



Merton Council Constitution

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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
 - 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 Development and Planning Applications Committee and Licensing Sub-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 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 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

09 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 if requested to carry out the following preparatory activity;

- to approve statements specifying: the duties of the officer concerned and 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 level and above.

(iv) Without prejudice to the generality of paragraph (iii) above:

- to agree any termination payment outside of an officer's contractual and statutory entitlement, the value of which is less than £100,000,
- to recommend to full Council any termination payment outside of an officer's contractual and statutory entitlement, the value of which is £100,000 or more, provided that if in the view of the Chief Executive it is more appropriate for the decision to be taken solely by full Council without prior consideration or approval by the Appointments Committee, s/he may choose to put the matter straight to full Council. If the decision in question relates to the Chief Executive him or herself, then the Monitoring Officer shall have the authority to exercise the discretion to refer the matter straight to Council.

(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 Development and 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 Housing and Sustainable Development
- c) All matters relating to the exercise of this committee's functions set out above are delegated to the Director of Housing and Sustainable Development in consultation with the Chair of Development and Planning applications Committee except the following which are reserved to Committee:
- (i) Where a written request is received to the Chair on planning grounds from a Council Member that*:
 1. a particular application should be determined by Committee;
 2. an approved application's conditions are not being followed and therefore should not be discharged;
 - (ii) Where in the view of the Head of Development Management and Building Control material 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 Development 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 Development 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 Historic England, the Environment Agency 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 as an applicant or landowner. This includes all residential and commercial schemes and their amendments but excludes minor works e.g. fence painting, gate moving, boundary wall fixing, drain digging, school window replacing etc.)
- (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 or a Council officer or their partner**or child living with them; or the application relates to land owned by one of those people;
- (xiv) Where officers consider the application should be determined by the Committee*;
- (xv) Where the application relates to major hazardous substances;

d) Advisory Functions

To advise on 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 and specifically:

- (i) to make recommendations as appropriate to the Cabinet and Council on matters relating to the Council's planning policy and guidance, Statement of Community Involvement, Development Plan Documents, Supplementary Planning Documents, Neighbourhood Plans] Local Development Orders; Conservation Area appraisals;

- (ii) To consider and advise the Cabinet and Council on the Inspector's report conducting the Independent Examination of Development Plan Documents of Merton's Local Plan;
- (iii) To advise the Cabinet and Council on the preparation of Development Plans, including those prepared with other Local Planning Authorities, e.g. Joint Waste Development Plan Document ;
- (iv) To advise the Cabinet and Council on other Strategic/London-wide spatial planning and transport planning matters;
- (v) 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 Development Plan;
- (vi) To consider new and emerging legislation and resident or commercial need relevant to the preparation and review of the Merton Development Plan;
- (vii) To consider and advise Cabinet and Council on buildings and structures to be included in the Local List, considering officer recommendations and consultation feedback.

* The Chair of the Committee will develop a protocol for dealing with requests by councillors and officers for matters to be referred to committee in order to ensure the efficient use of the committee's time.

** For these purposes "partner" means spouse, civil partner or person living with someone as though they were their spouse or civil partner.

1.4 Licensing Committee 2003 and Licensing Committee (Miscellaneous)

1.4.1 These committees will consist of the same membership and be scheduled to meet 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
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			
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 Act 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, Civic Pride and Climate 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 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 any 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 the Pension fund's sustainable investment policy and consider the impact of the Environment, Social and Governance on each investment decision
- c) To review and approve the Pension fund's annual statement of accounts and the annual report
- d) The Executive Director of Finance and Digital is authorised to take urgent decisions in relation to the pensions fund and investment strategy on behalf of the Committee, reporting back to the next scheduled meeting of the Pensions Committee on any exercise of these powers.
- e) **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 Local Government Pension Scheme knowledge and skills requirements.

f) **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 non attendance is for a reason approved in advance by the Committee, their membership of the Committee shall automatically cease and the Executive Director of Finance and Digital shall be entitled to appoint replacement members.
- iv. If a non-voting member resigns or is otherwise unable to continue as member, the Executive Director of Finance and Digital shall be entitled to appoint a replacement member.

1.7 Merton Health and Wellbeing Board

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 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

The responsibilities of the Health and Wellbeing Board are to:

2.1 Improve health and wellbeing and narrow the gapes 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 Groups' 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 and ensure partners respond to issues pertinent to the 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's Services
- Member of the Opposition

Under the governing legislation, the Leader of the Council is responsible for nominated 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
- Executive Director Adult Social Care, Integrated Care & Public Health (non-voting)
- Executive Director of Children, Lifelong Learning and Families (non-voting)
- Executive Director Environment, Civic Pride & Climate (non-voting)
- Director of Public Health (non-voting)
- Chief Executive of Merton Voluntary Service Council

- Representative of Healthwatch
- Community Engagement Network representative

(All members have a 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 HWBB Community Sub-Group which 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

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

TERMS OF REFERENCE

1.1 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.

1.2 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.

1.3 The length of time a specific matter / proposal will be scrutinised for will be determined by the Joint Committee or Sub Committee.

1.4 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.

1.5. 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.

1.6 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.

1.7 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.

1.8 The life of the Joint Committee will be for a maximum of four years from its formation in May 2022.

1.9 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.

1.10 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.

1.11 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.

1.12 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.

1.13 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.

JHOSC RULES OF PROCEDURE

1. Membership of Committee and Sub-Committees

- 1.1 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.
- 1.2 Appointments will be reconfirmed annually by each relevant authority.
- 1.3 Individual authorities may change appointees in accordance with the rules for the original nomination.
- 1.4 Individual authorities will be strongly encouraged to nominate substitutes in accordance with local practice.
- 1.5 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.
- 1.6 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.
- 1.7 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.

2. Chairman

- 2.1 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.
- 2.2 The appointments of Chairman and Vice Chairman will be reconfirmed annually.
- 2.3 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.
- 2.4 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.

3. Substitutions

- 3.1 Named substitutes may attend Committee meetings and sub-committee meetings in lieu of nominated members. Continuity of attendance is strongly encouraged.
- 3.2 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.
- 3.3 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.

4. Quorum

- 4.1 The quorum of a meeting of the JHOSC will be the presence of one member from any five of the seven participating constituent areas.
- 4.2 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.

5. Voting

- 5.1 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.
- 5.2 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.

6. JHOSC Role, Powers and Function

- 6.1 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
- 6.2 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.

7. Support

- 7.1 The lead governance and administrative support for the JHOSC will be provided by constituent areas on an annual rotating basis.
- 7.2 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.
- 7.3 Meetings of the JHOSC and its sub-committees will be rotated between participating areas.
- 7.4 The host constituent area for each meeting of the JHOSC will be responsible for arranging appropriate meeting rooms and ensuring that refreshments are available.
- 7.5 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.

8. Meetings

- 8.1 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.
- 8.2 Meetings will not last longer than 3 hours from commencement, unless agreed by majority vote at the meeting.

9. Agenda

- 9.1 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.
- 9.2 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.

10. Local Overview and Scrutiny Committees

- 10.1 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.
- 10.2 The JHOSC or its sub-committees will consider those views in making its conclusions and comments on the proposals outlined or reviews.

10.3 Individual Overview and Scrutiny Committees will make representations to any NHS Body where a consensus at the JHOSC cannot be reached.

11. Representations

11.1 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.

11.2 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.

11.3 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.

11.4 The Chairman of any committee or sub-committee will have the discretion to accept more or late speakers where s/he feels it is appropriate.

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Part 3 –C

RESPONSIBILITY FOR EXECUTIVE FUNCTIONS

1. RESPONSIBILITY FOR EXECUTIVE FUNCTIONS

Other than those matters reserved to the Council under Article 4 and Part 3A (Responsibility for Local Choice Functions) and those functions which as a matter of law may not be executive functions, all other remaining functions are allocated as executive functions.

1.1 Cabinet

- (a) **Membership:** The Leader will appoint between 1 and 9 councillors to the Cabinet, from among whose number shall be appointed a Deputy Leader(s). The cabinet portfolios are set out in part 3-D.
- (b) In accordance with section 9E of the Local Government Act 2000, the Leader has responsibility for deciding how and by whom executive functions should be discharged.
- (c) The Leader has delegated all executive functions to the Cabinet; and the Cabinet will:
- (i) take all necessary action to ensure that the Council's net revenue and capital expenditure is targeted to be at, or below, approved levels at the end of each financial year;
 - (ii) with respect to each Council service:
 - consider standards of services and service delivery;
 - review and monitor services, using measures of performance and setting targets;
 - make changes in service delivery, in the light of comparative performance data;
 - take account of the recommendations of best value and other reviews, together with other Overview and Scrutiny recommendations.
- (d) The Leader has also delegated some executive functions to officers in accordance with the scheme of delegation set out in part 7. Apart from those functions listed in paragraph (g) below, either the Cabinet or officers may exercise the functions listed in the scheme of delegation to officers.
- (e) Nothing in this part, 3-C shall prevent the Leader exercising any executive function him or herself.

(f) Subject to paragraph 4 below, the Leader has decided that the following functions shall only be exercised by the Cabinet may not be exercised by officers:

(g) Functions Reserved to the Cabinet

- (i) Proposing to the Council a strategic policy framework, and the individual strategies making up that framework;
- (ii) Identifying priorities, and recommend them to the Council;
- (iii) Proposing the Council's budget, and recommend it to the Council, including the level of Council Tax;
- (iv) Leading on the political direction of the Council as a whole, and relevant areas of responsibility in particular, within the guidelines and policies approved by the Council;
- (v) Considering major policy changes, and make appropriate recommendations to Council;
- (vi) approving the acquisition of all land and buildings that have been referred for decision by the Chief Executive;
- (vii) agreeing Compulsory Purchase Orders;
- (viii) agreeing the award of contracts worth £2million or more.

2. Joint Committees

The Cabinet has agreed, pursuant to regulation 9 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 to participate in the following joint committees:

2.1 South London Partnership

Role and Purpose of the Joint Committee:

- (a) To form collaborative South London views on issues affecting economic growth, regeneration and competitiveness
- (b) To undertake activities which promote and improve economic growth and wellbeing in the South London area
- (c) To determine strategic objectives and barriers to growth for the local area and develop solutions
- (d) To take on additional responsibilities and funding delegated from Government where the Committee judges this to be in the area's best interests.
- (e) The aim of the Joint Committee will be collaboration and the Terms of Reference would not prohibit any of the Member Councils from promoting economic wellbeing in their own areas either in addition to, or independently, from the Joint Committee

- (f) The detailed terms of reference are set out in the Joint Committee's constitution

Membership

The Leader is the Council's representative in the South London Partnership.

2.2 South London Waste Partnership Joint Committee

Membership: 2 Councillors from the London Boroughs of Croydon, Kingston, Merton and Sutton (the "participating councils")

Functions: To make arrangements for the disposal of waste, provide places for the deposit and disposal of waste and to advise Participating Councils on the delivery and separation of waste. The detailed functions are set out in Schedule 1 of the constitution of the joint committee operating under the name of the South London Waste Partnership.

3. Delegations to Individual Cabinet Members from the Leader of the Council

The Cabinet Member for Transport shall have delegated authority to approve the making of any order relating to traffic management or car parking.

4. Urgency

- 4.1 Notwithstanding that a decision is reserved for decision by the Cabinet in accordance with 1.1(g) above, a decision may be taken by the Chief Executive or appropriate Executive Director where it is urgent. An urgent decision may only be made where, taking into account the Council's public interests, the Monitoring Officer considers that it cannot reasonably be deferred until the next scheduled meeting of the Cabinet.
- 4.2 Urgent decisions may only be taken after consulting the Leader and the relevant Cabinet Member;
- 4.3 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.

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Leader of the Council – Cllr Ross Garrod

- Chair of Cabinet
- Leader of the Council

Cabinet Member for Children’s Services – Cllr Brenda Fraser

- Covering the full statutory role as Lead Member for Children’s Services
- Ensure the Children’s Trust is fulfilling its partnership role
- Early Help and children’s social care services including disabled children
- Supporting families to stay together wherever appropriate, and promoting security and stability when children do come into our care
- Corporate parenting and ensuring our looked after children succeed
- SEND support and statutory duties related to SEND
- Early years, childcare, and children’s centres
- Strong safeguarding through the Merton Safeguarding Children’s Partnership.
- Youth Justice Service and prevention of youth crime
- Joint responsibility for Merton’s Violence Against Women and Girls (VAWG) Strategy

Cabinet Member for Education and Lifelong Learning – Cllr Sally Kenny

- Leading on education across the life span
- Leading on the planning, development and management of the schools estate
- Ensuring the highest standards in schools when they are inspected by Ofsted and at statutory points of assessment, and minimising the impact of austerity on educational outcomes
- Championing equality of access and outcomes for all pupils including oversight of admissions
- Leading on developments in youth services and engaging young people in the life of the community e.g. Youth Parliament and Young Inspectors
- Leading on preparing young people for transition into adulthood, the world of work, training and further and higher education
- Ensuring the best attendance by all pupils, reducing the need for exclusions and ensuring inclusive practice across all schools and settings
- Oversight of DSG Safety Valve programme (with the Lead Member for Finance and Corporate Services)
- Governor training and support
- Leading on apprenticeships and training.
- Deliver high quality and sustainable adult learning in order to improve the social, economic, health and wellbeing of our residents.

Cabinet Member for Finance and Corporate Services – Cllr Billy Christie

- Leading on the Council’s recovery agenda.
- Leading on performance monitoring and Service Planning.

- Member Lead on the Your Merton, a place-based vision for the borough's recovery from Covid-19
- Responsible for effective communication with residents.
- Leading on the budget, including the development of revenue, capital and debt management strategies
- Responsible for revenues and benefits and the Council's response to the cost of living crisis
- Responsible for corporate finance, IT and audit, human resources, civic and legal services, and risk management
- Driving improvements in council performance and leading budget and finance performance review meetings
- Overseeing scrutiny and the Council's registrars
- Leading on the promotion of the digital agenda
- Leading on the change management agenda with responsibility for driving through value for money and efficiency within the council
- Overseeing the Council procurement strategy
- Monitoring progress of council wide strategic approach to customer services and community support and access.
- Lead member on Emergency Planning

Cabinet Member for Local Environment, Green spaces and Climate Change – Cllr Natasha Irons

- Increasing recycling rates and overseeing the council's waste strategy and street cleaning services
- Ensuring contracts uphold best possible outcomes in effective management of waste and street cleansing.
- Focus on streetscene improvement, including initiatives around HMOs/flats above shops.
- Promoting campaigns against environmental crimes (fly-tipping, litter).
- Leading on parks and use of the borough's greenspaces.
- Ensuring management of contracts for parks and open spaces.
- Encouraging sustainable activity by local community groups in parks and open spaces.
- Responsibility for allotments and cemeteries
- Council lead on the Climate emergency
- Chair of Climate Change Implementation Committee
- Responsible for building links with residents, businesses and community groups to reduce carbon.
- Lead member for flood risk

Cabinet Member for Civic Pride – Cllr Eleanor Stringer

- Leading on efforts to boost trade and the local economy in town centres, supporting small businesses, markets and Business Improvement Districts
- Responsible for effective communication with businesses
- Overseeing the Regulatory Services Partnership
- Leading on trading standards and commercial environmental health

- Working with organisations in the borough's thriving arts and cultural Communities
- Ensuring all equalities strands (sex, race, disability, sexual orientation, gender reassignment, pregnancy/maternity, religion/belief, age, marriage and civil partnerships) are embedded throughout council performance and the impact on these groups of austerity is minimised
- Oversight of the Council's Equality Strategy and Equality Impact Assessments and drawing up an Equalities Charter
- Supporting the Merton Council staff BAME Forum
- Joint responsibility for Merton's Violence Against Women and Girls (VAWG) strategy
- Support and development of the LGBT+ forum
- Support and development of the Faith and Belief Forum
- Overseeing community engagement, including Community Plan, increased participation in local decision making and increasing social capital
- Overseeing the council's community partnerships, including specific focus on the voluntary sector.
- Promoting and rewarding local action and volunteering
- Leading on the management of grants to community groups and decisions of Grants Committee
- Chair of the Merton Compact Board.
- Overseeing voluntary sector organisations applying to become Refugee Community Sponsors
- Reducing the threat of crime and anti-social behaviour in Merton and working closely with Police and Community Safety partnerships
- Leading on a knife crime strategy for the borough
- Point of contact with Borough Command Unit and Deputy Mayor for Crime and Safety
- Overseeing CCTV operations
- Joint responsibility for Merton's Violence Against Women and Girls (VAWG) strategy
- Oversight of the Council's Preventing Violent Extremism strategy
- Support and development of Merton's Armed Forces Community Covenant
- Support for refugees and those seeking sanctuary

Cabinet Member for Housing and Sustainable Development – Cllr Andrew Judge

- Responsible for housing strategy, developing relations with Housing Associations and promoting the needs of tenants and leaseholders.
- Responsible for delivery of environmentally sustainable development through the planning system
- Ensuring delivery of promises by Clarion Housing.
- Overseeing monitoring and enforcement of HMOs and rogue landlords, across Landlord Licensing and Article 4 Directions
- Leading on regeneration and neighbourhood renewal initiatives.
- Responsible for delivering statutory housing function relating the Housing Register and homelessness.
- Responsible homelessness strategy and rough sleeper services

- Responsible for administering the disabled facilities grant
- Housing Enforcement-Private sector disrepair, licensing and enforcement of HMOs
- Responsible for the Shared Lives Service
- Overall responsibility for planning policy.
- Leading on the development of the Local Plan.
- Overseeing major projects in town centres, with an emphasis on greening and sustainability
- Building a vision in conjunction with local residents for the future of our neighbourhoods.
- Overall responsibility for development and building control and spatial policy.
- Lead on asset management,

Cabinet Member for Transport – Cllr Stephen Alambritis

- Overall responsibility for transport planning policy and projects. This to include: Liaison with Transport for London and public transport providers
- Road safety and traffic management and reduction.
- 20mph borough
- Leading on policy for the Council's fleet and SEN transport
- Electric vehicle charging policy and delivery of EV charging infrastructure
- Car clubs and urban micro-mobility
- Increasing the number of step-free-access stations
- Lead member for liaison with Transport for London and strategic transport projects
- Lead member for Air Quality
- Responsible for greater community input into the design and execution of LTNs and provision of cycle hangars
- Lead member for active and sustainable travel, including school streets and cycling
- Parking services and overseeing the council's parking management strategy
- Responsible for attracting external investment into the borough to support overall aims for sustainable transport

Cabinet Member for Health and Social Care – Cllr Peter McCabe

- Leading on tackling inequalities in healthcare delivery across the borough
- Liaising with the NHS on maintaining all services at St Helier Hospital, development of Colliers Wood Surgery and development of a new medical centre in Mitcham
- Lead on Public Health, delivering its statutory duties including the Health and Wellbeing Board, Joint Strategic Needs Assessment, specified public health services, health protection oversight such as Covid-19 and support for the NHS, with focus on health improvement and reducing health inequalities for all ages.
- Chair of Health and Wellbeing Board.
- Ensuring Adult Social Care delivers its statutory duties under the Care Act 2014
- Ensuring the key principles under the Care Act of Prevention, Wellbeing and Independence are embedded in service delivery

- Lead on implementation of the Adult Social Care reforms namely; Integration, Charging and CQC Assurance
- Relationships with the local ICS (integrated care system) at place and the SWL ICS. The Primary Care Network (PCN) and wider health organisations, the voluntary sector while also ensuring that local health services are protected for Merton residents and the most vulnerable.
- Leading on tackling inequalities including tackling health inequality and health delivery across the borough
- Liaising with the NHS on maintaining and strengthening all services at St Helier Hospital, the development of Colliers Wood Surgery and development of a new wellbeing Centre in Mitcham
- Lead on Adult Social care for adults of working age with physical or learning disabilities
- Lead on Adult Social Care for older adults (+65)
- Lead on dementia and mental health services across health and care and keeping services at the Dementia Hub
- Responsibility for driving dementia-friendly policy, and high-quality dementia services in the borough
- Leading on personalised care and support.
- Lead member for addressing food poverty.
- Leading on support for informal carers
- Lead for care markets across a range of service settings, including residential care, nursing care, homecare and day opportunities for adults.

Cabinet Member for Sport and Heritage – Cllr Caroline Cooper-Marbiah

- Maximising the usage of our public libraries as community hubs so that they play an important prevention role for our communities and address inequalities.
- Continue to develop the offer by increasing partnership working and external funding.
- Continue to develop the Heritage & Local Studies Centre and deliver a year round programme of activities to raise awareness of Merton's rich heritage.
- Oversee the implementation of the borough's Heritage Strategy.
- Leading on libraries including maximising use of library buildings
- Overseeing leisure operations and development
- Lead member for promoting active lifestyles by leveraging functions across all council policy areas and collaborating with relevant Cabinet members
- Business opportunities in heritage and tourism
- Developing partnerships with sporting bodies

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SCHEME OF DELEGATION OF POWERS AND FUNCTIONS TO OFFICERS

Approved by Council on 7 July 2021 on the recommendation of the Standards and General Purposes Committee on 28 June 2021 and, insofar as it related to the exercise of executive functions, by the Cabinet on 22 June 2021. On 17 May 2023, Council noted that the Monitoring Officer will use their delegated authority under Article 15.2(b) of the Constitution to make consequential amendments to the Constitution to reflect the new Council structure agreed in September 2022.

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 officer as the Chief Executive may determine for this purpose.

Where an Executive 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, 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 Executive 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 Executive 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 EXECUTIVE DIRECTORS

The Chief Executive and all Executive 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 £500,000 in each case. Contracts between £500,000 and £2million must be agreed by either the S151 Officer or the Chief Executive.
- 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;
 - iv) 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 Executive Director Finance and Digital; 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 Executive 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 Executive Director is responsible for establishing an internal scheme of management for their own department. Under this scheme, Executive Directors may delegate functions allocated to them to other officers. In the Environment, Civic Pride & Climate 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 within the area of specific responsibility of other officers set out in section 8 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 Executive Directors shall be 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 Executive 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 councilors' and officers in their respective roles;
- b) be entitled to 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.

B. EXECUTIVE DIRECTOR OF CHILDREN, LIFELONG LEARNING AND FAMILIES

The Executive 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.
- e) Lifelong learning including further and higher education

C. EXECUTIVE DIRECTOR OF ADULT SOCIAL CARE, INTEGRATED CARE AND PUBLIC HEALTH

The Executive Director of Adult Social Care, Integrated Care and Public Health 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) Acting as Caldicott guardian

D. EXECUTIVE DIRECTOR OF ENVIRONMENT, CIVIC PRIDE AND CLIMATE

The delegated authority of the Executive Director of Environment, Civic Pride and Climate shall relate to the following:

- a) Trees, save for those matters reserved to the Development and Planning Applications Committee pursuant to Section 1.3(c) of Part 3B of the Constitution;
- b) Street scene, including inspection, enforcement and street cleansing services;
- c) Highways, Street Lighting including street trading;
- d) Statutory role of Highways Officer
- e) Transport Planning
- f) Traffic and Parking and Parking Enforcement
- g) Leisure, Parks, Sports, and Cultural Services;
- h) Waste and recycling services;
- i) Crematoria and Cemeteries;
- j) Acting as the Chief Licensing Officer for matters that fall to the council as Licensing Authority;
- k) 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;
- l) Functions in respect of commercial and residential regulatory services, environmental health, trading standards, 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;
- m) Climate Change
- n) Functions of the enforcement authority for purposes of Health and Safety at work;

- o) Community Safety and CCTV;
- p) Emergency Planning: Safer Merton
- q) Passenger transport and fleet management
- r) Libraries and Heritage services

E. EXECUTIVE DIRECTOR OF FINANCE AND DIGITAL

The Executive Director Finance and Digital 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,
- 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;
- e) Deciding upon methods of capital financing;
- f) Writing off irrecoverable debts and charges due to the Council;
- g) Approving the commencement of a new capital schemes not already provided for in the budget up to a value of £50,000;
- h) Agreeing the release and/or the reduction of any Bond and to authorise the service of the notice of release/and reduction;

F. EXECUTIVE DIRECTOR INNOVATION AND CHANGE

- a) Exercising corporate Council functions in relation to Internal Audit

- b) Overseeing the management arrangements for human resources, procurement advice/support, payroll, information governance, legal and electoral services and emergency planning, customer services and facilities management
- c) Exercising the functions of the registering authority pursuant to the Local Land Charges Act 1975
- d) Registration services for purposes of births marriages and deaths including civil partnerships and naming ceremonies
- e) Providing support for elected members of the Council and democratic processes; and
- f) Acting as Senior Information Risk Owner for data protection purposes

G. EXECUTIVE DIRECTOR HOUSING AND SUSTAINABLE DEVELOPMENT

- a) Planning, development and building control and trees, save for those matters reserved to the Development and Planning Applications Committee pursuant to Section 1.3(c) of Part 3B of the Constitution;
- b) Private sector Housing oversight
- c) Housing policy and supply;
- d) Regeneration programmes
- e) Property Services, Asset Management (other than responsibility for the management of Council occupied premises);
- f) Homelessness and regulation of private sector housing
- g) Facilities management of Council owned premises, including safety services

H. 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

I. 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;
- k) to authorise, in consultation with the Chief Executive or the relevant Executive 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)	Executive Director of Finance and Digital
Director of Children’s Services (Section 18 – Children Act 2004)	Executive Director of Children, Lifelong Learning and Families
Director of Adult Social Services (Section 6–Local Authority Social Services Act 1970)	Executive Director of Adult Social Care, Integrated Care and Public Health
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 Democracy Services

*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 Services or Scrutiny Manager 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 Services
Section 115 – The officer to whom money properly due from officers shall be paid	Executive Director Finance and Digital

Section 146 – The officer to make statutory declarations and issue any certificate with regard to securities held by local authority companies	Executive Director Finance and Digital
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 Services / Scrutiny Manager 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 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 Services
To make payments of relevant allowances in accordance with the council’s members allowances scheme	Head of Democracy 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	Executive Director Adult Social Care, Integrated Care and Public Health
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	Executive Director Finance and Digital
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 Executive Director Environment Civic Pride and Climate 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, Lifelong Learning 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 Executive 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 Executive 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)	Executive Director Finance and Digital
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)	Executive Director Finance and Digital

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 Executive Directors
LOCAL GOVERNMENT CONTRACTS ACT	
Certification of relevant powers to enter into contract	The Chief Executive, Monitoring officer, Executive Director Finance and Digital
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 Executive Director Environment Civic Pride and Climate
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

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) 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;
- (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(s) 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.

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 must be submitted to the Chief Executive seven clear working 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 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 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 9am on the day two 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.

(h) 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 two clear working days 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))

(i) Matters referred to Council by the Overview and Scrutiny Commission

(j) Corporate Reports (Best Value Draft Final Reports, Standards Committee, Monitoring Officer etc.) which cover a range of corporate objectives and principles.

(k) Any Notice of Motion

(l) Functions of Full Council and other matters requiring a Council decision.

(m) Presentation of petitions to the Mayor.

(n) 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;

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- (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) debate on the report and consideration of 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 Democracy 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 the relevant 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 with 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 respectively. 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.

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6. MOTIONS ON NOTICE

6.1 Notice

Except for motions that can be moved without notice under Rule 7 below 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 Secunder'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 wordsas 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 matters 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

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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

12.2 Questions on Notice at Full Council

Subject to Rule 12.4, 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.

12.3 Questions on Notice at Committees and Sub-Committees

Subject to Rule 12.4, 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.

12.4 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
- (c) 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.

12.5 Response

An answer may take the form of:

- (a) a written answer circulated to all members of the Council no later than 48 hours before the start 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.

12.6 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.

12.7 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
- 21.4 Any member appointed to a Committee or Sub-Committee, with the exception of its chair may participate in a formal meeting of that body 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 and they shall not be entitled to vote on any matter under consideration.

- 21.5 A member may participate in a meeting of Full Council remotely and shall have the right to ask questions pursuant to Rule 12. Such participation would not amount to attendance at that meeting for the purposes of ascertaining whether the meeting is quorate and they shall not be entitled to vote on any matter under consideration. Members are not permitted to move or second motions or amendments remotely.
- 21.6 A member who is entitled to attend a meeting of a committee, subcommittee 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 21.4 or 21.5 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 21.4 of this standing order does not apply to the Planning Applications Committee or the Licensing Committee or any of its subcommittees.

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	
2. Information which is likely to reveal the identity of any individual	
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	“financial or business affairs” includes contemplated as well as past of current activities;
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.	“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

	<p>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
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.	“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).
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)	

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.

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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 in private session 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 which it is proposed to be held in private 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 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 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 of 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 or 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 – D

CABINET PROCEDURE RULES

1. THE CABINET

1.1 Cabinet Decisions

The arrangements for the discharge of executive functions are as set out in the executive arrangements adopted by the Council and set out in Part 3C and the Scheme of delegation to Officers in Part 3E. These provide for executive functions to be discharged by:

- (a) the Cabinet as a whole;
- (b) a Cabinet committee or sub-committee;
- (c) an individual Cabinet member;
- (d) an officer;
- (e) joint arrangements;
- (f) another local authority.

1.2 Sub-Delegation

- (a) Where the Cabinet, a Cabinet committee or sub-committee, or an individual Cabinet member is responsible for an executive function, they may delegate further but not to a non-cabinet member.
- (b) Unless the Leader directs otherwise, if the Leader delegates functions to the Cabinet, then the Cabinet may delegate further to a Cabinet committee or sub-committee or to an officer.
- (c) Unless the Leader directs otherwise, a Cabinet committee to whom functions have been delegated by the Leader may delegate further to a sub-committee or to an officer.
- (d) Even where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.
- (e) Portfolio descriptions of Cabinet members are set out in Part 3 – D of this Constitution

1.3 Conflicts of Interest

Cabinet members shall act in accordance with the Council's Code of Conduct for Councillors in Part 5 of this Constitution.

1.4 Meetings of the Cabinet

- (a) The Cabinet shall meet according to the dates determined by the Cabinet. As Chair of the Cabinet, the Leader shall, in consultation with the Chief Executive, convene additional meetings, cancel or reschedule meetings, as necessary, to enable the efficient and smooth operation of Cabinet business. Any changes to Cabinet dates which will impact on the Overview & Scrutiny Commission will be agreed in consultation with the Chair of the Commission and the Leader of the Opposition.
- (b) Meetings of the Cabinet will be held in the Civic Centre or another location to be agreed by the Leader. Meetings will begin at 7:15 p.m., unless determined otherwise and shall last no more than three hours.
- (c) Meetings of the Cabinet shall be open to any councillor, the media and the public. If the business under consideration is exempt or confidential as determined under the Access to Information Rules set out in Part 4 of this Constitution, then the meeting will not be open to the media or the public. If in the reasonable opinion of the Leader a councillor who is not a member of the Cabinet requires access to the information under discussion in any part of a meeting during which members of the public have been excluded, that councillor shall be permitted to remain in the Cabinet meeting during that time,
- (d) The Leader or Chair of a Cabinet committee or sub-committee may invite a non-Cabinet Council member to participate in the debate on an item of business but such member will not have any right to vote on the matter.
- (e) Notice of Cabinet, Cabinet committee or sub-committee meetings will be given and the agenda and papers for each meeting will be available in compliance with the Access to Information Rules set out in Part 4 of this Constitution.

1.5 Quorum

The quorum for a meeting of the Cabinet, Cabinet committee or sub-committee shall be three members of the Cabinet, one of whom shall be the Leader or a nominated Cabinet member. For a Cabinet committee or sub-committee meeting, the quorum shall be three councillors or one third of the membership of the relevant Cabinet committee or sub-committee, whichever is the larger.

2. CONDUCT OF CABINET MEETINGS

2.1 Chairing of Cabinet Meetings

If the Leader is present he/she will preside. In his/her absence, then his or her nominee shall preside.

2.3 Conduct of Business

At each meeting of the Cabinet the following business will be conducted:

- (a) apologies for absence;
- (b) declarations of interest, if any;
- (c) consideration of the minutes of the last meeting;
- (d) matters referred to the Cabinet (whether by the Overview and Scrutiny Commission or by the Council) for reconsideration by the Cabinet in accordance with the call-in provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;
- (e) consideration of reports from the Overview and Scrutiny Commission or panels
- (f) other matters set out in the agenda for the meeting,

2.4 Consultation

All reports to the Cabinet from any Cabinet member or an officer on proposals relating to the budget and policy framework must contain details of the nature and extent of consultation with stakeholders and relevant Overview and Scrutiny panels, and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration. So far as possible Cabinet Members will consult with the relevant Overview and Scrutiny panel(s) before responding to consultations by outside bodies.

2.5 Inclusion of Items on the Cabinet Agenda

- (a) There will be a standing item on the agenda of each meeting of the Cabinet for matters referred by the Overview and Scrutiny Commission. In addition to any Best Value reviews, there may be up to 4 items referred for reconsideration by the decision-maker in accordance with the call-in procedures and up to 2 other reports from the Overview and Scrutiny Commission, per Cabinet meeting, unless agreed otherwise by the Leader.
- (b) The Chief Finance Officer and/or the Monitoring Officer may include an item for consideration on the agenda of a Cabinet meeting and may require the Proper Officer to call such a meeting in pursuance of their statutory duties

- (c) Otherwise the agenda for Cabinet meetings will be drawn up by the Chief Executive in consultation with the Leader of the Council.

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 (i) below, the Overview and Scrutiny Commission or Panel may:
 - (i) either 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

- (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 Scrutiny 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

Part 4 – F

FINANCIAL REGULATIONS

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Introduction

Financial Regulations

- 1.1 To conduct its business efficiently, the Council needs to ensure that it has sound financial management policies in place and that they are strictly adhered to. Part of this process is the establishment of financial regulations that set out the financial policies of the Authority. A modern Council should also be committed to worthwhile innovation, within the regulatory framework, providing that the necessary risk assessment and approval safeguards are in place.
- 1.2 The financial regulations provide clarity about the financial accountabilities of individuals - the Head of Paid Service, the Monitoring Officer, the Chief Finance Officer, currently Director of Corporate Services and other chief officers (departmental directors). Each of the financial regulations sets out the overarching financial responsibilities.
- 1.3 This document links financial regulations with other internal regulatory documents forming part of the Council's constitution. For example, contract standing orders, schemes of delegation, the role of Overview and Scrutiny committees and employee codes of conduct.

Financial Procedures

- 1.4 Following formal approval and adoption of the financial regulations, it is the responsibility of the Chief Finance Officer to implement those financial regulations by issuing and maintaining detailed financial procedures.
- 1.5 The financial procedures detail the responsibilities of the Chief Finance Officer and other chief officers (directors) and identify key controls. They carry the same importance as financial regulations and are an integral part of the Council's framework of internal control

Status of Financial Regulations

- 2.1 Financial regulations provide the framework for managing the authority's financial affairs.
 - They apply to every member and officer of the authority and anyone acting on its behalf.
 - They do not apply where the Council has agreed separate constitutional arrangements incorporating different Financial Regulations. This is currently relevant only to schools under "The Merton Scheme for Local Management of Schools"

- They do not apply where work is being undertaken by the Council as agent for another public body under an agreement which requires compliance with different procedures incorporated into the agency agreement.

2.2 The regulations identify the financial responsibilities of the full Council, Cabinet and Overview and Scrutiny members, the Head of Paid Service, the Monitoring Officer, the Chief Finance Officer and other chief officers (directors). Chief officers (directors) should maintain a written record where decision making has been delegated to members of their staff, including seconded and temporary staff.

Where decisions have been delegated or devolved to other responsible officers, such as school governors, references to the chief officer in the regulations should be read as referring to them. (There are separate regulations for schools based on the authority's financial regulations)

2.3 All members and staff have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, is properly authorised, provides value for money and achieves best value.

2.4 The Chief Finance Officer is responsible for maintaining a continuous review of the financial regulations and submitting any additions or changes necessary to the Full Council for approval. The Chief Finance Officer is also responsible for reporting, where appropriate, breaches of the financial regulations to the Monitoring Officer, the Council and/or to the Cabinet members.

2.5 The authority's detailed financial procedures, setting out how the regulations will be implemented, are contained in a separate document known as Financial Procedures. The financial procedures do, none the less, form an integral part of the financial regulations (schools operating under the local scheme of delegation will refer to a separate financial procedures document, "On the right track" referring to the most up to date version at the time.

2.6 Chief Officers (directors) are responsible for ensuring that all staff in their departments are aware of the existence and content of the authority's financial regulations and other internal regulatory documents and that they comply with them. They must also ensure that an adequate number of copies are available for reference within their departments.

2.7 The Chief Finance Officer is responsible for issuing advice and guidance to underpin the financial regulations that members, officers and others acting on behalf of the authority are required to follow.

A: FINANCIAL MANAGEMENT

Introduction

- A.1 Financial management covers all financial accountabilities in relation to the running of the authority, including the policy framework and budget. Where there is any discrepancy or inconsistency between these Financial Regulations and the Constitution, the terms of the constitution will prevail.

The Full Council

- A.2 The Full Council is responsible for adopting the authority's Constitution and Members' Code of Conduct and for approving the policy framework and budget within which the Cabinet operates. It is also responsible for approving and monitoring compliance with the authority's overall framework of accountability and control. The framework is set out in its constitution. The Full Council is also responsible for monitoring compliance with the agreed policy and related Cabinet decisions.
- A.3 The constitution and procedure rules require the recording and reporting of decisions taken. This includes those key decisions delegated by and decisions taken by the Council and its committees. These delegations and details of who has responsibility for which decisions are set out in the Constitution.

The Cabinet

- A.4 The Cabinet is responsible for proposing the policy framework and budget to the Full Council, and for discharging Cabinet functions in accordance with the policy framework and budget.
- A.5 Cabinet decisions can be delegated to a committee of the Cabinet, an individual Cabinet member, an officer or a joint committee.
- A.6 The Cabinet is responsible for establishing protocols to ensure that individual Cabinet members consult with relevant officers before taking a decision within his or her delegated authority. In doing so, the individual member must take account of legal and financial liabilities and risk management issues that may arise from the decision.

Committees of the Council

Overview and Scrutiny Commission and Panels

A.7 The Overview and Scrutiny Commission is responsible for participating in pre-decision policy formulation and for scrutinising Cabinet decisions after they have been made and for holding the Cabinet to account. The Overview and Scrutiny Commission is also responsible for making recommendations on future policy options and for reviewing the general policy and service delivery of the authority.

Standards and General Purposes Committee

A.8 This Committee is established by the Full Council and is responsible for promoting and maintaining high standards of conduct amongst councillors. In particular, it is responsible for advising the Council on the adoption and revision of the Members' Code of Conduct, and for monitoring the operation of the code.

A.9 In addition to the items in A8 the Committee oversees the Constitution (non-executive functions) and makes recommendations to full council; to approve the Statement of Accounts, Internal and External Audit Matters and Corporate Governance and deals with other specific matters related to finance, pension and personnel; and to discharge the functions related to Health and Safety, Elections and as Corporate Trustee where appropriate.

This committee is required to consider and make recommendations as appropriate in relation to the activities set out in the agenda item at that meeting concerned with internal and external audit matters and corporate governance and liaison with the Authority's External Auditors.

Other regulatory committees

A.10 Planning, conservation and licensing are not Cabinet functions but are exercised through the multi-party Planning Applications Committee and the Licensing Committee under powers delegated by the Full Council. The Planning Applications Committee and the Licensing Committee both report to the Full Council.

The statutory officers

Head of Paid Service (Chief Executive)

A.11 The Head of Paid Service is responsible for the corporate and overall strategic management of the authority as a whole. He or she must report to and provide information for the Cabinet, Full Council, the Overview and Scrutiny Commission and other committees. He or she is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation. The Head of Paid Service is also responsible, together with the Monitoring Officer, for the system of record keeping in relation to all Full Council's decisions (see below).

Monitoring Officer

A.12 The Monitoring Officer is responsible for promoting and maintaining high standards of financial conduct and therefore provides support to the Standards Committee. The Monitoring Officer will receive and act on reports made by the Ombudsman and will conduct investigations into such matters and make reports or recommendations in respect of them to the Standards and General Purposes Committee.

A.13 The Monitoring Officer must ensure that Cabinet decisions and the reasons for them are made public. He or she must also ensure that Council members are aware of decisions made by the Cabinet and of those made by officers who have delegated Cabinet responsibility.

A.14 The Monitoring Officer is responsible for advising all councillors and officers about who has authority to take a particular decision.

A.15 The Monitoring Officer is responsible for advising Cabinet or Full Council about whether a decision is likely to be considered contrary or not wholly in accordance with the policy framework.

A.16 The Monitoring Officer (together with the Chief Finance Officer) is responsible for advising the Cabinet or Full Council about whether decision is likely to be considered contrary or not wholly in accordance with the budget. Actions that may be 'contrary to the budget' include:

- initiating a new policy
- committing expenditure in future years to above the budget level
- incurring interdepartmental transfers above virement limits
- causing the total expenditure financed from Council tax, grants and corporately held reserves to increase, or to increase by more than a specified amount.

A.17 The Monitoring Officer is responsible for maintaining an up-to-date Constitution.

Chief Finance Officer

A.18 The Chief Finance Officer has statutory duties in relation to the financial administration and stewardship of the authority. This statutory responsibility cannot be overridden. The statutory duties arise from:

- Section 151 of the Local Government Act 1972
- The Local Government Finance Act 1988
- The Local Government and Housing Act 1989
- The Accounts and Audit Regulations 20011

A.19 The Chief Finance Officer (See "A statement on the role of the Chief Finance Officer in Local Government" (CIPFA 2010)

- Is a key member of the CMT helping it to develop and implement strategy and to resource and deliver the organisation's strategic objectives sustainably and in the public interest
- is actively involved in, and able to bring influence to bear on, all material business decisions to ensure immediate and longer term implications, opportunities and risks are fully considered, and alignment with the organisation's financial strategy
- leads the promotion and delivery by the whole organisation of good financial management so that public money is safeguarded at all times and used appropriately, economically, efficient and effectively
- leads and directs a finance function that is resourced to be fit for purpose
- is professionally qualified and suitably experienced

A.20 **Section 114** of the Local Government Finance Act 1988 requires the Chief Finance Officer to report to the full Council, Cabinet and external auditor if the authority or one of its officers:

- has made, or is about to make, a decision which involves incurring unlawful expenditure
- has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the authority
- is about to make an unlawful entry in the authority's accounts.

Section 114 of the 1988 Act also requires:

- the Chief Finance Officer to nominate a properly qualified member of staff to deputise should he or she be unable to perform the duties under section 114 personally
- the authority to provide the Chief Finance Officer with sufficient staff, accommodation and other resources- including legal advice where

this is necessary -to carry out the duties under section 114.

Chief Officers (Departmental Directors)

A.21 Chief officers (as set out in Article 12.2 of the constitution) are responsible for:

- ensuring that Cabinet members are advised of the financial implications of all proposals and that the financial implications have been agreed by the Chief Finance Officer
- signing contracts on behalf of the authority.

A.22 It is the responsibility of chief officers to consult with the Chief Finance Officer and seek approval on any matter liable to affect the authority's finances materially, before any commitments are incurred.

Other financial accountabilities Virement

A.23 Full Council is responsible for agreeing procedures for virement of expenditure between budget headings.

A.24 Chief officers are responsible for agreeing in-year virements within delegated limits, in consultation with the Chief Finance Officer and in accordance with the scheme of virement. They must notify the Chief Finance Officer of all virements. (This is essential even at the lowest level for accounting purposes and budget monitoring) The scheme of virement is attached at Annex 1 (Revenue) and Annex 2 (Capital).

Treatment of year-end balances

A.25 Full Council is responsible for agreeing procedures for carrying forward under and overspendings on budget headings as part of the scheme of virement.

Accounting policies

A.26 The Chief Finance Officer is responsible for selecting accounting policies and ensuring that they are applied consistently.

Accounting records and returns

A.27 The Chief Finance Officer is responsible for determining the accounting procedures and records for the authority.

The annual statement of accounts

- A.28 The Chief Finance Officer is responsible for ensuring that the Annual Statement of Accounts and the Annual Governance Statement are prepared in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom: The General Purposes Committee is responsible for approving the Annual Statement of Accounts and the Annual Governance Statement.
- A.29 The Chief Finance Officer is responsible for ensuring that the annual statement of accounts and the Annual Governance Statement are prepared in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice (CIPFA/LASAAC). The General Purposes Committee is responsible for approving the Annual Statement of Accounts and the Annual Governance Statement.

B: FINANCIAL PLANNING

Introduction

- B.1 Full Council is responsible for agreeing the authority's policy framework and budget, which will be proposed by the Cabinet. In terms of financial planning, the key elements are:
- the business plan
 - the budget
 - the capital programme.

Policy framework

- B.2 Full Council is responsible for approving the policy framework and budget. The policy framework is set out in article 4 of the Constitution and includes a number of plans and strategies approved or to be approved by the Council.
- B.3 Full Council is also responsible for approving procedures for agreeing variations to approved budgets, plans and strategies forming the policy framework and for determining the circumstances in which a decision will be deemed to be contrary to the budget or policy framework.
- B.4 Full Council is responsible for setting the level at which the Cabinet may reallocate budget funds from one service to another. The Cabinet is responsible for taking in-year decisions on resources and priorities in order to deliver the budget policy framework within the financial limits set by the Council.

Preparation of the business plan

- B.5 The Head of Paid Service is responsible for proposing the business plan to the Cabinet for consideration before its submission to Full Council for approval.

Budgeting Budget format

- B.6 The general format of the budget will be approved by the full Council and proposed by Cabinet on the advice of the Chief Finance Officer. The draft budget should include allocation to different services and projects, proposed taxation levels and contingency funds.

Budget preparation

- B.7 Section 25 of the Local Government Act 2003 requires the Chief Finance Officer to report on the robustness of estimates and the adequacy of

reserves when considering the budget requirement. The revenue budget is prepared on an annual basis and a general revenue plan on a four-yearly basis for consideration by the Cabinet, before submission to Full Council. Full Council may amend the budget or ask the Cabinet to reconsider it before approving it.

- B.8 The Cabinet is responsible for issuing guidance on the general content of the budget in consultation with the Chief Finance Officer as soon as possible following approval by Full Council
- B.9 It is the responsibility of chief officers to ensure that budget estimates reflecting agreed service plans are submitted to the Cabinet and that these estimates are prepared in line with guidance issued by Cabinet.

Budget monitoring and control

- B.10 The Chief Finance Officer is responsible for providing appropriate financial information to enable budgets to be monitored effectively. He or she must monitor and control expenditure against budget allocations and report to Cabinet on the overall position on a regular basis.
- B.11 It is the responsibility of chief officers to control income and expenditure within their area and to monitor performance, taking account of financial information provided by the Chief Finance Officer. They should report on variances within their own areas. They should also take any action necessary to avoid exceeding their budget allocation and alert the Chief Finance Officer to any problems.

Resource allocation

- B.12 The Chief Finance Officer is responsible for developing and maintaining a resource allocation process that ensures due consideration of the full Council's policy framework.

Preparation of the capital programme

- B.13 The Chief Finance Officer is responsible for ensuring that a capital programme is prepared on an annual basis for consideration by Cabinet before submission to Full Council.
- B.14 The Chief Finance Officer is responsible for ensuring that in setting or revising the Capital Programme that prudential indicators are reported to Full Council, having regard to:
- affordability, e.g. implications for Council Tax
 - prudence and sustainability, e.g. implications for external borrowing
 - value for money, e.g. option appraisal
 - stewardship of assets, e.g. asset management planning

- service objectives, e.g. strategic planning for the authority
- practicality, e.g. achievability of the forward plan.

B.15 The Chief Finance Officer is required to establish procedures to monitor performance against all forward looking prudential indicators. The Chief Finance Officer will need to establish a measurement and reporting process that highlights significant deviations from expectations.

Guidelines

B.16 Guidelines on budget preparation are issued to members and chief officers (directors) by Cabinet following agreement with the Chief Finance Officer. The guidelines will take account of:

- legal requirements
- medium-term planning prospects
- the business plan
- available resources
- spending pressures
- best value and other relevant government guidelines
- other internal policy documents
- cross-cutting issues (where relevant). Maintenance of reserves

B.17 It is the responsibility of the Chief Finance Officer to advise the Cabinet and/or Full Council on prudent levels of reserves for the authority.

C: RISK MANAGEMENT AND CONTROL OF RESOURCES

Introduction

- C.1 It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant operational risks to the authority. This should include the proactive participation of all those associated with planning and delivering services.

Risk management

- C.2 Cabinet is responsible for approving the authority's risk management policy statement and strategy and for reviewing the effectiveness of risk management. Cabinet is responsible for ensuring that proper insurance exists where appropriate.
- C.3 The Chief Finance Officer is responsible for preparing the authority's financial risk management policy statement, for promoting it throughout the authority and for advising Cabinet on proper insurance cover where appropriate.

Internal control

- C.4 Internal control refers to the systems of control devised by management to help ensure the authority's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the authority's assets and interests are safeguarded.
- C.5 The Chief Finance Officer is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with the statutory and other authorities that govern their use.
- C.6 It is the responsibility of chief officers to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving their financial performance targets.

Audit requirements

Internal Audit

C.7 The Accounts and Audit Regulations issued and updated by the Secretary of State for the Environment require every local authority to undertake an adequate and effective internal audit. Internal audit of its accounting records is an independent appraisal function established by the management of an organisation. It objectively examines, evaluates and reports on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources.

External Audit

C.8 The Audit Commission is responsible for appointing external auditors to each local authority. The basic duties of the external auditor are governed by section 15 of the Local Government Finance Act 1982, as amended by section 5 of the Audit Commission Act 1998.

C.9 The authority may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenue and Customs, who have statutory rights of access.

Preventing fraud and corruption

C.10 The Chief Finance Officer (in consultation with the Monitoring Officer) is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.

Assets

C.11 Chief Officers should ensure that records and assets are properly maintained and securely held. They should also ensure that contingency plans for the security of assets and continuity of service in the event of disaster or system failure are in place.

Treasury Management

C.12 The authority has adopted CIPFA's Code of Practice for Treasury Management in Local Authorities.

C.13 Full Council is responsible for approving the Treasury Management policy statement, practices and annual strategy in advance of the year setting out the matters detailed in CIPFA's Code of Practice for Treasury Management in Local Authorities. The policy statement is proposed to the full Council by the Cabinet. The Chief Finance Officer has delegated responsibility for implementing and monitoring the statement.

C.14 All money in the hands of the authority is controlled by the officer designated for the purposes of section 151 of the Local Government Act 1972, referred to in the code as the Chief Finance Officer.

C.15 The Chief Finance Officer is responsible for reporting to Cabinet a proposed treasury management strategy for the coming financial year at or before the start of each financial year.

All Cabinet decisions on borrowing, investment or financing shall be delegated to the Chief Finance Officer, (Part 3F Section B of the Constitution, Financial Matters) who is required to act in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities.

C.16 The Chief Finance Officer is responsible for reporting to Cabinet at least once in each financial year on the activities of the treasury management operation and on the exercise of his or her delegated treasury management powers. One such report will comprise an annual report on treasury management for presentation by 30 September of the succeeding financial year.

C.17 The Chief Finance Officer is responsible for Council's overall banking arrangements. All arrangements for opening bank accounts and for the banking and withdrawal of money shall be made or approved by the Chief Finance Officer.

Staffing

C.18 The Head of Paid Service is responsible for determining how officer support for Cabinet and non-Cabinet roles within the authority will be organised.

C.19 The Head of Paid Service will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

C.20 Chief Officers (directors) are responsible for controlling total staff numbers by:

- advising the Cabinet on the budget necessary in any given year to cover estimated staffing levels
- adjusting the staffing to a level that can be funded within approved budget provision, varying the provision as necessary within that constraint in order to meet changing operational needs
- the proper use of appointment procedures.

D: SYSTEMS AND PROCEDURES

Introduction

D.1 Sound systems and procedures are essential to an effective framework of accountability and control.

General

D.2 The Chief Finance Officer is responsible for the operation of the authority's accounting systems, the form of accounts and the supporting financial records. Any changes made by chief officers (directors) to the existing financial systems or the establishment of new systems must be approved by the Chief Finance Officer. However, chief officers (directors) are responsible for the proper operation of financial processes in their own departments.

D.3 Any changes to agreed procedures by chief officers (directors) to meet their own specific service needs should be agreed with the Chief Finance Officer.

D.4 The Chief Finance Officer is responsible for developing and maintaining the Council's detailed financial procedures

D.5 Chief officers (directors) should ensure that their staff receive relevant financial training that has been approved by the Chief Finance Officer.

D.6 Chief officers (directors) must ensure that, where appropriate, computer and other systems are registered in accordance with data protection legislation. Chief Officers (directors) must ensure that staff are aware of their responsibilities under freedom of information legislation.

Income and expenditure

D.7 It is the responsibility of chief officers (directors) to ensure that a proper scheme of management has been established within their area and is operating effectively. The scheme of management should identify staff authorised to act on the chief officer's (director's) behalf, or on behalf of the Cabinet, in respect of payments, income collection and placing orders, together with the limits of their authority. The Chief Finance Officer is responsible for approving procedures for writing off debts as part of the overall control framework of accountability and control.

Payments to employees and members

D.8 The Chief Finance Officer is responsible for all payments of salaries and wages to all staff, including payments for overtime, and for payment of

allowances to members.

Taxation

D.9 The Chief Finance Officer is responsible for advising chief officers, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the authority.

D.10 The Chief Finance Officer is responsible for ensuring that the authority's tax records are maintained, that all tax payments are made, that tax credits are received and tax returns are submitted by their due date as appropriate.

Trading accounts/business units

D.11 It is the responsibility of the Chief Finance Officer to advise on the establishment and operation of trading accounts and business units.

E: EXTERNAL ARRANGEMENTS

Introduction

E.1 The local authority provides a distinctive leadership role for the community and brings together the contributions of the various stakeholders. It must also act to achieve the promotion or improvement of the economic, social or environmental wellbeing of its area.

Partnerships/Joint Ventures/Shared Services

E.2 The Chief Finance Officer is responsible for promoting and maintaining the same high standards of conduct with regard to financial administration in partnerships that apply throughout the authority.

E.3 The Chief Finance Officer must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory.

E.4 The Monitoring Officer must consider the overall corporate governance arrangements and legal issues when arranging contracts/shared service arrangements with external bodies. He or she must ensure that the risks have been fully appraised before agreements are entered into with external bodies.

E.5 Chief Officers are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies.

External funding

E.6 The Chief Finance Officer is responsible for ensuring that all funding notified by external bodies is received and properly recorded in the authority's accounts.

Bibliography – Key Documents

- CIPFA Guidance on Asset Registers and Accounting/Practitioners' Guide to Capital Finance in Local Government/The Prudential Code for Capital Finance in Local Authorities CIPFA
- CIPFA Service Reporting Code of Practice (S_eRCOP)
- Code of Practice on Local Authority Accounting (CIPFA/LASAAC)
- Code of Practice for Internal Audit in Local Government CIPFA
- Public Sector Internal Audit Standards
- CIPFA Treasury Management Code of Practice

1.1 1 Scheme of Virement - Revenue

Financial limits	
Up to £5,000 paper budget head	Budget holder (for Chief Officer) who shall notify the Chief Finance Officer in writing (This is essential even at the lowest level for accounting purposes and budget monitoring)
£5,000 up to £100,000 pa per budget head	Appropriate Chief Officer who shall obtain the agreement of the Chief Finance Officer.
£100,000 and over	Cabinet

NOTES

1. A “service level budget” represents the budget as presented in the relevant Business Plan and a “budget head” is defined by CIPFA’s Service Expenditure Analysis and Standard Subjective Analysis e.g. Employees and Supplies and Services. A revenue virement is required if a Chief Officer requests a transfer of resources:
 - a) From one service level budget to another; and/or
 - b) From revenue budget head and another.
2. Virements may only be made in respect of DIRECT expenditure or income and excludes capital financing charges and asset rental charges. Direct expenditure budgets created from income, purely to manage internal recharges to direct service budgets e.g. photocopying are also excluded
3. Virement from income to expenditure is allowed in exceptional circumstances only where the additional expenditure will generate the income. Windfall income amounts shall not be used to augment spending power.
4. A request for virement must state explicitly whether the transfer is for the duration of the current financial year only, or whether it reflects a permanent change in policy and consequentially will continue and thus form the Base Budget for future years.
5. New expenditure initiatives require the approval of the Chief Finance Officer up to £100,000 or Cabinet, £100,000 and over.
6. The prior approval of the Cabinet is required for any virement, of whatever amount, where it is proposed to vire between budgets managed by different chief officers.

7. Virement that is likely to impact on the level of service activity of another chief officer should be implemented only after agreement with the relevant chief officer.
8. In cases of major unforeseen emergencies where no provisions on exists, the authority for immediate expenditure up to a limit of £100,000 is delegated to the Chief Finance Officer. This will be on the advice of the appropriate chief officer and subject to a report being made to Cabinet as soon as practicable. (This is in accordance with Delegation of Executive Powers).
9. The above virement arrangements do not apply to in year adjustments to budgets that arise due to accounting or technical reasons such as correcting errors, budget restructuring due to internal reorganisation and changes to grant regimes, provided these do not impact on the net budget of the Council.

Treatment of Year End Balances- Revenue

10. Year end balances will be dealt with as part of the closing of accounts arrangements under the guidance of the Chief Finance Officer and following rigorous budget monitoring throughout the year
11. Requests for carry forward of underspends will therefore be considered only in exceptional circumstances. Chief Officers will need to identify the source of the underspend or additional income and to justify why it will be needed in the following year in addition to the annual budget.
12. All internal business unit surpluses shall be retained for the benefit of the authority and their application shall require the approval of Cabinet.

1.2 Scheme of Virement - Capital

Financial limits	
Up to £5,000 paper scheme	Scheme 's responsible officer, who shall notify the Chief Finance Officer in writing (This is essential even at the lowest level for accounting purposes and budget monitoring)
£5,000 up to £100,000 paper scheme	Appropriate Chief Officer who shall obtain agreement of the Chief Finance Officer.
£100,000 and over	Cabinet

NOTES

13. A capital virement is required if the responsible officers identify a need to transfer resources between approved schemes in the capital programme
14. Virements by the Responsible Officer alone will be restricted to similar schemes within his/her management, e.g. Traffic Management Schemes, Traffic Calming schemes. Any uncertainty will be referred to the Chief Officer
15. Any virement affecting schemes of a different nature within a department will be referred to the Chief Officer.
16. Virements by a Chief Officer will be restricted to schemes within his/her departmental management
17. Any virement affecting the schemes of different chief officers will be referred to the Chief Finance Officer.
18. Any virement which diverts resources from a scheme not started, resulting in delay to that scheme, will be reported to Cabinet.
19. Where schemes are funded by ring-fenced or restricted use income, Merton's virement regulations will not over-ride these restrictions

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 (28.06.2021) Full Council
(07.07.2021)

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).

LONDON BOROUGH OF MERTON
CONSTITUTION

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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 Key Decisions	Chief Executive and Director of Corporate Services
Up to £500,000 Non-key Decisions	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 to 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 \(Complying with the UK's International Obligations on Subsidy Control\)](#)

10.8.2A 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:

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- 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;

16.2.2 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;

16.2.3 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;

16.2.4 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;

19.4.3 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 PCR2015, 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:

20.1.1a 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 equal to or greater than £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 equal to or greater than £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 equal to or greater than £2m, 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 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:

28.7.1 Bidders must be advised not to include any markings that would identify them on the outside of their Bid; and

28.7.2 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 Government’s 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	Approved / Not Approved	Signature	Date
<i>(Chief Executive if a Corporate Services decision)</i>			

SUBJECT: _____

LEAD OFFICER: _____

LEAD MEMBER: _____

KEY DECISION REFERENCE No: _____

<p>RECOMMENDATION</p> <p>[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]</p>

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 UNDERTAKE

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 (eg 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 and Design Contracts ⁷	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 Contract 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:	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):

<p>What procurement process was followed?</p>		
<p>Appointment using a framework</p>	<p>How many quotations were invited:</p>	<p>Details of Framework (eg title, owner, when was it let?)</p>
	<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 quotations was invited then justification for a single quotation process</p>	<p>Reason for single quotation</p>	

Appointment following Invitations To Tender (ITT)	How many tenders were invited: How many tenders were received:
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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

1. 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)

	<ul style="list-style-type: none"> • Must go to the Leader's Strategy Group for review prior to going to Cabinet (unless otherwise agreed by a Director) see: https://mertonintranet.moderngov.co.uk/mgAgendaManagementTimetable.aspx?RP=292; and http://intranet/councilwide/whoswho/cmtlsg.htm • Must go to Cabinet for approval https://mertonintranet.moderngov.co.uk/mgAgendaManagementTimetable.aspx?RP=146 • 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.
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*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)

	<ul style="list-style-type: none">• 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.
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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>

Part 4 – H

OFFICER EMPLOYMENT PROCEDURE RULES

Any mandatory standing orders issued in respect of senior appointments will be incorporated into this Constitution, as they become available.

References to Chief Officers and Deputy Chief Officers in these rules shall be construed in accordance with the provisions of section 2 of the Local Government and Housing Act 1989 and shall include both statutory and non-statutory chief officers as defined by that section. A list of all employees falling within the definition of deputy chief officer shall be maintained by the Head of Human Resources. For the purposes of these rules, the Proper Officer shall be the Head of Democracy and Electoral Services. For the avoidance of doubt, the following provisions of these rules do not apply to the appointment of officers on an interim basis.

1. Recruitment and Appointment

(a) Declarations

The Council will draw up a statement requiring any candidate for appointment as an officer to state, in writing, whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council or of the partner of such persons.

Where a candidate has declared such a relationship, any offer of employment shall be subject to approval by the relevant Chief Officer or his/her nominee.

(b) Seeking support for appointment

The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor or officer for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

No councillor or officer will seek support for any person for any appointment with the Council.

2. Recruitment of Chief Executive and Chief Officer

2.1 Where the Council proposes to appoint a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

(a) Draw up a statement specifying:

- (i) the duties of the officer concerned; and
- (ii) any qualifications or qualities to be sought in the person to be appointed

(b) 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; and

(c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.

2.2 For any new appointment where the salary is £100k per annum or more approval should be obtained from Full Council prior to the appointment being made (in practical terms the agreement would be sought at the start of the recruitment process).

3. Appointment of the Chief Executive and the Council's Monitoring Officer

3.1 Full Council will, before an offer of appointment is made, approve the appointment of the Chief Executive and the Monitoring Officer, following the recommendation of such an appointment by the Council's Appointments Committee. That Committee must include at least one member of the Cabinet.

3.2 Full Council may only make or approve the appointments of the Chief Executive and the Monitoring Officer where no material or well-founded objection has been made by any member of the Cabinet (see paragraph 6 below).

4. Appointment of Chief Officers

4.1 The Appointments Committee or Sub-Committee (the appointer) will appoint Chief Officers. That Committee must include at least one member of the Cabinet.

4.2 An offer of employment as a Chief Officer or the Monitoring Officer shall only be made where no material or well-founded objection from any member of the Cabinet has been received (see Para 6 below).

5. Other Appointments

5.1 Appointment of officers at or below deputy chief officer (other than assistants to political groups and an assistant to the Mayor and the Monitoring Officer) is the responsibility of the Head of Paid Service or his/her nominee(s), (the appointer) and may not be made by members. However, appointments of deputy chief officers are subject to the procedure set out in paragraph 6, even though the appointment is being made by officers.

6. Offers of Appointment

6.1 An offer of an appointment to the following posts shall comply with the following provisions of this rule:

a) Chief Executive

b) Executive Director of Adult Social Care integrated care and public health*

c) Executive Director of Children, Lifelong Learning and Families*

- d) Executive Director of Environment, Civic Pride and Climate**
- e) Executive Director of Finance and Digital*
- f) Executive Director of Housing and Sustainable Development**
- g) Executive Director of Innovation and Change**
- h) Director of Public Health*
- i) Deputy Chief Officer (including the post designated as the Council's Monitoring Officer)

*Statutory Chief Officer

**non statutory chief officer

6.2 Such an appointment shall not be made by the appointer until

a) the appointer has notified the Proper Officer of the name of the person to whom the appointer wishes to make the offer and any other particulars which the appointer considers are relevant to the appointment.

b) the Proper Officer has notified every member of the Cabinet of the authority –

i) the name of the person to whom the appointer wishes to make the offer

ii) any other particulars relevant to the appointment; and

iii) the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the Proper Officer; and

c) either –

(i) the Leader, has within the period specified in the notice under subparagraph (b)(iii), notified the Proper Officer that neither he nor any other member of the Cabinet has any objection to the making of the offer; and

(ii) the Proper Officer has notified the appointer that no objection has been received by him within that period from the Leader; or

(iii) The appointer or satisfied that any objection received from the Leader within that period is not material or is not well-founded

6.3 Appointment of an assistant to a political group under section 9 of the Act shall be made in accordance with the wishes of that group.

6.4 No appointment of an assistant to a political group under section 9 of the Local Government and Housing Act 1989 shall be made until the Council has allocated such a post to each of the political groups that qualify for one.

6.5 No post as an assistant to a political group under section 9 of the Local Government and Housing Act 1989 shall be made in respect of any party group which does not qualify for one under that Act.

6.6 Determination and qualification for posts under section 9 of the Local Government and Housing Act 1989 shall be the responsibility of the Monitoring Officer.

6.7 No more than one post as a political assistant shall be allocated to any one political group.

7. Suspension

7.1 The Chief Executive, the Chief Finance Officer and the Monitoring Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months beginning on the day on which the suspension takes effect.

8. Disciplinary Action

8.1 No disciplinary action to dismiss may be taken in respect of the Chief Executive, the Director of Finance and Digital (s151 officer) or the Monitoring Officer except after having taken into account any advice, views or recommendations of a panel, the conclusions of any investigation and any recommendations of the relevant officer i.e as set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

8.2 Involvement of Councillors. Subject to paragraph 8.1 above in the case of the Monitoring Officer, Councillors will not be involved in the disciplinary against any officer at or below Deputy Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct.

9. Dismissal

9.1 Where a committee, sub-committee or officer is discharging on behalf of the Council, the function of the dismissal of an officer designated as the Council's Chief Executive, the Council must approve that dismissal before notice of dismissal is given to him/her.

9.2 Where a committee or a sub-committee if the Council is discharging, on behalf of the Council the function of the dismissal of any officer referred to in paragraph 6.1 (a-f) or the Monitoring Officer at least one member of the Cabinet must be a member of the committee or sub-committee.

9.3 Notice of the dismissal of an officer referred to in paragraph 6.1 must not given by the dismissor until:

(a) the dismissor has notified the Proper Officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal.

(b) the proper officer has notified every member of the Cabinet of:

(i) the name of the person who the dismissor wishes to dismiss

(ii) any other particulars relevant to the dismissal which the dismissor has notified to the Proper Officer; and

iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the proper officer; and

(c) either:

(i) the Leader has, within the period specified in the notice under subparagraph (b) (iii) notified the dismissor that neither he nor any other member of the Cabinet has any objection to the dismissal;

(ii) the Proper Officer has notified the dismissor that no objection was received by him within that period from the Leader; or

(iii) the dismissor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

10. Termination Payments

10.1 Any termination payment outside of an officer's contractual and statutory entitlement, the value of which is less than £100,000 shall require the approval of the Appointments Committee and does not need to be reported elsewhere

10.2 Any termination payment outside of an officer's contractual and statutory entitlement, the value of which is £100,000 or more shall require the approval of the Appointments Committee *and* full Council, provided that if in the view of the Chief Executive it is more appropriate for the decision to be taken solely by full Council without prior consideration or approval by the Appointments Committee, s/he may choose to put the matter straight to full Council. If the decision in question relates to the Chief Executive him or herself, then the Monitoring Officer shall have the authority to exercise the discretion to refer the matter straight to Council.

10.3 As part of its audit role, the Standards and general Purposes Committee shall be entitled to request a report on termination payments which have been paid from time to time but there is no requirement for this Committee to approve such payments.

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5A – Code of Conduct for Members

MERTON COUNCIL CODE OF CONDUCT FOR MEMBERS

Introduction

The Council agreed to adopt this Code, which is largely based on the model code produced by the Local Government Association, at its meeting on 7 July 2021. It came into force on 30 September 2021.

Definitions

For the purposes of this Code of Conduct, a “councillor” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who

- a) is a member of any committee or sub-committee of the authority, or;
- b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

General principles of councillor conduct

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor. In accordance with the public trust placed in councillors they should, on all occasions:

- act with integrity and honesty
- act lawfully
- treat all persons fairly and with respect; and

- lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking their role councillors should:

- impartially exercise their responsibilities in the interests of the local community
- not improperly seek to confer an advantage, or disadvantage, on any person
- avoid conflicts of interest
- exercise reasonable care and diligence; and
- ensure that public resources are used prudently in accordance with the local authority's requirements and in the public interest.

Application of the Code of Conduct

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when:

- you are acting in your capacity as a councillor and/or as a representative of your council;
- you are claiming to act as a councillor and/or as a representative of your council; or
- your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct.

Standards of councillor conduct

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken. Guidance is included to help explain the reasons for the obligations and how they should be followed.

General Conduct

1. Respect

As a councillor:

- 1.1 I treat other councillors and members of the public with respect.**
- 1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect for the role they play.**

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

2. Bullying, harassment and discrimination

As a councillor:

- 2.1 I do not bully any person.**
- 2.2 I do not harass any person.**
- 2.3 I promote equalities and do not discriminate unlawfully against any person.**

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3. Impartiality of officers of the council

As a councillor:

3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

The Council has agreed a Member/Officer protocol which supplements this Code of Conduct and should be read in conjunction with it.

4. Confidentiality and access to information

As a councillor:

4.1 I do not disclose information:

- a. given to me in confidence by anyone**
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
 - i. I have received the consent of a person authorised to give it; or**
 - ii. I am required by law to do so; or**
 - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**

iv. the disclosure is:

- 1. reasonable and in the public interest; and**
- 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
- 3. I have consulted the Monitoring Officer prior to its release.**

4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

4.3 I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing contract negotiations.

5. *Disrepute*

As a councillor:

5.1 I do not bring my role or local authority into disrepute.

As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/it's functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

6. Use of position as a councillor:

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. Use of local authority resources and facilities

As a councillor:

7.1 I do not misuse council resources.

7.2 I will, when using the resources of the local or authorising their use by others:

- a. act in accordance with the local authority's requirements as set out in the Protocol On The Use of Council Resources and Facilities; and**
- b. ensure that such resources are not used for party political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

8. Complying with the Code of Conduct

As a councillor:

8.1 I undertake Code of Conduct training provided by my local authority.

8.2 I cooperate with any Code of Conduct investigation and/or determination.

- 8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**
- 8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

Protecting your reputation and the reputation of the local authority

9. *Interests*

As a councillor:

- 9.1 I register and declare my interests in accordance with the law and the rules set out in Appendix A of this Code.**

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or declare a disclosable pecuniary (i.e. financial) interest is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and declaring interests. If in doubt, you should always seek advice from your Monitoring Officer.

The Council has adopted a Planning Protocol for Members which supplements this Code in relation to planning matters and should be read in conjunction with it.

10. *Gifts and hospitality As a councillor:*

- 10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**

10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.

10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have declined to accept.

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered where its estimated value exceeds (£25). In the interests of transparency and to protect yourself against allegations, you should also register those cases where you have been offered but declined such gifts or hospitality. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

Appendices

Appendix A

Registering interests

1. Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests and those of your partner which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests).
2. You should also register details of your other interests which fall within the categories set out in Table 2 (Other Registerable Interests).
3. "Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.
4. You must ensure that your register of interests is kept up-to-date and notify the Monitoring Officer of any new interest, or of any change to a registered interest, within 28 days of becoming aware of it.
5. A 'sensitive interest' is as an interest which, if disclosed, could lead to you, or a person connected with you, being subject to violence or intimidation.
6. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold details of the interest from the public register.

Declaring interests

7. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests, you must declare the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest, just that you have an interest.
8. Where a matter arises at a meeting which directly relates to one of your Other Registerable Interests, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
9. Where a matter arises at a meeting which directly relates to your financial interest or well-being or that of your partner (and is not a Disclosable Pecuniary Interest or Other Registrable Interest), you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise you must not take part in any discussion or vote on the matter. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

10. Where a matter arises at a meeting which:
- a. either affects your own financial interest or well-being; or
 - b. directly relates to or affects a financial interest or well-being of a friend, relative, close associate

to a greater extent than it affects the financial interests or well-being of the majority of inhabitants of the borough or, where relevant, the ward affected by the decision, you must declare the interest. Having done so, you will still be able to participate in the consideration of matter unless paragraph 11 below applies.

11. Where you have declared an interest in accordance with paragraph 10 above in circumstances in which a reasonable member of the public knowing all the facts would believe that interest would affect your view of the wider public interest, you may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992</p>
Contracts	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which

	<p>such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council —</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land and Property	<p>Any beneficial interest in land which is within the area of the council.</p> <p>'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
Licences	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer</p>
Corporate tenancies	<p>Any tenancy where (to the councillor's knowledge)—</p> <p>(a) the landlord is the council; and</p> <p>(b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.</p>
Securities	<p>Any beneficial interest in securities* of a body where—</p> <p>(a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the</p>

	<p>shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>
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* 'director' includes a member of the committee of management of an industrial and provident society.

* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Table 2: Other Registerable Interests

You also have a registrable interest in any business of your authority where it relates to or is likely to affect:

- a) any body to which you are nominated or appointed by your authority; or
- b) any body of which you are in a position of general control or management and which:
 - (i) exercises functions of a public nature
 - (ii) is directed to charitable purposes or
 - (iii) has as one of its principal purposes the influence of public opinion or policy (including any political party or trade union)

Appendix B – The Seven Principles of Public Life

The principles are:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

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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.
- 4.6 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
- 4.7 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 of 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 being attend 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.
- 4.12 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 ungrouped 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 SUBCOMMITTEE

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)
5. 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.
6. 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.
7. The member will then be given the opportunity to make representations and with the Committee's permission, call any witnesses to give evidence.
8. 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.
9. At any time, the Committee and independent person may question any of the people involved or any witnesses.

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10. 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.
11. The committee may retire to consider its decision on a finding of facts in private.
12. 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?

13. The committee should then consider whether, based on the facts it has found, the member has failed to comply with the Code.
14. The member will be invited to make representations on the matter.
15. The investigating officer will be invited to make representations.
16. The independent person will be invited to express his or her views
17. The committee may, at any time, question the member, investigating officer or independent person on any point raised in the representations.
18. The member will be invited to make any final relevant points.
19. The committee may retire to consider its decision in private
20. 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

21. 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

22. 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.
23. 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.
24. The committee may consider in private whether to impose a sanction and if, so what sanction it should be.
25. The Chair will announce the decision to the meeting.
26. 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

27. 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.

Part 5 – B

CODE OF CONDUCT FOR EMPLOYEES

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1. INTRODUCTION

- 1.1 The main purpose of this Code is to provide rules and guidelines on minimum standards of conduct that you are expected to observe while in the employment of the Council so as to maintain and promote public confidence in the Council.

It is not intended to restrict you in the general exercise of your civil rights as citizens, or residents of the Borough, nor rights to engage in legitimate trade union activities.

This code is intended to serve four other purposes:

Advice: to advise employees of circumstances where they should exercise particular care as to their conduct.

Caution: to caution employees about circumstances of conduct which are neither right nor wrong in themselves but where the exercise of individual judgment is necessary in order to maintain public confidence and the confidence of the employer. Failure to exercise caution could lead to outcomes necessitating disciplinary proceedings.

Information: to inform employees of some of the main provisions of their contract of employment and Council policies and procedures, which have a bearing on general conduct.

Instruction: to instruct employees of some of the main statutory provisions regulating the conduct of Local Government employees and regarding the standards of behaviour expected by the Council of its staff.

The public is entitled to expect conduct of the highest standard from local government employees. In recognition of this, and to avoid uncertainty in the matter, the Council has adopted this staff Code of Conduct, which sets out the guidelines to help maintain and improve standards. Equally, the Code is designed to protect employees from misunderstanding or criticism, which may be unjustly leveled at them. The Council therefore recommends this code to all employees. It is stressed that some of these provisions are cautionary rather than mandatory and represent advice about circumstances where experience has shown that employees may face difficulties.

Failure to heed the advice, exercise caution, or to comply with these instructions could lead to disciplinary action.

You are strongly advised to consult your Manager if you have difficulty understanding any of the provisions of this Code or how to comply with them.

The Code complements service-specific verbal or written rules & instructions and where applicable codes of conduct issued by professional bodies to which you may belong. The Council expects you to comply with service-specific instructions and professional codes applicable to you. Breaches of the code may result in action being taken under the Council's disciplinary rules.

1.2 Who is covered by the Code?

The Code applies to all Council employees without distinction of grade or status. The Council also expects that anyone it engages or contracts to carry out any of its functions will comply with the requirements of the code. These include:

- consultants and their employees
- contractors and their employees
- the Council's partners and their employees
- employees of other organisations who have been seconded to work for the Council
- agency workers

In the event that the Code is breached, consideration will be given to terminating the contract/arrangement between the consultant/ contractor/ outside organisation and the Council, and/or to seek compensation and, as appropriate, refer the matter to the police, or other relevant regulatory body.

The application of the standards of this code to agency workers does not alter the underlying legal relationship that agency workers are not employees of the Council.

The Code will apply to employees in maintained schools and is commended for adoption by governing bodies of all schools within the Borough.

2. GENERAL CONDUCT

2.1 General

Employees are required to comply with the Council's policies, procedures, codes of practice, standing orders, contract standing orders, financial regulations, work instructions and their own professional codes of conduct.

Employees are required to undertake their official duties and responsibilities in an efficient manner and should not willfully neglect their duties and responsibilities. Employees are also required to comply with the terms and conditions of service as laid down in their Contract of Employment.

The Council expects you to deal with each other in a courteous manner at all times i.e. with respect and in a polite and dignified manner. The same courtesy is applicable to Council Members, any persons from outside organisations and to members of the public.

2.2 Equality and Diversity

Merton is an equal opportunities service provider and employer. All employees have a responsibility to promote, comply with and operate the Council's agreed Equality and Diversity Policy and related policies, practices and procedures.

Employees must not discriminate against other employees of the Council, clients, customers or members of the public on grounds of race, colour, creed, age, ethnic or national origin, disability, gender, gender identity, gender

expression, sexual orientation, religion, belief, marital status or Trade Union membership.

2.3 **Attendance**

Regular and prompt attendance for work is a requirement of the employment relationship. Unauthorised absence or lateness is disruptive to customers and other employees and is not acceptable. You are expected to comply with the Council's attendance procedure.

2.4 **Responsibilities of Managers/Supervisors**

Managers and Supervisors should take all reasonably practicable steps to:

- Ensure that you have adequate, well-equipped working conditions.
- Ensure that you have a framework of supervision and support, including provision of enough work to keep staff busy but without allowing anyone to be overwhelmed.
- Ensure that you know what standards of work and conduct are required, and where you are meeting, exceeding, or failing in relation to those standards.
- Ensure that your learning and development needs are identified and, wherever possible within resources and Council business need, met.
- Ensure that your own conduct does not undermine your impartiality when called upon to consider a misconduct complaint against you.
- Keep up-to-date with legislation and with best working practice, and be both willing and able to pass on this knowledge.
- Ensure that the provisions of the Health and Safety at Work Act are complied with.
- Take responsibility for their own and your learning and development
- Ensure that the Departmental Register of gifts and hospitality is Maintained

2.5 **Responsibilities of all employees**

You must:

- Show respect for the public, Contractors/Suppliers, 'partners' and colleagues and behave in a way, which cannot reasonably cause offence to anyone.
- Maintain reasonable conduct consistent with the duties of your post and the fact that these are performed in the context of public service and consistent with the codes of conduct of any professional organisation of which you may be a member.
- Give mutual support, consideration and respect to other colleagues.

- Make a positive contribution to a climate of equal opportunities within which everyone can feel comfortable and valued and able to give of their best.
- Maintain commitment, including acting in good faith in relation to the policies and procedures that the Council has adopted.
- Maintain records, tools and equipment and work in an orderly way, taking responsibility for personal and section workplace space, and helping to maintain standards of workplace procedure.
- Observe the need for personal and workplace security, including issues of safety, confidentiality and discretion.
- Ensure that the provisions of the Health and Safety at Work Act (as amended or supplemented) are complied with.
- Show consideration for customers. In particular you should ensure that you behave courteously and helpfully at all times especially when working in front line services like residents' homes, leisure facilities, refuse, schools and libraries.

2.6 Festivities/Celebrations/Christmas Parties

You must understand that inappropriate behaviour and comments, particularly relating to: sex, gender identity, gender expression, sexual orientation, race, disability; religion or belief are not acceptable, and will not be tolerated. You are reminded to apply the same standards of conduct during work-related celebrations and festivities as if you were at work.

You must behave in a respectful way with each other at celebration events and remember you are still at work and the Council's conduct rules apply.

2.7 Appearance/Dress Code

The Council recognises that there are many styles of dress, but also recognises that it is important that you dress for work in order to give an appropriate image of the service you provide.

The manner in which you present yourself at work directly affects the Council's image, colleagues and the service. Your dress should reflect this responsibility and emphasise your respect for the people with whom you work, your

colleagues and the service users. Managers will determine the appropriateness of your dress in relation to the service and/or local circumstances/requirements.

In addition, you are required to:-

- be clean, tidy and presentable at all times.
- never dress in any way which could intimidate, or cause offence to the public and/or colleagues, and which could undermine the image and
- reputation of the Council.

- Always wear uniform or protective clothing if these have been issued, or made available for particular tasks, and make sure that these are clean and in good repair.

The wearing of casual clothes for example Jeans; shorts etc may only be permitted on Fridays at the discretion of the local manager and the Head of Service.

Within this framework the Council will not exclude clothes worn for cultural or religious reasons unless there is a risk to health and safety.

2.8 **Personal financial affairs**

You must:-

- not conduct your personal finances in a way which results in Merton Council, or another public body, being defrauded (this includes claiming Housing Benefit to which you are not entitled; failing to register for Council Tax; claiming Council Tax discounts and exemptions as a Single Person, or occupying council property unlawfully)
- keep up to date with Council Tax, rent and service charges due to this Council – the Council will use any powers available to it to reclaim monies, including attachment of earnings.
- make proper arrangements to manage arrears, should they arise, and keep to agreements until accounts are cleared.
- not act for the Council in relation to your own affairs or affairs of your family or friends unless specifically requested to do so by a Manager who is fully aware of the situation.
- avoid being the subject of legal action, which may bring the Council into disrepute and/or undermine the relationship of trust and confidence between the employee and the Council.

You must notify the Council at the earliest possible opportunity if there is a possibility that you cannot maintain payment of Council tax, rent, service charges or other monies due to the Council as a resident.

3. **Information and Communication Technology (Including Email and Internet Use)**

The Council provides facilities to employees, trade unions and councillors to send emails, to access the Internet and the use of phones, for Council-related business purposes.

The Council has adopted a policy for internal e-mail use. Details about the rules in the policy can be found in the ICT Policy, which is available on the intranet. <http://intranet/departments/cs-index/cs-publications/it-reference/ict-policy>.

4. GIFTS HOSPITALITY AND CORRUPTION

4.1 Corruption

You must be aware that it is a serious criminal offence to receive or give any gift, loan, fee, reward or advantage for doing, or not doing anything or showing favour, or disfavour, to any person in their official capacity. This is treated as corruption.

Information

Prevention of Corruption Acts, 1906 and 1916

Under the Prevention of Corruption Acts, 1889 - 1916, it is an offence for you to solicit or accept any gift, loan, fee, reward or advantage if it is done as showing favour in any way in relation to the Council's business. Where it has been proved that you received money, gift or other consideration from a person holding or seeking to hold a contract with the Council, it will be seen as corruption unless proved otherwise. **This is very important to understand since it reverses the usual burden of proof in criminal cases.**

Local Government Act, 1972 (section 117)

Under the Local Government Act, 1972, it is an offence for you under cover of your office or employment to accept any fee or reward whatsoever other than your proper pay & benefits. The Council's legal opinion is that the acceptance of a gift is on the face of it an offence whether or not the donor expected any advantage.

Breaches of the above statutory provisions can lead to dismissal and also criminal prosecution.

4.2 Acceptance of Gifts/Register of gifts

- The offers of gifts to staff should be reported to Line Managers.
- The offer or acceptance of a substantial gift should be approved by your line manager and recorded in your departmental Gifts and Hospitality Register.
- The acceptance of gifts by you should only occur in limited circumstances, eg where refusal would cause offence/distress to a client, or where the gift is of low value (e.g. pens, mugs etc) and acceptance should be approved by the line manager.
- When considering whether it would be appropriate to accept you should ensure that no gift could be construed as a payment, bribe or other favour in respect of work performed for the council. The offering and the acceptance of bribes are criminal offences.
- You must not accept money and particular care should be taken when considering gifts from contractors; acceptance of any gift or hospitality in

the course of the award of a contract may constitute a criminal offence.

- You must not request or ask for any gifts, including tips, at any time of the year.

Advice and Information

You should take account of the need to promote the Council's image, when at work. Gifts or gratuities received or delivered should be returned to the sender with an appropriate letter stating the Council's policy on such issues. Where the nature of the gift makes it difficult to return it, e.g. perishable goods such as flowers or fruit, the responsible manager must identify an appropriate method of disposing of the gift.

- You must not accept any gift, whether or not substantial in value, unless it has been approved in advance by your manager. This does not apply to gifts between staff, for example, at Christmas or as leaving presents.

Information

The contents of departmental registers are reviewed regularly by Directors and reported by the Monitoring Officer to the Standards committee. These reports will include details of the recipient officer and the nature of any gift received. For this purpose a substantial gift is any gift considered to have a value of £25 or more

4.3 Hospitality

The offer and receipt of hospitality must be reported to managers.

Managers must then report immediately to the Director, and complete the hospitality register in all instances via the respective Director/Director's PA. Where the Director is involved it should be reported to the Chief Executive) giving the following information:-

- Name of company or individual
- If the company/individual is seeking any permission or work from the Council
- The form of hospitality and location
- Whether it is in working hours; and
- Whether the offer was accepted

Advice and Caution

You are expected to exercise discretion in the acceptance of hospitality and ensure that your actions in no way undermine the confidence of Members, other employees and the public. This is very important in respect of offers of hospitality from contractors/consultants, voluntary or pressure groups, who carry out work on behalf of the Council, or, are seeking Council approval in certain areas (e.g. planning applications, grant applications).

The acceptance of hospitality must be strictly limited to occasions directly having relevant business purpose.

“Networking” has often been cited as a reason for acceptance of hospitality. It is recognised that keeping in touch with peers and contacts beyond the Council is important. However there is concern that “networking” could be used to justify a number of different types of hospitality – some appropriate for acceptance and others not so. For example, attendance at an awards dinner or professional seminar by a relevant officer might be regarded as appropriate for “networking”, whereas attendance at a race meeting or football match in the company of a contractor would however be difficult to justify. **It must be emphasised that you gain approval of your line manager, prior to acceptance.**

Examples of circumstance where the receipt of hospitality may be acceptable are:

- social occasions as the nominated representatives of the Council.
- drinks and basic hospitality at meetings held away from places of work, including the acceptance of basic working lunches etc if during lengthy meetings this is the most efficient use of time available (provided this does not occur in the context of the award or negotiation of any contract); and
- (with the agreement of your manager) a free place at a training event which is relevant to your job and which will permit the acquisition of training without any commitment to the provider.

Acceptance of hospitality in the latter two cases should be reported to and, if possible agreed in advance by, your manager but need not be recorded in the departmental register.

4.4 Legacies

- You must not accept any legacy related to or arising out of this work as an employee; you should disclaim the gift, in which case it would be treated as part of the residue of the testator’s estate.
- There may be occasions when members of the public (in receipt of Council services) may wish to show their appreciation of the services of the

Council and/or particular Council employees by leaving money/ gifts to them in their wills. If you are aware that you may be left money/gifts you must declare this to your Director, the relevant details including name of the individual concerned, the service that has been provided, the reason for the legacy (if known) and the amount involved. Service users should be discouraged from doing this if you are aware of this intention.

Information

The Council can accept legacies to support it providing local services, or for the benefit of the residents of their area or for educational purposes but not for the relief of poverty.

4.5 Executorships/Executor of Wills

- The Council has agreed not to accept any responsibilities as Executor of wills. Therefore, you have no authority to accept appointment as an Executor on behalf of the Council.
- You must declare to your Director if you have agreed to become an executor in a personal capacity for a will of a service user in receipt of the Council's services personally provided by that employee.

4.6 (Misuse of power/job role) in Public Office

You are reminded that the Courts are rapidly rediscovering an old claim against Council Officers called "misfeasance (misuse of power/job role) in public office". In brief, where you fail to carry out your duties in good faith and as a result damage (financial or otherwise) is caused to a person, that person will have the right to personally sue you. The matter can also be a criminal offence. This development requires that you should be very careful to follow Council policies, procedures and regulations.

5. Use of Information –

5.1 Rights of the Public

You must be aware that the public has a right to request to see certain information under the Local Government Act, 1972 and under the Freedom of Information Act 2000. In most circumstances these rights are related to reports and background documents. When receiving such a request staff should be careful to deal with it politely and helpfully. Further details on this area can be found at: - <http://www.merton.gov.uk/council/dp-foi/foi.htm>

5.2 Use of Official/Confidential Information

The classification of "confidential/closed" information should only be used when justified. Documents marked 'confidential' mean just that and you should be aware of the nature of such information and the consequences of disclosing it and any limited circulation relating to it. If in doubt, employees should consult their Director.

Misuse of confidential information for personal gain or the gain of relations, partners or friends, or other improper motives may lead to disciplinary action.

If you leave the Council's service, you should not use and/or reveal confidential information gained whilst in the employ of the London Borough of Merton. Such conduct may lead to legal proceedings.

Information that identifies another person falls under the Data Protection Act 1998. You must process personal data in accordance with both the law and Council policies.

The Data Protection Act gives individuals, including Council employees a right to access information the Council holds about them. Unlawful processing of personal data may lead to prosecution under the Data Protection Act.

6 Relationships with Councillors (Members) and with Other Officers.

- You must treat Members with respect. As you are also entitled to be treated with respect.
- If you consider that unreasonable Member pressure is being put on you to deal with a particular issue outside of established procedures and policies, this must be referred to your Director.
- You are not to approach Members direct about personal matters relating to your employment and conditions of service. Matters related to personal employment and conditions of service should be raised initially with the appropriate line manager and/or Departmental Human Resources Officer.
- Whilst a working relationship between you and Members has to exist to enable an effective, responsive service to be provided; the use of that relationship should not be abused.
- Close personal familiarity between you and a Member can damage this working relationship and may prove embarrassing to other employees and other Members.

All candidates for posts in the London Borough of Merton, whether they be existing employees, or not, are required to disclose whether they are related to an elected member, or are known to the elected member through activities external to the Council such as: local organisations, active in political parties, being neighbours or officers of the Council. In making such disclosures employees and their manager should be very careful to assess the situation so that there is no conflict of interest with the Council's business and integrity. Failure to disclose this will result in disqualification for the appointment and if appointed, liability to dismissal without notice.

Canvassing of Members of the Council by you in connection with any appointment or any matter relating to your job may lead to disqualification and disciplinary action.

6.1 **Managers' relationships with their staff**

- Close personal familiarity between managers and members of their staff can compromise efficient and proper working, and morale in the workplace. Where such a relationship occurs, the manager must bring it to the attention of her/his Director/Head of Service personally and in confidence.
- Further information on this can be found on the intranet under the “? Managing Relationships at Work June 2014– on the intranet.

6.2 **Relationships with Contractors/Consultants**

- All relationships of a business, private or personal nature with external contractors/consultants, or potential contractors, should be made known to the appropriate manager.
- Orders and contracts must be awarded on merit, by fair competition, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local

Advice

You should realise that there may be situations in your personal life that may have a bearing on your employment. The Council cannot direct relationships, but you must exercise judgement in your relationships with Members not to create potential compromising situations or conflicts of interests in relation to your personal life or private commercial transactions

community should be discriminated against.

- If you engage or supervise contractors/consultants or have any other official relationship with contractors/consultants and have previously had or currently have a relationship in a private or domestic capacity with contractors/consultants, you should declare that relationship to the appropriate manager. Details should be recorded in the ‘Declaration of Interests Register’ that is kept by Directors.

6.3 **Relationships - with Children and Young Persons who are service users**

- If you are involved with young people as part of your job, you will need to be aware that your employment imposes on you a general duty of care. It is necessary therefore to maintain an acceptable level of safety at all times.
- The physical proximity between you and young people may necessitate contact from time to time. Since the conduct of young people can occasionally become dangerous, physical intervention may be required which, inevitably, is a high-risk activity. Written guidance cannot anticipate every situation: the sound judgement of you at all times remains crucial.

- Corporal punishment is prohibited in schools, children’s homes, sure start centres, foster placements and in any Council building.
- The use of physical restraint of young people is prohibited except as an act of care not punishment and only in specific circumstances using specific methods but not otherwise.
- Close personal familiarity between you and children can compromise good discipline and may lead to suspicion and allegation of improper conduct.
- If you work with children and young people you must seek advice from your Head of Service about acceptable parameters.
- If you work with children and young people you must familiarise yourself with the Council guidelines “Physical intervention in the Management of Young People”.

All forms of abuse of children and young service users is prohibited. The Council takes the view that the following constitutes abuse.

- **Physical abuse**, including: hitting, slapping, pushing, kicking, misuse of medication, restraint, or inappropriate sanctions;
- **Sexual abuse**, including rape and sexual assault or sexual acts to which the young person has not consented, or could not consent, or was pressured into consenting;
- **Psychological abuse**, including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation, or withdrawal from services or supportive networks;
- **Neglect and acts of omission**, including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating; and
- **Discriminatory abuse**, including abuse that is: racist, sexist, based on a person’s disability, sexual orientation, gender expression, gender identity and other forms of harassment, slurs, or similar treatment.
- **Financial or material abuse**, including: theft, fraud, exploitation, pressure in connection with wills, property or inheritance, or financial transactions, or the misuse or misappropriation of property possessions or benefits

6.4 Relationships with vulnerable adults

“A vulnerable adult” is a person of 18 years or over who is or may be in need of Council services by reason of mental or other disability, age or illness and who is unable to take care of him or herself, or unable to protect him or herself against abuse. Abuse may consist of a single act, or repeated acts.

All forms of abuse of vulnerable adults who are service users is prohibited. The Council takes the view that the following constitutes abuse:

- **Physical abuse**, including: hitting, slapping, pushing, kicking, misuse of medication, restraint, or inappropriate sanctions;
- **Sexual abuse**, including: rape and sexual assault or sexual acts to which the vulnerable adult has not consented, or could not consent, or was pressured into consenting;
- **Psychological abuse**, including: emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation, or withdrawal from services or supportive networks;
- **Financial or material abuse**, including: theft, fraud, exploitation, pressure in connection with wills, property or inheritance, or financial transactions, or the misuse or misappropriation of property possessions or benefits
- **Neglect and acts of omission**, including: ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating; and
- **Discriminatory abuse**, including abuse that is: racist, sexist, that based on a person's disability, sexual orientation, gender expression, gender identity and other forms of harassment, slurs or similar treatment. Physical restraint of vulnerable adults is prohibited except as an act of care and not an act of punishment.

7. CONFLICT OF INTEREST

“Conflict of Interest” is a shortened way of describing a conflict of personal interest and contractual duty.

Examples

The following are a few examples of the types of interests and influences which could cause a conflict on interest.

- You are a Benefit Officer and deal with benefit application of friends and family.
- You are an Environmental Health Officer and you carry out an inspection (or make decisions on an inspection) involving a restaurant owned by you, your friend or business associate.
- You are buying goods and services and those goods and services are supplied by a supplier owned by you, your friend, family or business associate.
- You have links with an agency and you are employing agency staff.

In all these examples you have a contractual duty to apply Council policy and procedures rigorously but there is a danger that your personal interest would influence your judgement in applying Council policy and procedures.

Some conflicts maybe unavoidable – however, you should always report them to your manager in advance. However public confidence is improved by showing that we have structures and processes, which show openness, sensitivity, challenge and accountability. You are required to implement and comply with these structures and procedures.

Public confidence is further improved by asking certain categories of staff to declare their interest in a written form to their Directors. Employees who are required to register their interest and fail to do so will be subject to disciplinary action.

Where an interest is declared the employee should take no further part in dealing with the matter in which an interest has been declared without specific clearance by their Director.

Under Contract Standing Orders all senior officers and officers involved in contracts should complete a declaration of interest form when they commence employment with the Council, even if there is nothing to declare. The declaration should be made where there is a change in circumstances but in any case every year.

You also have a duty to inform the Council if your spouse, or partner, or other family member, has an interest (direct or indirect) in any contract under

consideration by the Council.

Each Director is responsible for maintaining a register of any declaration given by an employee of the Council of a financial/monetary interest in a contract. These records are available for inspection in accordance with agreed procedures by any Member of the Council.

Information

a financial interest exists if:

- You or any friend, or relation of yours is a member of a company, or other body, with which the contract is made, or is proposed to be made, or which has a direct financial interest in the matter under consideration; or
- If you are a partner, or in the employment, of a person with whom the contract is made or is proposed to be made or who has a direct financial interest in the matter under consideration. If you are married and living with your spouse or partner the interest of one is seen to be the interest of the other if known to the other. For the avoidance of doubt, married persons living together includes partners living together. This also applies to people in a relationship but not living together.

If you have any involvement with outside organisations relevant to your area of employment with the Council, you should not, have any involvement with the affairs of the organisation (i.e. processing, advising on grants etc.). You should declare if you, or your spouse or partner, have an interest in a voluntary organisation, which is being considered for a loan, or grant by the Council, or other ties of which you are aware.

7.1 Employment Outside of the Council

You must not undertake any paid, or unpaid, work if your official duties overlap with your proposed work in a way which will cause a conflict of interest

The Council actively supports unpaid service to voluntary, or other, organisations and welcomes this involvement in Community Affairs. However, it is important that your unpaid service does not affect your job, or the reputation of the Council.

If you are considering taking up additional paid/unpaid employment you must first seek the approval of your Director in writing before taking up the post. Consideration will be given to the effects of such employment on the Council's services and interests.

Private work should not be undertaken for any person, company or contractor who is known by you to have a contractual relationship with the Council, or who is seeking work from the Council.

You are required to be solely occupied during your normal working hours with the business of the Council. No outside or private work of any sort should be undertaken in the Council's normal working hours, nor on official premises - even after working hours. The use of Council facilities (e.g. telephone, PC, email photocopying, typing) or equipment for outside or private work is strictly forbidden as well as incoming calls related to outside/private work.

If you have your own business, or are considering setting up your own business, you must seek the approval of your Director. You should not work in those businesses during working hours.

7.2 Publications, Broadcasts and Lectures and Communications with the Media and Blogs

If you publish or authorise the publication of a book, or make any contribution to a book, which has no connection to your role at the council, you must indicate that the London Borough of Merton accepts no responsibility for the author's opinions or conclusions.

If you are acting as a spokesperson in either a personal capacity, or for outside groups, you should not bring the Council into disrepute by publicising material adverse to the Council or other employees. This is not intended to preclude Trades Unions from pursuing their legitimate industrial relations activities.

All personal information must be treated as confidential and must not be passed to anybody other than when the information is necessary to that person as an employee of the Council, or when proper authority has been obtained to do so from your Director.

Agenda papers must be treated as confidential until they have been published as a formal agenda. At this point they become public documents unless they are marked 'not for publication'. All agenda papers marked 'not for publication' are to be treated as such by you at all times, i.e. both before and after publication of a formal agenda.

If you participate in activities of outside organisations (e.g. professional bodies tenants' association, interest groups) you must not indicate you are representing, or acting, on behalf of the Council unless you have been specifically authorised to do so by your Director.

You must not invite any representative of the media on to any Council premises, unless you have been specifically authorised to do so by your Director and a member of the communications team.

All staff should consult the Communications Team on any media matter. The Communications Team in the Chief Executive's Department, is responsible for liaising with the media, and produce all official press releases and statements made by the council. If you are asked by the media to make comments, you must immediately refer these to the Communications Team and your Director.

If you are asked to give lectures either in your own, or Council's, time on a

subject connected with your official duties for the London Borough of Merton, should seek approval in advance from your Manager. Where the subject is not connected with your official duties no permission is required but should be conducted in your own time and should not be on a subject, which could represent a conflict of interest with your employment with the Council. Any fees received in an official capacity must be declared and paid into the Council's funds.

If you are asked to give lectures during the Council's normal working hours, which are not connected with your official duties, you will be expected to take annual or flexi leave. It is expected that any necessary preparation work for such lectures will be done - unless otherwise agreed - outside the Council's normal working hours.

"Blogging" is the practice of posting a personal diary on a website. The Council does not interfere with individual freedom of expression. However, the Council cautions if you produce a 'blog' which is not authorised and which may identify the Council, council client, Councillor or council officer in derogatory, or non-flattering terms, it will be treated as a disciplinary offence for bringing the Council into disrepute.

Disciplinary action will be considered against you, if you post damaging or offensive messages about other employees, Councillors or the Council on social networking sites such as Myspace, Facebook and YouTube.

7.3 Politically Restricted Posts

The Local Government and Housing Act 1989 puts restrictions on certain local government employees that prevents them from taking part in political activities.

Employees who are Chief Officers or Deputy Chief Officers, and employees who earn the equivalent of PO4 (SCP44) or more a year (excluding London Weighting allowance) or whose duties are considered to be "politically sensitive" (anyone who attends meetings to give advice regularly to members and/or who speaks regularly on behalf of the Council to press or media journalists) even if they earn less than SCP44 a year are prevented from taking part in certain political activities. Such employees are not allowed to:

- stand as a candidate for election as a councillor, Member of Parliament or Member of the European Parliament;
- hold office in a political party (although they can still be a member of a political party);
- canvass either at any election or poll on behalf of a political party or at any election or poll for a local authority, Parliament or the European Parliament; or speak or write publicly on matters of political controversy (i.e. they are not allowed to speak or write in public in a way which appears to encourage support for a political party).

The rules relating to speaking, or writing, publicly are determined by Central Government and the Courts.

7.4 **Involvement with Voluntary Organisation Management Committees**

You must not, within your official Council duties, serve as a full member of voluntary management committees. Full members are those who fulfil the organisation's criteria for membership, have been elected/appointed onto the management committee and have full voting rights.

You may serve in an official capacity as a co-opted member of a voluntary management committee provided that you have been authorised to do so. Co-opted members are those who do not fulfil the organisation's criteria for full membership but have been appointed onto the management committee because of some assistance and expertise they can bring to the organisation. Co-optees may or may not be able to vote depending on the terms of the organisation's constitution.

If you are serving in an official capacity as a co-opted member on a voluntary management committee and are allowed to vote by the organisation's constitution, you will vote in accordance with Council policy and will provide information to the relevant Director where issues of major policy or contentious issues arise.

You may serve in a private capacity on a voluntary management committee as either a full or co-opted member but you must not allow your private interest to conflict with your duty as a Council officer.

If you have any concerns about potential conflicts of interest you should discuss these with your line manager. The manager will, if necessary, seek advice/approval from the Director of your department and if the voluntary organisation is funded by Merton Council, the approval of the Director of the appropriate funding department.

Examples of possible conflicts of interest may include (but are not limited to):

- engaging in management committee work during Council time or using Council resources;
- serving as a member of a management committee while advising Councillors or other officers on issues related to that (e.g. funding, policy or procedural issues);
- discussing Council business/officers/Councillors in such a way as to unfairly or untruthfully put these in a negative light;
- promoting policies or practices through your position on the management committee which violate Council policies or practice (e.g. equal opportunities policies);
- providing sensitive or confidential information to the management committee obtained in your official capacity as a Council employee.

The responsibility for avoiding conflicts of interest lies with you. While not obliged to inform the Line Manager of your private participation on the management committee of a voluntary your behaviour will at all times be governed by the relevant provisions of the Contract of employment and the National Joint Council Conditions of Service for Local Authority Employees known as the Green Book.

8. Summary and Review

This code of conduct outlines the standards of behaviour expected of you whilst employed by Merton Council and it is important that you understand the implication of the Code for our work. If your standard of behaviour falls below that outlined in the Code, it could have a serious impact on the quality of services provided to Merton residents, or to the Council's image as a service provider and employer. Breaches of the Code could have serious consequences and may result in action being taken under the Council's disciplinary procedures, including the possibility for the contract of employment to be terminated.

Review

This document will be reviewed regularly with the involvement of all stakeholders.

Other policies that fall under this code include:-

Health and Safety Policy

http://intranet/guidance_on_the_corp_hsw_policy_2008.doc

Non Smoking Policy

<http://intranet/pdf-nosmokingpolicymar06.pdf>

Substance Misuse

To be included on completion of revised document

Data Protection Policy

http://intranet/data_protection_policy-4.pdf

ICT Policy

<http://intranet/it-policy>

Equality & Diversity

http://intranet/equality_diversity_policy_oct_2004-2.pdf

Attendance Procedure

http://intranet/attendance_policy_oct_2007.pdf

Staff Relationship Policy

http://intranet/managing_relationships_at_work_june_2014.doc

Employee's Summary of the Code of Conduct

Introduction

The code applies to all Council employees without exception. The Council also expects the same standards of behaviour from non-employees who are engaged (e.g. agency workers) or contracted by the Council

1) Equality and Diversity:

We expect – you to deal with our customers, 'contractors/suppliers', 'partners' and each other with respect, regardless of differences

You must– promote and comply with the Council's equality and diversity policy at all times in your work

2) Attendance

We expect – you to attend for work on time and have a good attendance record

You must– follow the Council's sickness reporting procedure

3) Dress code

We expect – you to be safely and appropriately dressed for your job

You must– make sure you are dressed to do your job properly and professionally

4) Personal finance

We expect – you to pay your council tax on time, and talk to your line manager if your personal finance could affect your work with the council.

You must – be honest (when claiming any benefit or personal entitlements)

5) Information Technology

We expect – you to use the Council's information technology systems in a professional and appropriate way to do your job

You must– follow the Council's ICT policy <http://intranet/it-policy> and if in doubt speak to your manager and/or the IT division

6) Telephone Use

We expect – you to follow the Council's ICT policy on the use of telephones for personal calls.

You must– only make personal calls from landlines and mobiles in an emergency or for urgent personal requirements.

7) Gifts and Hospitality

We expect – you to inform your manager if you are offered or provided with any gift or hospitality, as a result of your work for the Council.

You must– not accept gifts or hospitality, without the agreement of your Manager. Any gifts or hospitality offered or received should be recorded in the gifts/hospitality register, located with the Director's Personal Assistant.

8) Employment outside the Council

We expect – when you are being paid to work for the Council, you not to be doing any other activity for financial reward.

You must– speak to your Head of Service if you wish to undertake additional employment or business activity outside your contractual hours.

9) Conflict of interest

We expect – you to be honest at all times when applying Council Policy and Procedures.

You must– not let your personal interest influence you when applying Council Policy and Procedure and declare/report to your Director, all private interests you have that may conflict with your work for the Council.

10) Publications, broadcasts and communications with the Media.

We expect – you to treat all personal information as confidential and not to misuse any confidential information or forward it to any person unless proper authority has been obtained.

You must– contact the Communications team on any media matters before speaking to any representatives of the media and contact the Data Protection team for advice on information that may be divulged.

11) Disciplinary Rules

We expect – you to behave in a professional manner, maintaining a high standard of behaviour at all times complying with the Council's rules.

You must– be familiar with the Council's disciplinary rules and standards required of staff.

The Council's disciplinary procedure can be found on the intranet under http://intranet/disciplinary_oct_2007.pdf

"This summary code is explanatory only and the full details of the code can be found as an appendix to the disciplinary procedure. You must refer to the detailed version of the code at all times.

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Part 5 – C

MEMBER/ OFFICER PROTOCOL

1. Introduction

- 1.1 This protocol aims to provide guidance on the complex relationships between members and officers of the Council.
- 1.2 The Government is encouraging the changes already begun to modernise political management arrangements. These need to be effective, transparent and accountable as well as facilitating clear community leadership. As the Council enters into new executive arrangements this protocol is intended to support the new ways of working.
- 1.3 The protocol supplements the separate Codes of Conduct for members and for Employees of the Council, which should be read in conjunction with this document.
- 1.4 The seven principles of public life as stated by the “Nolan” Committee (the Committee on Standards of Conduct in Local Government), which are set out in the members’ Code of Conduct (selflessness, integrity, objectivity, accountability, openness, honesty and leadership) should inform the relationships between members and officers.

2. The Role of Members

- 2.1 The roles of the councillor are set out in the members’ Code of Conduct. This states that a councillor may have a number of complex roles including politician, policy maker, representative, constituent advocate and council/ committee worker. It is not the role of the councillor to involve themselves in the day to day management of council services.
 - **Councillor** – in this capacity councillors will usually belong to particular groupings represented on the Council and will express political values and support the policies of the group to which they belong.
 - **Policy Maker** - Members may have personal, individual or collective responsibility depending on their role for the local authority organisation and its activities. They set the direction of the Council; are responsible for ensuring that adequate management arrangements are in place; develop and allocate the Council’s physical, financial and human resources and monitor the performance, development, continuity and overall well-being of the organisation.
 - **Ward Member** –in this capacity councillors interpret and express the wishes of the electorate, advocate on behalf of constituents and seek to account for service priorities, allocation of resources and ultimate performance of the Council. Councillors may also be appointed to outside

bodies and the role can vary from representing the views of the Council to acting according to individual judgement.

2.2 Members, collectively, therefore need to:

- Determine vision and values and ensure staff commitment;
- Ensure standards are properly established and monitored;
- Link service and corporate objectives;
- Enable local people to resolve problems and issues faced by the community;
- Ensure community needs are fed into strategy formulation and service provision;
- Develop and support community leadership.

2.3 Cabinet Members and Leader of the Council

In accordance with current legislation, the Leader and members of the Cabinet have executive legal powers as of 17 October 2001. Working closely with the Corporate Management Team, they will develop the policy framework and budget proposal to Council. The Leader and Cabinet are then responsible for implementing the approved policy framework by collectively and individually making decisions in keeping with the Council's scheme of delegation.

2.4 Opposition Members

All members, not just those of the majority group are entitled to receive confidential, but not covert support and advice. All members shall be given timely access to information required in their role as councillors and shall have the same rights and obligations in their relationship with officers.

2.5 The Mayoralty

The Mayor has a representative role of behalf of the Council and the borough to local residents and those who work or study in the borough. The position is non-political and this must be reflected when invitations to functions are accepted. It is reasonable for the Mayoralty to be supportive of local business, but the office should not be used for commercial promotions. The Mayor should not use his or her office, nor Council officers, to by-pass recognised systems of working.

3. The Role of Officers

3.1 Officers of the Council have, in broad terms, the following main roles:

- Initiate policy proposals;
- Implement all Council policies;
- Manage the services for which the Council has given them responsibility. They are accountable for the efficiency and effectiveness of those services and for proper professional practice in discharging their responsibilities and taking decisions, within agreed policy;

- Provide professional advice to the Council, its committees and members and the public in respect of their service;
- Ensure that the Council acts in a lawful way.

3.2 **Members can expect officers to:**

- maintain confidentiality;
- perform their duties effectively, efficiently and with political neutrality
- behave in a professional and courteous manner;
- be helpful to members and respect their role;
- avoid personal close familiarity with members and not use their relationship with members to advance their personal interests or to influence decisions improperly;
- report to their service heads any time that a member asks or pressurises the officer to deal with a matter outside of Council procedure or policy;
- demonstrate an understanding of and support for respective roles, workload and pressures;
- comply with the relevant Codes of Conduct.

3.3 **Officers can expect from members:**

- political leadership and direction;
- respect, dignity and courtesy;
- an understanding of and support for respective roles, workload and pressures;
- not to be subject to bullying or undue pressure;
- not to use their position or relationship with officers to advance their personal interests or those of others or to influence decisions improperly;
- compliance with the relevant Codes of Conduct.
- Compliance with any formal standards investigation

3.4 Members and officers will wish to discuss policy issues and officers will often require political guidance in framing proposals. However, when officers write reports for member decisions they have a duty to give the advice dictated by their professional expertise and in accordance with their own professional codes of conduct. In some situations an officer will be under a duty to submit a report on a particular matter. Officers expect to have their professional integrity respected and not to be influenced or required to reduce options, withhold information or make recommendations to the Cabinet or a committee they cannot professionally support.

3.5 An officer's first duty is to the Council as a whole and not to an individual member, or to a political or other group of members. However, officers may be called upon to provide advice to the majority group or leading members. This should not preclude them offering a similar service to the opposition parties.

3.6 Directors and Heads of Service are likely to develop a close working relationship with their relevant portfolio members and committee chairs. They may meet on a regular basis to discuss current issues, reports to be considered by committee and budgets.

3.7 The Cabinet and/or members' complaints about council services or officers should be referred to the relevant Director or the Service Head in the first instance. If the matter is not resolved, the member should contact the Chief Executive. Further details on such complaints are contained in the Council's Code of Conduct for Councillors.

3.8 Officers with Specific Responsibilities

3.8.1 A number of individual officers have specific roles including the Head of Paid Service (Chief Executive), the Chief Finance Officer (Director of Corporate Services), the Monitoring Officer (the Head of Legal Services), Proper Officers for particular functions (e.g. elections and licensing) and the statutory officers responsible for Children's Services and Adult Social Services.

3.8.2 The Monitoring Officer has a duty to provide advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members of the Council. In addition, the Monitoring Officer gives advice to members on the application of Local Codes of Conduct, maintains a register of interests for Council members, and promotes high standards of conduct through support to the Standards Committee.

3.9 Politically Restricted Posts

Section 2 of the Local Government and Housing Act 1989 introduced restrictions on the political activities of officers holding politically restricted posts. It prevents certain officers from being councillors in another council and restricts certain political activity such as canvassing. This includes all officers above PO4 and those who regularly advise members and speak to the media on behalf of the Council.

4. Other Officers

4.1 Departmental officers should not go beyond the bounds of their delegated authority. If officers do not have regular contact with members they may be asked to inform their manager if they are asked to provide assistance to a member. Members must not request officers to carry out research for them covertly. Members' access to information will be on a 'need to know' basis. The 'need to know' must be decided by a Head of Service and members should not exert pressure on junior officers to circumvent the process.

4.2 Bullying or harassment of officers, including sexual and racial, by members is unacceptable. Members should not use their position and knowledge of the Council to place undue pressure on officers to take a different course of action than they would otherwise have done.

(Workplace bullying is defined by Unison, the public sector union, as 'offensive, intimidating, malicious, insulting or humiliating behaviour, abuse of power or authority which attempts to undermine an individual or group of employees and which may cause them to suffer stress.' The Council has defined racial harassment as 'offensive conduct of a racial nature, or conduct based on race,

which is offensive to the recipient'. Sexual harassment has been defined as 'unwanted conduct of a sexual nature, or conduct based on sex, which is offensive to the recipient.')

The following examples are given by the Advisory, Conciliation and Advocacy Service (ACAS)

Behaviour that is considered bullying by one person may be considered firm management by another. Most people will agree on extreme cases of bullying and harassment but it is sometimes the 'grey' areas that cause most problems. It is good practice for employers to give examples of what is unacceptable behaviour in their organisation and this may include:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying e mails that are critical about someone to others who do not need to know
- ridiculing or demeaning someone
- picking on them or setting them up to fail exclusion or victimisation unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances
- touching, standing too close, display of offensive materials, asking for sexual favours
- making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and
- constant criticism preventing individuals progressing by intentionally blocking promotion or training opportunities.

Bullying and harassment is not necessarily face to face, it may occur through written communications, visual images (for example pictures of a sexual nature or embarrassing photographs of colleagues), email, phone, and automatic supervision methods – such as computer recording of downtime from work, or recording of telephone conversations – if these are not universally applied to all workers.

5. At Meetings

- 5.1 Officers and members will most frequently come into contact with each other at the variety of meetings held to conduct the Council's business. The respective roles of the participants may vary according to the purpose of the meeting and therefore their relationship to each other will also vary. The examples provided below are merely illustrative and not intended to be exhaustive.
- 5.2 At all times officers and members should show respect to one another and although members are entitled to question officers at meetings they should avoid personal attacks on officers and ensure that criticism is constructive and well-founded. Officers would expect to have the opportunity to explain what appears to be a performance failure or inconsistency.

5.3 Whenever a public meeting is organised to consider a local issue, all the members representing the ward(s) affected should, as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the ward members should be notified at the outset of the exercise. (For example, by being provided with a copy of the weekly list of planning applications.)

5.4 Council, Cabinet, Committee and Sub-Committee Meetings.

These bodies have executive powers and as such are run in a formal manner. They are subject to the Council's rules and procedure which can only be amended or waived by decision of the Council. Members of the relevant body are required to consider and take decisions on the matters falling within the terms of reference of the body. Chief officers at Director level or their nominees attend meetings either on a regular basis if reports are written in their name or at the request of the Chair to answer any detailed questions and provide appropriate advice. Other officers attend to provide financial and legal advice and to act as record keeper. Questions and answers are dealt with via the Chair. Officers and members will generally address each other in terms of Councillor 'A' and Mr./Mrs./Ms. A ''.

5.5 Working Groups/Consultative Committees.

These are more informal bodies that have no executive powers, and may make recommendations to the relevant body, or advise an officer to whom delegated power has been given. Officers are likely to have a more participative role, joining in the debate and contributing their own views and comments.

5.6 Area Forum Meetings.

These are to be held periodically throughout the year in various areas of the borough. Their aim is to improve communication with residents, provide a means for residents to express their views and for the Council to explain its policies. Ward councillors and the Leader of the Council and lead members attend as appropriate. Area Forum lead officers will attend these meetings which will be minuted.

5.7 Service Issue Consultation Meetings.

These may be set up for a variety of reasons, for example a proposed traffic management scheme, or the introduction of charging for social services. The relationship of officers and members at such meetings may vary. There may be a 'top table' of members dealing with questions with the assistance of officers or the meeting may be more informal.

5.8 Appeals Panels.

There are a variety of quasi-judicial bodies the Council is required to run. Quasi-judicial bodies are those where a decision 'affects the rights of subjects'¹ and there is usually a right for a person affected to appear before or make representations to the body which deliberates on the issues involved and takes a decision within legal guidance provided by officers. (There are other quasi-judicial bodies such as Planning & Licensing which are not appeal bodies.) Officers who have not previously been involved with the case in question must provide such advice. Some of these bodies must be seen to be operating at arms-length from the original decision-maker on the matter.

5.9 Group Meetings.

Group meetings of the political parties are organised by members and have no executive powers, although the majority group will consider the political direction of the Council and as a result they will request officers to develop and pursue their policy initiatives.

5.10 Meetings with Outside Organisations and Meetings of Outside Bodies –

Local authorities are often invited and in some instances have a right to be represented on other bodies, both statutory and voluntary and these may be executive, influential or advisory bodies and may involve agency arrangements. The role to be exercised by the representatives may be to represent the collective view of the nominating local authority or to act according to individual judgement. Members may also have to represent the Council at meetings with outside organisations where they may be negotiating or putting forward the Council's views. Officers may need to attend to provide professional advice to the member representative and may also be asked to provide appropriate

¹ Ridge v. Baldwin [1964] A.C. 40

briefings. Members should note that declaration of interest requirements apply to their service on outside bodies. Further guidance is available for members and officers as issued by the Standards Committee.

6 Delegated Authority of Executive Functions

- 6.1 The Council may delegate authority for executive functions to the Cabinet, an individual Cabinet member, a Cabinet committee or sub-committee and to one or more officers, but not to non-Cabinet members. There is a difference between one-off delegations to deal with a particular issue and permanent delegations which can only be agreed by the whole Council and need to be recorded in a document (the Scheme of Delegation) which is open to public inspection. Powers must be delegated to a single officer and if in practice they are sub-delegated by a scheme of management, this should be recorded and open to public inspection. In some cases authority is delegated to an officer in consultation with the chair. However, the officer must not act under the dictation of a member² and the officer remains accountable for the action taken.

7 Delegated Authority of Non-Executive Functions

- 7.1 The delegation of non-executive functions will be determined by Full Council.

² R v Port Talbot Borough Council, ex p Jones [1988] 2 All E. R 207

Part 5 – D

MONITORING OFFICER PROTOCOL

1. The Monitoring Officer undertakes to discharge his or her responsibilities outlined in this Protocol with determination and in a manner which will enhance the reputation of the Council. In general terms his or her ability to discharge these duties depends on excellent working relations with colleagues and members but also the flow of information and access to debate, particularly at the early stages. This protocol applies to the person appointed as deputy Monitoring Officer in the absence of the Monitoring Officer
2. The following arrangements and understandings between the Monitoring Officer and colleagues and members are designed to help ensure the effective discharge of their functions:
 - (a) If not a member of the Chief Officer's management team, the Monitoring Officer will have advance notice of those meetings and agenda and reports and the right to attend and speak.
 - (b) Advance notice of meetings whether formal or informal between Chief Officers and members of the Cabinet or committee chairs will be given to the Monitoring Officer where any procedural, vires or other constitutional issues are likely to arise.
 - (c) Chief Officers will alert the Monitoring Officer to all emerging issues of concern including legality, probity, vires and constitutional issues.
 - (d) The Monitoring Officer or his / her staff will be provided with copies of all reports to members.
 - (e) The Monitoring Officer is expected to develop good liaison and working relations with the District Auditor and the Ombudsman including the giving and receiving of relevant confidential or non-confidential information.
 - (f) The Monitoring Officer will have a special relationship with the Chair of the Standards Committee and the Overview and Scrutiny Commission and will ensure the Head of Paid Service and Chief Finance Officer have up-to-date information regarding emerging issues.
 - (g) The Monitoring Officer will be expected to make enquiries into allegations of misconduct.
 - (h) The Head of Paid Service, Chief Finance Officer and Monitoring Officer will meet regularly to consider and recommend action in connection with current governance issues and other matters of concern regarding probity.
 - (i) In carrying out any investigation (whether under Regulations or otherwise) the Monitoring Officer will have unqualified access to any information held

by the Council and any employee who can assist in the discharge of their functions.

- (j) The Monitoring Officer will have control of a budget sufficient to enable him / her to seek external legal advice.
- (k) The Monitoring Officer will be responsible for preparing a training programme for members on the ethical framework subject to the approval of the Standards Committee.
- (l) The Monitoring Officer will report to the Council from time to time on the Constitution and any necessary desirable changes following consultation in particular with the Head of Paid Service and the Chief Finance Officer.
- (m) In consultation with the Chair of the Council (the Mayor) and Standards Board, the Monitoring Officer may defer the making of a formal report under Section 5 of the Local Government and Housing Act 1989 where another investigative body is involved.
- (n) The Monitoring Officer will make a report to the Council from time to time as necessary on the staff, accommodations and resources required to discharge his / her function.
- (o) Chief Officers will lodge their internal schemes of authorisation (schemes of Delegation and Management) with the Monitoring Officer and their Annual Service Plans at the beginning of each financial year or as soon as possible after that.

Summary of Monitoring Officer Functions

Description		Source
1	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 Local Government and Housing Act 1989
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5 Local Government and Housing Act 1989
3	Appointment of Deputy	Section 5 Local Government and Housing Act 1989
4	Report on resources	Section 5 Local Government and Housing Act 1989
5	Receive copies of whistleblowing allegations of misconduct	Draft Model Code.
6	Investigate misconduct in compliance with regulation (when made)	Regulations when made.
7	Establish and maintain registers of members' interests and gifts and hospitality	Section 81 LGA 2000 and draft Model Code
8	Advice to members on interpretation of Code	Draft Model Code and consultation paper
9	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Statutory Guidance paragraph 8.20
10	New ethical framework functions in relation to Parish Councils	Section 83(12) LGA 2000
11	Compensation for maladministration	Section 92 LGA 2000
12	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members	DCLG guidance

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PART 5 – E

PROTOCOL ON THE USE OF COUNCIL RESOURCES AND FACILITIES

1. Introduction

- 1.1 The Council only has power to provide facilities that assist members in discharging their role as members of the Council. Services can therefore only be used on Council business and never in connection with party political or electoral campaigning activity or for private purposes.
- 1.2 This protocol was approved by the Council's Standards Committee on 8 February 2006 and adopted by the Council upon the recommendation of the General Purposes Committee on 5 April 2006.
- 1.3 It covers the use of Council resources and facilities by councillors particularly those provided under the member services budget.

2. Printing

2.1 Basis of Provision

Printing facilities are available to members of the Council in their capacity as ward councillors for the purpose of the provision of information to constituents in their wards about:

- The work of the Council, its committees and sub-committees or any matter being or likely to be considered at any such meetings;
- Services in the area provided by the Council or partner authorities [e.g. GLA, Police, Fire, Transport, Health];
- How to contact their local councillors or MP and raise issues; and,
- Meetings, consultation and local initiatives for the area organised by or on behalf of the Council.

2.2 The facilities are not available for the production of material which in whole or in part appears to be designed to affect public support for or to promote:

- A political party;
- A candidate or group of candidates in an election; or
- An electoral or party political campaign.

Under no circumstances can the name of a political party appear on the printed material, other than in a councillor's letterhead. Slogans, titles or phrases which are associated with a political party cannot be part of the text. The Council's Standards Committee has also imposed specific requirements (set out in the Member/Officer Relations Protocol) which must be adhered to at all times.

Material produced should include an indication that it has been printed by Merton Council under the arrangements for members printing. This can be by use of the Council's logo or the acknowledgement 'Printed by Merton Borough Council'.

Political groups can send welcome letters to residents on Merton letterhead paper so long as they comply with a template agreed with Monitoring Officer.

Letters on ward business must be cleared by the Monitoring Officer. The council will not pay for postage and letters must be hand delivered.

- 2.3 In addition to the names of members of the Council, printed material can contain the name of the MP or MEP for the area and the names of relevant officers of the Council.
- 2.4 These can be incorporated on the same basis as that which applies to the inclusion of names.

3. Processing of Requests

- 3.1 Printing requests should be submitted to the Head of Civic and Legal Services or an officer appointed for the purpose by him for approval under the above arrangements. The text of all publications must be approved by or on behalf of the Head of Civic and Legal Services before publication. Any decision not to process the request will be advised to and discussed with the Member.
- 3.2 The opportunity will be available to discuss any aspect further with the Head of Democracy Services or the Managing Director of the South London Legal Partnership.

4. Photocopiers

- 4.1 Short run copying facilities are provided in group offices for use on a self-service basis by members of the Council or party group support staff in connection with Council business only. Members will be provided with controlled access to these facilities and use will be monitored on an individual and overall basis.

5. The Coat of Arms and Logos

- 5.1 The Council's Coat of Arms and the Council's logo are only available for use in connection with Council business. Use of the Coat of Arms is restricted to formal Council documents and correspondence and invitations of the Mayor.

5.2 Use of the Council's logo by members of the Council is only acceptable on material produced under the arrangements for members' printing, on members' personalised stationery or in relation to an approved activity. The use of logos or slogans developed in relation to particular projects may only be used in communications relating to those particular matters.

5.3 Under no circumstances should the Coat of Arms or the Council logo be used as part of material produced by or on behalf of members of the Council outside of the approved arrangements described above.

6. Personalised Letterhead, Compliment Slips and Business Cards

6.1 These are provided for use only in connection with Council business and are available to all members of the Council and can be customised to show positions held as Leader of the Council, Deputy Leader of the Council, Cabinet Portfolio Member and Chair of a committee

6.2 Letterheads, compliment slips and business cards can, as a matter of fact, state the name of the political party group to which the councillor belongs and the ward they represent and details of surgeries.

7. Postage

7.1 Basis of Provision

Facilities are available to Members of the Council on the basis of posting individual letters for the purpose of:

- Responding to individuals or small groups of constituents on specific matters raised by them;
- Communication with other organisations as a part of dealing with issues raised by constituents or in relation to members' responsibilities e.g. Cabinet portfolio or role as committee chair;
- Providing information on a one off basis to new electors in the ward on the work of the Council, its Committees, services in the area provided by the Council or joint authorities [e.g. GLA, police, fire, transport, health] and how to contact their local Councillors or MP; and
- The circulation of information to individuals or groups of individuals within wards or the conduct of surveys or consultation processes.

7.2 The Council's facilities are not available for ward-wide mail shots, the distribution of leaflets or the posting of general information to constituents other than in the circumstances described above. They are also not available for posting any material which could not lawfully be printed by the Council. In considering those issues members should seek the views of officers above there is doubt.

7.3 Clarification on any proposed use of postal facilities can be obtained from the Head of Democracy Services.

8. Mobile Phones

8.1 Where mobile phones are issued to certain councillors, e.g. Cabinet members, it is on the basis that the making of any private calls will be recorded and the cost of any private call will be reimbursed.

9. Support Staff

9.1 All staff working in the units providing support for party groups within Democracy Services are subject to the same constraints as other Council employees in relation to political activity. They may be instructed and employed to provide the services set out in their job descriptions to assist councillors in carrying out their roles. These staff may facilitate the work of councillors by undertaking tasks related to any of the activities permitted by this guidance. This may involve typing, data processing, photocopying, progress chasing and diary management in relation to ward and Council activities and commitments.

9.2 Support staff may also assist in the preparation and issue of agenda for meetings of statutorily established political groups of Council members where such meetings relate to Council business.

9.3 In no circumstances may any member of staff perform any task which in whole or in part appears to be designed to affect public support for, or to promote, or is related to the work or activities of:

- A political party;
- A candidate or group of candidates in an election; or
- An electoral or party political campaign

9.2 The only exception will be staff employed as Political Assistants in accordance with section 9 of the Housing and Local Government Act 1989. Such officers may provide support to political groups and the councillors who comprise them in relation to the activities of those councillors arising from their functions as elected office holders. Such officers are however prohibited as employees from providing other support to the political activities of the groups or members.

10 Equipment

10.1 Information Technology

The Council supplies to members equipment to assist them in carrying out their duties as Councillors. Equipment may only be used for lawful purposes related to the Councillor's elected office. Council equipment may not be used for party political purposes. The acquisition, maintenance and use of information technology equipment provided to members are regulated by the Council's various IT policies. The four to particularly note are:

- The Email and Internet Usage policy, which gives guidance and requirements for the way that email and the Internet connection may be used;
- The IT Security Policy, which says what you may and may not do with the IT equipment and facilities, and gives guidance on matters such as effective use of passwords;
- Remote Access to Merton's Network regarding security of access; and
- The Software Management Policy, which gives the reasons why the acquisition and use of software has to be strictly controlled

These policies are published on the Council's intranet on the policies page, and are also obtainable from IT Services if required.

10.2 In accepting ICT equipment a member agrees to be bound by the policies. If he is satisfied that any councillor has failed to comply with the requirements of the policies the Chief Executive may require the member to cease using the Council equipment and surrender it to the Head of IT Services.

10.3 The Council will provide printer paper and ink cartridges for use on Council business. Members proposing to produce a significant number of copies of any document are encouraged to contact officers and to arrange for the documents to be photocopied or printed at the Civic Centre.

11. Particular Needs

11.1 The Council recognises that certain members may have need for specific equipment to assist them in carrying out their duties. The Council will aim to provide such equipment both in order to meet any legal obligations under the Disability Discrimination Act 1995, and in order to maximize the capacity of the councillor to carry out the functions of being an elected member of the Council.

Part 5 – F

PROTOCOL ON PLANNING MATTERS IN THE LONDON BOROUGH OF MERTON

March 2013

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LONDON BOROUGH OF MERTON

PROTOCOL ON PLANNING MATTERS

Introduction

The aim of this protocol: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of planning: to control development in the public interest.

Your role as a member of the Planning Applications Committee (PAC): to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

When the protocol applies: this protocol applies to ALL members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

If you have any doubts about the application of this protocol to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably before any meeting takes place.

1. Relationship to Members' Code of Conduct

- 1.1 At its meeting on 11 July 2012, the Authority adopted its new Code of Conduct. The Code of Conduct sets out general provisions and obligations for members and refers to the requirements of the Localism Act 2011 with regard to the registration and disclosure of disclosable pecuniary interests. This protocol is intended to explain and supplement the Code of Conduct and Localism Act provisions in the context of development control.
- 1.2 You should apply the rules in the Members' Code of Conduct first, which must always be complied with.
- 1.3 You should then apply the rules in this protocol which seek to explain and supplement the members' Code of Conduct for the purposes of development control. If you do not abide by this Protocol, you may put:
- The Council at risk of proceedings on the legality or maladministration of the related decision; and
 - Yourself at risk of a complaint being made to the Monitoring Officer for breach of the Code of Conduct.

2. Guidance for All Members

- 2.1 This section provides guidance for all Members including those who are members of PAC or Cabinet.
- 2.2 Members will want to engage actively and positively with planning decisions. All members can:
- Advise objectors/applicants/others on planning procedures and how to get involved;
- Give advice about adopted planning policies and local priorities;
 - Direct lobbyists, applicants or objectors to the relevant planning officer so their opinions can be taken into account when writing the officer's report;
 - Lead on local discussions in the preparation of the Local Development Framework;
 - Provide input into the preparation of planning or development briefs and guidance
 - Receive and pass on information eg briefings from officers on key proposals
- 2.4 Members must not:
- Expect both to lobby and actively support or resist an application/decision and subsequently vote at committee or Cabinet;
 - Seek to put undue pressure on officers or members of a decision making committee to support a particular course of action in relation to

a planning application or other planning decision

2.5 **All Members: Declaration of Disclosable Pecuniary Interests:**

2.5.1 All members must register their disclosable pecuniary interests (DPIs) as defined in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. If the DPI is registered or notice of it has been sent to the Monitoring Officer but not yet registered, the DPI does not need to be declared at the meeting. However, you may choose to declare it in any event in order that it is clear why you are not participating in the meeting.

If the DPI has not been registered or is not pending registration the existence and the nature of the DPI must be declared at any relevant meeting, including informal meetings or discussions with officers and other Members.

2.5.2 **Where your interest is a disclosable pecuniary interest**

- You must not participate, or give the appearance of trying to participate, in the making of any decision on the matter by PAC.
- You must not represent ward views, get another Ward member to do so instead.
- You must not get involved in the assessment of the application by the case officer.
- You must not seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable pecuniary interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
- You should be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a disclosable pecuniary interest to an appropriate officer, in person or in writing, you are not permitted to speak or vote on the matter unless you have obtained a dispensation from the Monitoring Officer. You should withdraw from the meeting when the matter is considered even though you may not be participating in the decision making.

2.5.3 You should notify the Monitoring Officer in writing of your own or any spouse/partner's application and note that:

- you should send the notification to the Monitoring Officer no later than submission of that application where you can;
- the application will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and

- you may employ an agent to act on your behalf on the application in dealing with officers and any public speaking at Committee.

2.5.4 Where a member is in any doubt about whether they have an interest they are advised always to seek advice of the Monitoring Officer or an officer in the Council's Legal Services team prior to the meeting.

3 Additional Guidance for Ward Members who are not members of PAC or the Cabinet

3. Members, in their roles as ward councillors will often be approached by parties – members of local communities, developers, landowners seeking both their support and their opposition to proposals and this is a key role for members who are not on the decision making bodies. Ward members can take part in

planning discussions and make representations on planning matters and act as advocates for their communities by:

- Joining or leading local campaigns;
- Speaking at the relevant committee in support or against a proposal, policy or enforcement action;
- Acting as advocate for their community on a particular issue

3.2 To promote transparency and following best practice members should:

- When speaking/making representations at the appropriate decision making committee or Cabinet make it clear their role in any local campaign or supporting any particular position;
- Make it clear when acting as an advocate or making representations on planning matters that they are not part of the decision making process and;
- Only carry out any lobbying of their decision making colleagues in favour of a particular planning decision in an open and transparent way

3.3 Officers will notify ward councillors of Presentations/Exhibitions which they will be invited to attend

4 Additional Guidance for Members of PAC

4.1 PAC Members: Declaration of Disclosable Pecuniary Interests

Paragraphs 2.5.1 to 2.5.4 above apply equally to all members.

4.2 Avoidance of bias or predetermination

- 4.2.1 Members have a legal duty to avoid bias or appearance of bias. Members also need to ensure they do not do anything which indicates they have made their mind up on an application/policy matter before it comes before the committee eg by stating in advance how they will vote.

Bias has been defined as a tendency towards one side because of an irrelevant factor such as a close relationship. For example, determining a planning application in relation to an application made by your brother. The legal test for bias is “*whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased*”. If this test is met, the member should not take part in the decision. Note that the definition of bias goes beyond the definition of disclosable pecuniary interest.

Predetermination is considered to be having a closed mind in a case. On the other hand a *predisposition* in a particular case means holding a provisional view, which however strongly held, is capable of being changed by relevant argument or factor. Predisposition will not invalidate a subsequent decision, but care must be taken to avoid predetermining or appearing to have predetermined an application or other case.

- 4.2.2 Section 25 Localism Act 2011 has sought to clarify the law regarding predetermination. Section 25 applies where a decision by members is challenged on the grounds of “bias, predetermination or otherwise”.

- 4.2.3 Section 25 states that:

“A decision maker is not taken to have had or appeared to have had a closed mind when making a decision just because:

- (a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to that matter and*
- (b) the matter was relevant to the decision.”*

- 4.2.4 Whilst section 25 provides some comfort to members on the extent to which they are entitled to express firm views on matters before decisions are made it still remains the case that members must retain an open mind at the time the decision is made and be prepared to listen to the views of officers and deliberations at the committee meeting.

- 4.2.5 You should not make up your mind, or appear to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning committee and of your hearing the officer's presentation and evidence and arguments on both sides.
- 4.2.6 If you have made your mind up and then take part in the decision, it will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 4.2.7 You are able to take part in the discussion of a proposal when acting as part of a consultee body, provided:
- the proposal does not substantially affect the wellbeing or financial standing of the consultee body;
 - you make it clear to the consultee body that your views are expressed on the limited information before you only;
 - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area or ward, as and when it comes before committee and you hear all of the relevant information; and
 - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the committee; and
 - you disclose your membership or role when the committee comes to consider the proposal.
- 4.2.8 You should not speak and vote on a proposal where you have made your mind up. You do not also have to withdraw (unless you also have a disclosable pecuniary interest), but you may prefer to do so for the sake of appearances.
- 4.2.9 As a PAC member, you can exercise your separate speaking rights as a ward member where you have represented your views or those of local electors and where you have made up your mind, but do not have a disclosable pecuniary interest. Where you do:
- advise the Chairman that you wish to speak in this capacity before commencement of the item;
 - remove yourself from the PAC member seating area for the duration of that item;-
 - and ensure that your actions are recorded.
- 4.2.10 It may, however, be advisable if a ward member who is not a member of PAC represented the views of the local electors in order that you can participate in the meeting.

4.3 PAC Members: Development of Council - Owned Land

4.3.1 The planning legislation specifically allows local planning authorities to determine applications on Council-owned land. Thus there is no automatic requirement for members, even of PAC, to declare an interest when taking planning decisions merely because the land is owned by the Council.

4.3.2 However where you are so committed to a particular development which is likely to be as a result of your cabinet responsibility and you may be seen as the chief advocate on behalf of the authority for the development you will be perceived by the public as being no longer able to act impartially or to determine the proposal purely on its planning merits. In such circumstances you can address the committee but should not vote on the relevant applications. You do not have to withdraw but may prefer to do so for the sake of appearances.

4.4 Members of the Design and Review Panel (D&RP) and the Planning Applications Committee (PAC)

4.4.1 It is acknowledged that some members of the PAC are also members of the above Panel and that on occasions as part of the consultation process the Design and Review Panel will consider and comment on the design aspects of a proposed application prior to the application being considered by PAC. These members may participate in the discussion at D&RP but shall not vote on any issues arising and shall formally disassociate themselves from any conclusion reached by and/or any recommendation made by the D&RP whether by vote or otherwise. This is because, as these members acknowledge when the item comes before PAC for its determination, their duty in law is to consider impartially and with an open mind all material considerations arising including those relating to design and conservation matters

4.4.2 These Members will be required to make a statement at the start of the meeting, acknowledging their obligations in these respects both at D&RP and PAC. These statements will be minuted

4.5 Licensing Committee Members who are also Members of PAC

4.5.1 When an application for development is to be considered by PAC and the application site was the subject of an earlier licensing decision in which you participated, you should declare this fact but you may remain and participate in the discussion and vote. You should be aware of the differences in criteria applicable to licensing and planning cases, and consider whether you need to take advice from the Monitoring Officer in such circumstances.

4.6 Contact with Applicants, Developers and Objectors

4.6.1 You should refer those who approach you for planning, procedural or technical advice to officers where appropriate.

4.6.2 You should not agree to any formal meeting with applicants, developers or groups

of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Development Control Manager to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

Otherwise, you should;

- follow the rules on lobbying;
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Monitoring Officer any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

4.7 Attendance at Presentations/Exhibitions by Applicants/Developers

4.7.1 Members of PAC may attend presentations/exhibitions organised by an applicant or objector. Members should adhere to the following:

4.7.2 Unless a meeting is open to the public, don't attend a planning presentation unless an officer is present and/or it has been organised by officers. The timing of such meetings should be agreed with officers.

4.7.3 You can ask relevant questions for the purposes of clarifying your understanding of the proposals.

4.7.4 You should remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the Planning Applications Committee.

4.7.5 You should avoid expressing an opinion on the merits of the proposal which could indicate you have made up your mind without hearing all the arguments.

4.7.6 Officers will notify ward councillors, consultees and objectors of the presentation/exhibition which they will be invited to attend.

4.8 Lobbying of Councillors

4.8.1 You should explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, you must not let it prejudice your impartiality and therefore your ability to participate in the Committee's decision-making and so cannot express a firm view or an intention to vote one way or another .

4.8.2 You should remember that your overriding duty is to the whole community not just

to the people in the ward and, taking account of the need to make decisions impartially and for justifiable planning reasons, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

- 4.8.3 You must not accept gifts or hospitality from any person involved in or affected by a planning proposal.
- 4.8.4 You must promptly refer to the Monitoring Officer any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 4.8.5 You should inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).
- 4.8.6 You should note that, unless you have a disclosable pecuniary interest, you will not have breached this protocol through:
- listening or receiving viewpoints from residents or other interested parties:
 - making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind.
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate. It would, however, be advisable to leave representing ward interests to ward members who are not members of PAC.

4.9 **Lobbying by Councillors**

- 4.9.1 You should not lead or act as a spokesperson of an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you are likely to be judged as being biased or having predetermined the issue.
- 4.9.2 You can join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as Victorian Society, CPRE, Ramblers' Association or local civic society, but disclose an interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 4.9.3 You should not excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

4.9.4 You should not decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other member to do so. Political group meetings should never dictate how members should vote on a planning issue.

4.10 Site Visits

4.10.1 Site Visits by PAC

It is not general practice to arrange site visits for the Committee. Such site visits will only be considered where the expected benefit is substantial.

4.10.2 You should not request a site visit unless you feel it is strictly necessary because:

- The impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although if that is the case, additional illustrative material should have been requested in advance); or
- There is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing or by verbal presentation at the Committee meeting.

Site Visits by individual members of PAC

4.10.3 Many members will already be familiar with sites which are the subject of applications but not in all cases. It is normal and proper for members in these circumstances to visit a site themselves before the Committee meeting. Where individual members of the Committee wish to undertake their own site inspection prior to the Committee meeting, these should be conducted unannounced and limited to a public vantage point. Members of the Committee should not visit an applicant's property to avoid the perception of bias. Members of the Committee should not arrange to meet applicants/agents or third parties for the purpose of a site inspection.

4.10.4 If a Committee member is approached on site by any applicant/agent, objector or other third party interest they should seek to avoid discussion of the application and should ensure they do not give any indication of their views or the likely decision of the Committee.

4.11 Conduct at Meetings

4.11.1 You should not allow members of the public to communicate with you during the Committee's proceedings other than through the scheme for public speaking, as this may give the appearance of bias. You should avoid communicating privately with applicants and objectors during the Committee meeting.

4.11.2 Avoid speaking to other members whilst the applicant or objectors are making representations to PAC. It may give the impression you are not taking into consideration their views.

- 4.11.3 Be aware of public perception. You should be paying attention to the discussion at all times.
- 4.11.4 Do ensure that you comply with the Council's procedures in respect of public speaking.

4.12 Membership of other Bodies

- 4.12.1 A member who is a member of a local lobby or campaign group should carefully consider whether they can participate in a planning application where the group has campaigned for or against a particular proposal.
- 4.12.2 A member should consider the nature of their involvement with the group; the publicly expressed views of the lobby or campaigning group; what has been or done in relation to the particular group and consider whether they have predetermined the issue or "*whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility*" that the member was biased.

4.13 Decision Making

A. The importance of approved policies in decision making

On making a decision on a planning application the law requires a local planning authority to have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations

- 4.13.1 You should ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- 4.13.2 You should come to meetings with an open mind and demonstrate your willingness to listen.
- 4.13.3 You must comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 4.13.4 You should come to your decision only after due consideration of all the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you request a deferral but do not use lack of information as a basis for moving refusal.
- 4.13.5 You should not vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.

4.13.6 You should have recorded the reasons during the meeting for PAC's decision to defer any proposal.

4.13.7 You should make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. Detailed reasons must be given, including policy references. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

B. Reports to Committee

Officers' written reports to committee aim to be accurate and concise and provide all relevant information. They describe the proposal and have a reasoned planning assessment of the proposal including an analysis of all relevant planning policies and other material planning considerations. They contain a written recommendation justified on the basis of relevant development policies and other material planning considerations. They cover consultations and other representations, but may not include copies of all letters of objection or support received. They will, however, summarise any material planning considerations contained in such representations. Complete copies of all such correspondence are placed on the planning file and are available to members.

4.13.8

- You should advise the case officer as soon as is practicable if you become aware of information relevant to the determination of a case which is on the Planning Applications Committee Agenda. Failure to do so may result in deferment of the case causing unnecessary delay.
- You should contact the Development Control Section Manager as soon as possible if you wish to discuss the interpretation of information in a planning applications committee report.

C. Decisions contrary to policy and/or recommendation

The law requires that decisions must be taken in accordance with the Development Plan unless material considerations indicate otherwise. Officers will advise in their report what arguments put forward by an applicant/objector or supporter to an application are considered capable of constituting material considerations.

If members are minded to approve an application contrary to policy or officer advice, they must identify clear and substantiated reasons capable of constituting material planning considerations.

5 Additional Guidance for Cabinet Members

5.1 Cabinet members may be approached by parties, members of local communities, developers, landowners seeking both their support and their opposition to planning matters as are those serving on PAC. In these circumstances the same opportunities and constraints apply as to members generally but the level of potential scrutiny is likely to be higher

5.2 Cabinet Members: Declaration of Disclosable Pecuniary Interests

Paragraphs 2.5.1 to 2.5.4 apply equally to all members.

5.3 Cabinet Members – Avoidance of Bias and Predetermination

5.3.1 Cabinet members are referred to the guidance on bias, predetermination and predisposition in paragraph 4.2 above which applies to all members as appropriate.

5.3.2 For clarity support for an overall policy stance or objectives, as distinct from a specific application of that policy approach in any decisions would be regarded as legitimate predisposition, rather than a predetermination which would render a member's involvement in decision making unsafe.

5.4 Cabinet Members – Attendance at presentations/exhibitions and site visits

5.4.1 The formulation of policy and the development of site briefs may benefit from early engagement by members. Officers may prepare a committee report or briefing note, or arrange a presentation or meeting in order to identify or debate key issues. This provides the opportunity for cabinet members to raise questions of their own or seek further information regarding a proposed policy.

5.4.2 Information presented and comments made at such briefings/meetings will have regard to the stage of negotiations and their sensitivity and possible links to other large scale schemes or planning activities which raise the same issues.

5.5 Cabinet Members: Planning and property functions: Development of Council-owned land

5.5.1 The planning legislation specifically allows local planning authorities to determine applications on council owned land so there is no automatic requirement for members of the cabinet to declare any interest when making planning decisions eg on planning briefs, merely because the land is owned by the council.

5.5.2 When a former council site is being considered by Cabinet (eg for inclusion in the LDF or for a planning brief) and a cabinet member was also member of the cabinet when a decision was taken on the disposal of the land he/she should declare this but the member concerned may remain and take a full part in any decision taken.

5.6 Cabinet Members who are also PAC members

- 5.6.1 When a proposal is under consideration at a PAC meeting and a committee member was also a member of the Cabinet making a decision e.g a planning brief this should be disclosed but the member concerned may remain and take a full part in any decision taken. However, where a member is identified with a development, for example as the lead proponent of a council led development, then the member should declare his involvement, may address the committee but should take no further part in the discussion and should not vote.
- 5.6.2 Where a cabinet member was part of the cabinet meeting which determined the planning brief affecting land where a planning application is now to be determined the member can take a full part in the committee discussions as the planning brief is council policy.

6 Role of Officers

- 6.1 You must not put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Development Control Section Manager, which may be incorporated into any committee report).
- 6.2 You should recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

7 Training

- 7.1 You should attend the council arranged training on planning matters before participating in decision making at meetings dealing with planning matters.
- 7.2 You should endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

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PART 6

MEMBERS' ALLOWANCE SCHEME

1. BACKGROUND AND GENERAL INFORMATION

- 1.1 The current scheme for paying allowances to Members was approved by Council on 13 September 2023 and it was made under powers conferred by the Local Authorities (Member's Allowances) (England) Regulations 2003. It replaces the scheme agreed in February 2023. This scheme may be cited as the London Borough of Merton Members' Allowance Scheme 2024/25 and shall have effect from and including 1 April 2024.
- 1.2 The scheme provides for the payment of a Basic Allowance to each Member (**section 3**) and a Special Responsibility Allowance to be paid to those Members who hold special responsibilities in relation to the Council (**section 4**). Wherever in these Regulations there is reference to the annual up-rating of an allowance, responsibility for the calculation of allowances payable under the scheme shall be made by the Executive Director of Innovation and Change.
- 1.3 The scheme provides for the payment of some travel expenses (**section 6**). These payments can only be claimed by Members in respect of Approved Duties (**section 9**). The Council resolved that normal travel expenses and other subsistence payments would be subsidised within the enhanced Basic Allowance and there would be no payment for intra-borough expenses.
- 1.4 Claims must be made on the appropriate forms and with the necessary supporting documentation, where appropriate. Payment will only be authorised when the claims rules (**section 10**) are fully complied with.
- 1.5 National Insurance (**section 11**) and Income Tax (**section 12**) liabilities may arise as a result of payment of some of these allowances and there may also be implications as regards Statutory Sick Pay (**section 13**).
- 1.6 Members are not able to join the Pension Scheme (**section 14**).
- 1.7 The allowances payable in any one year following the calculation of any increase resulting from the annual local government pay settlement shall be identified in a schedule to be prepared by the Executive Director of Innovation and Change and published to accompany the Constitution.

2. RENUNCIATION & WITHDRAWAL

- 2.1 A Member may, by notice in writing given to the Monitoring Officer, elect to forego any part of his/her entitlement to an allowance under this scheme. Payment of the Basic Allowance and Special Responsibility Allowance will be made automatically unless such written notice is given.
- 2.2 Councillors should note that if they do renunciate their right to receive an allowance they will no longer be entitled to claim a deduction against tax for expenses incurred but not reimbursed.

3. BASIC ALLOWANCE

- 3.1 The current rates are set out in Part 6 Addendum. It is paid in monthly instalments and there is no need to claim payment.

4. SPECIAL RESPONSIBILITY ALLOWANCE

- 4.1 The Special Responsibility Allowance is paid at the rates set out below.
- 4.2 If a person is entitled to more than one special responsibility allowance, only one (the highest) is paid. Unless the Member elects to receive the lower one.
- 4.3 The holders of the offices listed in the second column of the table below shall be entitled to receive Special Responsibility Allowances calculated by the multiplication of the rate of the Basic Allowance per Councillor as prescribed in section 3 above by the factor set out for that office in the third column.

Office	Factor
Leader of the Council	4
Deputy Leader	2
Leader of the Opposition	2
Leader of the largest Minority Group	1
Leader of the next largest Minority Group	0.5
Members of the Cabinet	2
Chair, Overview and Scrutiny Commission	1
Chair – Development and Planning Applications Committee	1

Chair – Licensing Committee	1
Chair – Standards and General Purposes committee	0.33
Chair - Scrutiny Panel	0.33
Mayor	1
Administration Whip	0.5
Deputy Leader of the Opposition	0.5
Opposition Whip	0.33
Minority Group Whip	0.25

4.4 Statutory co-opted members, co-opted members of the Standards Committee and Independent Persons (Code of Conduct)

4.5 An allowance will be paid to the statutory co-opted members, co-opted members of the Standards and General Purposes Committee and Independent Persons (Code of Conduct). The Council will set an annual allowance for these Members based upon a sum of £100 per meeting, multiplied by the total number of meetings expected in each year.

4.6 This allowance is not subject to indexation.

5. PART YEAR ENTITLEMENT

5.1 The provisions of this part shall have effect to regulate the entitlements of a Member to Basic and Special Responsibility Allowances where, in the course of a year, this scheme is amended or that Member becomes, or ceases to be, a Member or accepts or relinquishes a position in respect of which a Special Responsibility Allowance is payable.

5.2 If an amendment to this scheme changes the amount to which a Member is entitled by way of Basic Allowance or Special Responsibility Allowance, then the allowances shall be paid having regard to the relevant proportion of the year to which the entitlement relates (calculated on a daily basis).

5.3 If an amendment to this scheme changes the duties specified, the entitlement will be based on that applicable when the duty is carried out.

5.4 Where the term of office of a Member begins or ends other than at the beginning or end of a year, their entitlement to a Basic Allowance shall be based in proportion to the number of days which they hold/held office.

5.5 If eligibility to a Special Responsibility Allowance applies other than for a full Year, that too shall be apportioned on a daily basis in accordance with paragraph 5.4 above.

6. SICKNESS AND PARENTAL LEAVE

6.1 Members on sickness, maternity, paternity and adoption leave may continue to claim both their Basic Allowance and any Special Responsibility Allowance for which they are eligible. A pro-rata Special Responsibility Allowance will be paid to a Member covering an eligible post during such a period of absence.

7. TRAVEL EXPENSES

7.1 Travel expenses for travel outside the borough are payable to Members, in addition to any other allowance to which they may be entitled, where expense on travel is incurred in respect of the performance of an approved duty defined in section 9.4.

7.2 Members are permitted to reclaim travel expenses in relation to attendance at any meeting or function at which they are accompanied by a council officer who is permitted to make such a claim.

7.3 PUBLIC TRANSPORT

7.3.1 The rate of travel by public transport should not exceed the amount of the ordinary fare, or any available discounted fare. Where more than one class of fare is available the rate shall be determined by reference to standard class fares unless the Council specifies that a higher class fare will be paid.

7.3.2 The rate specified in this section may be increased to include expenditure actually incurred on sleeping accommodation engaged by the Member for an overnight journey. This is subject to a reduction of one-third in any subsistence payable in respect of that night.

7.4 MEMBERS' OWN TRANSPORT

7.4.1 For the purposes of this section the vehicle's cylinder capacity will be that shown on the vehicle registration document.

7.4.2 The rates of reimbursement are as follows:-

Motor Cars 451-999cc, Motor Cycles

Nationally agreed lowest car mileage band (up to 999cc band)

Motor Cars 1000cc+

Nationally agreed middle car mileage band (1000-1199cc band)

7.5 TRAVEL BY HIRED MOTOR VEHICLE

7.5.1 Reimbursement of hired motor vehicle fares shall not exceed the amount of the fare for travel by appropriate public transport except in cases of urgency or where no public transport is reasonably available, in which case the fare actually incurred plus any reasonable gratuity paid may be reimbursed.

8. SUBSISTENCE ALLOWANCE

8.1 The Council resolved on 24 September 2003 not to pay subsistence allowances under this scheme.

9. CARERS / DEPENDANTS ALLOWANCES

9.1 The Dependent Carers Allowance (DCA) is open to all Members who are the main carers of dependent relatives. This entitlement includes the statutory co-opted members, co-opted members of the Standards and General Purposes Committee and the Independent Persons (Code of Conduct). The Allowance will be paid where a Member requires care provision for a dependent relative or co-habitee to enable the Member to perform an Approved Duty.

9.2 The Member is responsible for making the care arrangements and the Council can accept no responsibility for anything that might happen as a result of those arrangements.

9.3 **Dependants** are defined as:

- Children aged fifteen or less;
- Relatives and co-habitees requiring full time care; and
- other dependants where there is medical or social work evidence that care is required.

9.4 **An Approved Duty** is defined as;

1. A meeting of the Council, Cabinet, Overview and Scrutiny Commission or any committee, or sub-committee of the Authority or of any other scrutiny panel or body to which the Authority makes appointments or nominations, or of any committee or sub-committee of such a body.
2. Any other meeting the holding of which is authorised by the Council,

- Cabinet, Overview and Scrutiny Commission or any committee, sub-committee or scrutiny panel of the Authority or a joint committee of the Authority and one or more other authorities, or a sub-committee of such a joint committee.
3. A meeting of any association or authorities of which the Authority is a member.
 4. Duties undertaken on behalf of the Authority in the pursuance of any Standing Order requiring Members to be present.
 5. Duties undertaken in connection with the discharge of any function of the Authority conferred by, or under, any enactment and empowering or requiring the Authority to inspect or authorise the inspection of premises. This includes visits by Members to residential establishments controlled by the Council.
 6. Duties undertaken in connection with the arrangements made by the Authority for the attendance of pupils at special schools.
 7. Any other duty approved by the Authority, or any duty of a class so approved, for the purposes of, or in connection with, the discharge of the functions of the Authority, or any of its' committees or sub-committees.

9.5 The Allowance is payable;

1. For the length of the qualifying duty, plus up to half an hour each side to cater for care during the Member's travel to and from the duty.
2. The Allowance is to reimburse actual costs incurred up to the London Living Wage maximum rate per hour, subject to a maximum weekly payment of seven and a half hours equivalent care.
3. The Allowance is paid as a reimbursement of incurred expenditure against receipts. Payments made under this scheme may be liable to Income Tax and National Insurance contributions.
4. The Allowance will not be paid in respect of other family members who cover the Member's caring duties.
5. The carer must be over the age of sixteen (and not a spouse or partner / co-habitee of the member or a relative living at the same address.
6. Members wishing to claim the Allowance will need to complete a Dependent Carers Allowance claim form and sign a declaration that states:

"I declare that the above named provided a babysitting/carer service to me as detailed above in order that I could attend the meetings listed. I also certify that the carer is over the age of sixteen and not a close relative or resident of my household."

7. All claims for Dependant Carers Allowance must be submitted to the Head of Democracy Services within two calendar months of the date on which the duty qualifying for the payment is carried out. Late applications can be accepted at that officer's discretion.
8. The rate will be uplifted annually in line with [Retail Price Index] for April of each year.
9. Disputes on entitlement or allegations of abuse to be adjudicated by the Standards and General Purposes Committee.

10. APPROVED DUTIES

10.1 APPROVED DUTIES FOR THE PURPOSES OF CLAIMING TRAVELLING OR SUBSISTENCE ALLOWANCES SCHEME ARE DEFINED BELOW.

- 10.1 Representing the Council outside the borough in response to a formal invitation for member attendance.
- 10.2 Attendance at meetings outside the Borough, of committees, outside bodies and consultative groups to which Members are appointed annually by Council.

11. CLAIMS AND PAYMENTS

- 11.1 Claims must be submitted on the appropriate form within three months of the date of the meeting attended or duty carried out.
- 11.2 All relevant sections of the claim forms must be completed in full. Failure to comply will result in delay while forms are returned to members for completion.
- 11.3 Payments will be made on the 15th of each month in respect of basic and special responsibility allowances and claims for other allowances/expenses properly completed and received up to the first day of that month.
- 11.4 A copy of the claim will be returned when payment is made together with a supply of new forms for future use.

11.5 Payment will be made by credit transfer direct to the account specified by the member on the credit transfer form and returned to the Payroll Manager. If no details are provided by the Member, payment will be made by cheque sent to the home address.

12. NATIONAL INSURANCE CONTRIBUTIONS

12.1 Basic and Special Responsibility Allowances, together with child care / dependents allowances, are subject to deduction of class I contributions to the extent that they fall within the statutory range of earnings levels. Members who are over the state retirement age are not liable to this deduction.

12.2 Contributions will be assessed on the basis of monthly earnings and at the current non-contracted out class I rate, excepting certain married women and widows who are liable only for reduced rate contributions.

12.3 In order that contributions are properly allocated to Members' credit by the DSS, the Payroll Manager will require the date of birth and national insurance number of each Member to whom payments are made.

12.4 All Members who are over the state retirement age and female Members liable to reduced rate contributions should complete the appropriate exemption certificate and send this to the Payroll Manager.

12.5 Each employment is dealt with separately as regards National Insurance Contributions. If the effect of this is that the annual maximum contribution is exceeded, a refund will be made by the DSS.

12.6 If a Member is aware that their contributions from other employment already reach the annual maximum, he/she may apply to be exempted from having deductions made by obtaining form RD950 from their local DSS office.

13. INCOME TAX

13.1 Basic and Special Responsibility Allowances, are taxable and the Council is required to deduct income tax at the basic rate on these payments.

13.2 Members may be entitled to relief from income tax on any part of their allowances which is recognised by the inspector of taxes as the necessary expenses of office and, to claim such relief, should complete form P15 and send it direct to the inspector.

13.3 Newly elected Members should complete form P46 and return it to the Payroll Manager. Alternatively, form P15 should be returned direct to the Inspector of Taxes by Members not wishing to complete a form P46.

13.4 Members with no other employment should pass their P45 to the Payroll Manager or, if this is not available, apply to the Inspector of Taxes for a tax coding on forms P46 or P15 both of which are available from the Executive Director of Finance and Digital.

13.5 The Inspector of Taxes responsible for the tax affairs of Members is:

HM Inspector of Taxes
London Provincial 6
Rede House
71 Corporation Road
Middlesborough
Cleveland
TS1 1TW
quote ref. LP6/996/B22

14. STATUTORY SICK PAY

14.1 Members who pay national insurance contributions on their allowances have a potential entitlement to statutory sick pay in respect of any sickness which prevents him/her from carrying out members' duties for four or more days.

14.2 The exact position will be different in respect of each Member and will depend on the amount of contributions paid over the preceding eight weeks. There will be further complications in respect of Members with other employment should one entitlement be exhausted before the other.

14.3 Members who find themselves in this situation should contact the Payroll Manager for further advice.

15. PENSIONS

15.1 Members are not entitled to apply for inclusion in the Pension Scheme.

16. SUBSISTENCE ALLOWANCE

16.1 Members may claim reimbursement of subsistence costs when they are obliged to incur expense in connection with the performance of an approved duty outside

the boundaries of Greater London.

16.2 The current schedule of approved duties in Merton for which members can claim subsistence is set out in paragraph 9.4.

16.3 The Council can reimburse subsistence to the limits given in the schedule below when the meeting attended or duty carried out is on the list of approved duties. These are only payable when the expense has been incurred. Where a member attends an event, (for example a conference) where a meal is provided, subsistence cannot be claimed, unless it is in addition to that which has been provided.

16.4 Where an event has accommodation associated with it as part of the booking arrangements (common to longer distance conferences and learning events) members are expected to make use of this facility, as subsidised rates often apply.

16.5 Schedule of Subsistence Rates

Type of Expenditure	Available Allowance and Eligibility Criteria
Out of Pocket Expenses (Meals)	Members may claim reasonable out of pocket expenses to cover all meals taken whilst on approved duties. The level of reimbursement will be the actual cost of the meals (excluding alcohol) up to a maximum daily rate of £28.00. Out of pocket expenses will not be paid where time spent on the approved duty is less than 4 hours.
Overnight absence (Accommodation)	Members may claim reasonable out of pocket expenses to cover hotel costs whilst on approved duties. The level of reimbursement will be the actual cost of the hotel accommodation to a maximum rate of £112.00p per night. This upper limit may be relaxed if the average cost of available hotel accommodation available in the area is higher. Where the member is part of a council delegation staying in the same hotel, the actual cost of the accommodation will be reimbursed. Accommodation costs will not be paid where time spent on the approved duty is less than 15 hours unless return travel to home is not available or unreasonable.

16.6 The above rates will be reviewed from time to time in line with best practice and cost changes.

How to Claim for Subsistence Allowance

16.7 This allowance is based on the principle that expenditure on meals/accommodation has actually taken place. Members will be reimbursed the actual expenditure incurred up to the maximum rates set in the above schedule. All claims must be supported by receipts or third party documentation.

16.8 Members are asked to submit their fully completed claims monthly. They should be sent to the Head of Democracy Services. The responsibility for the accuracy of any claims rests upon each individual claimant. A record of all payments made can be subject to inspection by the public and press under access to information legislation.

16.9 Claims must be made within 6 months of the expenditure being incurred. Payment will normally be made by cheque to the Member.

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PART 6 ADDENDUM

MEMBERS' ALLOWANCE – CURRENT RATES

1 MEMBERS' ALLOWANCES – CURRENT RATES

1.1 The following allowances will be paid to Members in pursuant to the scheme set out in accordance with Part 6 of the Constitution

1.2 Basic Allowance

- £12014 *as at March 2024 – to be uplifted in line with the annual staff pay award when known*

1.3 Special responsibility allowances (March 2024) – *to be uplifted in line with the annual staff pay award when known*

- Executive Leader £48056
- Deputy Leader £24028
- Leader of the Opposition £24028
- Leader of the largest minority group £12014
- Leader of next largest minority group £6007
- Cabinet Member £24028
- Chair, Scrutiny Commission £12014
- Chair, Development and Planning Applications Committee £12014
- Chair, Licensing Committee £12014
- Chair, Standards and General Purposes Committee £3965
- Scrutiny Panel Chairs £3965
- Mayor £12014
- Administration Whip £6007
- Deputy Leader of the Opposition £6007
- Opposition Whip £3965
- Minority Group Whip £3004

1.4 Special Responsibility Allowances are not cumulative. If more than one position attracting an SRA is held, only the highest applicable allowance will be paid.

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Part 7

MANAGEMENT STRUCTURE

The Council is organised into six directorates (seven if you include the Chief Executive's Department) each headed by an executive director. In addition to the Chief Executive the six executive directors are:

- (1) Executive Director of Environment, Civic Pride and Climate
- (2) Executive Director of Finance and Digital
- (3) Executive Director of Housing and Sustainable Development
- (4) Executive Director of Innovation and Change
- (5) Executive Director of Adult Social Care, Integrated Care and Public Health and
- (6) Executive Director of Children Lifelong Learning and Families

CMT

The Chief Executive and Executive Directors together form the Corporate Management Team (CMT). Formally the Corporate Management Team's role is:

- To set the strategic direction of the authority setting out the values and direction of travel.
- To agree the appropriate mix of business from time to time – being clear about what is being prioritised and reprioritised.
- To align the budgets to the business mix and to monitor spend.
- To motivate and align the development of staff to the business mix.
- To establish mechanisms for managing business risks.
- To establish systems and processes for monitoring the Council's performance.
- To develop a strategy for, community leadership, partnership working and service provision by other agencies.
- To communicate the strategies, values and direction of the organisation to the public, elected members, staff and stakeholders.

It achieves this by working alongside and in support of councillors.

Delivery takes place at the service and directorate level. Individual executive directors accept personal responsibility and therefore accountability for

service delivery in their departments and collective responsibility for service delivery across the Council.

Leaders Strategy Group

One way in which CMT works alongside councillors is at the Leader's Strategy Group. This is a regular meeting between the Cabinet and CMT members. It has its origins in the Corporate Governance Inspection of 2002. One of the findings was that the Cabinet and the CMT did not meet together on a regular basis to gain a shared understanding of key issues facing the Council. The suggestion was that without this opportunity the corporate focus on key issues might drift. The Strategy Board was established following this report; the new Administration elected in May 2006 has transformed the Strategy Board into the Leader's Policy Group. This has been renamed as the Leader's Strategy Group (LSG).

The Strategy Group is not a decision making forum and is not part of the constitutional arrangements. It is an opportunity for CMT and Cabinet to progress and chase current work and to generate new ideas for research and implementation through the formal machinery.

Departmental Management Teams (DMTs)

Each of the departments have Departmental Management Teams responsible for the management of the department. DMTs are not part of the constitution but part of a best practice business arrangement for managing a department. DMTs' decision making powers and rights depend on what powers and rights are given to it by the departmental director.

Managers' Forums

In order to encourage cross functional working regular management forums are held. The invitees are senior managers of each of the departments. In addition to the networking opportunity provided the forums are a channel of communication on key issues affecting the Council.

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