

Report to COUNCIL

Constitution Update

Officer Contact: Paul Entwistle, Director of Legal Services

12th July 2023

Executive Summary

The constitution requires to be updated regularly to ensure it is fit for purpose.

Recommendations

Council is requested to approve the Contract Procedure Rules at Appendix 1 and the Code of Conduct and Arrangements at Appendix 2.

Council

12th July 2023

Constitution Update

1 Background

- 1.1 The Constitution requires regular review to ensure it reflects any legislative, organisational and good governance amendments.

Contract Procedure Rules

- 1.2 Officers from Procurement, Finance and Legal have reviewed the Contract Procedure Rules and propose a number of technical amendments.

These technical amendments to the Contract Procedure Rules are required to ensure that the procurement framework for the Council is appropriate.

The main amendments are:

- The definition of “contracts” has been extended to include call off contracts.
- The Procurement Procedures at section 4 be amended to clarify the Procedure for Call off Contracts under Framework Agreements to ensure the Procurement Unit advise on the appropriate procedures.
- It is clarified that the Procurement Unit must be satisfied that contracts commissioned by another Contracting authority to which the Council is a party have been compliantly procured.

A revised document is included as Appendix 1 to the report.

1.3 Code of Conduct and Arrangements

The Standards Committee have recently considered the existing Members Code of Conduct and have recommended no amendments. It is appropriate though to confirm the Code. The Arrangements for dealing with complaints have been updated and consolidated and include the procedure to be followed at a local hearing at paragraph 9 of the Arrangements. The documents are included at Appendix 2.

2 Recommendation

- 2.1 Council agree the Contract Procedure Rules, the Code of Conduct and Arrangements identified at Appendix 1 and 2 in this report.

3 Preferred Option

- 3.1 The preferred option is to review and update the constitution.

4 Consultation

- 4.1 Officers have been undertaking work on the appropriate documents

5 Financial Implications

- 6.1 N/A

7 Legal Services Comments

- 7.1 N/A

8. Co-operative Agenda

- 8.1 N/A

9 Human Resources Comments

- 9.1 N/A

10	Risk Assessments
10.1	N/A
11	IT Implications
11.1	N/A
12	Property Implications
12.1	N/A
13	Procurement Implications
13.1	These are contained in the Report
14	Environmental and Health & Safety Implications
14.1	N/A
15	Equality, community cohesion and crime implications
15.1	N/A
16	Oldham Impact Assessment Completed?
16.1	Not applicable
17	Key Decision
17.1	N/A
18	Key Decision Reference
18.1	N/A
19	Background Papers
19.1	N/A

The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

Name of File: Constitution
Records held in Legal Service Department
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20	Appendices
20.1	Appendix 1 – Contract Procedure Rules Appendix 2 – Code of Conduct and Arrangements

APPENDIX 1

Contract Procedure Rules

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Note: All references to Council posts in these Contract Procedure Rules shall be read as a reference to the equivalent post at the relevant point in time

1. APPLICATION/COMPLIANCE WITH CONTRACT PROCEDURE RULES

- 1.1 These Contract Procedure Rules are made under Section 135 of the Local Government Act 1972 and apply to all Contracts and Call-Off Contracts for the procurement of Supplies, Works, Services or Concessions made in the name of the Council. Where in these Rules “the Council” is referred to, the term shall include the reference to School Governing Bodies by virtue of the Scheme for Financing Schools, to the Council in its roles as charitable trustee and to the Unity Partnership Limited and the Miocare Group and any other Contracting Authority owned in whole or in part by the Council.
- 1.2 For the avoidance of doubt, in instances of pooled funds arrangements made under section 75 of the National Health Service Act 2006 and the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 the lead commissioning organisation’s rules will take precedence.
- 1.3 Every Contract entered into by the Council shall be entered into pursuant to or in connection with the Council’s functions and shall comply with:
 - 1.3.1 all relevant statutory legislation and provisions and in particular the Procurement Regulations and any relevant case law;
 - 1.3.2 the Council’s Constitution including these Contract Procedure Rules, the Council’s Financial Procedure Rules and the Officer and the Executive Member Scheme of Delegation; and
 - 1.3.3 the Council’s strategic objectives and policies including, amongst others, the Corporate Plan.
- 1.4 These Contract Procedure Rules apply to all Contracts awarded by the Council for Supplies, Works, Services or in respect of Concessions, regardless of the source of funding for the Contract. They apply to procurement by any form, including by way of a Council purchase order by any other form of Contract awarded by any person, firm or body on the Council’s behalf.
- 1.5 No Contract shall be entered into unless those officers specified in the Scheme of Delegation at Part 3 of the Council’s Constitution with budget responsibilities are satisfied that there is adequate budget provision and all necessary consents to the expenditure have been obtained.
- 1.6 Where a Contract involves the making of a Key Decision as defined in Part 2, Article 14.3.2 -14.3.3 of the Constitution, those relevant officers specified in the Scheme of Delegation at Part 3 of the Council’s Constitution shall ensure that the Director of Legal Services and the Director of Finance are consulted throughout the procurement or commissioning process.
- 1.7 It shall be a condition of any Contract between the Council and any persons (not being Officers of the Council) who are required to supervise a Contract on the Council’s behalf, that in relation to such Contract, those persons shall comply with the requirements of these Contract Procedure Rules as if they were Officers of the Council.
- 1.8 These Contract Procedure Rules shall not apply to:
 - 1.8.1 Contracts of employment.

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- 1.8.2 Contracts for direct payments or for personal social or health care or educational need where neither a quotation or tender procedure are, in the opinion of the Deputy Chief Executive, or Managing Director (following consultation with Director of Legal Services) viable methods of procurement in the circumstances.
 - 1.8.3 Contracts for the purchase or sale of land or securities, or Contracts for the taking or granting of any interest in land, unless such Contracts involve details of the Council's specific requirements which would amount to a Works contract and must be procured in accordance with these Rules.
 - 1.8.4 Contracts for supplies to be purchased at auction and where the Director of Finance has agreed in writing that the Council's interests will best be served by purchase through auction and has similarly agreed an upper limit for bids.
 - 1.8.5 Contracts for the use of counsel or other legal representation where the Director of Legal Services considers that a Procurement exercise would not protect or support the Council's interests. All contracts for the use of counsel or other legal representation must be commissioned and/or approved by The Director of Legal Services.
 - 1.8.6 Contracts for works of art or theatre, which are genuinely exclusive.
 - 1.8.7 Contracts commissioned by another Contracting Authority as lead authority in accordance with their own contract procedures and Procurement Legislation provided the Commercial Procurement Unit (in consultation with Legal Services) is satisfied that the Contracts have been compliantly procured.
 - 1.8.8 A Call-Off Contract made by the Council or a lead Contracting Authority on behalf of the Council under a legally compliant Framework Agreement where the Council is a named Contracting Authority provided the Commercial Procurement Unit (in consultation with Legal Services) is satisfied that the Call-Off Contract has been compliantly procured (see Rule 8).
 - 1.8.9 The sale or provision of Supplies, Works or Services delivered by the Council as traded services.
 - 1.9 Save for Rule 14.1 and Rule 14.8 and Rule 14.12, these Contract Procedure Rules shall not apply to Grant funding received by the Council and Grant funding distributed by the Council provided always that this exclusion does not apply to the procurement of Supplies, Works or Services using Grant funding received by the Council..
 - 1.10 Any failure to comply with any of the provisions of these Contract Procedure Rules shall be reported to the Head of Commercial Procurement Unit who will refer the matter to the Director of Legal Services or the Director of Finance, as appropriate and the officer. A breach of these Rules may result in disciplinary action.
 - 1.11 The relevant officer referenced in Rule 1.10 shall, where appropriate, take immediate action in the event of a failure to inform the appropriate Director who will consider and determine the appropriate action.
 - 1.12 Any dispute regarding the application of these Contract Procedure Rules shall be referred to the Directors of Finance and Legal Services for advice.
 - 1.13 The final arbiter for resolution of disputes regarding the application or interpretation of these Contract Procedure Rules shall be the Director of Legal Services whose decision shall be binding and final.

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- 1.14 Persistent breach of the Contract Procedure Rules will also be reported to the Audit Committee.
- 1.15 These Contract Procedure Rules make provision for the overriding Procurement Regulations. It is anticipated that the Procurement Regulations will be amalgamated and replaced with new legislation which governs the way in which Contracts that have a Contract Value in excess of the prescribed thresholds are procured. It is also anticipated that the Provider Selection Regime (PSR), which will be a set of new rules for arranging healthcare services in England (but not the procurement of goods or non-healthcare services) will also be implemented. In the event that new legislation or rules are imposed, the definition of the Procurement Regulations shall be deemed to be modified to refer to the replacement legislation and rules and any procedures within these Contract Procedure Rules which comply with the Procurement Regulations as currently in force shall be deemed to be modified to refer to the replacement rules and procedures.

2. COMMISSIONING AND PROCUREMENT PLANNING

- 2.1 Prior to the start of each financial year, the Council shall create a strategic procurement forward plan in consultation with the Head of the Commercial Procurement Unit and members of the Legal Services team setting out its current Contracts and any Works, Supplies or Services to be procured for the forthcoming financial year. The procurement pipeline should be refreshed at intervals as the need arises. The coordination and updating of this plan will be the responsibility of the Commercial Procurement Unit. The strategic procurement forward plan will be published on the Oldham Council website.
- 2.2 The Council shall, where appropriate, make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness in accordance with Section 3 Local Government Act 1999 ("Best Value"). This includes where appropriate, consultation with representative groups of payers of Council Tax and Business Rates stakeholder(s) and any other relevant interested groups prior to commissioning services.
- 2.3 The Council shall consider its obligations under the Public Services (Social Value) Act 2012 and have regard to economic, social and environmental well-being in connection with public services contracts and for connected purposes in its planning and commissioning processes.
- 2.4 The Council shall, where appropriate, consider its obligations with regard to data protection under the UK General Data Protection Regulation and the Data Protection Act 2018 as amended from time to time and in particular its responsibilities and that of the Contractor in relation to the processing of personal data through the outsourcing of its services, including specifying the conditions for processing and retaining personal data.
- 2.5 The Council shall, where appropriate, ensure that any collaborative arrangements/agreements with other public bodies to procure Supplies, Works or Services comply with the Procurement Regulations and ensure value for money and that the Council's interests are fully protected.
- 2.6 As permitted by the Procurement Regulations, soft market testing may be undertaken provided it does not distort competition and is transparent and non-discriminatory.
- 2.7 Where an organisation has been involved at a pre-procurement stage (whether in soft market testing or otherwise, e.g., incumbents), the Council must ensure fairness, transparency and equal treatment when the tender process starts such as making certain information available to all Tenderers that has previously been made available at a pre-procurement stage.

2.8 The Contract Owner is responsible for the full commissioning cycle including contract management and must ensure the Council enters into a legally binding Contract with the Contractor prior to the provision of the Supplies, Works or Services. The Contract Owner must ensure that the Contract is correctly executed and completed and then lodged with the Commercial Procurement Unit where the value of the Contract is £10,000 and over.

3. CALCULATION OF CONTRACT VALUE

3.1 The estimated value of a Contract shall be the total consideration payable, including Value Added Tax (where applicable), which the Council expects to be payable under the Contract and shall be calculated in accordance with Rule 3.2 below.

3.2 The total Contract Value shall be calculated as follows:

3.2.1 Where the Contract is for a fixed period, by taking the total price to be paid during the lifetime of the Contract or the price which might be paid during the whole of the period including any permitted extension.

3.2.2 Where the term of a Contract is indefinite or uncertain, by taking the monthly price payable under the Contract multiplied by 48.

3.2.3 In relation to a compliant Framework Agreement with no guaranteed commitment, the Contract Value will be the estimated value of the required Supplies, Works or Services over the full duration of the Framework Agreement.

3.3 Under the Procurement Regulations, Contracting Authorities may divide tender opportunities into smaller lots to encourage small and medium sized business enterprises to submit bids and must provide reasons for not doing so. The cumulative value of the individual lots will form the total Contract Value. If the Council chooses not to divide tender opportunities into smaller lots, it will record a reason for not doing so, and this record will be held by the Commercial Procurement Unit.

3.4 A Contract Value shall not be artificially under or overestimated or divided into two or more separate Contracts where the purpose is to avoid the application of these Contract Procedure Rules.

4. PROCUREMENT PROCEDURES

4.1 Where an existing Contract or in-house service is available to meet the Council's specific procurement requirements and offers value for money it should be used unless there are particular circumstances which justify an alternative route to market.

4.2 An E-auction process may form part of the overall tender process and shall be used in conjunction with the relevant procedures. The Contract Notice or advertisement and the Invitation to Tender / Quote documentation shall state that an E-auction will form part of the process.

4.3 If Rule 4.1 does not apply, the Council must comply with the procurement table below, which sets out the required procedure for different Contract Values, the minimum number of offers that must be invited and how invitations to submit offers must be publicised.

Contract Value	Procurement Activity	Instructions	Minimum Requirement for Advertising the Opportunity
Less than £10,000 for Supplies, Works and Services	1 Written Quotation.	Service Area to obtain at least 1 written Quotation in accordance with Rule 5.1 below. Local Supply Chains and SMEs to be considered where practical.	N/A
Between £10,000 and £24,999 for Supplies, Works and Services	Approach a minimum of 3 organisations for a written Quotation.	Service Area to contact the Commercial Procurement Unit who will conduct an appropriate procurement procedure and facilitate the process using the Council's E-Procurement System (The Chest). Local Supply Chains and SMEs to be considered – at least 1 local Contractor (where practical) to be included.	The Chest
Between £25,000 and £99,999 for Supplies, Works and Services	Open Request for Quotations	Service Area to contact the Commercial Procurement Unit who will conduct an appropriate quotation procedure and facilitate the process using the Council's E-Procurement System (The Chest). Local Supply Chains and SMEs to be considered.	The Chest Contracts Finder
Between £100,000 and Procurement Regulations threshold for Supplies, Works and Services or Concessions	Formal Open Tender Process	Service Area to contact the Commercial Procurement Unit who will conduct an appropriate procurement procedure in accordance with these Contract Procedure Rules and facilitate the process using the Council's E-Procurement System (The Chest).	The Chest Contracts Finder
Procurement Regulations threshold and above for Supplies, Works and/or	Full Procurement Regulations compliant Procedure	Service Area to contact the Commercial Procurement Unit who will conduct an appropriate procurement procedure, in compliance with the Procurement Regulations, and follow and facilitate the process using the Council's E-Procurement System (The Chest) and	Open advert mandated in Find a Tender Service and Contracts Finder

Services or Concessions		Contracts Finder.	
Call-Off Contracts of any value	Procedure governed by the overarching Framework Agreement	Service Area to contact the Commercial Procurement Unit who will advise on the available procedures and, where appropriate, conduct a mini competition in compliance with the relevant Framework Agreement using the Council's E-Procurement System (The Chest) where possible.	The Chest or via the Framework Agreement holder's system

4.4 The rules relating to the required process and timescales shall be observed for all Contracts as shall the principles of the Procurement Regulations. The procurement process needs to be conducted in accordance with the principles of equal treatment, non-discrimination, transparency, mutual recognition, proportionality, competition, the protection of legitimate expectations, the requirement to act without manifest error and good administration – which underpin the Procurement Regulations.

5. QUOTATION PROCESS

5.1 Full written Quotation(s) below £10,000 shall be obtained from Contractor(s) pursuant to the procedure set out in the table in Rule 4.3 before a formal Contract can be issued. A formal Contract shall be issued after receipt of the Quotation(s) and shall specify the Supplies, Works or Services to be provided or the Concession to be granted, set out the price and terms of payment and incorporate the Council's relevant terms and conditions of contract unless approval from the Commercial Procurement Unit (in consultation with Legal Services) is given to use alternative terms and conditions.

5.2 Requests for Quotations of £10,000 or above for Supplies, Works and Services or a Concession must be advertised on the Council's E-procurement system (The Chest) and any Requests for Quotations of £25,000 and above must also be advertised on Contracts Finder.

5.3 At least one local Contractor should be included in each Request for Quotation, where possible.

5.4 The standard Council templates for Quotations shall be utilised for all Procurement activity and these are held by the Commercial Procurement Unit.

5.5 All Quotation(s) sought shall be recorded in writing for audit purposes via the Council's E-procurement system (The Chest).

6. TENDER PROCESS – Below Public Contracts Regulations Thresholds

6.1 All Procurement opportunities should be advertised via the Council's e-procurement system (The Chest) and Contracts Finder (See table Rule 4.3). The Invitation to Tender should include all of the information listed in Rule 9.2 below.

6.2. Any Procurement opportunity advertised shall:

6.2.1 specify the terms and conditions which will apply;

6.2.2 invite persons or bodies to express an interest in tendering;

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- 6.2.3 specify a date or time limit, being not less than 14 days within which such Tenders are to be submitted.

7. TENDER PROCESS – Above the Procurement Regulations Thresholds

7.1 Where an estimated Contract Value exceeds the current Procurement Regulations' Thresholds, the Contract shall be tendered in accordance with the Procurement Regulations. Under the Public Contract Regulations 2015, the Contract may largely be Tendered under Open, Competitive Dialogue, Competitive Procedure with Negotiation or Innovation Partnerships Procedure. Under the provisions relating to Social and Other Specific Services within the Public Contract Regulations 2015 and under the Concession Contracts Regulations 2016 the Council shall have more freedom to organise the procedure, subject to compliance with the relevant Regulations

7.2 A Contract Notice in the prescribed form must be published in Find a Tender and Contracts Finder in order to invite Tenders..

7.3 All Find a Tender and Contracts Finder notices shall be published by the Commercial Procurement Unit.

7.4 Competitive Procedures

7.4.1 A Competitive Dialogue procedure or Competitive Procedure with Negotiation may be beneficial in circumstances where greater flexibility is needed, e.g., for highly complex and risky projects where Tenderers will have a major role in defining the solution or where an Open Procedure may not deliver the expected outcomes.

7.4.2 A Competitive Dialogue procedure or a Competitive Procedure with Negotiation allows the Council to negotiate proposed solutions with Tenderers to achieve a desired outcome.

7.4.3 The Council must publish the minimum requirements, the award criteria and their weightings, which should not be changed during the negotiation process. During the dialogue, the Council must ensure the equal treatment of all participants and must not provide information in a discriminatory manner which may give any participant an advantage over others.

7.4.4 Advice from the Commercial Procurement Unit, in consultation with Legal Services, must be sought prior to embarking upon a Competitive Dialogue Process or a Competitive Procedure with Negotiation.

7.5 Concession Contract

A Concession governed by The Concession Contracts Regulations 2016 must be advertised in accordance with those Regulations and the value of the concession must be calculated in accordance with Regulation 8. There are certain procedural guarantees which must be met; award criteria must be published in descending order of importance and the tender evaluation made in accordance with them; minimum time limits for the receipt of tenders and the mandatory and discretionary exclusion criteria must be applied. A Find a Tender / Contracts Finder notice must be published for over threshold tenders.

8 COMPLIANT FRAMEWORK AGREEMENTS

8.1 CALL-OFF CONTRACTS

- 8.1.1 Where an appropriate compliant Framework Agreement is recommended by the Commercial Procurement Unit, that has been established by a consortium, collaboration, the Council or other public body, the Council may consider using this compliant Framework Agreement to place an order (Call-Off) if:
- (a) the Framework Agreement has been established by an entity, and via a process, which permits the Council to access those arrangements lawfully;
 - (b) the Council is a named Contracting Authority in the original advertisement.
- 8.1.2 Before undertaking a Call-Off under any compliant Framework Agreement, thorough due diligence should be undertaken and advice sought from the Commercial Procurement Unit and Legal Services to confirm the following (as a minimum):
- the Council is a named Contracting Authority in the original advertisement,
 - the compliant Framework Agreement is in place and binding,
 - the compliant Framework Agreement is still valid,
 - the estimated Contract Value in respect of the proposed Call-Offs that would be made under the compliant Framework Agreement,
 - that the maximum aggregate spend under the Framework Agreement has not been reached,
 - that the Call-Off terms and conditions are fit for purpose,
 - a copy of any User Guide / any other documentation is available.
- 8.1.3 Call-Off Contracts must be awarded based on the evaluation criteria identified in the compliant Framework Agreement.
- 8.1.4 Where the Call-Off is undertaken via a direct award process (which is prescribed in the compliant Framework Agreement), in advance of executing a Call-Off Contract the Contractor must be requested, in writing, to supply confirmation, that is verified by the Council, that it can meet the requirements of the Council in accordance with the relevant terms and conditions and the pricing established in the compliant Framework Agreement..

8.2 ESTABLISHING A COMPLIANT FRAMEWORK AGREEMENT

- 8.2.1 Where the Council is establishing a compliant Framework Agreement which may be accessed by other named Contracting Authorities, including any subsidiary companies of the Council, the estimated Contract Value that may be contracted for under the compliant Framework Agreement must take account of all potential work that may be put through the agreement (see Rule 4) and follow the procedures set out in these Contract Procedure Rules.
- 8.2.2 If the Council is establishing a compliant Framework Agreement in accordance with Contract Procedure Rule 8.2.1, reference must be made within the procurement documents explaining if the compliant Framework Agreement is intended for a wider use and advice should be sought from Legal Services to

ensure the terms upon which other Contracting Authorities access those arrangements are clear and offer appropriate protection to the Council.

- 8.2.3 In establishing a compliant Framework Agreement, the total duration (including any extensions) cannot exceed four years except in exceptional circumstances where this can be duly justified (as required under Public Contract Regulations. Any proposal to establish a compliant Framework Agreement with a duration exceeding four years should be referred to the Commercial Procurement Unit and Legal Services for advice.
- 8.2.4 Where, taking into account the above, the estimated value of the compliant Framework Agreement is above the relevant procurement threshold, the authorised officer must ensure that any other public bodies (Contracting Authorities) intended to be able to access the Framework Agreement are included in Find a Tender or contracts Finder or any official notice either individually or by an identifiable class.
- 8.2.5 In establishing a compliant Framework Agreement, the Council must ensure that the terms of the compliant Framework Agreement make the process clear by which Call-Off Contracts are to be entered into.

9. TENDER DOCUMENTATION

- 9.1 Save where a mini competition is to be carried out under another Contracting Authority's Framework Agreement, the standard Council templates for Tendering shall be utilised for all Procurement activity for Tenders of £10,000 or above.
- 9.2 As a minimum, Tender documents shall include details of the Council's requirements for the particular Contract including, but not limited to:
- 9.2.1 a description of the Supplies, Works or Services being procured, or Concessions granted now or in the future;
 - 9.2.2 the Procurement timetable including the Tender return date and time, which shall allow a reasonable period (a minimum of 14 days) for applicants to prepare their Tenders to submit electronically;
 - 9.2.3 the timetables prescribed by the Procurement Regulations;
 - 9.2.4 a detailed specification and instructions on whether any variant bids are permissible;
 - 9.2.5 the Council's terms and conditions of Contract (where a compliant Framework Agreement is to be used, the template Call-Off Contract shall be included)
 - 9.2.6 the evaluation criteria to be used, including Social Value and including any weightings as considered appropriate;
 - 9.2.7 payment schedule and terms and instructions for completion;
 - 9.2.8 whether TUPE may apply (if applicable);
 - 9.2.9 the pension arrangements for existing/former Council employees (if applicable);
 - 9.2.10 form and content of method statements to be provided (if applicable);

9.2.11 rules for submitting of Tenders; and

9.2.12 any further information, which will inform or assist Tenderers in preparing Tenders.

10. CONTRACT TERMS AND CONDITIONS

10.1 All written Contracts and Purchase Orders shall include appropriate terms and conditions for Supplies, Works, Services or Concessions (as relevant) or, where a compliant Framework Agreement is used, the applicable Call-Off terms and conditions. The Invitation to Tender or Quotation documentation shall state within the Contract which terms and conditions or Call-Off terms and conditions will apply, and these shall be available via Legal Services. Purchase Orders shall refer to the applicable terms and conditions.

10.2 All written Contracts shall include the Council's minimum requirements for insurance cover namely:

- Public Liability Insurance - £10m
- Employer's Liability Insurance - £5m and
- Professional Indemnity Insurance - £2m (if applicable)

except where a compliant Framework Agreement is used, in which case the levels of cover specified in the compliant Framework Agreement shall apply.

Any departure from the agreed thresholds must be approved by the Assistant Director of Corporate Governance and Strategic Financial Management.

10.3 Any bespoke contractual terms and conditions required shall be confirmed by Legal Services prior to them being issued as part of the Tender process.

10.4 All Contracts shall be documented before the Supplies, Works or Services are provided or Concession arrangements begin and shall include the following, as a minimum:

10.4.1 every Contract shall, as a minimum, unless there is good and sufficient reason to the contrary (or except where a compliant Framework Agreement is used, in which case the compliant Framework Agreement shall apply), require that all Supplies, Works or Services and all workmanship shall, if applicable, be in accordance with the relevant standard or equivalent International standard without prejudice to any higher standard required by the Contract.

10.4.2 a clause empowering the Council to cancel or terminate the Contract if the Contractor offers an inducement or reward in relation to the procurement of any Contract by the Council, to exclude the Contractor from the tender, under mandatory grounds or discretionary grounds for a serious infringement of the Procurement Regulations, and to recover from the Contractor the amount of any loss resulting from such cancellation or termination.

11. RECEIPT AND OPENING OF TENDERS

11.1 Electronic Tenders

11.1.1 Requests for Quotations and Invitations to Tender must be transmitted by electronic means in accordance with the advice of the Head of Commercial

Procurement Unit. Quotations and Tenders shall be submitted by electronic means e.g., the E procurement system (The Chest).

- 11.1.2 Evidence that the transmission was successfully completed is obtained and recorded.
- 11.1.3 Electronic Tenders are kept in a separate secure folder in The Chest or equivalent system and cannot be opened until the deadline has passed for receipt of Tenders.
- 11.1.4 A member of the Commercial Procurement Unit, who is not responsible for the procurement exercise, will open all requests for Quotations or bids received under a compliant Framework Agreement with a value in excess of £10,000.

12. PRE AND POST TENDER CLARIFICATIONS

- 12.1 Pre-tender clarifications can be provided to potential or actual Tenderers. All responses should be published on The Chest and communicated to all concerned.
- 12.2 Post tender clarifications may be undertaken with Tenderers provided the Council ensures equal treatment of all participants and specifies and applies a process for post tender clarifications in the Invitation to Tender and ensures that no Tenderer is given an advantage over any other Tenderer. For the sake of clarity, any clarifications on the commercial element of a bid must not change the original price offer. This includes verifying abnormally low bids where specific legal advice is required.
- 12.3 All pre and post tender clarifications must be conducted via The Chest. All communication must be documented and retained on The Chest.
- 12.4 At all times during the clarification process, the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.
- 12.5 Unless otherwise permitted by the Procurement Regulations, in no circumstances are post award negotiations permitted.

13. TENDER EVALUATION

- 13.1 All Tenders subject to the Public Contracts Regulations 2015 or the Concession Contracts Regulations 2016 shall be evaluated in accordance with the relevant Procurement Regulations and the evaluation criteria set out in the Invitation to Tender. All other Tenders shall be evaluated in accordance with the evaluation criteria set out in the Invitation to Tender.
- 13.2 The procurement lead from within the Commercial Procurement Unit shall ensure that a representative from Finance is involved in the evaluation of tenders and that, where deemed appropriate by the Head of the Commercial Procurement Unit, Legal Services is consulted regarding the evaluation process for procurements in excess of £1 million.
- 13.3 The procurement lead of the evaluation team must ensure that no member of the evaluation team has a conflict of interest and completes the appropriate documentation.
- 13.4 The procurement lead must ensure that each bid is compliant and that the Tenderer is not excluded from bidding under any of the mandatory or discretionary grounds listed in the Procurement Regulations.

- 13.5 The evaluation criteria shall be predetermined and approved by the procurement lead and listed in the Invitation to Tender documentation, in order of importance. In addition, the evaluation criteria shall be strictly observed (and remain unchanged) at all times throughout the award procedure.
- 13.6 All Tenders shall be awarded on the basis of being the “Most Economically Advantageous” unless otherwise agreed with the Commercial Procurement Unit, in consultation with Legal Services.
- 13.7 All Tenders must be evaluated in accordance with the following principles:
- Transparency – there should be no departure from the award criteria
 - Equal treatment - there should be an identical approach to the evaluation of each tender
 - Manifest error – all scores and calculations should be checked to ensure that there is no manifest error.
 - Record keeping – all original records should be kept together with handwritten comments to complete the audit trail.
- 13.8 Tenderers shall be given written feedback regarding their bid in accordance with the Procurement Regulations.

14. AWARDING CONTRACTS AND CALL-OFF CONTRACTS

- 14.1 All Contracts subject to these Contract Procedure Rules shall be awarded in accordance with the published evaluation criteria and in accordance with the Officer and Executive Member Scheme of Delegation in the table below and the decision notice recorded and published on Modern.gov:

Contract Value	Awarded By	Decision Recorded on
Less than £10,000	Authorised Officer (as per Departmental Scheme of Delegation)	Related spend is recorded (Purchase Order) via Finance Management System (Agresso)
Between £10,000 and £99,999	Authorised Officer (as per Departmental Scheme of Delegation)	Related spend is recorded (Purchase Order) via Finance Management System (Agresso), The Chest, Modern Governance System and Find a Tender/Contracts Finder for Contracts and Call-Off Contracts with a value over £25,000.00.
Between £100,000 and £399,999	Executive Member in consultation with the Deputy Chief Executive, Assistant Chief Executive,	The Chest Modern Governance System and Find a Tender/Contracts Finder and the Key decision document for

	Executive Director for Place and Economic Growth, Managing Directors and Directors (as relevant)	Contracts with a value of £250,000 plus
£400,000 or over	Cabinet or Sub-Committee including Commissioning Partnership Board	The Chest, Modern Governance System, Find a Tender/Contracts Finder and the Key Decision Document

- 14.2 No Contract or Call-Off Contract may be awarded unless budget release has been obtained in accordance with the Financial Procedure Rules and a Modern Gov report and Decision Notice is published authorising any spend of £25,000 or more confirming that the approved expenditure will be constantly monitored. A copy of the final version of the Modern Gov report must be forwarded to the procurement lead within the Commercial Procurement Unit to upload on The Chest. Spend below £25,000 shall be approved in writing by the Officer with delegated approval.
- 14.3 Where the Tender is not within the relevant approved budget, but additional budgetary provision is available, the Contract may be awarded, with the approval of the Director of Finance having ensured compliance with the Financial Procedure Rules.
- 14.4 Once the decision to award a Contract is made, each Tenderer must be notified in writing of the outcome. All Tenderers must be notified simultaneously and as soon as possible of the intention to award the Contract to the successful Tenderer(s) and this should be done via The Chest. The letters must include a description of the characteristics and relative advantages of the successful Tender.
- 14.5 A Contract award letter will be sent to the successful Tenderer(s) containing all relevant information, including all information prescribed by the Procurement Regulations, where relevant.
- 14.6 A Contract which has a Contract Value above the Procurement Regulations thresholds can only be awarded after a notice of the proposed award has been given to all unsuccessful Tenderers and the 10 day standstill period has elapsed from the day after the date upon which the notice was given. If the 10 days expire on a non-working day, then the notice period will be deemed to have lapsed on the next working day.
- 14.7 A Contract award notice must be published in Find a Tender and on the Council's website no later than 30 days after the date of award of the Contract (48 days in the case of a Concession Contract) where the Contract Value exceeds the Procurement Regulations threshold. A Contract award notice must also be published on Contracts Finder.
- 14.8 Save for Call-Off Contracts for personal social or health care or educational need where the overarching Framework Agreement has been sealed, Contracts for Supplies, Services or Works and any other contracts, including but not limited to Grant Agreements, Deeds of Variation, Deeds of Novation and Deeds of Assignment with a Contract Value of £100,000 or more shall be executed by deed and attested by no less than one authorised sealing officer within Legal Services.
- 14.9 Contracts for Supplies, Services or Works and any other contracts, including but not limited to Grant Agreements, agreements to vary, novate or assign together with Call-Off

Contracts for personal social or health care or educational need and with a Contract Value of less than £100,000 shall be executed by no less than one officer of the Council with delegated authority to sign a Contract or contractual document under the Council's Officer and Executive Member Scheme of Delegation.

- 14.10 Reasonable endeavours shall be used to ensure that performance of a Contract does not commence before the Contract is executed.
- 14.11 All Contracts over £5,000 shall be published on and embedded in the Council's Contracts Register maintained by the Commercial Procurement Unit.
- 14.12 Where approved by the officer with delegated approval to sign or an authorised sealing officer within Legal Services or the Director of Finance, Contracts and Call-Off Contracts for Supplies, Services or Works and any other contracts, including but not limited to Grant Agreements, agreements to vary, novate or assign with a Contract Value of less than £100,000 may be executed using the electronic signature of an officer of the Council authorised under the Council's Officer and Executive Member Scheme of Delegation or by such authorised officer using an e-signature via appropriate and secure digital signature software.
- 14.13 Contracts for Supplies, Services or Works and any other contracts, including but not limited to Grant Agreements, agreements to vary, novate or assign may be executed by a contractor using an electronic signature or by using an e-signature via appropriate and secure digital signature software.

15. FINANCE MANAGEMENT SYSTEM

- 15.1 The Council's Financial Management System (Agresso), or equivalent, shall be used to process all orders with Contractors. This includes all orders processed after Quotations are received or a Tender process has been undertaken.
- 15.2 To set up a new Contractor, the guidance that is available to all officers (on the intranet) should be followed.

16. LIQUIDATED DAMAGES AND RETENTIONS

- 16.1 The Director of Finance and the Director of Legal Services shall advise as to the appropriate degree of security (if any) required to protect the Council from a Contractor default prior to the invitation to tender. Liquidated damages clauses should always be used in a Contract or Call-Off Contract where appropriate.
- 16.2 A retention sum (appropriate to the circumstances of the Contract) should be written into the terms and conditions of any Contract for Works with a Contract Value of over £50,000, unless the Director of Legal Services agrees to waive the specific requirement.

17. MODIFICATIONS

- 17.1 Subject to Rule 17.2 a Modification of a Contract which is not subject to the Procurement Regulations may be permitted if any of the limited criteria below applies:
- (a) the original tendered Contract or Call-Off Contract contains clauses allowing such Modifications provided that such clauses:
 - (i) list the scope and nature of possible Modifications as well as the conditions under which they may be used, and

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- (ii) do not provide for Modifications that would alter the overall nature of the Contract or the Call-Off Contract;
 - (b) the Modification is for additional Supplies, Works and Services by the original Contractor that have become necessary and were not included in the initial procurement or commissioning exercise, where a change of Contractor:
 - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, and
 - (ii) would cause significant inconvenience or substantial duplication of costs for the Council
 - (c) where all of the following conditions are fulfilled:
 - (i) the need for the Modification has been brought about by circumstances which a diligent Contracting Authority could not have foreseen; and
 - (ii) the Modification does not alter the overall nature of the Contract or Call-Off Contract;
 - (d) where a new Contractor replaces the one to which the Council had initially awarded the Contract or Call-Off Contract as a consequence of:
 - (i) a clause or option in conformity with Rule 17.1(a); or
 - (ii) a takeover of the Contractor following corporate restructuring, including takeover, merger, acquisition or insolvency, by another Economic Operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail any other substantial Modifications to the Contract or Call-Off Contract;
 - (e) provided that the proposed Modification, irrespective of its value, is not substantial within the meaning of Rule 17.2.
- 17.2 A Modification of a Contract or Call-Off Contract during its term shall be considered substantial for the purposes of Rule 17.1 where one or more of the following conditions is met:
- (a) the Modification renders the Contract or Call-Off Contract materially different in character from the one initially concluded;
 - (b) the Modification introduces conditions which, had they been part of the initial procurement procedure, would have:
 - (i) allowed for the admission of other candidates than those initially selected,
 - (ii) allowed for the acceptance of a Tender other than that originally accepted, or
 - (iii) attracted additional participants in the procurement procedure;
 - (c) the Modification changes the economic balance of the Contract or Call-Off Contract in favour of the Contractor in a manner which was not provided for in the initial Contract or Call-Off Contract;
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- (d) the Modification extends the scope of the Contract or Call-Off Contract considerably;
 - (e) a new Contractor replaces the one to which the Council had initially awarded the Contract or Call-Off Contract in cases other than those provided for in Rule 17.1(d)
 - (f) the Modification increases the contract value for Supplies or Services by more than 10% and for Works by 15%.
- 17.3 For the purposes of Rule 17.2, if several successive Modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive Modifications.
- 17.4 A Modification of a Contract which is subject to the Procurement Regulations, shall be governed by the relevant legislation and the procedure in Rule 17.5 below.
- 17.5 Procedure for Modifications
- 17.5.1 a Modern.gov report must be completed which provides full details of the Modification and any supplementary documentation to enable the relevant Decision Maker (see table in Rule 14.1) giving the approval to make a fully informed decision. For the avoidance of doubt, the value of the modification and not the modified value of the Contract shall govern the Decision Maker.
 - 17.5.2 in giving approval, the Decision Maker must take account of any advice given by the Head of the Commercial Procurement Unit and the Director of Legal Services and must ensure that such advice is included in any report to the Decision Maker.
 - 17.5.3 written approval must be obtained to any Modification in accordance with the Council's Officer and Executive Member Scheme of Delegation.
 - 17.5.4 no commitment should be made to a potential Contractor prior to approval.
 - 17.5.5 the Head of the Commercial Procurement Unit is responsible for ensuring that a complete record of all Modifications is kept and a record of the decision approving a Modification and the reasons for it must be stored electronically in Modern.gov and on The Chest.
 - 17.5.6 a notice of the Modification of a Contract under Rules 17.1 (b) and (c) with a value over the relevant procurement threshold shall, where required, be published in the Find a Tender in accordance with the Procurement Regulations.

18. TERMINATION OF CONTRACTS

- 18.1 Prior to any action being taken, the Director of Legal Services shall be consulted with regard to any proposed termination of any Contract or Call-Off Contracts.

19. CLAIMS ARISING FROM CONTRACTS

- 19.1 Officers shall inform the Head of the Commercial Procurement Unit immediately of any claims (or anticipated claims) by or against a Contractor that are the subject of a dispute between the Council and the Contractor, and the Head of the Commercial Procurement Unit shall inform and consult with the Director of Legal Services to agree a course of action.
- 19.2 Claims arising in respect of matters not clearly within the terms of any existing Contract shall be determined by the Deputy Chief Executive, the Assistant Chief Executive, a

Managing Director or a Director (as appropriate) after having taken the advice of the Director of Legal Services and the Director of Finance.

- 19.3 Where completion of the supply of Works, Supplies or Services under a Contract are likely to be delayed, resulting in claims under the Contract, Officers shall inform the Head of the Commercial Procurement Unit immediately, and the Head of the Commercial Procurement Unit shall inform and consult with the Director of Legal Services to agree a course of action.

20. MONITORING CONTRACTS AND CALL-OFF CONTRACTS

- 20.1 All Contracts must have a Contract Owner.

- 20.2 The Contract Owner will be responsible for the whole of the commissioning, cycle including completing the governance and legal formalities, reviewing, monitoring and evaluating the Contract to ensure that its provisions and the Supplies, Works or Services or (or Concession) within it are being followed and performed as they should be. The Contract Owner shall understand the Specification, contractual terms and the performance framework and must manage activity ensuring that Contracts do not require any extensions beyond the permitted or planned expiry.

- 20.3 During the life of the Contract, the Contract Owner will monitor the Contract in respect to the following, as a minimum:

- (a) performance (against agreed KPIs where relevant) ensuring that where performance falls below expected standards this is managed promptly;
- (b) compliance with the Specification and the terms and conditions of Contract;
- (c) cost, ensuring that there are no unanticipated variations in price or spend;
- (d) any Social Value requirements;
- (e) risk Management ensuring risks associated with the Contract are identified and managed and any risk registers are kept up to date;
- (f) safeguarding where appropriate; and
- (g) user satisfaction.

- 20.4 The final certificate for payment for any Contract for the delivery of Works shall not be paid until the Contract Owner has performed a reconciliation of all Works completed against the approved costs of the scheme.

- 20.5 Where any sum or damages is payable to the Council as a result of the default of a Contractor, for example where completion of Works is delayed beyond the contractual completion date, it shall be the duty of the Contract Owner to claim whatever liquidated or other damages may be due under the terms of the Contract and no waiver of such sum or damages may be given without the approval of the Director of Legal Services and the Director of Finance.

- 20.6 Where a Contractor is in breach of its performance of a Contract, a default notice should be issued under the terms and conditions of the Contract to enable the Council to exercise its discretion to claim damages and/or terminate the Contract and exclude the Tenderer from any future tender process.

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- 20.7 Where the Contract is to be re-let, any information gathered by the Contract Owner shall be available to inform the approach to re-letting the next Contract.
- 20.8 The Contract Owner shall provide advice and support, as required, on good practice in performance management of Contracts.
- 20.9 All Contracts with a value in excess of £5,000 must be included and published on the Contracts Register maintained by the Commercial Procurement Unit in line with the Local Government Transparency Code 2015. This is a mandatory requirement and it is the responsibility of the commissioning officers to inform the Commercial Procurement Unit.

21. EXEMPTION FROM THE CONTRACT PROCEDURE RULES

- 21.1 These Rules are mandatory but, in limited circumstances, it may be necessary to seek an Exemption from these Rules. Guidance from the Commercial Procurement Unit must be sought before any Procurement activity commences for which an Exemption may be required.
- 21.2 An Exemption cannot be given where this would contravene the Procurement Regulations or any other legislation.
- 21.3 Exemptions will only be considered in exceptional circumstances, including but not limited to:
- (a) Proprietary or patented Supplies or Services are proposed to be purchased which are only obtainable from one entity and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented Supplies or Services is available;
 - (b) No genuine competition can be obtained in respect of the purchase of particular Supplies, Services or execution of Works;
 - (c) The Services or execution of Works are of such a specialist nature that they can only be carried out by one entity (e.g., statutory undertakers);
 - (d) Supplies are proposed to be purchased by or on behalf of the Council at a public auction;
 - (e) Supplies or Services are proposed to be purchased which are of a specialist or unique nature (such as a particular performance artist or antiquities for museums);
 - (f) Repairs or parts if the only option is to repair or buy new parts for existing Supplies, equipment or buildings, and there is only one Contractor;
 - (g) To comply with a change in legal requirements;
 - (h) The Contract is for Supplies, Services or the execution of Works which are required in circumstances of extreme urgency, for example, where immediate repairs are required to buildings, structures and other assets damaged by fire, bad weather or vandalism;
 - (i) The provision of Supplies, Works or Services is urgently required because of the failure of a Contractor through unsatisfactory performance or the appointment of an administrator, receiver or liquidator to administer its affairs. The Contract should be re-let at the earliest opportunity in compliance with these Rules;

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- (j) Where continued provision of Supplies, Works or Services is required for an additional period and this can be justified, for example where a service review includes the intention to co-terminate relevant Contracts within a reasonable period

with all exceptional circumstances to be objectively evidenced in the exemption request to enable the decision maker to reach an informed and reasonable decision in the circumstances.

21.4 Procedure for Exemptions over £10,000

- 21.4.1 To request an exemption from these Contract Procedure Rules, a Modern.gov report must be completed seeking approval for the exemption and authorisation for any expenditure. It must be signed only by those authorised to award a Contract under Rule 14.1.
- 21.4.2 An exemption request can be authorised by the Deputy Chief Executive, the Assistant Chief Executive, the Executive Director or a Managing Director who does not have direct line management responsibility for the service.
- 21.4.3 The Modern.gov report must provide full details of the request and any supplementary documentation to support the request and evidence the specific ground for the exemption.
- 21.4.4 No commitment should be made to a potential Contractor prior to authorisation.
- 21.4.5 The Head of the Commercial Procurement Unit is responsible for ensuring that a complete record of all Exemptions is maintained. A copy of the signed delegated/Cabinet decision approving an Exemption and the reasons for it must be forwarded to the Commercial Procurement lead.
- 21.4.6 In circumstances of extreme urgency, the relevant decision maker utilising Rule 21.3 (h) or (i) above may authorise an Exemption in writing without the need to complete a Modern.gov report. As soon as practicable a Modern.gov report must be submitted and approved in accordance with this Rule.
- 21.4.7 The written authorisation must be provided in accordance with this Rule 21.4 and must be stored electronically on The Chest.
- 21.5 All Exemptions reports require comments from the Assistant Director of Corporate Governance and Strategic Financial Management.
- 21.6 A direct award of a Contract following an exemption should comply in all other respects with the Council's Contract Procedure Rules and the Council's terms and conditions of contract should be used where possible.
- 21.7 The Council cannot use an exemption to depart from the Procurement Regulations and a Voluntary Transparency Notice may be required to inform the market of a direct award.
- 21.8 Where an Exemption is granted, the Contract shall still be made subject to the Council's standard terms and conditions where possible and in accordance with any relevant requirements detailed in Rule 10.1. Any amendments required to the Council's standard terms and conditions shall be approved by Legal Services prior to issuing as part of the procurement process. Legal Services will review and draft the terms and conditions for any bespoke contracts.

22. DECLARATIONS OF INTEREST and ANTI-BRIBERY and CORRUPTION

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- 22.1 The Council's reputation with regards to Procurement activity is important and should be safeguarded from any imputation of dishonesty or corruption. All elected Members of the Council and Officers are reminded of their responsibilities in relation to gifts, hospitality and any conflicts of interest and should ensure that they comply with the obligations set out in the Council's Members' Code of Conduct and the Officers' Code of Conduct respectively and any other relevant policies, guidance or strategies relating to bribery, fraud and corruption issued or endorsed by the Council from time to time.
- 22.2 Any Officer or Member must declare any interest which could influence their judgement in relation to Procurement activity in accordance with the Council's Codes of Conduct.
- 22.3 No gifts or hospitality should be accepted from any Tenderers involved in Procurement activity except in accordance with the Council's Codes of Conduct. Relevant interests, gifts and hospitality should be registered on the Council's e-register.

23. DEFINITIONS

- 23.1 Within the Contract Procedure Rules, the following definitions are used:
- 23.1.1 "Call-Off Contract" means a Contract which is entered into under a Framework Agreement in accordance with the terms and conditions of that Framework Agreement
- 23.1.2 "Concession" means a Contract under which a Contracting Authority outsources Supplies, Services or Works to a contractor or provider, who then has the right to commercially exploit those Supplies, Services or Works in order to recoup its investment and make a return on the proviso that the contractor or provider bears the operating risk and has no guarantee of recouping its investment or operating costs
- 23.1.3 "Contract" means an agreement in writing for consideration (money or money's worth) between the Council and a Contractor for the provision of Supplies, Works or Services by the Contractor or the granting of a Concession, including a compliant Framework Agreement and a Call-Off Contract under a compliant Framework Agreement and a Purchase Order
- 23.1.4 "Contracting Authority" has the meaning set out in the Public Contracts Regulations 2015
- 23.1.5 "Contractor" includes any sole trader, partnership or company (limited or unlimited) or any duly incorporated trade, consortiums or unincorporated bodies, professional or commercial body or voluntary body; (although the Council must only contract with legal entities)
- 23.1.6 "Contract Owner" means the lead stakeholder or commissioner for the proposed contract
- 23.1.7 "Contract Value" means the amount the Council pays to the Contractor under the Contract inclusive of VAT
- 23.1.8 "Contracts Finder" the UK's electronic procurement portal for contracts with a value of £25,000 or above
- 23.1.9 "Contracts Register" means a comprehensive list of all Contracts that the Council procures, detailing key attributes such as type, term, value and Contractor and Procurement/ Directorate contact details

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- 23.1.10 “Director of Finance” means the Chief Officer designated under section 151 of the Local Government Act 1972 or his/her nominated representative
- 23.1.11 “Director of Legal Services” means the Council’s Principal Solicitor
- 23.1.12 “E-auction” is a means of carrying out purchasing negotiations via the Internet. It is a real time event that occurs online, allowing multiple Contractors in different geographic regions to place bids and modify simultaneously
- 23.1.13 “E-procurement System” means Council’s e-tendering portal, The Chest (or equivalent)
- 23.1.14 “Find a Tender” means the UK’s electronic procurement portal for contracts with a value which is above the relevant Procurement Regulations threshold
- 23.1.15 “Financial Management System” means the Council’s electronic purchasing and payments system, Agresso (or equivalent)
- 23.1.16 “Framework Agreement” means an agreement which allows the Council to enter into Call-Off contracts for Supplies, Works or Services or Concessions in accordance with the terms of the overarching agreement, including an agreement for a Dynamic or Flexible Purchasing System
- 23.1.17 “Grant” means an award of money from the Council to another organisation or an award to the Council from a third party for the purpose of giving a benefit to a third party which is not Supplies, Services or Works. A grant awarded by the Council shall, where appropriate, be made subject to a written Grant agreement specifying the conditions upon which the grant is made and including that the grant can be clawed back if the conditions are not met
- 23.1.18 “Invitation to Tender” means a request for Contractors to submit a Tender to supply Supplies, execute Works or provide Services at specified charges or rates of charges
- 23.1.19 “Modification” means any change to a Contract
- 23.1.20 “Most Economically Advantageous” means using a cost-effectiveness approach or price/quality ratio which offers the best price (this will not necessarily be the lowest price)
- 23.1.21 “Open Procedure” means a procedure for inviting Tenders by advertisement in which an Invitation to Tender is sent to all Contractors who express an interest in Tendering
- 23.1.22 “Officer” includes any employee of the Council
- 23.1.23 “Procurement” means the process leading to the award of a Contract
- 23.1.24 “Procurement Regulations” means the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 and the Utilities Contracts Regulations 2016 as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (EU Exit Regulations) and as may be consolidated, extended, re-enacted or replaced together with such other UK regulations as may be made from time to time

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- 23.1.25 “Purchasing Consortia” means an organised and constituted body of individuals who jointly participate in the Procurement and award of a Contract
- 23.1.26 “Quotation” means a formal offer to supply Supplies, execute Works or provide Services at specified charges or rates of charges
- 23.1.27 “Scheme of Delegation” means the document described as such within the Constitution
- 23.1.28 “Services” includes services for the provision of labour, advice, care and support services for people, installation, implementation, testing, management services (including project and programme management and consultancy services), maintenance, repair and support services
- 23.1.29 “Supplies” covers an item(s) of equipment, plant, machinery, vehicle, tool, portable building, materials, software or other similar object, whether inanimate or electronic, to be supplied or delivered by the Contractor and procured by Oldham Council and includes any documentation
- 23.1.30 “Tender” means a formal offer to supply or purchase Supplies, execute Works or provide Services at a stated price or offer to be granted a Concession
- 23.1.31 “Tenderer” shall mean any potential Contractor submitting a Tender
- 23.1.32 “Works” means the carrying out of construction or undertaking of engineering or other practical work, which normally requires the provision of labour services and materials to build, construct or physically provide parts of Services during a project implementation period.

Appendix 2

Councillor Model Code of Conduct

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”.

For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

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 me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my 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 which may include when:

- you misuse your position as a councillor
- 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.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

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. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

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

The general conduct guidance follows below:

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 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 expectations and 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.

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;**
 - **ii. I am required by law to do so;**
 - **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 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 that 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/its

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 authority or authorising their use by others:

- **a. act in accordance with the local authority's requirements; and**
- **b. ensure that such resources are not used for 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 disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

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 disclose 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 disclosed 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 disclose a disclosable pecuniary interest as set out in **Table 1**, is a criminal offence under the Localism Act 2011.

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

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 £50 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 refused 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. 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.

Appendix A – 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 disclose 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.

Appendix B - Registering Interests

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 which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”. You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

“**Disclosable Pecuniary Interest**” means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

“**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.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.

2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.

3. 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 the interest from the public register.

Non-participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose 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 disclose the nature of the interest, just that you have an interest.

Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

5. [Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it]

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), you must disclose 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 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 disclose the nature of the interest.

Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part 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 disclose the nature of the interest.

8. Where a matter arises at a meeting which **affects** –

- a. your own financial interest or well-being;
- b. a financial interest or well-being of a relative or close associate; or

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- c. a financial interest or wellbeing of a body included under Other Registrable Interests as set out in **Table 2**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter (referred to in paragraph 8 above) **affects** the financial interest or well-being:

- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. a reasonable member of the public knowing all the facts would believe that it 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. Otherwise you must not take part 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 disclose the nature of the interest.

10. [Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it]

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

Table 1: Disclosable Pecuniary Interests

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	<p>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 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. '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>
Licenses	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer

Corporate tenancies	Any tenancy where (to the councillor's knowledge)— (a) the landlord is the council; and (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.
Securities	Any beneficial interest in securities* of a body where— (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and (b) either— (i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the 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 have a beneficial interest exceeds one hundredth of the total issued share capital of that class.

* '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 Registrable Interest

<p>You must register as an Other Registrable Interest :</p> <ul style="list-style-type: none"> a) any unpaid directorships b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority c) any body <ul style="list-style-type: none"> (i) exercising functions of a public nature (ii) directed to charitable purposes or (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member or in a position of general control or management
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Oldham Borough Council
Arrangements for dealing with complaints about the Code of Conduct for Members
1. Introduction

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- 1.1 This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Council Member has or may have failed to comply with the Code of Conduct for Members.
 - 1.2 The person making the complaint will be referred to as “the complainant” and the person against whom the complaint is made will be referred to as the “Subject Member”.
 - 1.3 No member of officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter

2. Making a complaint

- 2.1 A complaint must be made in writing, either by post or e-mail to; The Monitoring Officer, Oldham Council, Civic Centre, West Street, Oldham, OL1 1UL or monitoringofficer@oldham.gov.uk
- 2.2 The Monitoring Officer will acknowledge receipt of the complaint within five working days of receiving it and, at the same time, write to the subject Member (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council also) with details of the allegations (subject to any representations from the complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The subject member may, within 10 working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint should be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the initial assessment of the complaint.

3. Initial Assessment of Complaint

- 3.1 The Monitoring Officer will reject a complaint if it is not a complaint against a Councillor of Oldham MBC or a Parish Councillor within the area or the Councillor was not in office at the time of the alleged conduct. The Monitoring Officer will review the complaint and following consultation with the Independent Person, take a decision (Initial Assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.
- 3.2 If appropriate, the Monitoring Officer will consider the following criteria where relevant in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected;
 - Whether a substantially similar allegation has previously been made by the complainant to The Council, or the complaint has been the subject of an investigation by another regulatory authority
 - whether the complaint appears to be malicious, vexatious, politically motivated or tit for tat.
 - Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
 - Whether the allegation is anonymous
 - Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations and whether in all the circumstances there is no overriding public benefit in carrying out an investigation.
 - Whether the complaint suggests that there is a wider problem throughout the Authority;
 - Whether it is apparent that the subject of the allegation is relatively inexperienced as a Member or has admitted making an error and the matter would not warrant a more serious sanction;
 - Whether training or conciliation would be the appropriate response.

The Monitoring Officer will consult with the Independent Person and then give a decision on how the complaint will be dealt with. The Monitoring Officer may in exceptional circumstances refer the question of how to proceed to a sub-committee of the Standards Committee.

4. Additional Information

- 4.1 The Monitoring Officer may require additional information to come to a decision and may request information from the Subject Member. Where the complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Clerk of the Parish Council of the complaint and seek the views of the Clerk of the Parish Council before deciding whether the complaint merits formal investigation or other action. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the subject member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the subject Member or the Council (in appropriate cases) makes a reasonable offer of local resolution, but it is rejected by the complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.2 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authority in addition, to any action taken pursuant to the Code of Conduct.

5. Confidentiality

- 5.1 If a complaint has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage.
- 5.2 As a matter of fairness and natural justice the subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Office may withhold the complainant's identity if on request from the complainant, or otherwise, they are satisfied that the complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the complainant's identity being disclosed.
- 5.3 If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his or her identity withheld from the subject Member.

6. Investigation

- 6.1 The Monitoring Officer will appoint an investigating officer where a complaint merits formal investigation. The investigating officer may be a Council officer, an officer from another Council, or an external investigator.
- 6.2 The investigating officer will follow guidance if issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost effective use of Council resources and shall be interpreted in line with these principles.
- 6.3 At the end of their investigation, the investigating officer will produce a draft report and will send copies of that draft report to the complainant and to the Subject Member, for comments. The investigating officer will take such comments into account before issuing their final report to the Monitoring Officer.

7. Investigating Officer finding of no failure to comply with the Code of Conduct

- 7.1 Where the Investigating Officer's report finds that the Subject Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the

Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.

- 7.2 The Monitoring Officer will write to the Complainant and the Subject Member (and to the Clerk of the Parish Council, where the complaint relates to a Parish Member), with a copy of the decision and the Investigating Officer's report.
- 7.3 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.

8. Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct

Where the Investigating Officer's report finds that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then having consulted the Independent Person either send the matter for local hearing before the hearing panel or seek local resolution.

8.1 Local Resolution

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Subject Member accepting their conduct was unacceptable and offering an apology, and/or other remedial action including mediation or training. If the Subject Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member refuses local resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a local hearing without further reference to the Complainant or the Subject Member.

8.2 Local Hearing

Where, in the opinion of the Monitoring Officer, local resolution is not appropriate or the Complainant and/or Subject Member refuses to accept local resolution, then the Monitoring Officer will report the Investigating Officer's findings to the Hearing Panel which will conduct a local hearing before deciding whether the Member has failed to comply with a Code of Conduct and, if so, what action (if any) to take in respect of the Member.

9. Constitution of the Hearing's Panel

The Hearing's Panel is a sub-committee of the Council's Standards Committee. It will comprise of one of the independent persons and three members of the Council drawn from the Standards Committee. Where the complaint is about a Parish Council Member, the hearing panel will include at least one of the Parish Council Members co-opted to the Standards Committee. The Standards Committee comprises such elected members as determined by the Council, four Independent persons and a Parish Councillor representative from each Parish Council. Oldham Council members have voting rights only.

Procedure at the hearing

1. The sub-committee comprises currently three members of the Standards Committee, one from each group on the Standards Committee. An independent person will also attend the sub-committee and a Parish Councillor if the matter relates to a Parish Council Councillor.
2. The Chair shall explain the procedure and ask all present to introduce themselves. The member against whom the complaint has been made shall be known as the Subject Members for the purpose of this procedure.
3. The Investigating Officer outlines his/her report and presents the report, including any documentary evidence and calls such individuals as he/she considers appropriate to give evidence.

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4. The Subject Member or their representative may question the Investigating Officer upon the content of their report and may question any witnesses called by the Investigating Officer.
 5. Members of the sub-committee may ask questions of the Investigating Officer and any witnesses called.
 6. The Subject Member or their representative may present his/her case and call witnesses as required.
 7. The Investigating Officer may question the Subject Member and/or any witnesses.
 8. Members of the sub-committee may also question the Subject Member and/or any witnesses.
 9. The Investigating Officer may sum up the complaint.
 10. The Subject Member or representative may sum up their case.
 11. Members of the sub-committee consider in private the complaint and consider whether there has been a breach of the code.
 12. In the presence of all the parties, the Chair of the sub-committee will announce the decision that either the Subject Member the opportunity to make representations on whether action or sanctions should be taken.
 13. If the sub-committee decides that the Subject Member has failed to follow the code, the sub-committee will give the Subject Member the opportunity to make representations on whether action or sanctions should be taken,
 14. The sub-committee will consider in private what action should be taken and then in the presence of all the parties, the chair shall announce the decision.
 15. The Chair will confirm that the decision will be provided in writing to the Subject Member within 7 days following the meeting.

10. The Independent Person

The independent person must be a person who has applied for the post following advertisements of a vacancy for the post and appointed by a positive vote from a majority of all the Members of the Council at a meeting of the full Council.

A person is not eligible for appointment if they:

- are, or have been within the past five years a Member, co-opted Member or officer of the Council
- are, or have been within the past five years a Member, co-opted Member or officer of a Parish Council within the Borough; or
- are a relative or close friend of a person within the 2 above bullet points.

For this purpose, “relative” means that:

- Spouse or civil partner
- Living with the other person as husband and wife or as if they were civil partners
- Grandparents of the other person
- A lineal descendant of a Grandparent of the other person
- A parent, sibling or child of the person within the above bullet points
- A spouse or civil partner of a person within the above bullet points; or
- Living with a person within the above bullet points as husband and wife or as if they were civil partners.

12. Action

Where a hearings panel find that a Member has failed to comply with the Code of Conduct, the hearing panel may;

- Publish its findings in respect of the Member’s conduct
- Report its finding to Council (or to the Parish Council) for information
- Recommend to Council (or to the Parish Council) that the member be censured

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- Recommend to the Members Group Leader (or in case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub-committees of the Council.
 - Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from their portfolio responsibilities
 - Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Member
 - Recommend to Council (or recommend to the Parish Council) that the Member be removed from all outside bodies, appointments to which they have been appointed or nominated by the Council (or by the Parish Council).
 - Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Member by the Council such as a computer, website and/or email and internet access.
 - Exclude (or recommend that that Parish Council exclude) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and sub-Committee meetings or place such restrictions on access to staff as may be reasonable in the circumstances.

13. Revision of these Arrangements

The Council may by resolution or the Monitoring Officer may, in consultation with the Chair of the Standards Committee amend these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matters.

14. Appeals

Subject to judicial review or a decision of a local ombudsman, there is no right of appeal against the decision of a Monitoring Officer or of the Hearing Panel.