them, irrespective of whether they are legally obliged to do so.

Resolving disputes about the protocol

37. If a partner or external organisation believes that this protocol is not being adhered to, the issue should be referred to the Overview and Scrutiny Commission for consideration and decision.

Review of protocol

38. This protocol will be reviewed jointly on an annual basis or more frequently if experience and circumstances highlight that amendments may need to be made.

Availability of support

39. Further advice or information on any aspect of this protocol or on overview and scrutiny at Merton Council is available from the Scrutiny Team, Corporate Governance, Merton Civic Centre, London Road, Morden SM4 5DX.

Telephone: 020 8545 3864
E-mail: scrutiny@merton.gov.uk
Website: www.merton.gov.uk/scrutiny

Background documents

40. The following documents underpin this protocol:
- Local Government Act 2000
 - Health and Social Care Act 2001
 - Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, Statutory Instrument No.3048 (2002)
 - Health and Social Care Act 2001 – Directions to Local Authorities (Overview and Scrutiny Committees, Health Scrutiny Functions) (2003)
 - Local Government Act 2003
 - Police and Justice Act 2006
 - Local Government and Public Involvement in Health Act 2007
 - Overview and Scrutiny of Health – Guidance (2003)
 - Merton Council's Constitution
 - Overview and Scrutiny Handbook, London Borough of Merton
 - Data Protection Act 1998

Constitution Review

Summary of Proposed changes June 2021

Part	Paragraph number	Proposed changes
Part 1 – Summary and explanation		Drafting changes only to reflect other proposed structural changes and new terminology
Part 2 - Articles	4.2	<p>Update definition of policy framework to reflect current suite of strategies:</p> <ul style="list-style-type: none"> • Business Plan • Community Plan • Equality and Community Cohesion Strategy • Housing Strategy • Local Plan • Children and Young People’s Plan • Strategic Business Continuity Plan • Procurement Strategy • Neighbourhood Renewal Strategy • Climate Change Strategy • Wimbledon Town Centre Masterplan
	7.4/7.5 removal of leader and cabinet members	delete reference to leader and cabinet members being disqualified as no longer a legal possibility
	13.3 Urgency	delete reference to urgency committee in relation to council decisions needed urgently as hasn’t been established for a number of years. Such decisions to be taken by the Chief Exec where that is lawful and to be reported to the next meeting.

Part	Paragraph number	Proposed changes
3 –A Responsibility for Local Choice functions	1.1 (o)	Delete reference to appeals against rehousing decisions as Merton no longer owns housing stock Update statutory references and remove reference to benefits review boards as these no longer exist and appeals are heard by tribunals.
	Miscellaneous	Other drafting changes only to reflect other proposed structural changes and new terminology
3- B Responsibly for non-executive functions	Introduction	Make it clearer that unless specifically reserved for Full Council or a committee, all decisions are delegated to officers, in accordance with the scheme of delegation to officers which will now be a composite scheme covering exec and non exec functions and will form part 3E of the constitution.
	1.2 Terms of Reference of Standards and General Purposes	<ul style="list-style-type: none"> Includes power to establish a Hearing subcommittee to deal with complaints against members
	1.2 Appointments Committee	Includes power to deal with disciplinary matters for the Head of Paid Service, Section 151 Officer and MO
	1.3 Planning Applications Committee	Clarification of which types of application can only be decided by Committee
	1.4.4 Licensing Committee (2003)	Add in more detailed Scheme of Delegations as previously agreed by Council for licensing and gambling
	1.4.5 Licensing Committee (Miscellaneous)	Add in more examples of the types of licensing matter which the ‘miscellaneous’ hearing committee can deal with
	1.5 Appeals Committee	Recommend deletion as it was established to deal with appeals against housing decision made by the Council in its capacity as a landlord. It no longer meets.
	1.8 Joint Regulatory Services Committee	Recommend deletion as Richmond and Wandsworth Councils have indicated they no longer wish to have

Part	Paragraph number	Proposed changes
		elected member participation in the governance arrangement for the regulatory services partnership (RSP)
	1.9 Local Pensions Board	Change to Pensions Committee, clarify terms of reference to distinction between elected member body and advisory pensions board
	1.10 and 1.11 Health and Well Being Board	Add in terms of reference of Health and Well Being Board and Sub group
	1.13 JCC with Ethnic Minority Organisations	Add in terms of reference of JCC with Ethnic Minority Organisations
	1.14 SACRE	Add in SACRE
3 – C Responsibility for Executive Functions	1.1	Making it clear that the Leader is responsible for deciding how executive decisions are made and cross referring to the new scheme of delegation in part 3E
	1.1(g)	Refined list of matters reserved for cabinet decision, reflecting practice on the ground and making express reference to contracts worth £2m or more which is currently contained in contract standing orders but not elsewhere. Covers reserved CHAs decisions (<i>if agreed in separate paper</i>)
	1.3	Add in terms of reference of joint committees –South London Partnership and South London Waste Partnership
Part 4- A Council Procedure Rules	2.3 Order of Business and Strategic theme	<ul style="list-style-type: none"> Restructure format of strategic theme debate so that the relevant Cabinet member introduces the report followed by questions and motions on that theme. Member questions on other issues are taken separately, after public questions but before the strategic theme debate

Part	Paragraph number	Proposed changes
		<ul style="list-style-type: none"> Clarify process for choosing strategic theme – at nomination of group leaders either on rotation or proportionately
	6 + 12 Time limits for questions and motions	<ul style="list-style-type: none"> Strategic Theme <u>motions</u> submitted 3 clear days before meeting (currently 9am day before the meeting, provided that the report on the strategic theme is circulated before the main agenda) “Ordinary” member questions submitted 7 clear days before meeting (currently 3 clear days) to allow them to be circulated with the agenda (written answers still to be circulated on the day) No “motions” on community forms reports Amendments to be submitted by 9am on the working day before the meeting (currently no time limit), unless chair agrees a later submission Amendments to be circulated by 5pm on day of the meeting
	5.1 Changing time and date of meetings	Clarify power of Chief Executive to cancel or vary meeting dates: needs agreement of, but not a request from the Chair, although they may make such a request and group Leaders should be consulted .
	10.5 Voting on appointments	Cause clarifying casting vote of the Chair in the event of a tie
	8.4 Length of speeches	Addition of ability to agree different speech lengths as happens now in practice
	12. Questions	Remove separate provision 12.1 for members to ask questions on Cabinet and Cabinet committee reports.
	New SO 21	Provisions for the public to attend meetings remotely and for non committee members to do so too, noting that

Part	Paragraph number	Proposed changes
		they will not count towards the quorum or the purposes of the six month rule (separate paper for consideration of SGP)
4B- Access to Information Procedure Rules	12	Removal of provisions preventing private meetings between cabinet and officers within 28 days of formal cabinet as this is no longer a legal requirement relating to cabinet
	15	Include deputy mayor in list of persons who can authorise urgent decisions where a proposed decision is not on the forward plan and/ or 5 clear days notice has not been given
4C Budget and Policy Framework Procedure Rules	2. Budget setting	Delete paragraph 2(e) which erroneously gives the Leader a second right to object to the Council's budget proposals after they have already been sent back to cabinet for reconsideration
	5 Call in of decisions on the grounds they are outside the budget or policy framework	<p>Clarification for process:</p> <p>Being outside the budget or policy framework is a separate ground for call in</p> <p>Call in goes to Overview and Scrutiny Commission who take advice from the MO or S.151 officer.</p> <p>A. If MO concludes decision is already compliant, it can be implemented forthwith.</p> <p>B. if MO/ . 151 officer considers it is not compliant, produces a report which is sent to all councillors</p> <p>Cabinet meets to decide whether to proceed</p>

Part	Paragraph number	Proposed changes
		<p>If Cabinet wishes to proceed, refers matter to Council.</p> <p>Council either:</p> <p>confirms decision is within policy framework; or</p> <p>amends policy framework to make decision compliant;</p> <p>remits to Cabinet to reconsider and if wish to proceed, to amend decision so it is in compliance.</p>
	6(b) policy framework	amended to make it clear that only where a plan falls in policy framework and needs ministerial consent is full council approval required, not any plan that needs ministerial consent. Reflects legal position.
4D Cabinet Procedure Rules	1.5(c)	Clarifies legal position on attendance of non cabinet members during the part of any meeting where exempt information is being considered and the press and public have been excluded. That is, they permitted to stay if it necessary for the performance of their role
4E Overview and Scrutiny Procedure Rules	7 Meetings times and dates	Changed to reflect the fact the calendar is agreed by full council after consultation with chairs (currently says the chair of the commission and panels <i>decide</i>). Chief exec may vary or cancel in exceptional cases with the agreement of the chair of the Commission and after consulting the chair of the panel if relevant.

Part	Paragraph number	Proposed changes
	16 Call in	<p>Clarifying that only executive, not administrative, decisions of officers are susceptible to call in (i.e. key decisions and executive non-key (defined by article 13.3(c)(i)) including those where the value is 250k-499K)</p> <p>Adding in being apparently contrary to the policy framework or budget as a discrete ground for call in.</p> <p>Also removing wording which appears to give the Commission the power to decide whether a call in is valid as that contradicts the later provisions which confer that decision on the monitoring officer taking into account the criteria set out in 16(e)</p> <p>Cross referring to the budget and policy framework rules where that ground applies for the process to be followed.</p> <p>Inserting express power to fix specific additional meeting to hear call ins</p>
<p>Hearing subcommittee Process Part 5.A Appendix to complaints process</p>		<ul style="list-style-type: none"> • • Include specific power for the chair to vary the procedure if appropriate, including to elide the fact finding and determination of breach stages • Make it clear that the subcommittee has to consider the public interest when deciding whether to exclude the press and public
<p>Members Complaints Process (on website not currently part of Constitution)</p>	4.2 Validity of complaints	Amended to make it clear that procedure only applies to acts of a member acting in that capacity or claiming to

Part	Paragraph number	Proposed changes
Will become an addendum to Part 5 A – Code of Conduct		act or giving the impression that they are acting in that capacity.
	4.5 Consultation with Independent person	Remove mandatory requirement for the Monitoring Officer (MO) to consult with the Independent person (IP) at the beginning of the process. Still mandatory to consult before deciding to refer the complaint for formal investigation.
	4.6 Factors to be taken into account when considering whether to refer for investigation	<p>Adds in:</p> <ul style="list-style-type: none"> • Prohibition on considering ‘complaints which are already the subject of other complaints process • Power not to consider vexatious complaints or those appearing designed to harass or insult • Adds presumption that complaints over 3 months old will not normally be investigated • Adds presumption that process does not cover complaints about Council decisions, polices or service failure • Gives the MO power not to investigate if the complaint could more appropriately be dealt with through political group or party processes
Members complaints process	7.3	<ul style="list-style-type: none"> • Where the investigation officer concludes that there is a breach of the code, the complaint will proceed to a hearing by a hearing subcommittee, rather than a full meeting of the standards and General Purposes Committee (although the

Part	Paragraph number	Proposed changes
		<p>Terms of Reference (TOR) of Standards and General Purposes will retain the right to have full hearings).</p> <ul style="list-style-type: none"> The current 'filter' stage of the process whereby the committee decides, on receipt of the investigating officer's report <u>whether</u> to refer the complaint for hearing, is removed, if the report concludes there is a prima facie breach. That is now be a decision for the MO.
New Part 7B Scheme of Delegation to Officers	replaces and combines parts 3E (scheme of delegation by cabinet), 3F (scheme of delegation by Full Council) and part 7B (Scheme of delegation to officers by chief executive)	<p>Brings together all the delegations into one place. The Chief Executive still has overarching responsibility but, unlike at present, there are direct delegations to the four council directors.</p> <p>As before, the principle is that unless specifically reserved for decisions by a member body, they are deemed delegated to the relevant director. Each director will then draw up departmental schemes of management setting out levels of responsibility within departments, including financial limits</p>
	4	Provisions for dealing with conflicts of interest
	6	Sets out the context for taking decisions, to be consistent with council policy, budget and financial regulations
	11	<p>Clarifies position on urgent decisions and emergencies – power to take urgent decision where it cannot reasonably be deferred to the next meeting. Requires consultation with relevant cabinet member or committee chair and compliance with the access to information procedure rules.</p> <p>Such consultation can be dispensed with in real emergencies if it is not reasonably practicable</p>

Part	Paragraph number	Proposed changes
	Appendix	List of proper officers has been updated

SCHEME OF DELEGATION OF POWERS AND FUNCTIONS TO OFFICERS

Approved by the Council on xxxxxxxx on the recommendation of the Standards and General Purposes Committee on xxxx and, insofar as it relates to the exercise of executive functions, by the Cabinet on xxxxxxxx.

1. INTRODUCTION

The Scheme of Delegation provides information on the arrangements for the delegation of authority to officers to carry out the Council's various functions and sets out those functions which have been delegated to officers. It should be read alongside other Council wide procedures and related documentation.

Decisions must be taken in accordance with the Access to Information Procedure Rules set out in part 4B of the constitution and the principles set out in this scheme.

The list of officers designated as proper officers for the purposes of various pieces of legislation governing local authorities is attached as schedule two.

2. POWERS OF DELEGATION

Delegations of non-executive functions to officers from Council, committees and sub-committees are made under Section 101 of the Local Government Act 1972. In the case of licensing and gambling, the delegations derive from Section 10 of the Licensing Act 2003 and Section 154 of the Gambling Act 2005.

Executive functions are delegated to officers by the Leader of the Council or the Executive under Section 9 of the Local Government Act 2000 (as amended by the Local Government and Public Involvement in Health Act 2007 and the Localism Act 2011

This Scheme does not delegate:

- any matter which by law may not be delegated to an officer; and
- any matter which is specifically excluded from delegation by this scheme, or reserved for decision by the Council, the Leader or Cabinet or a committee or sub- committee.

3. BASIS OF DELEGATION AND RECORDING, IMPLEMENTING AND ACCOUNTING FOR DECISIONS

Where a function has been delegated to an officer, the person or body making the delegation may at any time resume responsibility for the function and may exercise the function despite the delegation.

An officer may refer a delegated matter to the person or body that has made the delegation if it is likely to be particularly controversial or raises issues of policy which Members would more appropriately determine or could expose the Council to major corporate risk which cannot be contained within directorate budgets.

An officer may refer a delegated matter to the Chief Executive if it raises issues of corporate priorities or the co-ordination of various functions of the authority. The Chief Executive has delegated authority to act in respect of any matter referred to her in this way

4. CONFLICTS OF INTEREST

Every officer is responsible for (a) identifying whether he/she has any personal interest in any matter which is under consideration and (b) notifying the authority (including under section 117 of the Local Government Act 1972).

Where an officer has a personal interest in any matter, he/she shall not participate in that matter and will refer the matter to his/her line manager.

Where the Chief Executive is unable to act on a matter because of a conflict of interest, the matter shall be discharged by such other Director as the Chief Executive may determine for this purpose.

Where a Director is unable to act on a matter because of a conflict of interest, the Chief Executive shall discharge the matter herself or allocate the matter to another officer.

Where the Monitoring Officer is unable to act on a matter, it shall be determined by the officer designated as Deputy Monitoring Officer.

5. THE CONTEXT FOR THE EXERCISE OF FUNCTIONS

The Chief Executive, Directors and other Chief Officers are authorised to discharge all the functions of the authority within their areas of responsibility as defined in section 8 below. Each Director is required to maintain an internal "scheme of management" for their directorate, providing more detailed information about delegated decisions and how these will be taken.

In the absence of the Chief Executive, the functions of Chief Executive and Head of Paid Service shall be the responsibility of the Director nominated by the Chief Executive.

6. GENERAL CONDITIONS AND LIMITATIONS

In taking any decision, each Officer must ensure that:

- (a) they have acted in a considered, well informed and defensible manner which is in the best interests of the Council and its residents;
- (b) all decisions are made with a full understanding of Council policy relating to the decision;
- (c) all decisions are made with an awareness of relevant legal obligations including equality requirements and a clear assessment of the impact of the decision on those affected;
- (d) all decisions are made in accordance with relevant spending limits, financial regulations and contract standing orders; and
- (e) all decisions made are consistent with the Council's budget strategy

The obligation to ensure that these issues are properly understood rests with each decision maker. Officers shall ensure that they have taken advice on procedural, legal and financial requirements from the appropriate department or other professional advisers.

This Scheme of Delegation describes broad areas of responsibility rather than detailing specific statutory functions. The Chief Executive shall be responsible for coordinating the discharge of the Authority's functions between the various officers.

Where the name of a post is changed, or its relevant functions become vested in a different post, any of the delegated powers possessed by the post shall be retained by the renamed post or transferred to the different post as the case may be. This includes any delegated powers vested in a post by resolution of the Council, the Cabinet or a committee/sub-committee unless a decision is made by the delegating body to the contrary. The Monitoring Officer may make amendments to this scheme from time to time to reflect such changes.

7. GENERAL DELEGATION TO CHIEF EXECUTIVE AND ALL DIRECTORS

The Chief Executive and all Directors shall have the power to take all lawful action consistent with overall Council policy to deliver agreed strategy, plans and policy within their area of and without prejudice to the generality of the foregoing, to take the following actions:

- (a) to incur expenditure on the Council's behalf within the sums approved by Council and in accordance with the financial regulations;
- (b) to procure goods and services consistent with the Council's procurement strategy and contract standing orders, up to a value of £2million in each case;
- (c) to agree the operational arrangements associated with all partnerships/partnering arrangements and ensure that appropriate governance frameworks and arrangements are established and are operating effectively;

- (d) to deal with the following human resources matters:
 - (i) to put in place staffing and management arrangements for the delivery of services which are consistent with the Council's staffing policies and to comply with management policies and procedures;
 - (ii) to create, delete or amend posts within approved budget provision
 - (iii) to authorise the suspension and termination of employment for any reason of employees of the Council, subject to the application of the appropriate procedures, including the Officer Employment Procedure Rules set out in Part 4H and with the advice of the Head of Human Resources where necessary;
 - (ii) to approve adjustments to salary including accelerated increments, recognition payments, honoraria, market supplements and other awards in accordance with schemes approved by the Council;
- (e) to lead and manage the operational delivery of services in a way which ensures their effective performance in accordance with all relevant management policies;
- (f) to submit bids for funding in consultation with the relevant Cabinet Member where this does not imply an ongoing or requires match funding that cannot be met within Directorate budgets;
- (g) to agree virements within the budget and policy framework and in accordance with the Financial Regulations;
- (h) to serve or place any necessary statutory or other notices;
- (i) after consultation with the Monitoring Officer, to authorise the institution, defence of or appearance in criminal or civil proceedings in relation to any matter for which they are responsible;
- (j) the award of settlements under £10,000 arising from the Local Government Ombudsman's recommendations;
- (k) to review and recommend changes in the fees and charges for services and to approve inflation only increases in discretionary charges of in consultation with the Director of Corporate Services; and
- (l) to respond to consultations by other bodies in relation to matters which might affect the functions of the Council where the issues are in line with existing policy (where appropriate, in consultation with the relevant Cabinet Member);
- (m) to make applications for planning permission, building control consent and other approvals in respect of building works;

8. AREAS OF SPECIFIC RESPONSIBILITY

The areas of delegated responsibility of each Director are detailed in the Schedule to this scheme. The authorisations include the power to do anything which facilitates, is incidental or conducive to the exercise of the relevant authority.

9. DETAILED SCHEMES OF MANAGEMENT

Each Director is responsible for establishing an internal scheme of management for their own department. Under this scheme, Directors may delegate functions allocated to them to other officers. In the Environment and Regeneration Department there is an additional scheme of management, which governs decision making in respect of the Regulatory Services Partnership between the Council and the London Boroughs of Richmond and Wandsworth.

A copy of the internal scheme of management will be made available on the Council's intranet site and be available for public inspection. The scheme will be reviewed annually.

10. CHIEF EXECUTIVE'S ROLE

For the avoidance of doubt, the Chief Executive is authorised to determine anything which is not covered by this scheme.

The Chief Executive may allocate or re-allocate responsibility for functions between officers as necessary for the effective discharge of those functions or to cover absence of particular officers.

The Chief Executive may take a decision on any matter with in the area of specific responsibility of other officers set out in section 8 below provided it is not reserved by statute for decision by a specified officer.

In the absence or inability to act of the Chief Executive for any reason, the other directors shall authorised to exercise any of the powers vested in him or her by this scheme of delegation.

11. URGENT DECISIONS AND EMERGENCIES

The Chief Executive and each Director in respect of his or her specific responsibilities, may take urgent decisions on matters even if those matters have been reserved for decision by Council, Cabinet or Committee, as long as the matter in question is not prevented by any statutory provision from being taken by officers.

A decision is to be treated as urgent if in the reasonable view of the Monitoring Officer it cannot reasonably be deferred until the next scheduled meeting of the relevant decision making body. Urgent decisions may only be

taken after consulting the Leader of the Council or relevant cabinet member in the case of an executive function or chair of the appropriate committee or sub-committee in respect of non-executive function. Where the Leader or chair is unable to act, the nominated deputies are authorised to act on their behalf.

In the case of emergencies, the Chief Executive is authorised to approve all reasonable expenditure and/or undertake all reasonable actions after consultation with the Leader of the Council unless such consultation is not practicable.

Such decisions shall comply with the requirements of the Access to Information Procedure Rules set out in Part 4B of this constitution.

SCHEME OF DELEGATION TO OFFICERS

AREAS OF SPECIFIC RESPONSIBILITY

A. THE CHIEF EXECUTIVE

The Chief Executive shall:

- (a) be the Head of the Paid Service (Section 4 of the Local; Government and Housing Act 1989) and undertake:
 - (i) the overall corporate management and operational responsibility for the Council (including overall management responsibility for all staff);
 - (ii) the overall provision of professional advice to all parties in the decision- making process (the Cabinet, Overview and Scrutiny Commission and its Panels, the Council and other committees); and
 - (iii) together with the Monitoring Officer, all functions in respect of maintaining the Constitution, advising whether Cabinet decisions are within the budget and policy framework, and overall advice to councillors and officers in their respective roles;
- (b) be entitled incur expenditure and delegate responsibility to incur expenditure in the event of a civil emergency
- (c) designate “Proper Officers” for the purposes of particular statutory functions from time to time and so authorise them to perform the functions of such a person under relevant legislation unless such designations are required to be made by a resolution of the Council.
- (d) take decisions in relation to CHAS 2013 Ltd on matters which are the responsibility of the Council as shareholder and which have not been reserved for decision by the Cabinet. Such decisions to be taken in consultation with the Director of Corporate Services and Monitoring Officer, together referred to as the Shareholder Panel

B. DIRECTOR OF CHILDREN, SCHOOLS AND FAMILIES

The Director of Children’s Services is the statutory officer under Section 18(1) of the Children Act 2004 and has authority in respect of all matters relating to the education of children and young people, the safeguarding of vulnerable children and for promoting the general wellbeing of children and families and services including but without limitation:

- (a) Children’s Social Care;

- (b) Children, Youth and Family Services;
- (c) Schools: Provision and support; and
- (d) Policy, performance and resources in these areas.

C. DIRECTOR OF COMMUNITIES AND HOUSING

The Director of Communities and Housing is the statutory officer for adult social services under Section 6(A1) of the Local Authority Social Services Act 197B, the Care Act 2014 and has authority for all matters relating to the care and support of vulnerable adults, safeguarding of vulnerable adults, housing and cultural services, including but without limitation:

- (a) Strategic commissioning & resources for adult social care;
- (b) Transformation and independence for adults;
- (c) Joint arrangements with health service bodies
- (d) Policy and performance in these areas;
- (e) Acting as receiver and administer receivership cases;
- (f) All matters relating to Public Health
- (g) Homelessness and regulation of private sector housing
- (h) Libraries and lifelong learning including further and higher education
- (i) Acting as Caldicott guardian

D. DIRECTOR OF ENVIRONMENT AND REGENERATION

The delegated authority of the Director of Environment and Regeneration shall relate to the following:

- (a) Planning, development and building control and trees, save for those matters reserved to the Planning Application Committee pursuant to section 7 of the Scheme of Delegation from Council contained in part 3B of this Constitution;
- (b) Street scene, including inspection, enforcement and street cleansing services;
- (c) Highways including street trading;
- (d) Traffic and Parking;
- (e) Leisure, Parks, Sports, and Cultural Services;
- (f) Waste and recycling services;
- (g) Crematoria and Cemeteries;

- (h) Acting as the Chief Licensing Officer for matters that fall to the council as Licensing Authority;
- (i) Other licensing matters, including but not limited to, matters under the London Local Authorities Act 1990 (as amended), London Local Authorities Act 1991, Scrap Metal Dealers Act 2013, Local Government (Miscellaneous Provisions Act 1982, Animal Welfare Act 2006, Animal Boarding Establishments Act 1963, Zoo Licensing Act 1981, Riding Establishments Acts 1964 and 1970, Breeding of Dogs Act 1973;
- (j) Functions in respect of commercial and residential regulatory services, environmental health, trading standards, private sector housing oversight and regulation and the promotion of safer communities as set out in the scheme of management for the Regulatory Services Partnership between the Council and the London Boroughs of Richmond and Wandsworth;
- (k) Regeneration programmes;
- (l) Housing policy and supply;
- (l) Property Services, Asset Management (other than responsibility for the management of Council occupied premises);
- (m) Functions of the enforcement authority for purposes of Health and Safety at work;
- (n) Community Safety and CCTV; and
- (o) Passenger transport and fleet management

F. DIRECTOR OF CORPORATE SERVICES

The Director of Corporate Services is the statutory officer for finance and the proper administration of the Council's financial affairs under sections 115, 146 and 151 of the Local Government Act 1972, section 114 of the Local Government and Finance Act 1988 and as such has authority for the following matters, including but without limitation:

- (a) Exercising corporate Council functions in relation to finance services, revenues and benefits, including benefits fraud, the Council's fraud strategy and associated arrangements, debt recovery, the governance framework, treasury management including borrowing, insurance and associated risk management, internal audit,
- (b) Carrying out the Council's functions as administering authority under the Local Government Pension Scheme;
- (c) Administering trust funds and charitable funds as required by the Council;
- (d) Overseeing the management arrangements for: the Council's information technology services; human resources; procurement advice/support; payroll; information governance, legal and electoral services and emergency planning; customer services and facilities management;

- (e) Exercising the functions of the registering authority pursuant to the Local Land Charges Act 1975;
- (f) Registration services for purposes of births marriages and deaths including civil partnerships and naming ceremonies;
- (g) Deciding upon methods of capital financing;
- (h) Writing off irrecoverable debts and charges due to the Council;
- (i) Approving the commencement of a new capital schemes not already provided for in the budget up to a value of £50,000;
- (j) Agreeing the release and/or the reduction of any Bond and to authorise the service of the notice of release/and reduction;
- (k) Providing support for elected members of the Council and democratic processes; and
- (l) Acting as Senior Information Risk Owner for data protection purposes

G. DIRECTOR OF PUBLIC HEALTH

- (a) All the functions of the statutory Director of Public Health to take steps to improve health in accordance with section 73A and 73B National Health Services Act 2006

H. MONITORING OFFICER

The Managing Director of the South London Legal Partnership is the statutory Monitoring Officer under Section 5 of the Local Government and Housing Act 1989.

The Monitoring Officer has delegated authority to do the following:

- (a) to take any action to implement any decision taken by or on behalf of the authority, including the signature or service of statutory and other notices and any document. The Monitoring Officer may authorise any other officer to take such action.
- (b) to institute, defend, settle or participate in any legal proceedings in any case where such action is necessary, in the view of the Monitoring Officer to give effect to decisions of the authority or in any case where s/he considers that such action is necessary to protect the Council's interests or those of the residents of Merton;
- (c) to arrange for any legal proceedings to be conducted by any solicitor or barrister employed within the South London Legal Partnership including appearances before any court or tribunal in which the officer has rights of audience;
- (d) to instruct counsel, solicitors or other experts for legal proceedings, public inquiries, or other matters involving the Council;
- (e) to give undertakings to any court or tribunal on behalf of the Council and to give solicitor's undertakings where appropriate and within the rules and guidance issued by the Law Society

- (f) to enter objections to any proposal affecting the Council, the Council's area or the inhabitants of the Council's area;
- (g) to be the Senior Responsible Officer (SRO) with regard to the Regulation of Investigatory Powers Act (RIPA) and to nominate Authorised Officers to determine RIPA requests;
- (h) to be the Council's Data Protection Officer under the Data Protection Act 2018
- (i) to ensure the lawfulness and fairness of decision-making, provide support to the Standards and General Purposes Committee, receive complaints about breaches of the Members Code of Conduct, conduct investigations in consultation with the Independent Persons designated under the Localism Act 2011;
- (j) to grant a dispensation to members under section 33 of the Localism Act 2011 allowing them to refrain from declaring a disclosable pecuniary interest and to participate in discussions in and vote on matters in which they have such an interest;
- (h) to authorise, in consultation with the Chief Executive or the relevant Director, the payment of any award of damages, compensation and costs made by any court or tribunal against the Council;

PROPER OFFICERS**STATUTORY OFFICERS AND PROPER OFFICER FUNCTIONS****1. Statutory Officers**

Legislation requires local authorities to appoint certain officers with statutory responsibilities. These appointments and the officer to whom the council has allocated responsibility are listed below.

Title/Description (and statutory derivation)	Officer appointed
Head of Paid Service (Section 4 – Local Government & Housing Act 1989)	Chief Executive
Monitoring Officer (Section 5 – Local Government & Housing Act 1989)	Managing Director , South London Legal Partnership
Officer responsible for financial administration (Section 151 – Local Government Act 1972)	Director of Corporate Service
Director of Children’s Services (Section 18 – Children Act 2004)	Director of Children, Schools and Families
Director of Adult Social Services (Section 6–Local Authority Social Services Act 1970)	Director of Communities and Housing
Director of Public Health (Section 73A – National Health Service Act 2006)	Director of Public Health *
Scrutiny Officer (Section 31 – Local Democracy, Economic Development and Construction Act 2009)	Head of Strategy, Policy and Partnership

*Director of Public Health must be appointed by the authority *acting jointly* with the Secretary of State

2. Proper officer functions

The following officers are appointed proper officers and will carry out functions in relation to the statutory provisions specified. This list is not necessarily exhaustive and any omission shall not affect the validity of any action or decision taken by the proper officer.

REPRESENTATION OF THE PEOPLE ACT 1983	
Section 8 – registration of electors	Chief Executive
Section 28 – The Acting Returning Officer at an election of a Member of Parliament	Chief Executive
Section 35 – The Returning Officer at an election of London Borough councillors	Chief Executive
LOCAL GOVERNMENT ACT 1972	
Section 83(1) – The officer to whom a person elected to the office of Councillor shall deliver a declaration of acceptance of office on a form prescribed by rules made under Section 42 of the Act	Chief Executive
Section 83(3)(b) – The officer before whom a declaration of acceptance of office of chair of council or deputy chair of council may be made	Chief Executive
Section 84 – The officer to whom written notice of resignation of elected office shall be delivered	Chief Executive
Section 86 – To declare any vacancy in any office under this section	Chief Executive
Section 88(2) – The officer by whom a meeting of the council for the election of the vacant office of chairperson of the council may be convened	Chief Executive
Section 89(1)(b) – The officer to whom notice in writing of a casual vacancy occurring in the office of councillor may be given by two local government electors for the Borough	Chief Executive
Section 96 – The officer to whom general notices and recording of disclosures of interests under Section 94 should be given	Monitoring Officer
Section 99 and Schedule 12 – To give notice and send summonses in respect of any council meeting	Chief Executive
Section 100A(6) – To give public notice of any meeting to which the public are entitled to attend, provide copies of agenda and facilities for the press	Chief Executive
Section 100B(2) – The officer to exclude from committees, sub-committees, council or cabinet meeting agendas any information to be dealt with in a meeting from which the public are likely to be excluded	Monitoring Officer

Section 100B(7)(c) The officer to supply to any newspaper copies of documents supplied to members of committees, sub-committees, council or cabinet meetings in connection with an item for consideration. The officer to supply to any newspaper copies of documents supplied to members of committees, sub-committees, council or cabinet meetings in connection with an item for consideration	Monitoring Officer
Section 100C(2) The officer to prepare a written summary of proceedings of committees, sub-committees, council or the cabinet from which the public were excluded	Head of Democracy and Electoral Services or Scrutiny Officer as appropriate
Section 100D(1)(a) The officer to prepare a list of background papers for reports considered by committees, sub-committees, council or the cabinet	Monitoring Officer
Section 100D(5) The officer to determine which documents constitute background papers and Section 100H – ability to charge for the provision of such documents	Monitoring Officer
Section 100F(2) The officer to decide which documents are not, by virtue of containing exempt information, required to be open to inspection	Monitoring Officer
Section 100G – To maintain a register of the names and addresses of members and membership of committees, lists of delegations and the like	Head of Democracy and Electoral Services
Section 115 – The officer to whom money properly due from officers shall be paid	Director of Corporate Services
Section 146 – The officer to make statutory declarations and issue any certificate with regard to securities held by local authority companies	Director of Corporate Services
Section 151 – The officer to be responsible for the proper administration of the authority's financial affairs (and to issue a report to members if there is or is likely to be unlawful expenditure or an unbalanced budget)	Monitoring Officer
Section 223 – Authorising officers to attend court and appear on behalf of the council under Local Government Act 1972 and the County Courts Act 1984	Monitoring Officer
Section 225(1) – The officer to receive and retain statutory documents on behalf of the authority	Monitoring Officer
Section 229(5) – The officer to certify photographic copies of documents	Monitoring Officer
Section 233 – The officer to receive documents required to be served on the authority	Monitoring Officer

Section 234(1) and (2) – The officer to authenticate documents on behalf of the authority	Monitoring Officer
Section 238 – The officer to certify printed copies of bylaws	Head of Democracy and Electoral Services / Scrutiny Officer as appropriate
Section 248 – The officer responsible for the keeping of the roll of freemen	Monitoring Officer
Schedule 12 [paragraphs 4(2)(b) & 4(3)] – The officer responsible for the receipt of notices regarding address to which summons to meetings is to be sent	Monitoring Officer
Schedule 14 [paragraph 25(7)] – The officer responsible for the certification of true copies of resolutions	Chief Executive
Schedule 29 [paragraph 41] – The officer responsible for the exercise of functions under Sections 9(1) & (2), 13(2)(h) and (3)(b) and 20(b) of the Registration Services Act 1953 (Proper Officer)	Chief Executive
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976	
Section 41 – The officer to certify copies of any resolution, order, report or minutes of proceedings of the authority as evidence in any legal proceedings	Monitoring Officer
Section 16 – Notices requiring details of interest in land	Any Officer of the Council
LOCAL GOVERNMENT AND HOUSING ACT 1989	
Section 2 – The officer to hold on deposit the list of politically restricted posts and Section 2 – provision of certificates as to whether a post is politically restricted	Monitoring Officer
Sections 15-17 (and regulations made thereunder) – The officer to receive notices relating to the membership of political groups	Monitoring Officer
LOCAL GOVERNMENT ACT 2000	
The officer responsible for ensuring a proper record is made of cabinet decisions and that the document comprising the authority's forward plan is published in accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000	Head of Democracy and Electoral Services
To establish and maintain the members' register of interest (Section 81 LGA 2000) and ensure it is available for public inspection	Monitoring Officer
To ensure that copies of the constitution are available for inspection	Head of Democracy and Electoral Services

To make payments of relevant allowances in accordance with the council's members allowances scheme	Head of Democracy and Electoral Services
To defray expenses of any members making official and courtesy visits, receptions and entertainment of distinguished persons visiting the Borough	Chief Executive
LAND CHARGES ACT 1975	
Section 19 – The officer to act as Local Registrar as defined in Section 3 of the Land Charges Act 1975	Monitoring Officer
NATIONAL ASSISTANCE ACT 1948 AND NATIONAL ASSISTANCE (AMENDMENT) ACT 1951	
Proper officer to seek an order for removal of persons into care	Director of Communities and Housing
REGISTRATION OF SERVICES ACT 1953	
Proper officer for births, deaths and marriages	Chief Executive
LOCAL GOVERNMENT ACT 2003	
Section 25 – Requirement to report to council annually on the robustness of estimates and the adequacy of the proposed financial reserve	Director of Corporate Services
PUBLIC HEALTH (CONTROL OF DISEASES) ACT 1984, FOOD SAFETY (GENERAL FOOD HYGIENCE) REGULATIONS 1995 AND THE MILK AND DAIRIES (GENERAL) REGULATIONS 1969	
Requirement to appoint a suitably qualified person as the council's medical advisor on environmental health and proper officer for notifiable disease	As may be appointed from time to time by the Director of Environment and Regeneration or Director of Public Health
CIVIL EVIDENCE ACT 1995	
To certify council records for the purposes of admitting the document in evidence in civil proceedings	Monitoring Officer
CRIME AND DISORDER ACT 1998	
Section 12 – to apply for the discharge or variation of a Child Safety Order	Director of Children, Schools and Families
Sections 17 and 37 – to have regard to effect of the exercise of any function on the need to prevent crime and disorder and offending by children and young persons	The Chief Executive and Directors
CRIMINAL JUSTICE AND POLICE ACT 2001	
Delegated power to authorise officers to enter premises and seize items where the council has a power of seizure under this Act and to perform other related duties (return and security of seized items)	The Chief Executive and Directors

LOCAL GOVERNMENT FINANCE ACT 1988	
Section 114 – The officer to be responsible for the proper administration of the authority’s financial affairs (and to issue a report to members if there is or is likely to be unlawful expenditure or an unbalanced budget)	Director of Corporate Services
Section 116 – Notification to the council’s auditor of any meeting to be held under Section 115 of the 1988 Act (meeting to consider any report of the Chief Finance Officer under Section 114)	Director of Corporate Services
Section 139A – Provision of information to the Secretary of State in relation to the exercise of his powers under this Act as and when required	The Chief Executive and Directors
LOCAL GOVERNMENT CONTRACTS ACT	
Certification of relevant powers to enter into contract	The Chief Executive, Monitoring officer, Director of Corporate Services
LOCAL AUTHORITY CEMETERIES ORDERS 1977 (SI 1977 OF 204)	
Schedule 2, Article 10, Part 11.1(1) – To appoint an officer for the purpose of signing the Grants of Exclusive Right of Burial Deeds on behalf of the burial authority Note: It is not necessary for that deed to be executed under seal	As may be appointed from time to time by the Director of Environment and Regeneration
OTHER MISCELLANEOUS PROPER OFFICER FUNCTIONS	
Any other miscellaneous proper or statutory officer functions not otherwise delegated by the authority	Chief Executive or his/her nominee
NATIONAL HEALTH SERVICE ACT 2006	
Section 2B – the exercise by the authority of its duty to take steps as it considers appropriate for improving the health of the people in its area	Director of Public Health
Section 111 – the exercise by the authority of any functions prescribed by Secretary of State in relation to dental public health	Director of Public Health
Section 249 – the exercise by the authority of its duty to cooperate with the prison service with a view to improving the exercise of their respective functions in relation to securing and maintaining the health of prisoners	Director of Public Health
Schedule 1 – the exercise by the authority of any of its functions as set out in Schedule 1	Director of Public Health
Section 6C(1) – the exercise by the authority of any of the Secretary of State’s public health functions, which it is required to carry out by regulations issued by the Secretary of State	Director of Public Health

Section 7A – the exercise by the authority of any of the Secretary of State’s public health functions, which are delegated to it by the Secretary of State	Director of Public Health
Section 73A(1)(d) – the exercise by the authority of any of its functions that relate to planning for, or responding to, emergencies involving a risk to public health	Director of Public Health
Section 73A(1)(e) – the exercise by the authority of its functions under section 325 Criminal Justice Act 2003 (cooperating with “responsible bodies” in relation to the assessment of risks posed by certain offenders	Director of Public Health
Section 73A(1)(f) – the exercise by the authority of such other functions relating to public health as may be prescribed	Director of Public Health

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Committee: Standards and General Purposes Committee

Date: 28 June 2021

Wards: All

Subject: Revisions to the Council's Contract Standing Orders

Lead officer: Caroline Holland, Director of Corporate Services

Lead member: Tobin Byers

Contact officer: Dawn Jolley, Head of Commercial Services

Recommendations:

- A. That Members note, approve and recommend to full Council, the proposed revisions made to the Councils Contract Standing Orders. Changes made are in response to the implementation of the impact the UK leaving the EU will have on the Public Contracts Regulations [The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020] (PPR 2020), greater reinforcement with regards to the Social Value Act 2012, reference to the Council's commitment to the Climate Emergency; and to try to provide clarity in order to drive greater compliance overall with procurement governance and best practice.

 - B. That Members approve and recommend to full Council that the appendices to the CSOs may be updated by the Head of Commercial Services, with approval by Procurement Board, without the need to seek approval from SGPC and full Council. These are supplementary documents, templates and guidance notes that compliment but do not impact on the content of the main CSOs.
-

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To inform members about the proposed changes to the Contract Standing Orders (CSOs), which form Part 4G of the Councils Constitution, in light of the legislative changes brought about by the UKs exit from the EU and the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020. The revision also seeks to drive greater reinforcement to the Social Value Act 2012, reference to the Council's commitment to the Climate Emergency; and to try to provide clarity in order to drive greater compliance overall with procurement governance and best practice.

2 DETAILS

- 2.1. Merton, as a public authority is bound by the Public Procurement Regulations, which governs public sector procurement of works, supplies and services contracts. This legal framework encourages free and open competition and value for money, in line with agreed obligations and regulations. As part of its strategy, the government aligns procurement policies with this legal framework, as well as with its wider policy objectives.

- 2.2. The implementation of the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020, took effect from 23:00 on 31 December 2020. The revised Regulations fixes deficiencies in the public procurement regulations that are caused by the UK leaving the EU, and also implements the Withdrawal Agreement between the EU and the UK (which includes the Northern Ireland Protocol), the [EEA Separation Agreement](#) and the Swiss Citizens' Rights Agreement.
- 2.3. The Council is obliged to maintain a set of Contract Standing Orders to cover the procurement of all works, supplies and services and the procedures underpinning them. Given that Contract Standing Orders form part of the Council's Constitution, any amendments to the CSOs must be approved by full Council.
- 2.4. The main impact which affect councils in the short term is:
- i) From 23:00 on 31 December 2020, new UK public procurement opportunities needed to be published on the UK e-notification service called Find a Tender service (FTS). The FTS means new UK opportunities will no longer be sent to the Official Journal of the European Union (OJEU) or Tenders Electronic Daily (TED). However, for procurements that were advertised in OJEU before 23:00 on 31 December, any subsequent notices, such as award notices, needed to be sent to OJEU for publication.
- 2.5 The Government is considering further reforms to the public procurement regulations. These are detailed in the Green Paper: Transforming public procurement, which has recently undergone consultation. There will also be the outcomes of the NHS and social care White Paper: Integration and innovation: working together to improve health and social care for all – implications for future procurement of public health service. The Council's CSOs will be revised and updated once the impact of both of these paper are known and appropriate legislation has been drafted. This is expected to be in about 18-months.

3.0 RECOMMENDED CHANGES TO CSOs

- 3.1 The key changes proposed within the review of the CSOs are summarised below:

a) Clearer signposting

The CSO's have been amended to better highlight the key principles of transparency and the need for value for money.

Clearer signposting to Departmental Scheme of Management; the Departmental Operational Procurement Groups (OPGs) and Procurement Board (PrB) has been included.

b) Application of the CSOs

The CSOs have been amended to reflect the change in requirement to advertise in Find a Tender as per the PPR 2020.

c) Social Value

Reference to the Public Services (Social Value) Act 2012 has been strengthened.

d) Climate Emergency

Due consideration is to be given to the Council's commitment to the Climate Emergency and how the Council can reduce its carbon footprint through the tenders that it lets.

e) Use of Professional Services and/or Consultants

The CSOs have been amended to ensure that in the first instance, Officers make use of corporate contracts / agreements for the provision of this type of requirement.

f) Evaluation of Bids

The CSOs have been amended to include reference to the fact that bids for contracts above the Lower Threshold (over £25,001) are to be evaluated by at least three Officers; that the highest scoring bid for contracts above the Lower Threshold (over £25,001) should have their financial standing reviewed by the respective departmental Service Financial Advisor; and the evaluation of bids received for contracts above the upper threshold (£100,000) are to be moderated by a member of the Commercial Services team.

g) Contract Extensions

The CSOs have been amended to make it clearer for officers wanting to extend or vary a contract.

4. PROCUREMENT TOOLKIT REFRESH

- 4.1 Along with the proposed revisions to the CSOs, the Procurement Toolkit, available to staff via the Merton Hub, is currently being refreshed in order to further support Officers undertaking compliant, outcomes focused procurements that meet the Council's needs now and in the future. This is a 'live' document which is updated as and when. This has been supplemented by a Social Value Toolkit, also available via the Merton Hub. Additionally, the Social Value Toolkit will be made available on the Council's website under Contracts, tenders and procurement.
- 4.2 Key updates to include:
- i) The updating of the template suite of documents for all the main procedures, including Quotations, Open and Restricted tenders and supporting detailed guidance notes.
 - ii) Updated short summary guides and tables which offer a 'quick guide' to the approvals, advertising and procurement procedures based on the contract value
 - iii) Up to date 'Process flows' for each procurement process, showing Officers the key stages and minimum timescales required to undertake the individual process, such as Open, Restricted and Competitive with Negotiation.
 - iv) Templates for obtaining approval to invite tender and award a contract, where Officers have delegated authority as part of the Scheme of Delegation.
 - v) A Commercial and Procurement glossary.
- 4.3 All documents have been created using the same themes and language to ensure consistency and so that the principles are clear and easy to understand.

5 ALTERNATIVE OPTIONS

- 5.1 Leave the CSOs as they are, previously revised by Full Council on 22 November 2017. This option is not recommend given that CSOs are required to be amended to ensure they are complaint with current legislation and best practice.

6 CONSULTATION UNDERTAKEN OR PROPOSED

- 6.1. The Council's Procurement Board as well as the Council's Monitoring Officer has been given the opportunity to comment on the proposed amendments to CSOs.

7 TIMETABLE

- 7.1. It is anticipated that should the proposed amendments be approved by Full Council on 7 July 2021 that the updated CSOs will be effective 8 July 2021.

8 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 8.1. None.

9 LEGAL AND STATUTORY IMPLICATIONS

- 9.1 The Local Government Act 1972 (Section 135) requires that Local Authorities make Standing Orders in respect of contracts for the supply of goods, services and materials or the execution of works to ensure competition and regulate the manner in which tenders are invited.

10 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 10.1 None.

11 CRIME AND DISORDER IMPLICATIONS

- 11.1 None.

12 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 12.1. By revising and updating the Council's Contract Standing Orders, risk of Legal Challenge for failure to follow due process should be mitigated at least in part.

13 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- 13.1. Proposed Revised Contract Standing Orders

14 BACKGROUND PAPERS

The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020

LONDON BOROUGH OF MERTON

CONSTITUTION - PART 4G

CONTRACT STANDING ORDERS

Effective: July 2021¹

Version: 3.0

Revised by: Dawn Jolley – Head of Commercial Services

Approved by: Director of Corporate Services (15.06.2021)

Standards and General Purposes Committee (ddmmyy)

Full Council (ddmmyy)

¹ Full Council revised last version 2.0 on 22 November 2017.

CSOs are to be reviewed and revised every two to three years (unless a need arises to review sooner).

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CSO 1. CONTRACT STANDING ORDERS - COMPLIANCE AND TERMINOLOGY

- 1.1 Contract Standing Orders (“CSOs”) form part of the Constitution of the London Borough of Merton (“the Council”) and govern contracts as described below.
- 1.2 The Council is legally obliged to have standing orders. CSOs must include provision for securing competition in the award of contracts and for regulating the manner in which tenders are invited.
- 1.3 These Orders are based on the following key principles:
 - a. To be transparent with our residents about how the Council spends their money
 - b. To ensure that the Council meets its statutory duty to deliver best value for money, and creates healthy competition and markets for the Goods, Services and Works purchased
 - c. To ensure that public money is spent legally and fairly
 - d. To support sustainability and social value objectives, and our public sector equality duty, encouraging local small businesses.
- 1.4 In addition, each Department must have and adhere to a Scheme of Management. The Scheme of Management will set out what level of financial authority officers in each Department have.
- 1.5 Officers must comply with these CSOs unless an Exemption from CSOs is obtained, in advance, in accordance with [CSO 7 \(Exemptions from Contract Standing Orders\)](#).
- 1.6 A list of Exceptions to these CSOs are to be found [under CSO 8 \(Exceptions to Contract Standing Orders\)](#).
- 1.7 Failure by Officers to comply with these CSOs is a disciplinary offence.
- 1.8 These CSOs apply to all contracts awarded by the Council for works, services or supplies, regardless of the source of funding for the contract, and to the award of concession contracts and those relating to income generation. They apply equally to contracts awarded by any person, firm or body acting on the Council’s behalf subject to CSO 1.7.
- 1.9 In certain cases, the Council may enter into joint procurement arrangements, partnership agreements or shared services with other parties, including other councils.
 - 1.9.1 Such agreements may contain delegations to either individual officers, joint committees or other Councils to authorise procurement strategies and/or contract awards in compliance with a third party’s contract standing orders.
 - 1.9.2 Procurement Board must approve any partnership agreement and/or shared services arrangement, at the outset, before being authorised by the Director of Corporate Services and/or the Chief Executive.
 - 1.9.3 At the sole discretion of either the Director of Corporate Services or the Chief Executive, the proposed joint arrangement may be designated as requiring prior consent from Cabinet to proceed. Please see [Appendix 7](#).

- 1.10 When entering into any agreement to engage a Consultant (to carry out work on behalf of the Council) in relation to any Disposal, Contract or Property Agreement (or proposed Disposal, Contract or Property Agreement) - the appointing and/or Responsible Officer must ensure that such Consultant agrees to, and actively complies with, these CSOs.
- 1.11 Disposals and Property Agreements are dealt with specifically at [CSO 28 \(Contracts for the Disposal of Council Assets\)](#) and unless otherwise stated to the contrary, the provisions stated to apply specifically to Contracts do not apply to Disposals or Property Agreements.
- 1.12 Every Contract and Disposal and Property Agreement must comply with:
- All applicable UK and associated Laws;
 - Financial Regulations; and
 - Relevant Council Policies.
- 1.13 These CSOs (whether amended or superseded or not) shall be retained for twelve (12) years from the date of publication before being considered for destruction.
- 1.14 The Director of Corporate Services may from time to time issue practical guidance and governance as to the steps to be taken to comply with these CSOs.
- 1.15 In these CSOs reference to a post, Director, department, team or the like includes a reference to any re-designated post, Director, department, team or the like from time to time who performs or substantially performs the role, function or duties of that post, Director, department, team or the like, or the manager of these posts.
- 1.16 Terminology and abbreviations referred to in these CSOs are set out at [Appendix 1](#).
- 1.17 These CSOs are to be read in conjunction with the Council's Procurement Toolkit that sets out guidance on the application of these principles and compliance with these CSOs. *The Toolkit is located on the Merton Hub and is updated on a regular basis in consultation with the Procurement Board and Departmental Operational Procurement Groups. Advice should also be sought from both Commercial Services and Legal Services*
- 1.18 Any wholly or partly owned Merton company must ensure that they set up their own, specific governance arrangements, in consultation with and approved by their relevant appropriate Board.

CSO 2. AMENDMENT OF CONTRACT STANDING ORDERS

- 2.1 Except to the extent permitted under CSO 2.2, these CSOs may only be amended following a recommendation of the Director of Corporate Services and approval by a meeting of the full Council.
- 2.2 These CSOs may be supplemented, varied or amended from time to time in respect of the Council Thresholds, the Authorisation Thresholds and to reflect the requirements of any amendments to or additional UK / associated Procurement Laws or other Laws with the written approval of the Leader of the Council, the Chair of Scrutiny, the Chief Executive and the Monitoring Officer.

CSO 3. PROCUREMENT TOOLKIT

- 3.1 The Procurement Toolkit contains guidance, information, templates, tools and techniques to assist officers in undertaking Contract procurement and management activity generally and in complying with these CSOs.
- 3.2 In the event of any conflict between these CSOs and the Procurement Toolkit, these CSOs shall take precedence over the Procurement Toolkit.
- 3.3 The Procurement Toolkit can be found on the Merton Hub.

CSO 4. SCHEMES OF MANAGEMENT

- 4.1 The Chief Executive and any officers authorised by the Chief Executive in accordance with the relevant Scheme of Management may authorise the entry into Contracts and Property Agreements by the Council.
- 4.2 The Director of Corporate Services shall keep a register of all Schemes of Management and make this available on the Council's intranet.
- 4.3 Financial limits for authorising the awards of contracts (including variations and/or extensions) - post approval by either the relevant Operational Procurement Group (OPG) and/or Procurement Board - are as follows:

Over £2 million	Cabinet
Above £500,000 <i>Key Decisions</i>	Chief Executive and Director of Corporate Services
Up to £500,000 <i>Non-key Decisions</i>	Level 1 Managers
Up to £250,000	Level 2 Managers + named exceptions
Up to £50,000	Level 3 Managers + named exceptions
Up to £20,000	Level 4 Managers + named exceptions
Up to £10,000	Level 5 Managers + named exceptions

- 4.4 Some variation may occur from department to department. Each Departmental Scheme of Management can be found on the Merton Hub. *(It is the responsibility of each Department to ensure that their respective Scheme of Management is reviewed regularly and kept up to date).*

CSO 5. DIRECTOR'S RESPONSIBILITY

- 5.1 Directors are responsible for ensuring within their department that:
- 5.1.1 these CSOs are observed and complied with;
- 5.1.2 a Scheme of Management exists for their department which sets out which Officers may authorise entering into a Contract and/or Property Agreement;
- 5.1.3 Contracts and Property Agreements are (as relevant) awarded/entered into and managed in accordance with these CSOs;
- 5.1.4 documentation, accurate records, clear audit trails relating to all Disposals, Contract procurements and actions, decisions and Authorisations relating to all Contracts and Property Agreements are maintained and are available for

inspection;

- 5.1.5 the documentation, records and audit trails referred to in CSO 5.1.4 shall be retained for the periods set out in [Appendix 5 \(Retention Periods for Documents\)](#).

CSO 6. RESPONSIBLE OFFICER'S DUTIES

- 6.1 The departmental Director (or alternative Officer on their behalf) shall appoint a Responsible Officer to be responsible for every proposed or actual Contract, Disposal and Property Agreement. Where no Responsible Officer has been directly appointed, the Responsible Officer shall be deemed the Budget Holder of the department from which the Contract is funded, income received (e.g. Concession Contracts, etc.) or Disposal/Property Agreement is handled.
- 6.2 The Responsible Officer shall be responsible for ensuring that the procurement of the Contract or Disposal is conducted in accordance with these CSOs. This includes where the procurement is undertaken by a consultant on behalf of the Council.
- 6.3 Without prejudice to the general requirement at CSO 6.2, the Responsible Officers shall:
- 6.3.1 before selecting the most appropriate procurement route for a Contract, carry out a robust Options Appraisal;
- 6.3.2 seek value for money and, in the procurement of a Contract and to the extent relevant, proportionate and permitted by UK / associated Procurement Law, consider social benefits of the Contract;
- 6.3.2.1 The Public Services (Social Value) Act 2012 places an obligation on the Council to consider the economic, social and environmental well-being of our local area when we award contracts over Regulatory Thresholds.
Please see guidance within the Social Value Toolkit
- 6.3.3 give due consideration to the Council's commitment to the Climate Emergency and how the Council can reduce its carbon footprint through the tenders that it lets;
- 6.3.4 conduct all activity in accordance with the highest standards of probity and integrity to prevent fraud and corruption;
- 6.3.5 fulfil the role as the project sponsor or appoint a project sponsor and appoint a project manager where relevant;
- 6.3.6 in relation to any Contract, adhere to the Council's Procurement Governance and Gateway Process as stipulated by the Director of Corporate Services;
- 6.3.7 take into account all relevant Laws and Council strategies, policies and procedures relating to equality, diversity, health & safety, Modern Slavery and sustainability;
- 6.3.8 be responsible for ensuring and demonstrating that appropriate statutory and stakeholder consultation has been carried out;
- 6.3.9 clarify the role (if any) of community groups, the voluntary sector and the business community;

- 6.3.10 ensure that either on appointment or engagement or (if not already done so) prior to commencing any relevant activities, all Officers, Contractors and Consultants, involved in the procurement of a Contract or a Disposal, complete a Declaration of Interest in line with the Council's Declaration of Interest policy (on the Merton Hub). This applies equally to any Community Representatives that may participate in any way in a procurement process.
- 6.3.11 take into account all relevant requirements under the Local Government Transparency Code and General Data Protection Regulation (GDPR);
- 6.4 The Responsible Officer may not delegate their duty under CSO 6.2 and 6.3 and shall ensure that compliance is properly evidenced.
- 6.5 Officers may invite community representatives to participate in the procurement process for development of specifications, assistance in selection of providers and the commentary on performance of particular contracts. The agreement of the Director of Corporate Services is required for any other type of involvement where this is not covered by law or any Council policy. *Guidance is also contained within the Procurement Toolkit.*
- 6.5.1 Community representatives (e.g. school representatives, but not Members) are not and may not be "Responsible Officers" for the purposes of these Standing Orders and, except where the law specifically provides otherwise, will be observers with speaking rights at the discretion of the Responsible Officer. They may advise Responsible Officers where appropriate, but all decisions will be taken by the Council within the framework of the schemes of delegation;
- 6.5.2 Responsible Officers will ensure community representatives give a written undertaking to treat all information confidentially throughout the tendering process, and the life of the contract and sign the appropriate declaration of interests;
- 6.5.3 The Council must always avoid any suspicion or risk of potential allegation about possible bribery or corruption. An adequate record of the Community Representatives involved, consulted and the responses obtained must be kept and filed. It must include a written record of those approached and their responses, including notes of any meetings held with names of all those present. Where possible, written responses should be encouraged. If face-to-face discussion is necessary, then the Responsible Officer should attend such a meeting accompanied by another Council representative.
- 6.6 The Council has a statutory duty to achieve best value and it is in the Council's best interests to spend public money in this way. Contracts must be awarded on the basis of the most economically advantageous tender (MEAT), quotation or proposal, as determined by such criteria as are relevant to the type of goods, works or services. This will generally cover the optimum combination of whole life costs and benefits, including such factors as quality, Social Value, initial price, running costs and disposal costs. In short, this does not require the tender to be awarded to the lowest priced bidder.

CSO 7. SEEKING AN EXEMPTION FROM CONTRACT STANDING ORDERS

- 7.1 The Chief Executive will consider and may grant exemptions, where appropriate, to these CSOs when requested by Officers within Corporate Services.
- 7.2 For Departments other than Corporate Services, the Director of Corporate Services is authorised to grant exemptions to these CSOs.
- 7.3 The grounds for granting exemptions are as follows. No exemption to these CSOs may be permitted unless the authoriser can be satisfied that:
- i. the circumstances of the proposed waiver are permitted under UK Procurement and associated law; and
 - ii. there are exceptional circumstances that have led to a need to depart from the CSOs and evidence has been provided which demonstrates the exemption is necessary to achieve the Council's objectives; and
 - iii. the nature of the market for the works to be carried out, or the services or supplies to be provided, has been investigated and it has been demonstrated that due to a lack of competition in the market, a departure from the requirements of CSOs is justifiable; or
 - iv. the contract is for works, services or supplies that are required in circumstances of an emergency and as such could not reasonably have been foreseen.
- 7.4 Where an exemption is requested, an Exemption Report must first be reviewed by the relevant Category Manager, the relevant Service Financial Adviser (SFA) and the Council's Legal Services (the South London Legal Partnership (SLLP)), all for comment and sign-off. The report is then to be submitted to the Head of Commercial Services (for review and approval) prior to it being submitted to the Chief Executive or the Director of Corporate Services (as relevant) and must include:
- a) the Contract Standing Order number from which the exemption is requested
 - b) the reasons for requesting the exemption
 - c) the alternatives available if the exemption is not granted
 - d) total value of the exemption being requested
 - e) any potential legal implications associated with the exemption request
 - f) the financial implications of the exemption request
- 7.5 No requested exemption shall be permitted to take effect until the Exemption Report has been signed as agreed by the Chief Executive or the Director of Corporate Services (as relevant).
- 7.6 A template and non-exhaustive list of circumstances where an exemption may be granted is set out in [Appendix2](#).
- 7.7 No exemption may be granted that:
- Is retrospective in seeking approval to award
 - would result in a breach of UK / associated Procurement Law
 - requires Cabinet to approve significant contract variations

- removes the requirement for Cabinet to approve certain contract awards
- differs from the Scheme of Management
- removes the requirement for declaration of any Officer or Members Interests

7.8 The Director of Corporate Services shall maintain a register of exemptions granted by department that shall refer to the relevant Contract, Disposal or Property Agreement and set out the nature of the exemption and the value of the Contract, Disposal or Property Agreement as well as include the Exemption Report. The Director of Corporate Services shall report exemptions monthly to the Procurement Board.

7.9 In exceptional circumstances - if the Director of Corporate Services and/or the Chief Executive are not able to grant an exemption - any two (2) Officers selected from the Deputy Section 151 Officer, the Monitoring Officer or any of the Council's remaining Directors may, acting jointly, consider and where appropriate, grant an exemption. Directors may not sign off an exemption report for their own department.

CSO 8. EXCEPTIONS TO CONTRACT STANDING ORDERS

DISPOSALS AND CONTRACTS NOT REQUIRING PROCUREMENT IN ACCORDANCE WITH THESE CONTRACT STANDING ORDERS

8.1 The following are not required to be procured in accordance with these CSOs unless otherwise required by Law and no exemption shall be required under [CSO 7 \(Exemptions from CSOs\)](#):

- Contracts of employment for staff;
- Contracts with agencies for the provision of individual temporary staff where the Head Human Resources, (after liaison with the Head of Commercial Services) agree that use of the vendor-managed service is not appropriate;
- Land Transactions (which solely relate to interest in land);
- Arrangements for the engagement of counsel for particular instructions, and certain other legal services (subject always to UK / associated Procurement Law), where the Monitoring Officer considers the instructions do not require a procurement exercise and can be commissioned outside of any current framework agreement for those services. Such instructions are to be reported by Legal Services to Procurement Board on a quarterly basis;
- Contracts for particular Voluntary Sector bodies where the Council is seeking to move from a grant agreement to a formal contractual relationship, and where the purpose of the contract is to establish the general conditions to support the voluntary sector body in adapting to the new arrangements, where the grant terminates;
- Contracts entered into by school governing bodies that operate under the relevant Scheme of Management, unless otherwise stated in the relevant Scheme of Management;
- Orders placed under Existing Contracts, Dynamic Purchasing Systems or Electronic Auctions (provided they are placed in accordance with the requirements set out or otherwise referred to in those Contracts);

- Contracts for the provision of packages of social care, educational and welfare, services to individual clients, where the aggregate value of such contracts does not exceed the UK Public Procurement Threshold for Social and other specific services. (see [APPENDIX 3](#))
- Contracts that ensure continuity of care of vulnerable persons in accordance with the Care Act 2014, Children Act 1989 and any superseding legislation;
- where the provider has signed a pre-placement agreement with the Council for residential or nursing care;
- the engagement of professional expert witnesses in contentious matters; and
- the appointment of independent investigators, arbitrators, mediators, and facilitators.

8.1.1 Entering into a grant agreement may not be subject to these CSOs in full and advice should be sought from Commercial Services and Legal Services.

8.1.2 None of the exceptions above may be utilised unless the Officer has Authority in accordance with the scheme of delegation.

8.2 Disposals of Property Assets shall be carried out in accordance with [CSO 28 \(Contracts for the Disposal of Council Assets\)](#).

CSO 9. OPTIONS APPRAISAL

9.1 Prior to the procurement of any Contract (be it for the provision of Goods, Services or Works) with a value above the Upper Threshold, the Responsible Officer must carry out an Options Appraisal to determine the best way of structuring the procurement to achieve the best outcome for the Council and the most appropriate procurement process. This should be presented, in the form of a Gateway 1 report, to the appropriate Departmental Operational Procurement Group (for contracts with a value less than £2m and regarded as low risk) and/or the Procurement Board (for contracts with a value of £2m or greater; or those projects regarded as having a high risk) for approval.

9.1.1 Guidance as to how to undertake an Options Appraisal is set out in the Procurement Toolkit

CSO 10. CONTRACT VALUE ESTIMATION AND AUTHORISATION TO COMMENCE THE PROCUREMENT

10.1 Before commencing any procurement, Officers must estimate the total value of the Contract to be procured (net of VAT). Also See [CSO 11 \(Contract Packaging and Aggregation\)](#).

10.2 The estimation is be carried out in accordance with UK / associated Procurement Law. The estimated value will determine the extent to which UK / associated Procurement Law applies as well as which CSOs apply.

The Procurement Toolkit contains guidance on the most appropriate form of Contract and procurement process to use. Commercial Services can also provide further advice. The Responsible Officer must have authority in accordance with the Scheme of Management.

10.3 The total value of the Contract must be based on the total amount payable (net of

VAT), over the full life of the Contract to the provider (regardless of where the funding is coming from, or whether or not it is a joint contract with another contracting authority). In all cases, it must include the value of any possible extensions during the period of the Contract.

10.4 In the case of contracts without a fixed term, the estimated value shall be the monthly value, multiplied by 48 (net of VAT). Additional guidance is to be sought from both Commercial Services and Legal Services to ensure compliance with UK / associated Procurement Law.

10.5 A Contract is not to be divided into smaller related Contracts (disaggregated) with the intention to avoid the application of UK / associated Procurement Law or particular CSOs. Where Contracts are disaggregated, the total value of all of the Contracts must be taken into account in determining the value of the Contract.

10.6 In the case of setting up a Framework Agreement, or Contracts to set up Dynamic Purchasing Systems (DPS), the value to be taken into account shall be the maximum estimated value of all of the Contracts envisaged to be awarded under the relevant Framework Agreement / DPS for the total period of the Framework Agreement / DPS.

10.6.1 Officers must consult the Head of Commercial Services and the Head of Law – Procurement and Information Governance, prior to seeking to set up any Framework Agreement or DPS. Please also refer to [CSO 12. FRAMEWORK AGREEMENTS](#)

10.7 Lots

10.7.1 As a general rule, where a Contract is (or may be) divided into smaller Contracts (Lots), the estimated value should take account of the value of all of the separate Lots, although in certain circumstances UK Procurement Law may permit a different methodology. Officers are to seek advice from Commercial Services and Legal Services when seeking to procure a Contract comprising of Lots.

10.7.2 Where a Contract is likely to be over the UK Procurement Threshold, Officers should record the justification for dividing or not dividing the Contract into smaller Lots.

10.8 Concession Contracts (and Contracts with nil value to the Council)

10.8.1 Specific rules apply to the valuation of Concession Contracts, where the Contract may have a nil value in terms of how much the Council pays the Provider, but this may not be a nil value when considered under the rules of the Concession Contracts Regulations 2016. The value of concession contracts shall therefore be the estimated total turnover of the concession generated over the duration of the contract, net of VAT. Also see [Appendix 9 \(Complying with the UK's International Obligations on Subsidy Control\)](#)

10.8.2 A contract will be considered to be a concession contract where:

- The consideration given to the contractor is that the contractor is permitted to exploit the works or services that are the subject of the contract (together with payment if desired).
- The award of the contract transfers the operating risk to the

concessionaire and involves real exposure to the vagaries of the market (this will be assumed where the concessionaire has no guarantee that it will recoup its investment).

10.8.3 Officers should seek advice from both Commercial Services and Legal Services, as well as approval from Procurement Board, when considering procuring and prior to awarding a Concession Contract.

10.9 Council's Commitment to Carbon Reduction

10.9.1 On 10 July 2019, Merton passed a motion to declare a climate emergency and set an ambitious carbon reduction target to make Merton the Council carbon neutral by 2030 and Merton the borough carbon neutral by 2050.

10.9.2 Officers should seek approval from Procurement Board when considering procuring any contract that has any carbon implications/impacts, irrespective of the value of the contract.

CSO 11. CONTRACT PACKAGING AND AGGREGATION

11.1 A procurement process for a new Contract may only proceed where the Council does not have a suitable Existing Contract in place. Commercial Services will, in conjunction with departmental users, publish (and update from time to time) via the Council's e-Tendering System, an Existing Contracts Register.

11.2 Contracts must be packaged to ensure they provide best Value for Money for the Council.

11.3 Responsible Officers, in conjunction with Category Managers, should consider whether aggregation of Contracts across departments offers best Value for Money for the Council and comply with reviews of service for the Council as a whole. Responsible Officers are required to justify their decision with regard to aggregation or disaggregation of Contracts across departments on the basis of Value for Money. Responsible Officers should seek advice from Commercial Services, and where necessary, Legal Services.

11.4 Aggregation:

11.4.1 Responsible Officers must aggregate contracts which have similar characteristics or are intended for renewal within a given time period, in the following way:

Contracts of the same type

11.4.2 The calculation of the estimated contract value should be based on the total value of successive contracts (including variations and extensions) of the same type, awarded anytime during the course of the preceding 48 months. This should be adjusted, where possible, to take account of changes in quantity or value which could occur in the course of 12 months following the award of a new contract.

Contracts for renewal within a certain time period

- 11.4.3 The calculation of the estimated contract value should be based on the total estimated value of successive contracts (including variations and extensions) awarded during the preceding 48 months (following the first delivery of the renewal).

Works contracts

- 11.4.4 In relation to a Works project the values of any services and supplies contracts, which are necessary for the completion of the works, must be included in the calculation of the estimated contract value.

CSO 12. FRAMEWORK AGREEMENTS

12.1 A Framework Agreement is a form of Contract and as a general rule, these CSOs shall apply (as appropriate) to accessing any existing Framework Agreement (be it let nationally, regionally or locally) and to the establishment of any new Framework Agreement by Merton Council.

12.2 Accessing an existing Framework Agreement

12.2.1 A Contract of any value may be procured using a suitable existing Framework Agreement (set up by the Council or another public sector authority, or other organisation) - provided that the Framework Agreement has been procured in accordance with UK / associated Procurement Law - and it is lawful and appropriate (in respect of scope, value, terms and eligibility to access) for the Council to use it. Responsible Officers should seek advice from Commercial Services, and where necessary, Legal Services.

12.2.2 Prior to utilising an existing Framework Agreement:

- i. the Director of Corporate Services (or their nominee) shall approve using such Framework Agreement; and
- ii. the Responsible Officer must seek written confirmation from both Commercial Services and Legal Services that it is lawful and appropriate for the Council to access the Framework Agreement.

12.2.3 Legal Services will keep an up to date list of all current and past framework agreements reviewed and approved for use by Merton.

12.3 Setting up a new Framework Agreement

12.3.1 When considering setting up a new Framework Agreement for the Council the Responsible Officer shall determine the estimated value of the Framework Agreement in accordance with [CSO 10 \(Contract Value Estimation and Authorisation to Commence the Procurement\)](#) and must seek advice from both Commercial Services and Legal Services, as well as approval from Procurement Board.

12.3.2 Responsible Officers may wish to consider permitting other contracting authorities to use the Framework Agreement and if so will need to ensure the Tender Documents and Framework Agreement are structured to enable this.

- 12.3.3 All Framework Agreements (and their Call-off Contracts) must comply with UK / associated Procurement Law.

12.4 Call-off Contracts

- 12.4.1 Call-off Contracts to be entered into pursuant to a Framework Agreement must be awarded in accordance with the rules set out in the Tender Documents and/or the Framework Agreement (as relevant). This includes in relation to the Terms and Conditions to apply.

12.5 Dynamic Purchasing Systems

- 12.5.1 A Dynamic Purchasing System may not be established without the prior approval of Procurement Board and the authorisation of the Head of Commercial Services and the Monitoring Officer and/or the Head of Law – Procurement and Information Governance or nominated officers.

CSO 13. GENERAL PROVISIONS, THE E-TENDERING SYSTEM AND COMMUNICATION WITH BIDDERS

- 13.1 The procurement of Contracts of any value and the Disposal of Council Assets shall at all times, be subject to Law.
- 13.2 In addition to the general principle at CSO 13.1, Contracts with a value at or above the Lower Threshold are subject to UK / associated Procurement Law with which Officers must comply. This includes Concession Contracts.
- 13.3 The Council Thresholds and the UK Procurement Regulations Thresholds are set out in [Appendix 3 \(UK Procurement Thresholds and SQ Thresholds\)](#) and [Appendix 4 \(Council Thresholds\)](#).
- 13.4 Save with respect to Contracts excluded from CSOs in line with [CSO 08](#):
- 13.4.1 all Contracts must be procured using the e-Tendering System;
- 13.4.2 the completed Contract must be added to the Existing Contracts Register;
- 13.4.3 [CSO 27 \(Contract Conditions\)](#) applies with respect to the requirement to include certain Terms and Conditions.
- 13.5 Subject to CSO 13.4 and [CSO 28](#), all procurements for Contracts and Disposals of Property Assets regardless of their value must be conducted using the e-Tendering System. This includes placing advertisements, requesting bids, issuing Invitations to Tender (and or Requests for Quotes) and publishing other Tender Documents, communicating with Bidders and the submitting bids.
- 13.6 All bids must be submitted to the Council via the e-Tendering System. In a very limited number of circumstances, it may be appropriate to require Bidders (in addition to submitting their bids via the e-Tendering System) to submit their bids or offers in hard copy (see [Appendix 8](#)).
- Under no circumstances may a late tender be accepted or opened without the written authorisation of the Head of Commercial Services or the Monitoring

Officer or the Head of Law – Procurement and Information Governance or nominated officers.

- Where genuine technical difficulties arise and the fault lies with the e-Tendering System, Bidders may be asked to submit their bid via the messaging section of the e-Tendering portal and/or a designated email address, once prior agreement has been sought by the Head of Commercial Services or the Monitoring Officer or the Head of Law – Procurement and Information Governance, or nominated officers.
- Bids must be opened in the presence of 2 (two) officers and a record made of the exact time and date each bid was opened. An audit trail must be sought from the system provider as to the nature of the technical difficulty. Under no circumstances may bids be sent to Officer email accounts without the prior written authorisation of either the Head of Commercial Services or Monitoring Officer or the Head of Law – Procurement and Information Governance or nominated officers.
- In the unlikely event that the e-Tendering portal is not accessible at all:
 - Where the system is not accessible for one day or less, an extension to the deadline for the receipt of quotes and/or tenders is to be granted and notification issued to all providers via a designated email address. Details of the extension are to be later added onto the portal for audit purposes.
 - Where the system is not accessible for a period of more than one day, an alternative arrangement will be set up by the Head of Commercial Services in conjunction and agreement with the Head of IT Service Delivery and notification issued to all providers via a designated email address. Details of the extension are to be later added onto the portal for audit purposes.

13.7 In certain complex procurements or Disposals and/or following an award decision (but prior to formal entry into the Contract), it may be necessary to communicate with Bidders. Such communications must be recorded in writing (preferably via the e-Tendering system) and/or minuted; and the decision to do so must be made by the Responsible Officer post discussion with the Head of Commercial Services and/or the Head of Law – Procurement & Information Governance. Officers must not meet with Bidders in person unless at least one other Officer is present.

CSO 14. CONSULTANTS

14.1 Where the Contract is a contract for the appointment of a Consultant, these CSOs shall at all times apply. This includes (without limitation) that the procurement procedure to be followed shall be as set out at [CSO 16 \(Contracts up to and including the £5,000\)](#), [CSO 17 \(Contracts above the £5,000 up to and including the Lower Threshold\)](#), [CSO 18 \(Contracts above the Lower Threshold up to and including the Upper Threshold\)](#) or [CSO 19 \(Contracts above the Upper Threshold\)](#) as appropriate, depending on the estimated value of the Contract.

14.2 Without prejudice to the general provision at CSO 14.1, the Responsible Officer shall ensure that:

14.2.1 the procurement complies with the Council's Code of Practice on procuring Consultants ([Appendix 6](#));

14.2.2 the Contract is in a form approved by the Director of Corporate Services (and [CSO 26.1.1 \(Forms of Contract and in Writing\)](#) shall not apply); that the Consultant complies with IR35 legislation and, where necessary, on a case-by-case basis, the Responsible Officer must seek guidance from the Head of HR with regards to whether or not the 'off-payroll working rules' apply.

14.2.3 the Council's Officer responsible for insurance matters shall determine the minimum insurance levels required; and

14.2.4 any Contract with the Consultant shall require the Consultant to comply with [CSO 30 \(Conflicts of Interest\)](#), [CSO 31 \(Acceptance of Gifts and Hospitality\)](#) and any other relevant Council policies.

14.2.5 Where the Council has an agreement in place for professional services and / or consultants, this must be used. If the agreement is deemed inappropriate for the nature of the professional services / consultancy required, an exemption of CSOs will be required [CSO 7 \(Exemptions from Contract Standing Orders\)](#).

CSO 15. SERVICES COVERED BY THE LIGHT TOUCH REGIME

15.1 Schedule 3 of the Public Contracts Regulations 2015 list the social and other specific services to be covered by the 'Light Touch Regime' (LTR). These can also be found in the Procurement Toolkit.

15.2 The LTR has a much higher UK Public Procurement Threshold than applies for other service contracts and permits a more flexible procurement procedure, subject always to compliance with UK / associated Procurement Law. (See [Appendix 3](#) for current thresholds)

15.3 A Contract for services that fall within the LTR is still a Contract and as such these CSOs apply (as appropriate) to entering into any Contract for such services.

CSO 16. CONTRACTS UP TO AND INCLUDING £5,000

16.1 This CSO applies to all Contracts with an estimated value of up to and including £5,000. Please also see [CSO 10.8](#) (Concession Contracts (and Contracts with nil value to the Council)) with regards to estimating the value of such contracts.

16.2 For all Contracts:

16.2.1 the procurement may (where it is lawful to do so) be carried out using a suitable Existing Framework Agreement but otherwise must be carried out in accordance with this CSO;

16.2.1 there is no requirement to advertise the Contract opportunity publically

- unless a Responsible Officer decides that advertising would provide better Value for Money for the Council;
- 16.2.2 Responsible Officers may issue either a Quick Quote or a Request for Quote (RfQ) inviting Bids from any number of Bidders but preferably three. Where deemed appropriate, the Responsible Officer may directly award the Contract by approaching a single Bidder. If a decision is made to directly award the Contract, the Responsible Officer must be satisfied (and keep a record) that this demonstrates best Value for Money for the Council;
- 16.2.3 all Bids must be submitted in writing via the Council's e-Tendering portal.

CSO 17. CONTRACTS ABOVE £5,000 UP TO AND INCLUDING THE LOWER THRESHOLD (£5,001 - £25,000)

- 17.1 This CSO applies to all Contracts with an estimated value above £5,000 up to and including the Lower Threshold of £25,000. Please also see [CSO 10.8](#) (Concession Contracts (and Contracts with nil value to the Council)) with regards to estimating the value of such contracts.
- 17.2 For all Contracts:
- 17.2.1 the procurement may (where it is lawful to do so) be carried out using a suitable Existing Framework Agreement but otherwise must be carried out in accordance with this CSO;
- 17.2.2 Bids should, as best practice, be sought by issuing either a Quick Quote or a Request for Quote (RfQ) to at least three (3) Bidders, although Officers may approach a single Bidder in accordance with CSO 17.3;
- 17.2.3 all Bids must be submitted in writing via the Council's e-Tendering portal (including where CSO 17.3 applies).
- 17.2.4 Once awarded, the details of the Contract must be published on the Council's Existing Contracts Register in-line with the Local Government Transparency Code 2015 (and any subsequent amendments)
- 17.3 The Responsible Officer may approach a single Bidder provided the Responsible Officer can demonstrate (and keeps a record of the fact) that there is only one Provider capable of performing the Contract.

CSO 18. CONTRACTS ABOVE THE LOWER THRESHOLD UP TO AND INCLUDING THE UPPER THRESHOLD (£25,001 - £100,000)

- 18.1 This CSO applies to all Contracts with an estimated value above the Lower Threshold up to and including the Upper Threshold of £100,000. Please also see [CSO 10.8](#) (Concession Contracts (and Contracts with nil value to the Council)) with regards to estimating the value of such contracts.
- 18.2 For all Contracts:
- 18.2.1 the procurement may (where it is lawful to do so) be carried out using an Existing Framework Agreement but otherwise must be carried out in

- accordance with this CSO;
- 18.2.2 the procurement must be conducted in accordance with UK / associated Procurement Law;
- 18.2.3 selection of Providers using a PQQ/SQ is not permitted;
- 18.2.4 where the Contract is for works and falls below £100,000, Bidders may be selected from a nationally accredited provider directory;
- 18.2.5 there is no requirement to advertise the Contract (although the Responsible Officer may choose to do so) and an RfQ may be issued to Bidders without advertising;
- 18.2.6 if the Contract is not advertised, RfQs must be issued to at least three (3) Bidders;
- 18.2.7 where the Contract is advertised, the contract notice must also be published on Contracts Finder;
- 18.2.8 all Bids must be submitted in writing via the Council's e-Tendering portal;
- 18.2.9 If fewer than three (3) written Bids are received the reason for this must be recorded and retained;
- 18.2.10 Once awarded, the details of the Contract must be published on both the Council's Existing Contracts Register in-line with the Local Government Transparency Code 2015 (and any subsequent amendments), as well as Contracts Finder in-line with Crown Commercial Services guidance.

CSO 19. CONTRACTS ABOVE THE UPPER THRESHOLD (£100,001)

- 19.1 This CSO applies to all Contracts with an estimated value above the Upper Threshold of £100,000. Please also see [CSO 10.8](#) (Concession Contracts (and Contracts with nil value to the Council)) with regard to estimating the value of such contracts.
- 19.2 For all Contracts:
- 19.2.1 the procurement may (where it is lawful to do so) be carried out using a suitable Existing Framework Agreement but otherwise must be carried out in accordance with this CSO;
- 19.2.2 the procurement must be conducted in accordance with relevant UK / associated Procurement Law;
- 19.2.3 all Contracts must be advertised as detailed below;
- 19.2.4 Once awarded, the details of the Contract must be published on both the Council's Existing Contracts Register in-line with the Local Government Transparency Code 2015 (and any subsequent amendments), as well as Contracts Finder in-line with Crown Commercial Services guidance.

Contracts below the relevant UK Procurement Threshold

- 19.3 Where the value of the Contract is below the relevant UK Procurement Threshold:
- 19.3.1 there is no requirement to publish public procurement notices through

- Find a Tender, but an advertisement must be placed via the e-Tendering System and also on Contracts Finder;
- 19.3.2 selection of Providers using a SQ is not permitted, other than for work Contracts and Social and Other Services Contracts, where an SQ may be used for Contracts with a value exceeding that of the UK Procurement Threshold for Services and Supplies .

Contracts above the relevant UK Procurement Threshold

- 19.4 Where the value of the Contract is at or above the relevant UK Procurement Threshold:
- 19.4.1 save where UK Procurement Law permits a PIN to be used as a call for competition, a Contract Notice must be placed through Find a Tender and on Contracts Finder;
- 19.4.2 selection of Providers using a SQ is permitted;
- 19.4.2 save where the Contract is for services that fall into the LTR category, the procurement must follow one of the procedures set out in the PCR 2015, namely:
- the Open Procedure (PCR 2015 Regulation 27);
 - the Restricted Procedure (PCR 2015 Regulation 28);
 - the Competitive Procedure with Negotiation (PCR 2015 Regulation 29);
 - the Competitive Dialogue (PCR 2015 Regulation 30); or
 - the Innovation Partnership (PCR 2015 Regulation 31).

The Responsible Officer must seek advice from Commercial Services and/or Legal Services prior to determining which route to follow.

- 19.5 A notice communicating the decision to award a Contract must be sent to each Bidder and a standstill period of 10 calendar days (excluding Bank Holidays) observed prior to entering into the Contract. Where an award of Contract is to be approved by Cabinet, the 10-day standstill period cannot commence until post-decision call-in is complete.

CSO 20 CONTRACT AWARD NOTICES AND PUBLISHING AWARD DETAILS ON CONTRACTS FINDER

- 20.1 For all Contracts with a value at or above the relevant UK Procurement Threshold:
- 20.1.1 a Contract Award Notice is required to be published;
- 20.1.2 information about the award of the Contract must also be published on Contracts Finder.
- 20.2 Contract Award Notices must be sent for publication no less than thirty (30) calendar days after the formal decision to award a Contract has been made.
- 20.3 For Contracts with a value at or above the Lower Threshold, there may be a requirement to publish information about the award of the Contract on Contracts

Finder and Officers should refer to the PCR 2015. Guidance is also contained in the Procurement Toolkit.

- 20.4 Where information about the award of the Contract is required to be published on Contracts Finder (i.e. for all contracts over £25,000), this shall be done within a reasonable time, but not exceed three months from the date authority to award has been granted by the Council. The information should include at the very least:
- the name of the Provider;
 - the date the Contract was entered into;
 - the value of the Contract; and
 - whether the Provider is an SME or a VCSE.
- 20.5 There is also a requirement for the Council to prepare and retain a written report (a "Regulation 84 Report") covering specified information about the procurement process for every over UK Procurement threshold contract, framework agreement and dynamic purchasing system which is awarded or established. Responsible Officers should seek guidance from Commercial Services and the Procurement Toolkit.

CSO 21. EMERGENCY PROCUREMENT

- 21.1 In an Emergency, it may not be possible to comply with the procurement procedures set out in these CSOs and in such circumstances, senior Officers may authorise the procurement of Contract or a Disposal to be carried out without the need for such compliance.
- 21.2 Senior Officers with authority to Authorise a procurement of a Contract or a Disposal in an Emergency are:
- the Chief Executive;
 - the Director of Corporate Services or
 - the Director of the relevant department in conjunction with one other Director.
- 21.3 In the event that the persons set out at CSO 21.2 are not available, the Responsible Officer may use their own judgement based on the severity and urgency of the situation to make a decision as to whether the relevant situation is an Emergency. Written justification must be made and retained on file for audit purposes.
- 21.4 The decision as to whether a situation is an Emergency shall be made by those Officers referred to at CSO 21.2 and CSO 21.3 in accordance with the Council's emergency planning and business continuity procedures set out on the Council's intranet. The Procurement Toolkit contains guidance on when an Emergency procurement for a Contract may be appropriate.

CSO 22. SHORTLISTING BIDDERS – STANDARD SELECTION QUESTIONNAIRES (SQs) AND SUITABILITY QUESTIONS

- 22.1 SQs are only permitted to be used where a Contract is valued at or above the relevant SQ Threshold and there is a need to pre-qualify bidders based on previous history. The SQ Thresholds are set out in Appendix 3. The Procurement Toolkit contains the form of SQ to apply. Officers may not deviate (including changing the SQ wording or adding new questions to the SQ) unless this is approved by Commercial Services.
- 22.2 Where a SQ is permitted, the procurement may be structured as a two-stage procedure or a single stage procedure,
- 22.3 Where a Contract is valued below the relevant SQ Threshold, Suitability Questions are still permitted, provided these are relevant to the subject matter of the Contract, are proportionate, and do not involve a separate stage in the procurement process (i.e. there can be no shortlisting of Bidders prior to requiring them to submit a Bid).
- 22.4 The Procurement Toolkit contains a set of appropriate Suitability Questions that may be used. Officers may omit questions from the Suitability Questions if these are not relevant.
- 22.5 There are mandatory and discretionary exclusion criteria set out in the PCR 2015. The Procurement Toolkit contains guidance on when these apply.
- 22.6 The assessment of responses to SQs and Suitability Questions shall be carried out by applying Selection Criteria.
- 22.7 Assessment Criteria for assessing responses to the SQ must comply with UK / associated Procurement Law.
- 22.8 Assessment Criteria for assessing responses to Suitability Questions must comply with the Treaty Principles.
- 22.9 Assessment Criteria, together with their relative weightings and methodology to be used to assess responses to SQs and Suitability Questions must be made available to Bidders in advance of them submitting their responses.

CSO 23. EVALUATION OF BIDS AND AWARD CRITERIA

- 23.1 In this CSO, all references to Award Criteria include sub-criteria of any level.
- 23.2 Save where the Council has invited only one (1) Bid (where permitted by these CSOs and/or PCR2015), the evaluation of Bids shall be carried out by applying Award Criteria.
- 23.3 The Award Criteria to apply, together with their relative weightings and the methodology used to evaluate Bids must be contained in the Tender Documents or the Request for Quote (RfQ), or the Quick Quote (as relevant) issued to Bidders at the commencement of the procurement process.
- 23.4 Evaluation of Bids must be open, transparent and not discriminate or favour a particular Bidder and must be carried out by applying the published Award Criteria

in accordance with the published evaluation methodology.

- 23.5 The Bid evaluation process should be designed specifically for each procurement process. The Procurement Toolkit contains guidance on evaluation of Bids.
- 23.6 Bids are to be evaluated by at least three Officers where the contact value is equal to or greater than £25k.
- 23.7 For contracts above the Lower Threshold - the financial element of highest scoring bidder should be reviewed by the respective Service Financial Advisor (SFA). This includes the bidder's financial standing.
- 23.8 The evaluation of bids received for contracts above the upper threshold are to be moderated by a member of the Commercial services team.
- 23.9 Whilst the Bid evaluation process is in progress, Officers and Members must not disclose information relating to any Bid or the procurement process to anybody not directly involved in the process - regardless of whether they are Officers, Members, residents of the borough, members of the press or Bidders. (This includes not disclosing to a Bidder information about its own Bid evaluation).
- 23.10 Subject to CSO 23.12 below, during the Bid evaluation process, contact with Bidders must be strictly limited, and where contact is necessary, it must be fully documented, and wherever possible, be carried out via the e-Tendering System.
- 23.11 Subject to CSO 23.12 below, contact with Bidders must be limited to matters directly related to the Bid evaluation and must be fair and transparent. Examples of where contact may be necessary are:
- to raise clarifications, or
 - to arrange presentation meetings.
- 23.12 Where an incumbent Provider has submitted a Bid, normal Contract management activities may continue, however care should be taken to limit the interaction to Contract management activities only and Officers must not discuss any Bid, including that submitted by the incumbent Provider or any aspect of the procurement or evaluation process.
- 23.13 Officers must not meet with any Bidder (including an incumbent Provider that has submitted a Bid for the new Contract) without at least one other Officer being present.

CSO 24. CONTRACT AWARD AND AUTHORISATION PROCESS

- 24.1 A decision taken by the Council may either be a non-key Decision or a key Decision. Key Decisions must be included on the forward plan, and published. Non-key Decisions do not require inclusion on the forward plan, however the decision and report must be published in line with the Local Authorities Regulations 2012. (See the Council's Constitution as well as [Appendix 10](#))
- 24.2 A Contract (including those in relation to income generation) may only be awarded and (save with respect to CSO 24.2.2 below) a Property Agreement may only be

entered into when:

- 24.2.1 all of the requirements of these CSOs have been met; and
 - 24.2.2 the expenditure and/or income involved has been included in approved revenue estimates, or is in the capital programme, or has been otherwise approved by the Director of Corporate Services;
 - 24.2.3 Authorisation has been obtained from the relevant body or person as set out in the Scheme of Management; and
 - 24.2.4 (if relevant) the Call-in Period and/or standstill period has expired.
- 24.3 Contract or Property Agreement variations (including extensions), not provided for in the original contract shall, unless otherwise provided for in the original Authorisation to award the Contract or enter into the Property Agreement, be Authorised by:
- 24.3.1 in the case of Contracts or Property Agreements being procured or proposed by Corporate Services - and with a total contract value of £100k but less than £2m and/or which result in a 100% increase in contract value - by the Chief Executive;
 - 24.3.2 in the case of all other departments and with a total contract value with a total contract value of £100k but less than £2m and/or which result in a 100% increase in contract value, by the Director of Corporate Services;
 - 24.3.3 in the case of Contracts or Property Agreements with a total contract value of £2m or greater, by Cabinet.
 - 24.3.4 in the case of Contracts or Property Agreements with a total contract value below £100k, in line with the Departmental scheme of management.
- 24.4 Where Authorisation is required to enter into a new Framework Agreement - to be established by the Council - the value of the Contract is the value of all of the Call-off Contracts proposed to be entered into (by the Council or any other body able to access the Framework Agreement).
- 24.4.1 Where the Council has established its own Framework Agreement, provided that correct Authority has been given to enter into the Framework Agreement, no further Authority is required to enter into any Call-off Contract under that Framework Agreement (unless otherwise stated in that Authority).
- 24.5 Where Authorisation is required to enter into a Call-off Contract for a framework agreement not established by the Council - in determining who the Authorising Body is, the value of the Contract is the value of all of the Call-off Contracts proposed to be entered into by Merton Council. Unless otherwise stated in the Authorisation, further Authorisation is required to enter into any additional Call-off Contract under that Framework Agreement.
- 24.6 Contracts for the provision of legal services or legal advice may not be awarded without the prior written consent of the Monitoring Officer and/or the Head of Law – Procurement and Information Governance or nominated officer.

CSO 25. FORMS OF CONTRACTS AND IN WRITING

- 25.1 Subject to CSO 25.3 below, before any Contract is awarded, it must be:
- 25.1.1 in a form which has been approved by the Monitoring Officer and/or Head of Law – Procurement and Information Governance, or nominated officer as being suitable for the proposed purpose of the Contract; and
 - 25.1.2 in writing.
- 25.2 Contracts must either be executed under seal by an authorised signatory of Legal Services; or signed by an appropriate Officer in line with the Scheme of Management. Legal Services shall advise whether a Contract should be executed under seal or signed by hand / electronically. (Please see [Appendix 11](#))
- 25.3 Contracts required to be entered into in an Emergency do not need to comply with CSO 25.1 before they are entered into. They do however, need to be confirmed as meeting the requirements of CSO 26.1 as soon as possible after the commencement of the Contract.
- 25.4 Where possible, prior to the commencement of the Contract, written terms of agreement should be drawn up, approved by Legal Services as suitable, and signed by the authorised signatory and the Provider.

Contracts can be executed under electronic signature by virtue of the Electronic Communications Act 2000, the 2001 Law Commission Paper and case law. However there are a few exceptions namely any contracts that need to be registered at the Land Registry and deeds which must be executed in the Councils case under seal.

CSO 26. CONTRACT CONDITIONS

- 26.1 The presumption is that except in limited circumstances Legal Services will be preparing the terms and conditions of contracts. In circumstances where the contract is of an extremely low value and very low risk, template contracts set up by Legal Services may be used by Officers. However, Officers should first consult Legal Services if they intend to use the templates themselves to ensure this is appropriate in the circumstances.

CSO 27. CONTRACT VARIATIONS, EXTENSION AND NOVATIONS

- 27.1 This CSO shall apply to all Contracts
- 27.2 Contracts may be modified/varied or extended, if any such changes are provided for within the terms of the contract and /or allowed within the Public Contracts Regulations 2015. Advice must be sought from both Commercial Services and Legal Services before any changes are approved and executed
- 27.3 Contract variations and extensions should be based on the same terms and conditions set out in the original Contract as a minimum, although where appropriate an improved position for the Council with regard to price and or T&Cs may be sought providing the scope of the contract is not substantially altered.
- 27.4 Total contract value (aggregation) must be taken into consideration.

- 27.5 In certain circumstances it may be appropriate for a Voluntary Transparency Notice to be published following a variation or extension to a Contract - the Responsible Officer should liaise with both Commercial Services and Legal Services.
- 27.6 The variation or extension shall require the Authorisation of the relevant Authorising Body in accordance with [CSO 24 \(Contract Award and Authorisation Process\)](#), taking into account the revised total contract value.
- 27.7 Contract variations and extensions must be recorded in writing and signed/sealed (as appropriate) by both the Council and the Provider.
- 27.8 Responsible Officers must be able to demonstrate that a variation and/or extension of a Contract will offer Value for Money to the Council and that the Contract will continue to meet the Council's requirements.
- 27.9 In an Emergency, a Contract variation or extension may be permissible pursuant to [CSO 21 \(Emergency Procurement\)](#).
- 27.10 The Responsible Officer must ensure that the Corporate Contracts Register is updated accordingly.
- 27.11 Contract variations and extensions shall at all times be subject to UK / associated Procurement Law.

27.12 Contract Extensions

- 27.12.1 As a rule, a contract shall not be extended unless expressly allowed for within the Contract Notice and the Contract.
- 27.12.2 However, depending on certain criteria, a contract may be varied to accommodate an extension to either the term and/or the value. Advice must be sought from Commercial Services and Legal Services prior to any contract variation being drafted and agreed to.
- 27.12.3 An 'extension' of contract not expressly allowed for within the Contract Notice and the Contract, or which cannot be legally accommodated via a variation, will be classified as a Direct Award for which an Exemption of these CSOs must be sought.
- 27.12.4 A Contract shall not be varied or extended (beyond the term and/or contract value originally approved) until funding has been identified in accordance with Council's financial procedures and approval obtained by either the relevant Operational Procurement Group (OPG) and/or Procurement Board.
- 27.12.5 The financial standing of the new company must be verified by Finance prior to any agreement to extend a contract being entered into.

27.13 Contract Novation

- 27.13.1 A Responsible Officer may agree the novation (transfer) of any contract subject to UK / associated Procurement Law.
- 27.13.2 Legal advice must be sought and UK Procurement Law adhered to.

- 27.13.3 A contract novation must be approved as per the thresholds referenced in the Council's Scheme of Management.
- 27.13.4 The financial standing of the new company must be verified by Finance prior to any agreement to novate a contract being entered into.

CSO 28. CONTRACTS FOR THE DISPOSAL OF COUNCIL ASSETS

- 28.1 This Contract Standing Order sets out specific requirements relevant to the Disposal of Council Assets.
- 28.2 Subject to CSO 28.4 below, any Disposal of Council Assets must be for best consideration reasonably obtainable. In respect of Property Assets, the duty to obtain best consideration reasonably obtainable is set out in section 123 of the Local Government Act 1972 ("Section 123"). In the context of Property Assets "best consideration" can, provided that it is reasonable and proportionate in the circumstances, include a quantifiable or demonstrable benefit to the public, the community or the Council that compensates the Council for any shortfall in financial compensation it receives from the Disposal.
- 28.3 Where the Disposal involves a Property Asset, the Corporate Property Officer shall determine whether an auction, a Bid process or a private treaty is the most appropriate method of Disposal taking into account the procedure set out in the Code of Practice – Disposal of Property. The Corporate Property Officer must be able to demonstrate that the Disposal satisfies the Council's obligation to comply with Section 123.
- 28.4 Where a Disposal of a Council Asset is proposed which is at less than best consideration reasonably obtainable (determined by the market or a qualified Valuer); and where the Council has the power to do so, no Disposal shall be made without the express written approval of the Director of Corporate Services and the appropriate Authorising Body, in consultation with Commercial Services and Legal Services.
- 28.5 The Corporate Property Officer shall seek approval of the Asset and Property Board prior to initiating any disposal. Where it is determined that a Bid process is the most appropriate, this must be undertaken via the Council's e-tendering portal.
- 28.6 In all cases where the Disposal of a Council Asset is or includes works and/or services to be performed or goods to be supplied which may result in the transaction being subject to UK / associated Procurement Law then the Responsible Officer shall liaise with Legal Services and shall be responsible for ensuring compliance with UK / associated Procurement Law.
- 28.7 Subject to CSO 28.6, where the Corporate Property Officer determines, in advance, that the most appropriate means of communication with the market and Bidders in relation to the Disposal of Property Assets is via means other than the e-Tendering System, this shall require prior approval of the Director of Corporate Services. Where the Corporate Property Officer determines that the most appropriate method of Disposal is by submission of paper Bids:
- 28.6.1 Bidders must be advised not to include any markings that would

identify them on the outside of their Bid; and

28.6.2 The procedure set out in [Appendix 8](#) shall apply.

28.8 Where the proposed Property Agreement is a lease for rent, the e-Tendering System need not be used.

CSO 29. CONFLICTS OF INTEREST

29.1 All Officers and Members must ensure that in carrying out their duties and functions for or on behalf of the Council, their decisions and actions are not impaired by a Conflict of Interest with their private interest.

29.2 The obligation to ensure that there is no Conflict of Interest extends to ensuring that there is no perception of a Conflict of Interest.

29.3 In order to ensure actual or perceived Conflicts of Interest are identified and appropriate steps taken to ensure that the Council's interest is not impaired, the following people are required to declare any interests which may affect a Disposal or the procurement process for a Contract or the appointment of a consultant or the management of any Contract or Property Agreement:

29.3.1 all Officers;

29.3.2 all Members involved in any relevant decision (at executive or scrutiny level) relating to a Disposal, Contract or Property Agreement;

29.3.3 All Consultants / interim members of staff

This should be done by those persons completing a Declaration of Interest.

29.4 Members are required to comply with the Members' Code of Conduct. Officers are required to comply with the Staff Code of Conduct.

29.5 Any Officer to whom an interest is declared has a duty to examine that declaration in the context of the Contract, Disposal or Property Agreement in question. The Officer must decide whether the interest declared would affect (or would appear to affect) the relevant person's ability to represent the Council's sole interest if they (in each case) participate in or carry out any action or make any decision in the Disposal or procurement process for a Contract or the management of the relevant Contract or Property Agreement.

29.6 A person who is considered to have a Conflict of Interest will be precluded from (in each case) participating in or taking any action and/or making any decision in relation to the relevant Contract, Disposal or Property Agreement until the Conflict of Interest no longer exists.

Please see the Council's Intranet for the most current version of the Declaration of Interest Form

CSO 30. ACCEPTANCE OF GIFTS AND HOSPITALITY

30.1 Acceptance of gifts, money, hospitality and other inducements by any Officer or Member involved in a Disposal and/or the procurement of a Contract and/or the management of and/or any decision relating to a Contract or Property Agreement could be viewed as accepting a bribe or corrupt practice. The general rule is that

no gift, money, hospitality or other inducement should be accepted by Officers or Members. All Officers and Members must comply with the Council's rules on the receipt and registration of gifts, money, hospitality and other inducements set out in the Staff Code of Conduct and in the Members' Code of Conduct.

- 30.2 Any Officer or Member involved in a Disposal or the procurement process for a Contract should be particularly sensitive to their involvement in that Disposal or procurement process where a person or organisation that has offered or given them a gift, money, hospitality or other inducement is involved in that Disposal or procurement or may submit a Bid for that Contract or Property Agreement in the future.
- 30.3 All offers of gifts, money, hospitality or other inducement should be reported in accordance with the Staff Code of Conduct or the Members' Code of Conduct (as appropriate).

CSO 31. UNAUTHORISED DISCLOSURE OF INFORMATION

- 31.1 No Officer or Member is permitted to disclose to any internal or external party any information they have obtained which may reasonably be considered to be capable of influencing the outcome of the award of a Contract or a Disposal.
- 31.2 No Officer or Member is permitted to disclose to any internal or external party any information that may be regarded as commercial confidential. This includes but is not limited to the pricing methodology of a current contract.

CSO 32. INTERNAL ADMINISTRATIVE MATTERS FOLLOWING AWARD OF CONTRACT

- 32.1 Following the entering into of any Contract, each Responsible Officer shall be responsible for:
- recording details of the Contract on the Existing Contracts Register; and
 - arranging for the archiving of the original signed Contract by Legal Services (Responsible Officers are to retain an electronic local copy of the signed Contract),
 - Where a Contract is over the relevant UK Procurement threshold, prepare a Regulation 84 report

APPENDIX 1 - DEFINITIONS

In these Contract Standing Orders, the following capitalised terms shall have the following meanings:

“Accredited Provider Register(s)” means the Council’s register(s) of individuals and organisations that have been appointed from time to time by the Council in accordance with these CSOs to provide relevant works, services and/or goods.

“Asset Management Plan” means the Council’s plan containing details relating to the Council’s Assets.

“Assistant Director” means the deputy to an appointed Director.

“Authorisation” means the approval given by the appropriate Authorising Body before Contracts or Property Agreements may be entered into (and “Authority” and any other derivatives shall be construed accordingly).

“Authorising Body” means a body or individual acting under properly delegated authority with power, up to the relevant Authorisation Threshold, to Authorise the award of a Contract or entering into of a Property Agreements on behalf of the Council.

“Authorisation Threshold” means the threshold referred to as such in Appendix 4 (Council Thresholds and Authorisation Thresholds), as the same may be amended from time to time pursuant to CSO 2 (Amendment of Contract Standing Orders)

“Award Criteria” means the criteria, including sub-criteria, determined by the Council upon which the evaluation of tenders and quotes is based.

“Bid” means an offer submitted in response to an Invitation to Tender and/or an RfQ and/or in relation to the Disposal of a Council Asset.

“Bidder” means an individual or organisation that may or has submitted a Bid, including in each case a Consultant.

“Cabinet” means the body of Members responsible for making most of the executive decisions of the Council and which may delegate such decision-making responsibility to relevant Officers.

“Call-off Contract” means an agreement entered into pursuant to a Framework Agreement pursuant to which the Provider is required to provide goods, services or works.

“Call-In Period” means the period of ten (10) days following the date on which a Key Decision is made and during which time such decision may be called-in for reconsideration by Cabinet.

“Chair of Scrutiny” means the chair person of the Council’s Overview and Scrutiny Commission.

“Chief Executive” means the most senior Officer of the Council.

“Code of Practice – Disposal of Property” means the Council’s code of practice on the disposal of property from time to time in place. The current code of practice is set out in the Asset Management Plan.

“Code of Practice on procuring Consultants” means the Council’s code of practice on procuring Consultants from time to time in place. The current code of practice is set out at [Appendix 6](#)

“Commercial Services” means the Council’s Commercial Services team (within Corporate Services) or such other body as has been approved by Cabinet to perform its functions.

“Competitive Dialogue” means the procurement procedure set out in Regulation 30 which may be used in the circumstances set out in that Regulation.

“Competitive Procedure with Negotiation” means the procurement procedure set out in Regulation 29 which may be used in the circumstances set out in that Regulation.

“Concession Contract” means a Contract where the consideration (payment) paid by the Council to the Provider under the Contract includes a right for the Provider to exploit the Contract commercially. This right may be the sole form of income received by the Provider or there may also be a financial payment by the Council.

“Conflict of Interest” means a situation in which a person has multiple interests which could possibly corrupt the motivation of that person. In the context of the Council, this is likely to be a situation where a person’s duty to the Council conflicts with a private interest they have or where a person has a duty to both the Council and to another public or other body and those duties conflict and in all cases includes the appearance of such a conflict.

“Consultant” means an individual or organisation providing specialised skills and expertise that is not available within the Council and who is appointed on a clearly specified and time limited basis to carry out a specific task or to provide specialist or strategic advice and/or other similar services. Consultants do not include temporary staff such as casual and contract staff and interim managers. The term “Consultancy” shall be construed accordingly.

“Contract” means any agreement for the provision of goods, services or works, including agreements with Consultants, Framework Agreements and Concession Contracts but excluding Call-off Contracts. Contract documentation is to include the Invitation to Tender documentation and any clarification questions and answers relevant to that specific bid. Contracts do not include the evaluation documents. These are however to be kept separately in line with the Council’s retention policy.

“Contract Award Notice” means a notice sent by the Council for publication in Find a Tender (OJEU prior to January 2021) confirming the award of a Contract.

“Contract Notice” means a notice sent by the Council for publication in Find a Tender (OJEU prior to January 2021) seeking expressions of interest or inviting Bidders to submit a Bid for a Contract.

“Contract Standing Orders” means the rules and requirements relating to Contracts and Property Agreements set out in this document or referred to herein.

“Contracts Finder” means the online database administered by central Government setting out

details of public sector Contracts opportunities and information relating to award of Contracts.

“Corporate Services” means the Council’s corporate services department or such other body as has been approved by Cabinet to perform its functions.

“Council Asset” means assets and/or chattels that are in the Council’s ownership or control, including Property Assets.

“Council Policies” means the policies of the Council from time to time relevant to the Contract or Disposal or as required by these Contract Standing Orders.

“Council Thresholds” means the Lower Threshold and the Upper Threshold.

“CSO” means a Contract Standing Order.

“Declaration of Interest” means the form of declaration of interest as published on the Council’s intranet.

“Director” means the appointed head Officer of a department within the Council.

“Director of Corporate Services” means the Director in charge of Corporate Services or any other Director to whom responsibility for corporate procurement functions is delegated by the Chief Executive

“Disposal” means the divestment of Council ownership in any Council Asset including a sale or other disposition of a Property Asset.

“Dynamic Purchasing System” means an electronic purchasing system for Contracts for works, services and goods commonly available in the market as described in Regulation 34.

“e-Tendering System” means the Council’s electronic procurement system from time to time.

“EIRs” means the Environmental Information Regulations 2004 (SI 2004/3391).

“Electronic Auction” means an online auction for Contracts for works, services and goods as described in Regulation 35.

“Emergency” means a genuinely unforeseen emergency situation which has significant and unforeseen consequences, for example where:

- life, property or equipment are immediately at risk; and/or
- standards of public health, welfare or safety are required to be re-established without delay, such as in the case of disaster relief or an act of terrorism.

“UK / associated Procurement Law” means the PPR 2015, the PPR 2020, and all relevant case law and guidance published by central Government and/or other relevant bodies from time to time.

“UK Procurement Thresholds” means the various thresholds set by Government from time to time in place and used to determine the extent to which UK Procurement Law applies. The current UK Procurement Thresholds relevant to the Council are set out in [Appendix 3 \(UK Procurement](#)

[Thresholds](#)).

“Exemption” an exemption from the requirement to comply with all or part of these Contract Standing Orders.

“Exemption Report” means the report (in the form report set out at [Appendix 2 \(Exemption Report\)](#)) to be completed when an Exemption is requested.

“Existing Contract” means an unexpired Contract entered into by the Council and a Provider for works, services and/or goods.

“Existing Contracts Register” means a list setting out all of the Existing Contracts, as updated from time to time and containing details of the Contract value, Contract Manager, Provider and commencement and expiry dates of the Contract.

“Financial Regulations” means the regulations setting out the financial policies of the Council from time to time in place.

“Find a Tender” means the Governments new e-notification service for publishing public sector procurement notices as of 1 January 2021.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any regulations, guidance and/or codes of practice issued by the Information Commissioner or relevant central Government department from time to time in relation to such legislation.

“Forward Plan” means the Council’s document which sets out the Key Decisions to be taken.

“Framework Agreement” means an over-arching agreement between one or more contracting authorities (which may include the Council) and one or more providers, the purpose of which is to establish the terms governing Call-off Contracts to be awarded during a given period.

“Innovation Partnership” means a Contract having as its aim the development of an innovative product, service or works and the resulting purchase by the Council of such product, service or works as described in Regulation 31.

“Invitation to Tender” means, where a Contract opportunity has been advertised, the document sent by the Council to Bidders inviting them to participate in the procurement procedure for that Contract, together with any other relevant documentation issued with that document or referred to in that document as forming a part of it. For the purpose of these CSOs, an invitation to tender means any document inviting Bids (for example, an invitation to negotiate or invitation to participate in dialogue) but excluding an RfQ and (for the avoidance of doubt) a SQ.

“Key Decision” means a decision made by Cabinet or a decision made under delegation to a Member or a Director that falls into one of the following categories:

- Type (a) - incurring expenditure or making savings which are significant having regard to the budget for the service or function to which the decision relates;
- Type (b) - significant in terms of its effects on communities and groups of service users living or working in an area comprising one or more wards or electoral divisions in the Council;
- Type (c) - amending the agreed budget and policy framework;
- Type (d) - expenditure of £500,000 or more.

“Key Decision Contract” means a Contract proposed to be awarded where the decision to award the Contract will be a Key Decision.

“Laws” means any relevant law, statute, subordinate legislation, bye-law, enforceable right, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, directive or requirement of any regulatory body as it is in each case in force from time to time, taking account of any amendment, extension or re-enactment.

“Leader” means the Member elected as leader of the Council.

“Legal Services” means the Council’s legal services department or such other body as has been approved by Cabinet to perform its functions. *also see “South London Legal Partnership (SLLP)”

“Light Touch Regime” means the regime described at Section 7 of the PCR 2016 to apply to those social and other specific services set out at schedule 3 to the PCR 2016.

“Lots” means small related Contracts that may be entered into with the same or a number of separate Providers following the division of a larger Contract into smaller but related parts.

“Lower Threshold” means the sum set out in Appendix 4 (Council Thresholds and Authorisation Thresholds) as being the lower threshold, as the same may be amended from time to time pursuant to CSO 2 (Amendment of Contract Standing Orders).

“Member” means an elected member of the Council.

“Members’ Code of Conduct” means the Council’s code of conduct from time to time applying to Members. The current code of conduct is set on the intranet.

“Monitoring Officer” means the Officer appointed by Council under s5 Local Government and Housing Act 1989 responsible for reporting to the Council where it appears to that person that the Council has done, or is about to do, something which would contravene the Law or which would constitute maladministration.

“Officer” means an employee or officer of the Council or any temporary staff (such as casual and contract staff and interim managers) or Consultant in each case appointed by the Council to carry out procurement or associated activities in relation to any Disposal, Contract or Property Agreement (including the Responsible Officer and any Director).

“OJEU” means the Official Journal of the European Union.

“Open Procedure” means the single stage procurement procedure to be conducted in accordance with Regulation 27.

“Options Appraisals” means a formal and documented analysis of the possible ways the Council may structure a procurement in order to obtain best Value for Money.

“Overview and Scrutiny Commission” means the body of the Council responsible for (inter alia) monitoring Council decisions.

“PCR 2015” means the 2015 Public Contract Regulations (SI 2015/102) as amended from time to time. **Please also see PPR2020“PIN (Prior Information Notice)”** means a notice published by the Council (in the OJEU (prior to January 2021) and/or on Find a Tender and/or on the Council’s website) which is used as a mechanism for notifying potential Bidders of the Council’s likely future requirements for goods, services and/or works and which may (in certain circumstances

permitted by the PCR 2015) be used as a call for competition for a Contract opportunity .

“PPR2020” means *The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 as amended from time to time.*

“Procurement Board” means *the body within the Council with responsibility (inter alia) for overseeing Contract procurement activities.*

“Procurement, Governance and Gateway Process” means *the Council’s processes and procedures for conducting, monitoring and reviewing its procurement activities as set out in the Procurement Toolkit.*

“Procurement Toolkit” means *the guidance, information, templates, tools and techniques to assist Officers in carrying out a procurement process for a Contract as set out on the Commercial Services’ intranet pages as amended from time to time.*

“Property Agreement” means *an agreement relating to land and/or buildings, including a purchase or sale agreement, where the Council is seeking a capital receipt or benefit (i.e. nominations)..*

“Property Asset” means *any interest in land or property in the ownership or control the Council.*

“Provider” means *any organisation or individual providing goods, works or services (including under a Concession Contract) to the Council, which may include a Consultant.*

“Restricted Procedure” means *the two-stage procurement procedure to be conducted in accordance with Regulation 28 where the second stage is restricted to those Bidders who have pass the previous SQ stage.*

“Regulation” means, *unless stated otherwise, a regulation of the PCR 2015 in conjunction with the PPR2020.*

“Regulation 84 Report” means *the report required under the Public Contracts Regulation 2015 for any procurement above the Public Procurement Thresholds (previously referred to as the thresholds above which a notice would be required to be published in the Official Journal of the European Union (OJEU)).*

“Responsible Officer” means *any Officer properly authorised under the Scheme of Management to carry out any of the Council’s functions in connection with a Disposal, Contract or Property Agreement entered (or proposed to be entered) into by the Council.*

“RfQ (Request for Quotation)” means *where a Contract opportunity has not been advertised (as permitted by these CSOs), the document issued to Bidders inviting them to submit a Bid, together with any other relevant documentation issued with that document or referred to in it as being part of it.*

“Selection Criteria” means *the criteria, including sub-criteria, determined by the Council upon which the assessment of responses to SQs and Suitability Questions is based.*

“Scheme of Management” means *the management arrangements for a department setting out the delegated authority of Officers within that department.*

“Section 151 Officer” means the Officer responsible for the proper administration of the Council’s affairs appointed under Section 151 of the Local Government Act 1972, being the Director of Corporate Services or any other Director to whom such responsibility is delegated by the Chief Executive from time to time.

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

“Social Value Toolkit” means the guidance and information to assist Officers in securing Social Value through a procurement as set out on the Commercial Services’ intranet pages as amended from time to time.

“South London Legal Partnership (SLLP)” means the Council’s legal services

“Specification” means the document setting out the Council’s requirements for the Contract to be procured.

“SQ (Standard Selection Questionnaire)” means a set of questions to be completed by Bidders to assess their suitability to be invited to the next stage of a procurement process for a Contract.

“SQ Threshold” means the various thresholds from time to time used to determine the extent to which the Council is permitted by UK Procurement Law to use a SQ. The current SQ Thresholds are set out in [Appendix 3](#).

“Staff Code of Conduct” means the Council’s code of professional conduct from time to time applying to Officers. The current code of professional conduct is set out on the Merton Hub

“Standstill Period” means the mandatory standstill period as described in Regulation 87 that must be observed between notifying Bidders of the Council’s intention to award a Contract and confirming the award of that Contract.

“Suitability Question” means in a procurement procedure that is below the SQ Threshold a question relating to information or evidence which the Council requires for the purpose of assessing whether Bidders meet requirements or minimum standards of suitability, capability, legal status or financial standing.

“Tender Documents” means all documents relating to the procurement process for a Contract including (as relevant) the PIN, Contract Notice, Specification, Invitation to Tender, Terms and Conditions and any other relevant documents.

“Terms and Conditions” means the actual or proposed terms and conditions of a Contract.

“Transparency Agenda” means any requirement placed on the Council or any Government policy, guidelines, codes of practice and the like relating to transparency in procurement and public contracts.

“Treaty Principles” means the principles of:

- 13.1.1 non-discrimination – which requires the Council to not discriminate against or in favour of certain Bidders or Providers;

- 13.1.2 *equality – which requires the Council to treat all Bidders and Providers equally and give them all the same opportunities;*
- 13.1.3 *transparency – which requires the Council to be transparent in terms of the process followed and its decision making;*
- 13.1.4 *proportionality – which requires the Council to be proportionate and not require Bidders or Providers to comply with unnecessary requests or requirements;*
- 13.1.5 *mutual recognition- which requires the Council to allow for mutual recognition of diplomas, certifications and other evidence of formal qualifications.*

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

“Upper Threshold” means the sum set out in Appendix 4 as being the upper threshold, as the same may be amended from time to time pursuant to CSO 2 (Amendment of Contract Standing Orders).

“Value for Money” means the optimum combination of whole life cost and quality (or fitness for purpose) to meet the Council’s requirements.

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

“Voluntary Transparency Notice” means a notice to be published on Find a Tender (or in the OJEU prior to January 2021) setting out (inter alia) the Council’s justification for its decision to award a Contract without prior publication of a Contract Notice.

“Written” to also include receipt by email.

“Whistleblowing Procedures” means the Council’s whistleblowing procedure from time to time in place. The Council’s current whistleblowing procedure can be found on the intranet.

APPENDIX 2 - EXEMPTIONS FROM CONTRACT STANDING ORDERS

- A. Where an exemption is requested, an Exemption Report must first be reviewed by the relevant Category Manager, the relevant Service Financial Adviser (SFA) and the Council's Legal Services (the South London Legal Partnership (SLLP)), all for comment and sign-off. The report is then to be submitted to the Head of Commercial Services (for review and approval) prior to it being submitted to the Chief Executive or the Director of Corporate Services (as relevant) and must include:
- the Contract Standing Order number from which the exemption is requested
 - the reasons for requesting the exemption
 - the alternatives available if the exemption is not granted
 - total value of the exemption being requested
 - any potential legal implications associated with the exemption request
 - the financial implications of the exemption request

No Exemption may be retrospective.

No Exemption shall be presumed as permitted, nor deemed to take effect, until the Exemption Report has been signed as agreed by the Director Corporate Services (or in their absence, their nominated deputy), or the Chief Executive where the request is from the Corporate Services Department.

[In exceptional circumstances - if the Director of Corporate Services and/or the Chief Executive are not able to grant an exemption - any two (2) Officers selected from the Deputy Section 151 Officer, the Monitoring Officer or any of the Council's remaining Directors may, acting jointly, consider and where appropriate, grant an exemption. Directors may not sign off an exemption report for their own department.]

- B. A non-exhaustive list of reasons for seeking an Exemption is set out below and may be referred to in the Exemption Report (by reference to this Appendix 2 and the relevant paragraph below):
- a) that only one Provider is able to perform the Contract for technical or artistic reasons or because of exclusive rights, for example, the commissioning or purchase of works of art, museum artefacts, manuscripts or archive collection items;
 - b) that time limits required for carrying out a procurement for a Contract in accordance with these CSOs cannot be met for reasons of extreme urgency (for example, in an Emergency or for Contracts where the terms of a court order set a time limit which specifically precludes all or part of the procurement process for the Contract) which were unforeseen and un-attributable to the Council;
 - c) where the Council would risk losing the opportunity of entering into a Contract or Property Agreement and reasonably considers that there is no other viable alternative to the proposed Contract or Property Agreement;
 - d) that additional goods, works and/or services are required which, through unforeseen circumstances, were not included in the original Contract and which either are strictly necessary for the completion of the Contract or, for technical or economic reasons, cannot be carried out separately without disproportionate difficulty;
 - e) that goods are required as a partial replacement for or addition to existing goods or installations and obtaining them from another Provider would result in

- incompatibility or disproportionate technical difficulties in operation or maintenance;
- f) the proposed Contract is an extension to or variation of the scope of an existing Contract and demonstrates value for money;
 - g) when a grant from a public body includes a recommendation as to the Provider or is time limited;
 - h) in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity where the Council has agreed to collaborate with another public body and is satisfied that the contracting arrangements of the lead body (where different from the Council) do not contravene the Council's legal responsibilities in this respect;
 - i) if there are exceptional circumstances not previously identified or covered by existing policies, procedures or these CSOs.

EXEMPTION REPORT

[Please ensure that you have read [CSO 7 \(Seeking an Exemption from Contract Standing Orders\)](#) and Appendix 2 (Exemptions from Contract Standing Orders) prior to completing this form]

Director of Corporate Services Decision <i>(Chief Executive if a Corporate Services decision)</i>	Approved / Not Approved	Signature	Date

SUBJECT: _____

LEAD OFFICER: _____

LEAD MEMBER: _____

KEY DECISION REFERENCE No.: _____

RECOMMENDATION:

[Please include: the specific CSO are you asking exemption from? What the contract is for? Why are you seeking an exemption? Total value of exemption and total contract value if different? Total term? Note any other exemption previously granted in relation to this request]

Head of Commercial Services Recommendation	Approve / Not Approve	Signature	Date

1. EXECUTIVE SUMMARY AND PURPOSE OF REPORT

[Why is this request to exclude the application of the Council’s Contract Standing Orders to the process of awarding this contract being made and what is the business case to support this request? Please provide all relevant detail.]

[Please refer to the Council’s Contract Standing Orders which form part of the Council’s Constitution and are published on the Council’s website under Council and democracy / Decision-making]

2. DETAILS

Background Information

[Please include: Description of contract is the contract for goods / works / services? Current supplier, proposed contract period, Total value (including licenses etc.).]

Current Supplier(s) (if applicable):

Proposed Contract period:

Total Contract Value:

Previous exemption granted [number of months and Value]:

3. ALTERNATIVE OPTIONS

[Please describe what alternative options to an exemption have been considered, for example: • do nothing; • or undertaking a compliant procurement exercise. Why have these option not been recommended?]

4. FINANCIAL IMPLICATIONS

[Please provide a breakdown of cost by financial year. Please describe how costs will be controlled over the duration of the contract. Please ask Finance to run a credit check and include a summary of the findings here Please ensure that the relevant Service Financial Adviser(s) (FSA) has reviewed and provided comment]

5. BUDGET SIGN OFF

Name of Budget Holder	Budget Approved / Not Approved	Signature	Date

6. PROCUREMENT IMPLICATIONS

[Please describe how: value for money will be achieved over the duration of the contract, including contract management; social value will be considered; any potential breach of PCR2015. Please include comments from a member of Commercial Services]

7. LEGAL IMPLICATIONS AND STATUTORY PROVISION

[Is there a statutory requirement to deliver this provision? Yes / No – Please provide details. Please ensure comments are added from a member of the SLLP]

8. HUMAN RIGHTS AND EQUALITIES IMPLICATIONS

Will this contract impact on the Councils Human Right and Equalities strategic objectives and if so, how (positive and/or negative)?

'Equalities Merton' aims for full and equal access to learning, employment, services and cultural life and the celebration of diversity.

9. CONSULTATION UNDERTAKEN

Please set out which Service Area and Officer have been consulted in the preparation of this report. As a minimum please ensure you have consulted with Commercial Services who will advise if further consultation is required.

Department	Comments	Date	Signed
Commercial Services			
Service Financial Adviser			
Legal			
[Insert details of other departments consulted]			

BACKGROUND PAPERS:

[Please insert details of any relevant reports that may have gone to CMT / Procurement Board etc.]

OFFICER CONTACT DETAILS:

Name:	
Job Title:	
Department:	
Email address:	
Telephone No.:	

APPENDIX 3– UK PROCUREMENT THRESHOLDS

The Crown Commercial Service (CCS) is responsible for the legal framework for public sector procurement and leads on the development and implementation of procurement policies for government.

The over-riding procurement policy requirement is that all public procurement must be based on value for money, defined as “the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought”. This should be achieved through competition, unless there are compelling reasons to the contrary.

Public sector procurement is subject to a legal framework that encourages free and open competition and value for money, in line with internationally and nationally agreed obligations and regulations. As part of its strategy, the government aligns procurement policies with this legal framework, as well as with its wider policy objectives.

Details of the thresholds, applying from **1 January 2020** are given below. (Thresholds are net of VAT).

THE PUBLIC CONTRACTS REGULATION

	Supply, Services ² and Design Contracts	Works Contracts ³	Social and other specific services ⁴
Other contracting authorities (e.g. Local Authorities)	£189,330	£4,733,252	£663,540

SQs may only be used for the award of contracts whose value equals or exceeds specific thresholds:

	Supply, Services ⁷ and Design Contracts	Works Contracts ⁸	Social and other specific services ⁹
Local Authorities	£189,330	£189,330	£189,330

Form.

the exception of the following services which have different thresholds or are exempt:

- Social and other specific services (subject to the light touch regime) Article 74.
- Subsidised services contracts specified under Article 15.
- Research and development services under Article 14 (specified CPV codes are exempt).

³ With the exception of subsidised works contracts specified under Article 13.

⁴ As per Article 74. Services are listed in Annex XIV.

APPENDIX 4 – MERTON THRESHOLDS**Council Thresholds**

Lower Threshold	£25,000
Upper Threshold	£100,000

Advertising of Contracts

CONTRACT VALUE	E-TENDERING SYSTEM	CONTRACTS FINDER	FIND A TENDER
At or above £5,000 but below Lower Threshold	Yes via use of Quick Quotes or Request for Quotes (RfQs)	Not required unless advertised elsewhere	Not required
At or above Lower Threshold but below PCR Threshold	Yes	Not required for call for competition unless advertised elsewhere. Is required for contract award	Not required
Above PCR Thresholds	Yes	Yes	Yes

APPENDIX 5 - RETENTION PERIODS FOR CONTRACT DOCUMENTS

The Council has a legal obligation to keep information for only as long as it is needed. There are costs and legal risks associated with keeping information that we no longer need.

The Council has a number of policies and procedures that must be followed by all staff, including the Retention and Disposal Policy. This policy applies to all records held by the council including electronic files, video, microfiche, paper files and photographs.

Please see the table below as a guide:

Transaction	Retention period
Contract under seal (Deed)	Twelve (12) years after expiry of Contract
Contract under hand / electronic signature	Six (6) years after expiry of Contract
Property Agreements – sales (other than right to buy)	Six (6) years
Property Agreements – right to buy	Twelve (12) years
Property Agreements – purchases	Twelve (12) years
Property Agreements – leases	Twelve (12) years from expiry of the lease
Property Agreements – licences	Six (6) years from expiry of lease
Property Agreements - compulsory purchase order	Property Agreements - indefinitely Correspondence – fifteen (15) years after completion of last transaction including settling the value

For further information, please visit Records management (Merton Hub) or speak to the Information Governance team (data.protection@merton.gov.uk)

APPENDIX 6 CODE OF PRACTICE FOR THE APPOINTMENT OF CONSULTANTS**Key Considerations**

- Value for Money must be demonstrated prior to engaging a consultant. External consultants are expensive and as such the requirement to engage with a consultant must be approved by the relevant departmental Director.
- The Councils Standing Orders are applicable to the appointment of Consultants,
- The appointment of a Consultant follows the same procedures as all other procurements.
- The Procurement Toolkit contains the Council's procurement procedures and standard templates.

What is a Consultant?

1. For the purposes of this procedure, an external consultant is someone who:
 - offers specialist skills and expertise not available in-house,
 - has a clearly specified and time-limited role that is not 'business as usual'
 - is not appointed to cover a vacant position within the Council.
2. Consultants generally work on specialist, strategic or advisory projects to a clearly defined brief with set deliverables and milestones
3. Temporary staff, including casual and contract staff and interim managers, are not consultants. There is a separate procedure for employing temporary staff as set out on the HR pages of the intranet

Process to follow in appointing a consultant.

The appointment of an external consultant is no different to that used in appointing any other supplier.

Business Case

As with any requirement, a business case should be completed and approved prior to engaging the market. It is expected that for the appointment of most consultants, the need to retain such specialist skills and expertise would have been highlighted in the initial project business case.

The advice & guidance on the development of a business case is set out in the Merton Approach to Projects on the Council's intranet.

Market Engagement

The advice & guidance on market engagement is set out in the Procurement Toolkit

In accordance with these CSOs all correspondence inviting quotations and any formal market engagement must be carried out utilising the Council's e-tendering system.

The bid documents

Templates and guidance for developing the Invitation documents e.g. Specification; ITT; Contract terms are contained in the procurement toolkit. Please seek advice and guidance from Commercial Services

Terms and Conditions

It should be noted that the appointment of consultants require specific terms and conditions as set out in the Council's T&Cs for consultants. Legal advice will be required concerning which template should be used based on the nature of the consultancy to be provided. Any conditions relating to performance management and performance related payments must also be included. Insurance levels to be determined by the Council's Insurance Officer.

Advice must be sought from HR regarding the revised IR35 legislation and whether or not it will be applicable, depending on the employment status of the Consultant and/or whether or not they operate a Personal Service Company (PSC).

Recording on the Contracts Register

As with any contract over £5,000, contracts for consultants must be recorded on the corporate Contrast Register at the completion of the procurement.

THIS FORM IS TO BE COMPLETED POST APPOINTMENT OF A CONSULTANT, BE THEY AN INDIVIDUAL OR PART OF A FIRM.

Please email the fully completed and signed form to: temporaryworker@merton.gov.uk

RESPONSIBLE OFFICER

Name:		Tel Ext:
Department: Choose an item.	Division:	Section/Team:

CONSULTANCY ASSIGNMENT DETAILS

Is the appointment: a new assignment or an extension to an existing assignment
 (please tick as appropriate)

Provider's name:	
Value of assignment including all options: £	
If extension, expiry date of the current assignment:	
If extension, value of services provided to date [£.....] and value of the extension [£.....]	
Start date:	Duration of appointment in weeks:
Appointment location:	Cost code:
Assignment brief / Key deliverables:	

RATIONALE FOR ENGAGEMENT/EXTENSION OF CONSULTANTS

<p>Please give detailed reasons as to why you have engaged consultant or extended the assignment of the existing appointment. The reasons you provide must be explicit, otherwise you will be asked for more justification.</p>

PROCUREMENT PROCESS

London Tenders Portal Reference Number (if applicable):

What procurement process was followed?		
Appointment using a Framework	How many quotations were invited:	Details of Framework (e.g. title, Owner, when it was let?):

	<p>How many quotations were received:</p>	
<p>Appointment following Requests For Quotation (RFQ)</p>	<p>How many quotations were invited:</p> <p>How many quotations were received:</p>	
<p>If only one Quotation was invited then justification for a single quotation process.</p>	<p>Reason for single quotation</p>	
<p>Appointment following Invitations to Tender (ITT):</p>	<p>How many tenders were invited:</p> <p>How many tenders were received:</p>	

APPENDIX 7 – JOINT PROCUREMENT ARRANGEMENTS WITH THIRD PARTIES

Joint procurement arrangements with third parties should be considered if such arrangements would offer the Council best value. Such third parties may include other public authorities and voluntary sector entities, and such arrangements may include membership of or use of purchasing consortia.

Any partnership agreement and/or shared services arrangement must be pre-approved by Procurement Board before being authorised by the Director of Corporate Services or the Chief Executive. At the sole discretion of either the Director of Corporate Services or the Chief Executive, the proposed joint arrangement may be designated as requiring prior consent from Cabinet to proceed.

Any joint procurement arrangements of the type described in Appendix 7 must be approved by the Director of Corporate Services or the Chief Executive prior to the commencement of any procurement or arrangement on behalf of the Council. No such approval may be given unless there has been a satisfactory appraisal of the matters set out below.

In considering any and all such proposals, the Director of Corporate Services and/or the Chief Executive must be satisfied:

- a. that the proposed joint procurement does not breach any UK law, or where the proposed third party is a foreign non-UK national, does not breach the laws of its country of registration if a company or location if a public authority; and
- b. is capable of delivering value for money; and
- c. where an exemption is required to the Council's Contract Standing Orders, (for example because it is necessary as part of the proposed arrangements to use the proposed third party's procurement regime, or because another party will be the lead body), that the proposed third party's governing procedures are sufficiently rigorous and can deliver standards of probity and transparency reasonably comparable to those of the Council's Contract Standing Orders; and
- d. that adequate consideration has been given to whether the proposed third party should indemnify the Council in the event that the third party's methods of operating and ideas may turn out to be unlawful or result in the Council being subjected to challenge, judicial review, or any similar action from any party that may lead to a financial loss for the Council.
- e. That an appropriate Inter-Authority Agreement shall be entered into by the Council and the Third Party(s).

The Director of Corporate Services and/or Chief Executive shall take procurement, legal and financial advice, as they consider necessary.

APPENDIX 8 – PROCEDURE FOR ACCEPTING AND OPENING PAPER BIDS

Where the Responsible Officer, with prior agreement of the Director of Corporate Services or their nominee determines (in accordance with these CSOs), requires that paper Bids may be submitted in relation to the Disposal of a Property Asset or where Bids in relation to Contracts are also required to be submitted in paper format, the procedure set out in this Appendix 8 shall apply. Please see the Procurement Toolkit for the process around receipt of paper bids.

1. Bids must not, under any circumstances, be opened before the deadline (date and time) for receipt of Bids has passed. If a Bid is opened early in error, the Responsible Officer must seek advice immediately from the Head of Commercial Services who will consult with Legal Services.
2. The Responsible Officer must fix a time and date for the opening of Bids received, which must (if relevant) take place after the deadline (date and time) for submission of electronic Bids.
3. No person may be present at the opening of Bids unless that person has been designated as part of the Bid opening process.
4. Only Officers may be present at the opening of the Bid.
5. All Bids received for a particular Contract or Disposal must be opened at the same time and place and in the presence of the same Officers.
6. All Bids must be opened in the presence of at least three (3) Officers.
7. The Officer leading the opening procedure must record the following details for each Bid received:
 - a. the date and time specified as the deadline for receipt of Bids for the particular Disposal or Contract;
 - b. the date and time that each Bid was received;
 - c. the name of each Bidder;
 - d. the amount of each Bid;
 - e. the names of those Officers present.
8. All Officers present at the opening of Bids must sign each Bid immediately after it is opened. All Bids received must be signed:
 - a. on the front page of the Bid; and
 - b. in the pricing schedule (or place where the price is stated).
9. Bids are to be scanned and filed electronically in accordance with the Council's retention policy. A copy of the electronic documentation is to be sent to Commercial Services for reference.

APPENDIX 9 – COMPLYING WITH THE UK’S INTERNATIONAL OBLIGATIONS ON SUBSIDY CONTROL

Following the UK’s exit from the EU on the 31 December 2020, new rules on subsidy control now apply.

EU State aid rules only apply in certain limited circumstances:

- aid that is granted within scope of the Northern Ireland Protocol.
- the disbursement of outstanding Structural Funds payments

This quick guide summarises the key steps public authorities should take when awarding subsidies after 1 January 2021. Public authorities should read this guide in conjunction with the longer, technical BEIS guidance for more detailed background.

<https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities>

1. Step 1: Are you giving a subsidy and if so, what international obligations apply?

In general terms, and for the purposes of our international commitments, a subsidy is a measure which:

- is given by a public authority. This can be at any level – central, devolved, regional or local government or a public body
- makes a contribution (this could be a financial or an in kind contribution) to an enterprise, conferring an economic advantage that is not available on market terms. Examples of a contribution are grants, loans at below market rate, or a loan guarantee at below market rate or allowing a company to use publicly owned office space rent free. An enterprise is anyone who puts goods or services on a market. An enterprise could be a government department or a charity if they are acting commercially
- affects international trade. This can be trade with any World Trade Organisation member or, more specifically, between the UK and a country with whom it has a Free Trade Agreement. For example, if the subsidy is going towards a good which is traded between the UK and the EU this could affect trade between the EU and the UK. Please note that you are not being asked whether the subsidy could harm trade but merely whether there could be some sort of effect. Subsidies to very local companies or a small tourist attraction are unlikely to be caught as this is unlikely to affect international trade.

All of these tests must be met for a measure to be a subsidy.

If the measure meets the definition of a subsidy then you should consider which international obligations need to be met. In particular, you should determine whether the subsidy is going to a good or a service. Subsidies for services are outside the scope of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (ASCM). The WTO ASCM is most likely to be of relevance to subsidies in sensitive sectors such as aerospace, steel or automotive. On the other hand, attention needs to be given to the Free Trade Agreements (FTAs) the UK has agreed including the UK-EU Trade and Cooperation Agreement (TCA). These contain important obligations which must be met, where applicable. Please consult Section 5 of the technical guidance for more information on FTAs.

Public authorities also need to consider the implications of Article 10 of the Northern Ireland Protocol. The Protocol sets out that the EU State aid rules will apply in certain, limited cases where

this is relevant to trade between Northern Ireland and the EU. Please consult Section 7 of the guidance for more information on the Northern Ireland Protocol.

2. Step 2: Is the proposed measure a prohibited subsidy?

The WTO ASCM contains 2 categories of prohibited subsidies, under which subsidies must not be given:

- subsidies dependent on export performance – for example giving a subsidy to a widget manufacturer linked to exporting a certain tonnage of widgets to another country
- subsidies contingent on the use of domestic content – for example stating that the beneficiary must use 50% UK manufactured widgets in their product

These are not new obligations. The UK, as a member of the WTO, has been following the WTO ASCM rules since 1994. Therefore, subsidies for goods should already be designed to be compliant with these obligations.

In addition, several FTAs – including the UK-EU TCA – expand the above prohibitions to cover services and include additional prohibitions. These include giving:

- unlimited State guarantees
- restructuring subsidy if the beneficiary does not have a valid plan in place to return the company to viability

The UK-EU TCA includes some additional conditions for subsidies given to air carriers, energy/environment and large cross border or international projects. These are not prohibitions but conditions which must be met.

3. Step 3: If you are within scope of the UK-EU TCA you must ensure that the subsidy meets the terms of the principles

The UK-EU TCA sets out principles which all subsidies of more than 325,000 Special Drawing Rights (approx. £350,000) given to a single beneficiary over 3 years must meet.

The only exceptions are subsidies to compensate for natural disasters, subsidies for agriculture and subsidies for audio visual. If in scope, you must consider these principles in the design and granting of subsidies on a case-by-case basis. Failure to do so could leave a public authority open to judicial review in the UK.

The principles are that:

- subsidies should pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns (“the objective”)
- subsidies should be proportionate and limited to what is necessary to achieve the objective
- subsidies should be designed to bring about a change of economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided
- subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy
- subsidies should be an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means
- subsidies’ positive contributions to achieving the objective should outweigh any negative effects, in particular the negative effects on trade or investment between the Parties.

It is important to note that all the principles should be met. Public authorities should use the template in the Annex of the guidance to record their consideration of the principles. They may be required to provide this to the UK government if asked as part of the consultation or remedial measures processes in the UK-EU TCA or if they are subject to judicial review in the UK courts.

For the avoidance of doubt, public authorities can still pay out subsidies under previously approved schemes as these will be in line with the principles. This includes subsidies related to COVID-19 that have previously been given under the State aid Temporary Framework. Public authorities should keep these schemes under review and apply the principles to any changes made to these schemes.

4. Step 4: Assess the likelihood of triggering a dispute or unilateral remedies under WTO ASCM rules and other FTAs

This is where consideration needs to be given as to whether the subsidy could harm international trade or investment rather than merely affect it. The bar for WTO action is high, and as noted above is only likely to affect subsidies in sensitive sectors. Subsidies in these sectors may also be relevant under the other FTAs – especially the UK-EU TCA. When thinking about this, in addition to the sector, public authorities should consider:

- value of the subsidy and the intervention rate: very substantial subsidies (e.g., £hundreds of millions) are more likely to attract attention than small subsidies. The same is true for high intervention rates (e.g., 70% of project costs)
- international competitors: how many competitors are there? How easy is it to enter this market internationally? Are there only one or two competitors in the market who are likely to have concerns about any amount of subsidy?
- impact on trade: does this subsidy make it less likely that competitors can enter the UK market? Does it make it more likely that the beneficiary (or beneficiaries) can undercut in other markets? Does it make it more likely that the beneficiaries can win orders in third markets?

Public authorities should take a proportionate view when considering whether a subsidy could trigger action. Small sums to small companies are unlikely to do so. However, public authorities should consult BEIS if required using the email address at the bottom of this guide.

5. Step 5: Record the award of the subsidy

BEIS is developing a transparency database for public authorities to record information on relevant subsidies. This is beneficial not only for providing transparency in a domestic context but will also help deliver compliance with our international reporting requirements. It is therefore very important that subsidies are recorded in a timely way.

If in doubt, public authorities should contact subsidycontrol@beis.gov.uk for further advice

APPENDIX 10 – MERTON PROCUREMENT / DEMOCRATIC GOVERNANCE

Procurement Strategy (Gateway 1) and Contract Award Reports (Gateway 2) for low risk projects, with either a total contract value of £100k (but less than £2m), or Concession Contracts (and Contracts with nil value to the Council) need to be presented to the appropriate Departmental Operational Procurement Group(s).

Procurement Strategy (Gateway 1) and Contract Award Reports (Gateway 2) with a total contract value of £2m (or over) and/or rated high-risk i.e. those procurement projects which have been rated 15 and above, and/or procurement projects with carbon implications/impacts, must be presented to Procurement Board. All Concession Contracts (and Contracts with nil value to the Council) must also be presented to Procurement Board.

[see: <http://intranet/councilwide/policyproceduresandguidance/riskmanagement.htm>]

Must be placed on the Forward Plan at least 1 month prior (but preferably 2-3 months prior) to the required Cabinet decision date - see

<http://intranet/councillorsandcommittees/decisionmakinginmerton/forwardplan.htm>

If the need arises, the decision date on the Forward Plan items can always be pushed back a month or two without too much trouble providing sufficient notice is given to Democratic Services

Also see:

<https://democracy.merton.gov.uk/mgDelegatedDecisions.aspx?XXR=0&&DR=01%2f10%2f2013-07%2f11%2f2028&ACT=Find&RP=0&K=0&V=0&DM=0&HD=0&DS=1&Next=true&NOW=071113145709&META=mgdelegateddecisions>

NB: Please bear in mind, and flag-up any potential exempt appendices to your Award Report when filling in the Forward Plan

- Both the Gateway 1 and Gateway 2 report must go to Procurement Board as soon as practicable - Procurement Board is held once a month.

2.a	Where the Contract Award Report (Gateway 2) is for a contract with a total value (including all possible extension options) of £2m (or over) and/or rated high-risk:
	<ul style="list-style-type: none"> The report must include comments from relevant Finance, Legal and Commercial Services Officers and be approved by Procurement Board Reports are to be approved by the relevant director and then must be signed off by the relevant Cabinet Member(s) May need to go to CMT (unless otherwise agreed by a Director) Must go to the Leader's Strategy Group for review prior to going to Cabinet (unless otherwise agreed by a Director) <p>see: https://mertonintranet.moderngov.co.uk/mgAgendaManagementTimetable.aspx?RP=292; and http://intranet/councilwide/whoswho/cmtlsg.htm</p> <ul style="list-style-type: none"> Must go to Cabinet for approval https://mertonintranet.moderngov.co.uk/mgAgendaManagementTimetable.aspx?RP=146

2.a	Where the Contract Award Report (Gateway 2) is for a contract with a total value (including all possible extension options) of £2m (or over) and/or rated high-risk:
	<ul style="list-style-type: none"> Is subject to post-decision call-in*. Please allow one week for Scrutiny to decide whether or not it would like to call in the award. If they do, this could add an additional 4 -6 weeks to the decision process. You will then need to allow for any additional standstill period required under PCR2015, where applicable, prior to notifying the bidder(s) of the award outcome.

*If you believe that the award may be politically sensitive / of political interest you may opt to offer it up for pre-decision scrutiny.

2.b	The process for Key decisions delegated to Chief Officers (i.e. with a total contract value of between £500k - £1.9m) is:
	<ul style="list-style-type: none"> The Authority to Award report must include comments from relevant Finance, Legal and Commercial Services Officers and be approved by the relevant departmental Operational Procurement Groups Must be placed on the Forward Plan - preferably 2-3 months prior to the required decision date The Report must reviewed by the relevant director before being signed off by the Chief Executive and the Director of Corporate Services (in line with the Scheme of Management) and published 5-days before the decision date. May need to go to CMT (unless otherwise agreed by a Director) A decision form must be completed and published on the decision date. Is subject to post-decision call-in* - see http://intranet/ds-callinform.doc. Please allow one week for Scrutiny to decide whether or not it would like to call in the award. If they do, this could add an additional 4 -6 weeks to the decision process. You will then need to allow for any additional standstill period required under PCR2015, where applicable, prior to notifying the bidder(s) of the award outcome.

2.c	The process for Non-Key Decisions (i.e. with a total contract value of between £250k - £499k) is:
	<ul style="list-style-type: none"> The Authority to Award report must include comments from relevant Finance, Legal and Commercial Services Officers and be approved by the relevant departmental Operational Procurement Groups The Report must be signed off in line with the relevant Departmental Scheme of Management May need to go to CMT (unless otherwise agreed by a Director) Is subject to post-decision call-in* - see http://intranet/ds-callinform.doc. Please allow one week for Scrutiny to decide whether or not it would like to call in the award. If they do, this could add an additional 4 -6 weeks to the decision process. You will then need to allow for any additional standstill period required under PCR2015, where applicable, prior to notifying the bidder(s) of the award outcome. A decision form must be completed and published on the decision date.

APPENDIX 11 – GUIDANCE NOTE ON SEALING CONTRACTS

Under Merton’s constitution, all contracts must be in writing.

A contract can be executed either under signature (also known as a simple contract) or under a deed (also known as under seal).

The types of risk where contracts under £250,000 should be sealed in the areas described above, reflect worst-case scenarios. The table below gives some examples:

Construction	Where defective design or build could become apparent at a later date and the Council would want to be able to sue for losses or costs arising out of this. (For example, where materials used; internal and/or external cladding; fixtures and fittings and structural works lead to injury and/or death arising out of the defects, or where, for example, the loss of premises (e.g. a school) results in alternative accommodation having to be acquired).
Services relating to Children and Vulnerable Adults	Circumstances where, if the services/goods provided under the contract are not adequate; or clauses in the contract that are designed to protect the users of the service/goods are not complied with entirely (or at all); results in allegations of abuse, injury or death. This may not come to light until after the contract has ended. Another potential risk could be data breaches that may not be apparent during the life of the contract.
ICT	System failure/data breaches/losses incurred
Mechanical / Electrical	Where defective design, installation and/or maintenance could become apparent at a later date and the Council would want to be able to sue for losses or costs arising out of this including injury or death arising out of the defects.

Please refer to the Procurement Toolkit on the Merton Hub for additional guidance.

APPENDIX 12 – PROCUREMENT CARDS (P-CARDS)

In certain circumstances, the Council makes use of general Purchase Cards, which are effectively like credit cards and are used to make small purchases in a wide range of situations.

Procurement cards may provide an alternative method to purchasing low value goods or services however the cards must only be used for authorised business expenditure.

Please make a note of the restrictions associated to your Procurement Card. Any attempt to purchase outside of these restrictions will result in the transaction being declined.

Procurement cards are not to be used as a mechanism for avoiding Contract Standing Orders / from following a compliant procurement process.

Please note that any unauthorised expenditure may lead to disciplinary proceedings, and possible dismissal and criminal proceedings.

The use and administration of P-cards is dealt with by Finance - please refer to the Merton Hub for further information on the appropriate use of Procurement Cards.

APPENDIX 13 – PUBLIC SECTOR PROCUREMENT FROM 1 JANUARY 2021

From 1 January 2021, a new e-notification service called Find a Tender went live for the publication and viewing of UK public sector procurement notices. This replaced the requirement to publish notices in the Official Journal of the European Union (OJEU).

The London Borough of Merton manages their procurement notices via the Council's e-Tendering system operated by Proactis. Proactis are classified as an 'eSender' and they have confirmed that they publish notices to **Find a Tender**.

Links to Public Contracts Regulations

<https://www.legislation.gov.uk/uksi/2015/102/contents>

<https://www.legislation.gov.uk/ukdsi/2019/9780111176788/contents>

<https://www.legislation.gov.uk/uksi/2020/1319/contents/made>

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