

Appendix 1

ARTICLE 15 – DECISION MAKING

15.1 Responsibility for decision making

Council Decisions

Council Decisions are made in relation to Council functions as defined by the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended.

Executive Decisions

Executive Decisions are made in relation to Executive functions as defined by the as defined by the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended.

Responsibility for Decision Making

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 (Responsibility for Functions). The Leader of the Council may determine to exercise any of the functions of the Council personally, or may arrange for the exercise of any of the Council's executive functions by:

- i. the Executive;
- ii. by a Committee of the Executive ;
- iii by a Member of the Cabinet in consultation with an Executive Director
- iii) by an officer of the Council in consultation with a Member of the Executive.
- iv) Another local authority or the executive of another local authority
- v) joint arrangements with one of more other Local Authorities, including the establishment of a joint committee with such authorities

The Monitoring Officer will maintain a register of the Delegation of Executive functions

15.2 Principles of decision making

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

1. proportionality - the action must be proportionate to the desired outcome;

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2. consultation – there will be appropriate consultation and professional advice from officers;
 3. All decisions will take into account the European Convention on Human Rights;
 4. Openness and accountability – in all decisions there will be a presumption in favour of openness;
 5. There will be clarity of aims and desired outcomes in respect of every decision made; and
 6. Options – an explanation of what options were considered and reasons for decisions will be provided.

15.3 Categories of decision

Decisions reserved to full Council.

Decisions relating to the functions listed in Article 4.2 will be made by the full Council and not delegated.

Key Decisions

- a. a key decision is any decision which is likely to result in a local Council incurring expenditure which is, or the making of savings which are, significant having regard to the local Council's budget for the service or function to which any decision relates; or
- b. to be significant in terms of its effects on communities living or working in the area comprising two or more wards in the area of the local Council

Key Decision - Definitions

- a. “Significant expenditure or savings” is defined as:
 - i. Revenue expenditure or saving that is neither provided for within the Budget, nor virement permitted by the Constitution.
 - ii. Capital expenditure that is not provided for within:
 - iii. The capital estimate for a specific scheme; or
 - iv. A lump sum capital estimate.
 - v. Of the declaration of land or property, the estimated value of which exceeds £250,000, as surplus to the Council's requirements.
 - vi. Securing approval in principle to the acquisition or disposal of land or property the value of which is estimated to exceed £250,000.

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- vii. Securing approval in principle to the taking of, or the granting, renewal, assignment, transfer, surrender, taking of surrenders, review, variation or termination of any leases, licences, easements or wayleaves, at considerations in excess of £250,000 per annum or a premium of £250,000.
 - viii. Any decision which involves expenditure or savings over £250,000.
- b. Key Decisions are also those decisions which:
- i. Require an application to be made for planning permission, listed building, ancient monument or conservation area consent.
 - ii. Comprise or include the making, approval or publication of a draft or final scheme which may require, either directly or in the event of objection, the approval of the Secretary of State or of a Minister of the Crown.
 - iii. Require the passage of local legislation or the adoption by the Council of national legislation.
 - iv. Propose a response on behalf of the Council to consultation by the Secretary of State or a Minister of the Crown, where the consultation response could have a potential impact upon the Council to the extent defined in Article 15.3.2-15.3.4
 - v. Propose an alteration in the standard charges which the Council makes for any of its services.

Principal Decisions – Definition

A decision in relation to a Council or Executive function which is not a key decision and which:

1. Results in the Authority incurring expenditure or making savings (including receipt or loss of income) over £100,000 each year: or
2. Is in the opinion of the Director or Executive Director of such significance that a record of the decision would ensure transparency and accountability in relation to decision making within the Authority.

Administrative Decisions – Definition

A decision in relation to a Council or Executive function which is not a key or a principal decision and results in the Authority incurring expenditure up to £100,000. The decision must be:

1. Within an approved budget and not in conflict with the Budget and Policy Framework or other approved policies
2. Does not raise new issues of policy

15.4 Decision making by the full Council

Subject to Article 15.8, the Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution when considering any matter.

15.5 Decision making by the Cabinet.

Subject to Article 15.8, the Cabinet will follow the Cabinet Procedures Rules set out in Part 4 of this Constitution when considering any matter.

19.9 Recording Decisions

All Council decision will be recorded in accordance with the provisions of the Access to Information Procedure Rules set out in the Constitution.

All Executive decisions will be recorded in accordance with the Executive and Decision Making Procedure as set out in the Constitution.

15.6 Considerations by Overview and Scrutiny Bodies

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

15.7 Decision making by other committees established by the Council

Subject to Article 15.8, other Council committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

15.8 Decision making by Council bodies acting as tribunals

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

Appendix 2

Part 3 – Responsibility for Functions

Terms of Reference of Committees

6.8 Selection Committee

6.8.1 To recommend to Council the appointment of Head of Paid Service and to make appointments to Chief and Deputy Chief Officer posts (and such other posts as may be determined) within the Council.

To approve significant proposed amendments to all matters pertaining to Chief and Deputy Chief Officer posts.

6.8.2 To deal with all potential variations to the terms and conditions of first and second tiers officers outside of the parameters agreed when the appointment was made.

6.8.3 To establish at the appropriate time a sub- committee comprising of 3 politically balanced Members of the Selection Committee, to be called the “Investigation and Disciplinary Committee” (I&CD) to effectively manage the following functions:

6.8.4 To make recommendations to Council as to the dismissal of the Head of Paid Service, the Monitoring Officer or the Chief Financial Officer.

6.8.5 To take disciplinary action short of dismissal against the Head of Paid Service, the Monitoring Officer or Chief Financial Officer.

6.8.6 To suspend and keep under review the suspension of the Head of Paid Service, the Monitoring Officer or the Chief Financial Officer.

6.9 Independent Panel

6.9.1 To advise the authority on matters relating to the dismissal of relevant officers of the authority.

7. **INDIVIDUAL CABINET MEMBER DECISIONS**

- 7.1 The fact that a function stands delegated to a Cabinet Member under these arrangements and the matter falls exclusively within the scope of their individual portfolio, shall not preclude the Leader or the Cabinet from exercising the function directly, subject to legal requirements.
- 7.2 Whilst the exercise of a function by a Cabinet Member under these arrangements is not made subject to the satisfaction of any prior condition, a Cabinet Member shall, when exercising a discretion remitted to them, be under a duty to consider whether the decision conforms to Council-approved policies and strategies and ensure, in reaching the decision, they have observed approved practices and procedures
- 7.3 Where it appears to a Cabinet Member to whom a function has been delegated hereunder, that a matter might require to be considered by the Executive prior to a decision being taken, they shall consult the Leader before proceeding.
- 7.4 An individual Cabinet Member may discharge an executive function within the scope of their individual portfolio which is a 'key decision' as defined at Part 2 Article 15 or, in consultation with the relevant Executive Director, award contracts with a value of between £100,00 and £400,000 provided that:
- The matter is not reserved for a decision by the Cabinet
 - The function is not exercisable by a Committee of the Cabinet or a District Executive or through joint arrangements and
 - would not contravene paragraph 7.5
- 7.5 An individual Cabinet Member may not discharge an Executive function where this scheme requires that the function must be discharged by an officer, unless expressly delegated to do so by the Leader or where the Constitution or law requires that function to be undertaken by an officer.
- 7.4 Before a Cabinet Member exercises their delegated power to make a "Key Decision" (If this power has been delegated to the relevant Executive Member) they must consult with the relevant Executive Director. This is further defined in Article 15 of the Constitution.
- 7.5 Where Cabinet Members are referred to in the text this term shall include all Cabinet Members where appropriate.
- 7.6 All "Key Decisions" made by an Executive Member in consultation with the relevant Executive Director will be made available as soon as is reasonably practicable.

8. **DELEGATIONS TO INDIVIDUAL CABINET MEMBERS**

The Council's democratic structure aims to be based on the principles of good governance to ensure openness transparency, effectiveness and accountability.

The Council has a structure which is based on the 'Strong Leader with Cabinet' model, with an Executive with Overview and Scrutiny Committees and Regulatory Committees. The Leader of the Council in Oldham has delegated powers to Individual Cabinet Members in consultation with Officers.

These powers will permit Executive Members to make ‘key decisions’ as defined in Article 15 of Part 2 of the Constitution within their portfolio areas and enables Executive Members in consultation with the relevant Executive Director, to award contracts between £100,000 and £400,000.

9. OFFICER SCHEME OF DELEGATION

4. Decision Making – Key Decisions

- 4.1 The significance of decisions taken under delegated powers will vary, and Cabinet Members and Executive Directors and those they empower to make decisions will need to exercise judgement in determining whether decisions are significant enough to require formally recording. Key decisions are required to be recorded in accordance with the provisions of paragraph 6.
- 4.2 Key Decisions, **Principal Decisions and Administrative Decisions** are defined in Article 15 of the Constitution.

6. Decision Making – Recording the Decision

There is a requirement to maintain a record of executive decisions which are not key decisions (**Principal and Administrative Decisions as defined in Article 15**) for the purpose of Councillor or public access. Officers are responsible for retaining a record of such decisions which they and Cabinet Members take and the reasons for such decisions sufficient for audit and evidential purposes (against the eventuality of evidence being required for Judicial Review, Employment Tribunal, Ombudsman, District Audit, Ofsted or other proceedings or investigation), and for ensuring that all those who need to know are informed promptly of the decision.

GENERAL CABINET MEMBER DELEGATIONS

There are occasions when matters affect more than one Cabinet Member portfolio; on such occasions the Leader will take the decision, subject to point 4 above.

All Cabinet Members have responsibility for taking commissioning and delivery decisions in relation to their portfolio within the existing budget and policy framework.

In particular they have the following powers:

1. To make key decisions in consultation with the relevant Executive Director.
2. To make decisions leading to Contracts for the value of £100,000 up to £400,000 in consultation with the relevant Executive Director.

Appendix 3

Part 4 – Rules of Procedure

1. ANNUAL MEETING OF THE COUNCIL

1.1 Timing and Business

In a year when there is an ordinary election of Councillors, the annual meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, the annual meeting will take place on a date to be set by Council.

The annual meeting will:

- a) elect a person to preside if the Mayor or Deputy Mayor is not present;
- b) elect the Mayor;
- c) elect the Deputy Mayor;
- d) approve the Minutes of the last meeting;
- e) elect the Leader;
- f) decide the allocation of seats (and substitutes) to political groups in accordance with the political balance rules;
- g) appoint at least one Overview and Scrutiny Commission, a Standards Committee and such other Committees as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are executive functions;
- h) decide the size and terms of reference for those Committees and Commissions;
- i) appoint to those Committees and Commissions, including substitute Members;
- j) appoint a Chair for those Committees and Commissions
- k) appoint to outside bodies, except where appointment to those bodies has been delegated by the Council;
- l) agree amendments to the Constitution, including the Scheme of Delegation.
- m) if not previously determined by Council, approve a programme of ordinary meetings of the Council for the year;
- n) to deal with matters which the Mayor considers to be urgent business;
- o) to receive any communications from the Mayor relating to the business of the Council;
- p) to receive any petitions relating to the business of the Council (all petitions to

be dealt with in accordance with the Council's Petitions Protocol);

- q) to deal with any business (if any) outstanding from the last meeting if the business is time limited and cannot wait until the next ordinary meeting of Council (time limit 15 minutes).
- r) to consider notices of motion in the order in which they have been received by the Chief Executive (time limit – 30 minutes);
- s) to consider motions of opposition business in accordance with Rules 8 and 10 (time limit – 30 minutes); and
- t) consider any business set out in the notice convening the meeting.

ACCESS TO INFORMATION PROCEDURE RULES

3. RIGHTS TO ATTEND MEETINGS

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

Where a meeting is open to the public any member of the public attending may report on that meeting by:

- a) Filming, photographing or making an audio recording of proceedings at a meeting;
- b) By using any other means for enabling persons not present to see or hear proceedings at a meeting as it takes place or later.
- c) The recording protocol as set at appendix 1 to these rules applies.

PUBLICITY AND PROCEDURE IN CONNECTION WITH KEY DECISIONS

Subject to Rule 16 (general exception) and Rule 17 (special urgency), a key decision may not be taken **unless**:

- a. a notice (called here a Key Decision Document) has been published in connection with the matter in question;
- b. at least 28 clear days have elapsed since the publication of the Key Decision Document;
- c. where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings):

19. RECORD OF EXECUTIVE DECISIONS MADE AT MEETINGS

After any meeting of the Cabinet or any of its committees, whether held in public or private, the proper officer or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as

soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting, alongside the date of the decision, and any declarations of interest made.

22.3 RECORDING OF EXECUTIVE DECISIONS TAKEN BY INDIVIDUALS

As soon as reasonably practicable after an Executive decision has been taken by an individual member of the Cabinet or a Key decision or a Principal decision has been taken by an officer, he/she will prepare, or instruct the proper officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a political assistant. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting, alongside the date of the decision, any declarations of interest made and a list of background papers. After a decision has been taken, the notice of decision and any reports considered and must be available for inspection at the Council's offices or on the Council's website.

22.4 ADMINISTRATIVE DECISIONS

Officers are responsible for retaining a record of administrative decisions and the reasons, options/alternatives considered any conflict of interest declared by any executive member, a note of dispensation granted (if any) and published on the website which is sufficient for audit and evidential purposes and for ensuring all those who need to know are informed promptly of the decision. Nothing in this rule shall require the disclosure of confidential information or exempt information as defined in these rules.

CONTRACT PROCEDURE RULES

CPRs	Proposed Amendment to CPRs
<p>1.Application/Compliance with Contract Procedure Rules 1.4 The Council's strategic objectives and policies including, amongst others, the Community Strategy and the Procurement Strategy.</p>	<p>Replace with:- <i>1.4 The Council's strategic objectives and policies including, amongst others, the Corporate Plan.</i></p>
<p>2. Procurement Planning 2.1 For each financial year, the Council shall create a Procurement Plan setting out its current contracts and contracts to be procured over £50k in value for the forthcoming financial year. The coordination and updating of this Plan will be the responsibility of the Corporate Procurement Unit.</p> <p>Include a new section to ensure the Council is complying with its obligations under Best Value and Social Value</p>	<p>Delete/Obsolete</p> <p>New Rule <i>For each financial year, the Council shall create a Procurement Forward Plan setting out its current contracts and contracts to be procured for the forthcoming financial year. The coordination and updating of this Plan will be the responsibility of the Strategic Sourcing Team. The Procurement Forward Plan will be published on Oldham Council's website.</i></p> <p>New Rule <i>The Council must 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. This includes consultation with representative groups of payers of Council tax and business rates, stakeholder(s) and any other relevant interested groups prior to commissioning services.</i></p>
<p>2.2 At the beginning of each financial year the Council (via the Corporate Procurement Unit shall publish a Prior Information Notice in the Official Journal of the European Union listing the contracts for works, services and supplies, which it expects to procure for the coming year.</p>	<p>Replace with:- <i>The Public Contract Regulations 2015 permit soft market testing provided it does not distort competition and is transparent and non-discriminatory.</i></p> <p><i>Where an organisation has been involved at a pre-procurement stage (whether in soft market testing or otherwise, eg incumbents), the Council must ensure that there is a level playing field when the tender process starts such as making information which has been made available at a pre-procurement stage available to all bidders.</i></p> <p><i>A bidder may be excluded from the procurement process altogether in circumstances where its prior involvement would distort the competition in the</i></p>

	<p><i>market.</i></p> <p>This is to reflect the new rules around market testing.</p>
<p>3. Calculation of Contract Values</p> <p>3.3 Contracts shall not be artificially under or overestimated or divided into two or more separate Contracts where the effect is to avoid the application of these Contract Procedure Rules.</p>	<p>Remove & replace with:</p> <p><i>Under Regulation 46 of the Public Contracts Regulations 2015 contracting authorities may divide tenders into smaller lots to encourage small and medium sized business enterprises to submit bids and must provide reasons for not doing so.</i></p> <p>This is to reflect the recommendations of the Lord Young review in relation to encouraging SME's.</p>
<p>4. Procurement Procedures</p> <p>4.1 Before selecting a procurement procedure the Executive Director shall consider all relevant procurement procedures and where appropriate consult with the Borough Treasurer and Borough Solicitor.</p> <p>4.2 An E-auction process may form part of the overall Tender process and be used in conjunction with the Open or Restricted Procedures. The Borough Treasurer shall approve any proposal to use this process and such approval will include consideration of all software, systems and procedures to be used. The Invitation to Tender documentation shall state that an E-auction will form part of the Tender process. Specific e auction guidance is available and shall be followed if using an e auction.</p>	<p>Delete/Obsolete</p> <p>Delete/Obsolete</p> <p>New Rules</p> <p><i>An E-auction process may form part of the overall Tender process and be used in conjunction with the Open or Restricted Procedures or Competitive Procedures with Negotiation. The Contract Notice or Advertisement and the Invitation to Tender documentation shall state that an E-auction will form part of the Tender process.</i></p> <p><i>Quotations over £5000 are to be advertised on the Council's E-procurement system (The Chest) and any quotations over £25,000 which have been advertised must also be advertised on Contracts Finder</i></p>

CPRs	Proposed Amendment to CPRs
<p>6. Tender Process – Below EU Procurement Thresholds</p> <p>6.1 Where these Contract Procedure Rules permit. Tenders shall either follow an open or restricted procedure</p> <p>6.2 Open Procedure</p> <p>6.2.1 This Contract Procedure Rule shall apply where an Executive Director has decided that an Invitation to Tender for a Contract are to be made to all persons or bodies who have replied to a public note.</p> <p>6.2.2 Tenders shall be advertised via a public note in a local or regional paper, or on the Council's website or a relevant trade journal (or equivalent appropriate placement), or both where, in the opinion of the Executive Director, this will be to the Council's advantage. The Executive Director shall ensure a suitable degree of Contract advertising sufficient to ensure competition, to avoid discrimination and maintain the impartiality of the procurement procedure.</p> <p>6.2.4 The tender shall be advertised on The Council's website</p> <p>6.2.5 After the expiry of the period specified in the public notice, Invitations to Tender for the Contract shall be sent to all those who have expressed an interest.</p>	<p>Legislation changes to ensure compliance – Amend:- <i>Remove reference to restricted procedure. The new regulations prohibit the use of a pre-qualification questionnaire for below EU thresholds.</i></p> <p>Replace with:- <i>These Contract Procedure Rules shall apply to all those persons or bodies who have replied to a Procurement opportunity.</i></p> <p>Replace with:- <i>All Tendering opportunities are advertised via the Council's E-procurement system (The Chest) and Contracts Finder.</i></p> <p>Delete/Obsolete</p> <p>Delete/Obsolete</p>

CPRs	Proposed Amendment to CPRs
<p>6.3 Restricted Procedure</p> <p>6.3.1 This Contract Procedure Rule shall apply where an Executive Director has decided that Invitations to Tender for a Contract are to be made to a limited number of Contractors. These Contractors can be selected via the placement of a public notice or from Contractors registered on the “Construction Line” initiative.</p> <p>6.3.2 Tenders shall be advertised in a local or regional paper, or a relevant trade journal (or equivalent appropriate placement), or both where, in the opinion of the Executive Director, this will be to the Council’s advantage. The Executive Director shall ensure a suitable degree of Contract advertising sufficient to ensure competition, to avoid discrimination and maintain the impartiality of the procurement procedure.</p> <p>6.3.3 The public notice shall: - such applications are to be submitted.</p> <p>6.3.3.1 Specify details of the Contract into which the Council wish to enter;</p> <p>6.3.3.2 Invite persons or bodies to express an interest in tendering;</p> <p>6.3.3.3 Specify a time limit, being not less than 14 days or such period within which</p> <p>6.3.4 The Tender shall also be advertised on the Council’s website.</p> <p>6.3.5 After the expiry of the period specified in the public notice, and having regard for the evaluation criteria established in respect of the procurement, Invitations to Tender the Contract shall be sent to:-</p> <p>6.3.5.1 Not less than four of the persons or bodies who expressed an interest to tender, selected by the Executive Director and approved by the Borough Treasurer ; or</p> <p>6.3.5.2 Where fewer than four persons or bodies have applied, or are considered suitable, those persons or bodies which the Executive Director and the Borough Treasurer consider suitable.</p>	<p>Legislation changes to ensure compliance – Delete/Obsolete</p> <p>6.3.1 to 6.3.5.2 inclusive:- <i>Crown Commercial Services guidance discourages the use of PQQ/SSQ for contracts below OJEU values. Primarily on the basis of this discouraging interest/applications from SME’s.</i></p>
<p>6.4 Constructionline</p> <p>The Borough Treasurer may approve not less than four persons or bodies who are registered on Constructionline. Where fewer than four persons or bodies which the Executive Director and the Borough Treasurer consider suitable shall be invited to tender.</p>	<p>Replace with:- <i>All Tendering opportunities are advertised via the Council’s E-procurement system (The Chest) and Contracts Finder.</i></p>

CPRs	Proposed Amendment to CPRs
<p>7. Tender Process – Above the EU Procurement Threshold</p> <p>7.1 Where an estimated Contract Value exceeds the current EU thresholds, then the Contract shall be Tendered in accordance with the EU procurement Regulations. Under the EU Procurement Regulations, the Contract may be Tendered under Open, Restricted, Competitive Dialogue, Competitive Procedure with Negotiation or Innovation Partnerships Procedure.</p> <p>7.3 All Official Journals of the European Union (OJEU) Notices shall be published by the Borough Treasurer.</p>	<p>Legislation changes to ensure compliance – Amend & Delete:</p> <p><i>Amend to include sentences that cover 2 additional procurement processes as stated in the new Regulations.</i></p> <p>Delete - <i>sentences which offer an accelerated process if agreed by Executive Director & Borough Treasurer & Solicitor. New EU Regs make provision for an accelerated process</i></p> <p>New Rule</p> <p><i>To comply with the new provisions in relation to the procurement process under The Concession Contracts Regulations 2016</i></p> <p><i>There is no prescribed procurement process under the Concession Contracts Regulations, but certain procedural guarantees must be met: award criteria must be published in descending order of importance and the contract evaluation made in accordance with them; minimum time limits for the receipt of tenders and the mandatory and discretionary exclusion criteria must be applied.</i></p> <p>Amend/Update:</p> <p><i>7.3 All Official Journals of the European Union (OJEU) Notices shall be published by the Strategic Sourcing Team.</i></p>
<p>8. Tender Process</p> <p>8.2.5 The evaluation criteria including any weightings as considered appropriate,</p>	<p>Amend to: Tender Documentation</p> <p>Amend to include reference to Social Value</p> <p><i>8.2.5 The evaluation criteria including any weightings as considered appropriate, including Social Value questions;</i></p>
<p>Frameworks</p>	<p>A new section has been introduced titled ‘Frameworks’ to cover the Council wide use of framework agreements.</p> <p><i>A framework agreement is an ‘umbrella agreement’ that sets out the terms (particularly relating to price, quality and quantity) under which individual contracts (call-offs) can be made throughout the period of the agreement</i></p> <p><i>If the total value of ‘call offs’ is estimated to exceed the EU Thresholds the framework agreement should be advertised in the Official Journal of the European Union (OJEU).</i></p> <p><i>The individual call-offs do not need to be re-advertised.</i></p>

CPRs	Proposed Amendment to CPRs
<p>9. Contract Terms & Conditions</p> <p>9.3.2 A clause empowering the Council to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or forborne to do, any action in relation to obtaining or execution for the Contract or any other Contract with the Council or for showing, or forbearing to show, favour or disfavour to any person in relation to the Contract or any other Contract with the Council, or if the like acts shall have been done by any person employed by the Contractor or acting on their behalf (whether with or without the knowledge of the Contractor) or, if in relation to any Contract with the Council, the Contractor or any person employed by the Contractor or acting on their behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.</p>	<p>Amend to reflect updates in legislation from the <i>Prevention of Corruption Acts 1889 to 1916 to the Bribery Act 2010 and The Public Contracts Regulations 2015</i> :</p> <p>New Rule 10.3.2 requiring a clause in the terms and conditions of contract empowering the Council as of right 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; where there has been a substantial modification of the contract; the contractor should have been excluded from the tender under mandatory grounds or for a serious infringement of European laws and to recover from the Contractor the amount of any loss resulting from such cancellation or termination</p>
<p>9.3.3 Include conditions reflecting the Council's commitment to good race relations and shall be based on its duties under the Race Relations (Amendment) Act 2000.</p>	<p>Amend to reflect updates in legislation from <i>Race Relations (Amendment) Act 2000 to Equality Act 2010</i></p> <p><i>Include conditions reflecting the Council's commitment to non-discrimination in employment and equality of opportunity under the Equality Act 2010.</i></p>
<p>10. Receipt & Opening of Tenders</p> <p>10.1 Hard Copy/Paper Tenders</p> <p>10.1 Hard Copy/ Paper Tenders</p> <p>10.1.1 All Tenders received (unless submitted electronically) shall be addressed to the Borough Solicitor in a sealed envelope endorsed with the work "Tender" followed by the subject matter to which it relates. It shall not bear any distinguishing matter or mark to indicate the identity of the sender.</p> <p>10.1.2 Tenders shall be kept in a safe place and remain unopened until the time and date specified for their opening.</p> <p>10.1.3 Where a Tender is received after the specified time then it shall be disqualified. Any such Tender shall be returned promptly to the Tenderer who should be notified accordingly.</p> <p>10.1.4 Tenders shall all be opened at the same time by an Executive Director or their nominated Officer and at least one other Officer nominated by the Borough Treasurer.</p>	<p>Delete/Obsolete</p> <p>10.1 to 10.1.11 inclusive – to take into account, policy of accepting paper copies no longer applies.</p>

<p>10.1.5 Tenders submitted in hard copy shall be opened by the same Officers and at the same time as any Tenders received electronically.</p> <p>10.1.6 Where external agencies contribute to the overall funding of a project representatives of the agency may also attend at the opening of Tenders, provided that such persons agree to maintain the confidentiality of all commercially sensitive information and other information which is or is to be exempted from public disclosure under the Local Government Act 1972.</p> <p>10.1.7 Each Executive Director shall set up a system for submission and opening of quotations, which shall replicate that for Tenders.</p> <p>10.1.8 On opening the Tenders, an Officer shall:</p> <p>10.1.8.1 Number each tender consecutively;</p> <p>10.1.8.2 Check that the Form of Tender is completed as required, signed and officially stamp and sign relevant pages;</p> <p>10.1.8.3 If there are priced bills, schedules of rates or the like, officially stamp, date and sign each summary sheet (or overall summary sheet, as appropriate) indicating the main Contract prices.</p> <p>10.1.9 The following information shall be recorded in the Tender Register:-</p> <p>10.1.9.1 the title of the Tender Invitation;</p> <p>10.1.9.2 the name of the Tenderer;</p> <p>10.1.9.3 the date & time of receipt of each Tender;</p> <p>10.1.9.4 the amount/ value of each Tender;</p> <p>10.1.9.5 the date and time of the opening of the Tenders;</p> <p>10.1.9.6 The names of all persons present at the opening of the Tenders.</p> <p>10.1.10 A Tender can be amended after it has been received and before it has been accepted only in order to correct an arithmetical error or other discrepancy made in good faith, subject to the following:</p> <p>10.1.10.1 The Tenderer shall be given details of the error or discrepancy found during the examination of the Tender and shall be given the opportunity of confirming the Tender without amendment or withdrawing the Tender; or</p>	<p>Delete/Obsolete</p> <p>10.1 to 10.1.11 inclusive – <i>to take into account, policy of accepting paper copies no longer applies</i></p>
<p>10.1.10.2 Amending the Tender to correct genuine arithmetic errors provided that in this case, apart from these arithmetic errors, no other adjustment, revision or qualification is permitted. In this case written confirmation should be requested from the Tenderer as to the error or discrepancy and confirming what the corrected entry should be.</p> <p>10.1.11 The appropriate Executive Director shall keep a record of all amendments made and a copy of the record shall be sent to the Borough</p>	<p>Delete/Obsolete</p> <p>Delete 10.1 to 10.1.11 inclusive – <i>to take into account, policy of accepting paper copies no longer applies</i></p>

<p>treasurer.</p> <p>11.1.2 At the time the Tenders are opened, the electronic Tenders are to be accessed and recorded.</p> <p>11.1.3 On opening electronic Tenders, a Legal Officer shall:</p> <p>11.1.3.1 Number each Tender consecutively within the Tender Register;</p> <p>11.1.3.2 Check that the form of Tender if completed as required;</p> <p>11.1.3.3 If there are priced bills, schedules of rates or the like, log the main Contract prices on the Tender Register;</p> <p>11.1.4 The following information shall be recorded in the Tender Register: -</p> <p>11.1.4.1 The title of the Tender Invitation;</p> <p>11.1.4.2 The name of the Tenderer;</p> <p>11.1.4.3 The date & time of receipt of each Tender;</p> <p>11.1.4.4 The amount/ value of each Tender;</p> <p>11.1.4.5 The date and time of the opening of the Tenders;</p> <p>11.1.4.6 The names of all persons present at the opening of the Tenders.</p> <p>12. Tender Evaluation</p> <p>12.2 The evaluation criteria shall be predetermined and approved by the appropriate Executive Director and Borough Treasurer and listed in the Invitation to Tender documentation, in order of importance. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the Contract Award procedure.</p>	<p>Delete/Obsolete</p> <p>Delete 11.1.2 to 11.1.4.6 inclusive to reflect the use of E-procurement tool for audit purposes and replace with:-</p> <p><i>Any queries regarding the submission of tenders shall be referred onto Legal Services.</i></p> <p>Delete – reference to Executive Director and the Borough Treasurer and replace with appropriate titles of Officer(s).</p>
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<p>12.3 Where there is a requirement for a tender to be awarded on the basis of being 'Most economically advantageous' and not based on the lowest price, the approval of the Borough Solicitor and the Borough Treasurer shall be sought prior to the commencement of the Tender process.</p> <p>12.4 The evaluation criteria shall be logged with the Borough Solicitor prior to the issuing of tenders to contractors</p> <p>The relevant Executive Director shall keep a record of all debrief requests and responses.</p>	<p>Delete – <i>'....approval of the borough Solicitor and the Borough Treasurer to be sought.....'</i></p> <p>Delete/Obsolete – <i>E-procurement tool captures this information.</i></p> <p>Delete/Obsolete – <i>E-procurement tool captures this information.</i></p> <p>Insert new Rule 13.2 - <i>to ensure that the bid is compliant and the tenderer is not excluded from bidding under mandatory or discretionary provisions in Public Contract Regulations 2015.</i></p> <p>Insert new Rule 13.5 – <i>all tenders to be evaluated in accordance with treaty principles.</i></p> <p>Amend clause 13.7 – <i>include written feedback comparing the characteristics and relative advantages of the successful bid for each scored question</i></p> <p>.</p>
<p>13. Awarding Contracts</p> <p>13.2 Prior to the final Contract award, the Contractor shall provide evidence of adequate insurance to cover both public and employers' liability and professional indemnity (where appropriate) and produce such evidence before the commencement of the contract, <i>at the reasonable request of the Executive Director.</i></p> <p>13.3 For all tenders over £50,000, a minimum of 10 calendar days mandatory standstill period is required between the notification of the Contract award decision and entering into the Contract, with day 1 being the day after the award decision is issued, <i>by fax, or email</i> and in writing to all Tenderers. This is to allow Tenderers an opportunity to challenge the decision in accordance with the principles of EU law.</p> <p>13.4 A register of all term /framework Contracts (Contracts Register) placed by the Council shall be kept and maintained by the Borough Treasurer. An Executive Director shall be responsible for ensuring the required Contract information is provided to the Borough Treasurer.</p> <p>13.5 For all Tenders valued above £50,000, the decision to award a Contract shall be made in accordance with the table</p> <p>13.6 Contracts with a value of £50,000 or more</p>	<p>Delete previous Rule12 <i>Post Tender Negotiations</i></p> <p>Insert new Rule 12 – <i>Pre and Post Tender Clarifications - any changes to any advertised tender would have to fall within the scope of Rule 17</i></p> <p>Delete/Obsolete – <i>at the reasonable request of the Executive Director</i> and replace with</p> <p>Delete/Obsolete - 13.3 to 13.7 inclusive</p> <p>New Rules</p> <p><i>No Contract may be awarded unless budget release has been obtained in accordance with the Financial Procedure Rules.</i></p> <p><i>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 Chief Finance Officer having ensured compliance with the Financial Procedure Rules.</i></p> <p><i>A Contract which has a contract value above the Regulation Thresholds can only be awarded after a notice of the proposed award has been given to all unsuccessful Bidders and the 10 day standstill period</i></p>

<p>shall be executed under the Council's common seal and shall therefore be signed by the Borough Solicitor.</p> <p>13.7 All contracts with a value of £50,000 or more, where the standard Terms and Conditions have been amended, and all Contracts over the EU thresholds shall be signed by the Borough Solicitor.</p>	<p><i>has elapsed from the date 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.</i></p> <p><i>Once the decision to award a Contract is made, each Bidder must be notified in writing of the outcome. All Bidders must be notified simultaneously and as soon as possible of the intention to award the Contract to the successful Bidder(s) and this should be done via The Chest. The letters must include a description of the relative advantages of the successful Tender.</i></p> <p><i>A Contract Award notice must be published in the OJEU 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 Concessions Contract) where the Contract value exceeds the Public Contracts Regulations/Concession Contracts Regulations threshold. The notice must also be published on Contracts Finder if required by the Regulations or Concession Regulations as the case may be.</i></p> <p>Provisions have now been made clearer minimising the risk of challenge.</p>
<p>14. E Procurement System</p> <p>14.2 When placing an order based on a verbal or written quotation the details of the quotations received shall be attached to the electronic order utilising the quotation log template provided in the Procurement Code of Practice.</p>	<p>Replace all - with 'Finance Management System'</p> <p>Replace with – To set up a new supplier, refer to the Supplier Set up Procedure available on the intranet.</p>
<p>15. Performance Bonds, Guarantees and Liquidated Damages</p> <p>15.1 In the case of all Contracts values above £50,000 the Borough Treasurer shall determine the degree of security (if any) required to protect the Council from a Contractor default. This may be a performance bond or some other form of financial or performance guarantee considered appropriate.</p> <p>15.2 Where the estimated value of the Contract is £50,000 or under the Executive Director shall ensure appropriate provision for a performance bond and/or parent company guarantee is contained within the Tender documents.</p>	<p>Delete Liquidated Damages</p> <p>Delete ' In case of all Contracts above £50,000'.</p> <p>Add new sentence ' and will advise if this needs undertaking whilst providing financial comments in the Modern Governance (or equivalent) reporting process'.</p> <p>Delete/Obsolete</p>
<p>16. Contract Additions, Extensions and Variations</p>	<p>Add 'Modifications' to the list</p>

Add new paragraph ‘ Any modification to an existing Contract shall only be permitted where such modification complies with Regulation 72 of the Public Contracts Regulations 2015’.

New Rules

Subject to Rule 17.2 a Modification may be permitted if any of the limited criteria below applies:

(a) the original tendered Contract contains clauses allowing such Modifications provided that such clauses:

i) the scope and nature of possible Modifications as well as the conditions under which they may be used, and

ii) do not provide for Modifications that would alter the overall nature of the Contract or the Framework Agreement;

(b) the Modification is for additional Works, Services or Supplies by the original Contractor that have become necessary and were not included in the initial procurement, 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, or

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;

ii) the Modification does not alter the overall nature of the contract;

(d) where a new Contractor replaces the one to which the Council authority had initially awarded

the 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;

PROVIDED THAT the proposed Modification, irrespective of its value, is not substantial within the meaning of Rule 17.3;

A Modification will only be permitted if:

(a) The proposed Modification is for an increase in price of less than 10% of the initial Contract value or £500,000 (whichever is the lower) where there is sufficient budgetary provision and such a Modification is in compliance with the Financial Procedure Rules; or

(b) The Modification is for an increase in value of more than 10% of the initial contract value or £500,000 (whichever is the lower) but not more than 50% of the initial contract value and the requirement set out in Rule 17.4 has been followed.

A Modification of a Contract or a Framework Agreement 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 the Framework Agreement 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 the Framework Agreement in favour of the Contractor in a manner which was not provided for in the initial Contract or Framework Agreement;

(d) the Modification extends the scope of the Contract or Framework Agreement considerably;

(e) a new Contractor replaces the one to which the Council had initially awarded the Contract in cases other than those provided for in Rule 17 (1)(d).

(f) any increase in price is higher than 50% of the value of the original Contract or Framework Agreement.

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.

Procedure for Modifications

Approval must be obtained to any Modification in accordance with the Council's Officer and Executive Member Scheme of Delegation.

A modification form must be completed which provides full details of the Modification and any supplementary documentation to enable the Decision Maker giving the approval to make a fully informed decision.

In giving approval, the Decision Maker must take account of any advice given by the Head of Strategic Sourcing and the Director of Legal Services and must ensure that such advice is included in any report to the Decision Maker.

No commitment should be made to a potential contractor prior to approval.

The Head of Strategic Sourcing is responsible for ensuring that a complete record of all Modifications is kept and a record of the decision approving a

	<p><i>Modification and the reasons for it must be stored electronically in Modern.gov and on The Chest.</i></p> <p><i>A modification notice amending the Contract Award Notice must be published in for certain modifications</i></p> <p>This is to take into account the relaxed provisions with regards to modifications in the Public Contracts Regulations 2015</p>
<p>17. Termination of Contracts</p> <p>17.2 Details of terminations shall be provided to the Borough Treasurer so that the Contracts Register can be maintained.</p>	<p>Delete/Obsolete</p>
<p>19. Monitoring Contracts</p> <p>19.2 Where the total value of the Contract exceeds the EU thresholds the Executive Director shall make a written report evaluating the extent to which the purchasing requirements and the Contract objectives were met by the Contract. This shall be done when the Contract is completed. Where the Contract is to be re let, a provisional report shall also be available early enough to inform the approach to re letting of the subsequent Contract.</p>	<p>Delete/Obsolete – EU threshold Contracts are subject to the EU Procurement Regulations 2015.</p> <p>New Rules <i>All Contracts must have a Council Contract Manager (“Contract Manager”) or equivalent for the entirety of the Contract. In the event that there is no named Contract Manager the SRM Team or equivalent function will fulfil the role of Contract Manager.</i></p> <p><i>The Contract Manager will be responsible for reviewing monitoring and evaluating the Contract to ensure that its provisions and the services within it are being followed and performed as they should be. The Contract Manager should 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.</i></p> <p><i>During the life of the Contract, the Contract Manager should monitor the Contract in respect to the following:</i></p> <ul style="list-style-type: none"> <i>(a) Performance (against agreed KPIs where relevant) ensuring that where performance falls below expected standards this is managed promptly;</i> <i>(b) Compliance with the Specification and Contract;</i> <i>(c) Cost, ensuring that there are no unanticipated variations in price or spend;</i>

	<p>(d) Any Social Value requirements;</p> <p>(e) Risk Management ensuring risks associated with the Contract are identified and managed and any risk registers are kept up to date;</p> <p>(f) Safeguarding where appropriate; and</p> <p>(g) User satisfaction;</p> <p>The final certificate for payment for any capital Contract should not be paid until the Contract Manager has performed a reconciliation of all Works completed against the approved costs of the scheme.</p> <p>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 Manager 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 Chief Finance Officer.</p> <p>Where the Contract is to be re-let, any information gathered by the Contract Manager should be available to inform the approach to re-letting the next Contract.</p> <p>The Contract Manager can provide advice and support on good practice in performance management of Contracts.</p> <p>All Contracts must be included and published on the Contracts Register maintained by the Strategic Sourcing Team in line with the Local Government Transparency Code 2014. This is a mandatory requirement and it is the responsibility of the Executive Director for each service to ensure that they have informed the Strategic Sourcing Team of the Contracts they are responsible for and provided them with the information necessary to update the Contracts Register.</p> <p>This is to ensure contract monitoring takes place in the interests of the Council and value for money principles are entrenched.</p>
<p>20. Exemption of CPRs Exemption from any of the provisions to these Contract Procedure Rules may be made:-</p>	<p>Delete/Obsolete – 20.1 to 20.2 inclusive</p>

20.1.1 By the Council
20.1.2 By the Cabinet acting under delegated powers, or
20.1.3 & 20.1.4
20.2 The Council shall be informed of the circumstances of every exemption made.

New Rules *These Rules are mandatory but in limited circumstances, it may be necessary to seek an Exemption from these Rules and guidance from the Procurement Team must be sought before any Procurement Activity commences for which an Exemption may be required.*

An Exemption cannot be given where this would contravene the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 or any other legislation.

Exemptions will only be considered in exceptional circumstances namely:

- (a) Proprietary or patented goods or services are proposed to be purchased which, are only obtainable from one person and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented goods is available; or*
- (b) No genuine competition can be obtained in respect of the purchase of particular Goods, Services or execution of Works; or*
- (c) The Services or execution of Works are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers); or*
- (d) Goods are proposed to be purchased by or on behalf of the Council at a public auction; or*
- (e) Goods or Services are proposed to be purchased which are of a specialist or unique nature (such as antiquities for museums or a particular performance artist); or*
- (f) Repairs or parts if the only option is to repair or buy new parts for existing equipment or buildings, and there is only one supplier.*
- (g) To comply with legal requirements;*
- (h) The Contract is for Goods, 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 a service 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;

(j) Where an extension for a particular period can be justified, for example where a Service review includes the intention to co-terminate relevant Contracts within a reasonable period;

(k) Where fewer than the required numbers of Tenders have been received and it is considered unlikely that a further tendering exercise will result in more Tenders being received

Procedure for Exemptions

To apply for an Exemption an Exemption Form must be completed and signed by the relevant Executive Director.

The Exemption Form must provide full details of the request and any supplementary documentation to support the request.

No commitment should be made to a potential Contractor prior to authorisation.

The Head of Strategic sourcing is responsible for ensuring a complete record of all Exemptions is maintained. A record of the decision approving an Exemption and the reasons for it must be stored electronically on The Chest.

In circumstances of extreme urgency, the relevant decision maker in 21.5 above may authorise an Exemption in writing without the need to complete an Exemption Form. The written authorisation provided in accordance with this Rule 21.9 must be stored electronically on The Chest. As soon as practicable an Exemption Form must be submitted and approved in accordance with this Rule

All Exemptions granted will be reported to the Audit Governance and Improvement Review Committee as part of the Annual Procurement and Commissioning

Report.

This has been replaced to ensure that all officers are clear of the parameters within which exemptions can be requested.

CPRs	Proposed Amendment to CPRs
21. Definitions	Replace Public Contracts Regulations 2006 (SI 06 No 5) with Public Contracts Regulations 2015 (SI 2015 No 102)
20.1.8	Add new paragraph – E-Procurement system means Council’s e-tendering portal, The Chest or equivalent
‘Concession’ means a contract under which a contracting authority outsources works or services to a contractor or provider, who then has the right to commercially exploit those works or services 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.	Add new paragraph – To include a definition of “Concesssion”
	New Rule 22 to deal with Declarations of Interest and Anti-Bribery and Corruption. This has been included to protect the probity of the Council’s decision making process.