

Standing Orders

of East Lothian Council



East Lothian
Council



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Application of Standing Orders

These Standing Orders will replace any Standing Orders the Council has previously approved and will take effect from 25 August 2015.

These Standing Orders are subject to the provisions of the Acts outlined below, and any other relevant Acts, and may be varied or revoked by the Council in accordance with Standing Order 13.2:

- 1973 Act The Local Government (Scotland) Act 1973
- 1989 Act The Local Government and Housing Act 1989
- 1994 Act The Local Government etc. (Scotland) Act 1994

Document Version Control

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| B | East Lothian Council Procurement Procedures |
| C | Councillors' Code of Conduct |
| D | Standards Commission for Scotland Advice Note for Councillors on Distinguishing between Their Strategic Role and Any Operation Work |
| E | Councillor Role Descriptions |
| F | Statutory Officer and Chief Officer Role Descriptions |
| G | Code of Recommended Practice on Local Authority Publicity |
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1 FIRST MEETING OF THE COUNCIL FOLLOWING AN ELECTION

1.1 Convening the Meeting

In an election year, the Council will hold its first meeting within 21 days from the date of the election. The Chief Executive will set the date and time of this first meeting.

1.2 Mandatory Items of Business

Until the Provost is elected the Returning Officer will chair the meeting.

At this meeting the Council will:

- i. Receive notice of election of Councillors, noting which Councillors have signed the declaration of acceptance of office
- ii. Appoint the Provost, Depute Provost, Leader (and Depute Leader, if desired) of the Council
- iii. Receive notice of the appointments of Leaders of Minority Groups and identify any spokesperson for any group of independent Councillors, and, from those, appoint the Leader of the Opposition
- iv. Appoint the Cabinet, other Committees and Sub-Committees of the Council and their respective Conveners and Depute Conveners, noting that all Groups will be required to make nominations for membership in accordance with the committee/sub-committee composition, as determined by the Council
- v. Appoint portfolio holders
- vi. Appoint representatives to any Joint Boards, Associated Committees and the various other outside bodies the Council is represented on, provided these appointments can be reasonably made at that meeting and it is considered appropriate to make appointments at that time
- vii. Set the allowances of the Provost, Depute Provost, Conveners and Depute Conveners of Committees and other Members in accordance with the relevant statutory provisions and guidance from the Scottish Government
- viii. Appoint the Licensing Board in terms of the Licensing (Scotland) Act 2005
- ix. Deal with any other statutory or urgent competent business.

2 COUNCILLOR APPOINTMENTS AND REMOVAL FROM OFFICE

2.1 Appointment of Councillors to Office

- i. When appointing Councillors to any office or position where there are a greater number of candidates than vacancies, the decision will be taken by a vote (see Standing Order 10).
- ii. It will not be competent for a Councillor to move or second his/her own election or appointment either as Provost, Depute Provost, Leader or Depute Leader of the Council, or as Convener or Depute Convener of a Committee of the Council.
- iii. Where there is one vacancy and one candidate has an absolute majority of the votes cast, that candidate will be appointed. If no candidate has an absolute majority the candidate with the fewest votes will be eliminated and another vote taken. This process of elimination will continue until one candidate has an absolute majority.
- iv. Where there is an equal number of votes for the candidates with the fewest number of votes, there will be an additional vote to decide which candidate to eliminate. If there are an equal number of votes in the additional vote between two candidates, the elimination will be decided by drawing lots.
- v. Where there is one vacancy and an equal number of votes between two candidates, the appointment will be decided by drawing lots.
- vi. Where there is more than one vacancy, the candidate with the lowest vote will be eliminated and another vote taken. This process of elimination will continue until there are an equal number of candidates to the number of vacancies.

2.2 Duration of Appointments

Unless a Councillor resigns from any appointment or is removed by the Council, each of the appointments referred to in Standing Order 1.2 will stand until the next Council election.

2.3 Removing the Provost, Committee Conveners and Committee Members

- i. The Council may remove the Provost, Depute Provost, Leader, Depute Leader, any Convener or Depute Convener of a committee or any member of a committee (this includes appointed members and added members).
- ii. Any motion for removing the Provost, Depute Provost, Leader, Depute Leader, Convener, Depute Convener or any member of a committee

may be carried by a simple majority of those members present and eligible to vote at the meeting at which the motion is put.

3 COMMITTEES, SUB-COMMITTEES AND ASSOCIATED COMMITTEES

3.1 Committees

- i. Subject to any statutory provision, the Council may at any time appoint committees to help carry out its functions. The powers and duties of these committees will be incorporated into the Scheme of Administration (Appendix 1 to these Standing Orders). In the event that any new committees are appointed, the Council shall determine the membership of those committees and shall ensure that political balance is achieved. This Standing Order should be read in conjunction with the Scheme of Administration.
- ii. The Council may amend the committee structure at any time.
- iii. The Provost's powers in Council meetings will apply to the Convener (or Depute Convener) of a committee for meetings of that committee and to any member of a committee chairing a committee in the absence of the Convener and Depute Convener for meetings of that committee.

3.2 Sub-Committees

The Council may establish any sub-committee of its committees, their remits, delegated powers and number of members, and appoint the conveners and members of these sub-committees. The powers and duties of these sub-committees will be incorporated into the Scheme of Administration (Appendix 1 to these Standing Orders).

3.3 Associated Committees

The Council may establish any associated committee, their remit, delegated powers and number of members, and appoint the conveners and members of these associated committees. The powers and duties of these associated committees will be incorporated into the Scheme of Administration (Appendix 1 to these Standing Orders).

3.4 Members' Library Service

The Chief Executive will maintain a Members' Library Service, which will contain:

- (a) reports advising of significant items of business which have been delegated to officers in accordance with the Scheme of Delegation or officers in conjunction with Councillors (see Standing Order 15.2), or
- (b) background papers linked to specific committee reports.

A summary of all papers lodged in the Members' Library will be presented at the next ordinary meeting of the Council for recording into the proceedings of the Council. Reports to the Members' Library will be made available to the public except where they contain exempt or confidential information as defined in Schedule 7A of the 1973 Act or Section 50A of the 1973 Act.

4 ORDINARY AND ADDITIONAL MEETINGS OF THE COUNCIL AND COMMITTEES

4.1 Ordinary Meetings

Ordinary meetings of the Council and its committees will be held according to the schedule agreed by the Council, unless the Council agrees otherwise.

At an ordinary meeting of the Council or a committee no business will be transacted other than:

- i. business required by statute to be transacted at that meeting
- ii. business specified in the Notice of Meeting (see Standing Order 4.3)
- iii. any other business considered as a matter of urgency in terms of Section 50B(4)(b) of the 1973 Act and Standing Order 5.2.

4.2 Special Meetings

A special meeting of the Council or a committee may be called to deal with urgent business:

- i. at any time by the Chief Executive, in consultation with the Convener; or
- ii. by a written request signed by at least 6 Councillors. In such cases, the special meeting will be held within 14 days of receipt of the request by the Chief Executive; or
- iii. as required by statute.

The agenda for a special meeting will be limited to that item/those items of business specified.

4.3 Notice of Meetings to Members of the Council and Committees

- i. At least three clear days before a meeting of the Council or any committee, notice of the time and place of the meeting will be published. As a matter of practice, seven clear days' notice of meetings will normally be given.

[Note: clear days includes week days, weekends and public holidays, but excludes the day the notice is issued and the day on which the meeting is held.]

- ii. Where the meeting is called by Councillors in terms of Standing Order 4.2(ii), the notice will include a copy of the request signed by them and will specify the business to be discussed at the meeting.
- iii. Councillors will be provided with the meeting agenda and accompanying reports. If a notice of meeting is not received by any Councillor, the meeting will still be valid.
- iv. All Councillors will have access to all committee papers, including those containing exempt and confidential information (as defined in Standing Order 5.5).

4.4 Notice of Meetings to the Press and Public

- i. Copies of the items set out in the Notice of Meeting will be made available on the Council website (www.eastlothian.gov.uk).
- ii. Reports containing exempt or confidential information (as defined in Standing Order 5.5) will not be made available to the press or public.

4.5 Postponing, Continuing and Cancelling Meetings

- i. In consultation with the Convener, the Chief Executive may postpone any meeting to another day or time.
- ii. Any motion to continue a meeting which has already started to another day or time must be seconded before being put to the vote.
- iii. Where a sub-committee meeting is continued, no member should attend who did not attend the original meeting (see also Standing Order 6.4)
- iv. Scheduled meetings may be cancelled where there is no business to be discussed or with the agreement of the Chief Executive, in consultation with the Convener.

5 MEETING AGENDAS

5.1 Order of Business

- i. The order of business for a Council or committee meeting will be agreed by the Chief Executive and Convener. Any changes to the order of business will be announced by the Convener at the beginning of the meeting. Items containing exempt or confidential information will normally be discussed following public items.

- ii. Unless determined otherwise by the Chief Executive, only business requiring a decision will be specified on the agenda.
- iii. The Convener may make a statement at the start of a meeting on any matter of civic importance. There will be no debate on such matters, unless determined otherwise by the Convener.

5.2 Urgent Business

If three clear days' notice are not given for an item of business, it may be dealt with at the meeting as urgent business if:

- i. it is made known at the start of the meeting; and
- ii. the Convener rules that there are reasons why it is urgent and states those reasons.

5.3 Written Motions to Council

- i. Written motions intended for inclusion on the agenda for a meeting of the Council will be emailed directly to the Clerk by the Councillor submitting the motion, and 'countersigned' by at least one other Councillor by way of an email to the Clerk. All such notices should be submitted to the Clerk eleven clear days in advance of the meeting date. If this deadline is missed, the motion will not be included on the agenda. Motions will be included on the agenda for the meeting in the order in which they are received.
- ii. Every motion must contain an instruction to Council and be relevant to matters within the Council's powers and duties or involve an issue that will affect East Lothian or a matter of social and political concern.
- iii. Motions may not contain offensive or abusive language and may not contain argument. The Chief Executive, in consultation with other Council officers, may refuse to accept any motion that fails to meet these requirements.
- iv. Every written motion received will be subject to checks to determine their competency, which will include:
 - (a) whether they have been submitted in accordance with Standing Order 5.3(i);
 - (b) the purpose of the motion is within the powers of the Council;
 - (c) the motion is lawful; and
 - (d) whether the purpose of the motion seeks to directly rescind a decision made by the Council or Committee within the previous six months (in which case approval of two-thirds of Councillors present and entitled to vote would be required).

5.4 Call-in Process

A minimum of four Councillors shall be required to call in items of business from a Cabinet agenda. Written notice of a call-in must be submitted to the clerk to the Cabinet (by electronic mail) by noon on the day before the meeting at which the item(s) are due to be considered; each Councillor requesting the call-in is required to notify the clerk separately. Any items of business called in in accordance with this process will be withdrawn from the Cabinet agenda and referred to the next ordinary Council meeting for consideration. Time-critical items of business (i.e. those items which require a decision to be taken in advance of the next Council meeting) will be exempt from the call-in process. It shall not be competent for Councillors to use the provisions set out in Standing Order 4.2(ii) (Special Meetings) to request a special meeting of the Council to specifically call in time-critical items of business from a Cabinet agenda.

5.5 Exempt and Confidential Information

- i. Agendas and reports containing exempt information (exempt items) will contain a declaration that the report is 'Not for publication' because it contains exempt information as defined in Schedule 7A of the 1973 Act.
- ii. The press and public will not be admitted during the discussion of exempt items.
- iii. If a question arises at a Council or committee meeting where the press or public is present as to (a) the appointment, promotion, salary or conditions of service, or (b) as to the dismissal, conduct, character or reputation of any person(s) employed by the Council, or (c) confidential information as defined in Section 50A of the 1973 Act, it will be considered by the Council or committee in private.

6 GENERAL OPERATION OF COUNCIL AND COMMITTEE MEETINGS

6.1 Chairing Meetings

- i. The Provost, if present, will be the Convener of Council meetings. If the Provost is not present, the Depute Provost will chair the meeting. If neither the Provost nor the Depute Provost is present, the Councillors present will decide who will chair the meeting by means of nomination and a simple majority vote.
- ii. The Convener, if present, will chair committee/sub-committee meetings. If the Convener is not present, the Depute Convener will chair the meeting. If neither the Convener nor the Depute Convener is present, the Councillors present will decide who will chair the meeting by means of nomination and a simple majority vote.

- iii. If a Convener is required to vacate the chair due to a declaration of interest, the Depute Convener will assume the chair. If the Depute Convener is not present, the Councillors present will decide who will assume the chair by means of nomination and a simple majority vote.

6.2 Quorum

- i. No business will be carried out at a meeting unless a quorum of Councillors is present. A quorum is the minimum number of Council/committee members who must be present before the meeting can take place and make valid decisions.
- ii. The quorum of the Council, committees and sub-committees will be detailed in the Council's Scheme of Administration (see Appendix 1). The quorum will include those attending in person and those attending remotely.
- iii. If, ten minutes after the time appointed for a meeting the quorum has not been met, the Convener will postpone the meeting until a date and time determined at the time or afterwards. The minutes of the meeting will record that no business was carried out due to the lack of a quorum.
- iv. If, after a meeting has started, the number of Councillors entitled to vote falls below the quorum, there will be a break of ten minutes. If, after the break, a quorum has not been found, the meeting will be adjourned and the minutes of the meeting will state the reason for the adjournment.
- v. Decisions taken during any part of the meeting where there was a quorum present are valid.

6.3 Attendance at Meetings

- i. At each meeting, the Clerk will record the names of Councillors present, those committee members who submit apologies for absence, and those committee members who are absent without having submitted an apology. Attendance recorded at hybrid meetings will include those present in the Chamber and those attending remotely.
- ii. The entitlement to vote on any matter under consideration will be restricted to committee members present at the meeting. Direction on councillor participation in meetings of any committee of which they are not a member is set out within the Scheme of Administration for each committee.
- iii. Meetings may take place by way of the digital meeting facility only (that is, there will be no physical attendance). In such cases, Councillors and relevant officers will be advised of this in advance of the meeting date.

6.4 Substitute Members

- i. In respect of sub-committees of the Council, and of other committees, as stipulated in the Scheme of Administration, members may appoint another member of the Council as a substitute member to act on their behalf at any meeting which they are unable to attend. This Standing Order should be read in conjunction with Standing Order 4.5(iii) and the Scheme of Administration.
- ii. Where a member is unable to attend a meeting and has appointed a substitute (in accordance with the Scheme of Administration), they will advise the Clerk in advance of the name of the Councillor who will act as substitute.

6.5 Failure to Attend Meetings

- i. If a Councillor is not able to attend a meeting, he/she should inform the Clerk of that committee in advance of the meeting. The Clerk will advise the meeting of apologies intimated prior to the commencement of business.
- ii. If a Councillor fails to attend meetings for six consecutive months of any meeting of the Council or its committees and sub-committees, associated committees or joint boards on which the Councillor represents the Council, the Councillor will no longer be a member of the Council unless the Council grants them prior leave of absence.

6.6 Press and Public Attendance at Meetings

- i. Except where Standing Order 5.5 provides otherwise, every meeting of the Council, its committees and sub-committees will be open to the press and public as observers. Except where Standing Order 5.5 provides otherwise, the press and public will be able to observe every meeting of the Council, its committees and sub-committees. Where a meeting takes place via digital facilities only, this will be facilitated via a live webcast of proceedings.
- ii. The taking of photographs, use of mobile phones and of other audio visual and recording equipment is not permitted during meetings unless with the express permission of the Convener. Councillors and officers attending meetings held via digital facilities must not use any part of the recording for political purposes.
- iii. If a member of the public interrupts any meeting, the Convener may issue a warning to the person creating the disturbance or may order that person to be removed from the meeting. If they refuse to leave the meeting, the Convener may call for the Police to remove them.

- iv. If there is a general disturbance during any part of the meeting open to the public, the Convener may order that the public be removed from the meeting.
- v. Members of the public will not be permitted to address any meeting of the Council, its committees or sub-committees, except where they have the prior permission of the Convener. It will be at the discretion of the Convener to permit any member of the public to address any meeting (see also Standing Order 7.1).

7 CONDUCT AT COUNCIL AND COMMITTEE MEETINGS

7.1 Powers and Duties of the Convener

- i. It is the duty of the Convener to ensure that Standing Orders are followed and to ensure that all Councillors receive a fair hearing.
- ii. When the Convener begins to speak, other Councillors must stop speaking.
- iii. The Convener will decide on the order in which Councillors may speak.
- iv. On all points of order, the ruling of the Convener will be final and not open to discussion.
- v. In the event of disorder arising at any meeting, the Convener will be entitled to adjourn the meeting until a date and time determined by the Convener at the time or afterwards.
- vi. It will be at the discretion of the Convener to permit any member of the public or deputation to address any meeting of the Council, provided that prior permission has been sought and granted by the Convener.
 - a. In respect of any item of business, other than planning applications, the number of persons in a deputation will not exceed three and will be given no more than ten minutes in total to present their case.
 - b. In respect of planning applications, applicants/agents and individuals who have submitted written representations will be invited to attend the Planning Committee and offered the opportunity to address the Committee, in accordance with the procedures outlined in the Scheme of Administration for the Planning Committee (Appendix 1).
 - c. Councillors will not interrupt the delivery of a presentation but may ask questions on its conclusion.

- vii. The Convener will have discretion to determine all questions of procedure where no specific provision is made under these Standing Orders. He/she will explain the reasons for the decision and his/her decision will be final and not open to discussion.

7.2 Behaviour

All Councillors must comply with the Councillors' Code of Conduct and behave respectfully at any meeting, and should not behave in a manner that is improper or offensive, or deliberately obstructs or otherwise disrupts the business of the meeting.

The Convener may take any of the following courses of action against any Councillor disregarding the authority of the Convener, obstructing the meeting or conducting him/herself offensively:

- i. direct the Councillor to refrain from speaking during the remainder of the debate on the matter under discussion
- ii. adjourn the meeting for a period of time specified by the Convener
- iii. suspend the Councillor for the remainder of the meeting and direct him/her to leave the Chamber, in which case the Councillor concerned shall leave the Chamber immediately, or, if the Councillor is participating remotely, his/her access to the digital meeting facility will be suspended for the remainder of the meeting.

7.3 Points of Order

- i. A point of order is a verbal objection given to the Convener, saying that a statement or proposed procedure or action at the meeting may be in breach of the law, Standing Orders or the Councillors' Code of Conduct. The term 'point of order' does not include the arguments, the principles or the political views expressed in debate, or relate to how true or accurate any statement made in the course of debate is. A difference of opinion is not a point of order.
- ii. Any Councillor eligible to participate in the meeting may raise a point of order arising at any point in the meeting, but must clearly tell the meeting on what basis a Standing Order, the law or the Councillors' Code of Conduct has been, or is about to be, breached.
- iii. When a point of order is raised, the meeting will stop until the Clerk or Legal Adviser has determined whether or not the point raised is a point of order. If the point of order is confirmed by the Clerk or Legal Adviser, the Convener will decide how the point of order should be dealt with. If the point is not confirmed to be a point of order, it will not be accepted and the business will continue.

7.4 Declarations of Interest – Councillors

- i. Any Councillor who has an interest (financial and/or non-financial), as defined in the Councillors' Code of Conduct, in any matter and is present at a meeting of the Council at which that matter is under consideration, will act in accordance with the Councillors' Code of Conduct. Members must also consider whether any connections they have constitute an interest, and should act accordingly. He/she should seek the advice of the Monitoring Officer and take account of legal advice, where appropriate, on the terms of the Code and how it may affect them.
- ii. Applications to the Council for any grant, approval or permission in which any Member has a personal or financial interest will be considered only by the Council or the appropriate committee or sub-committee.

7.5 Declarations of Interest – Council Officers

Any officer who has an interest (financial and/or non-financial) in any matter and is present at a meeting of the Council at which that matter is under consideration, will disclose his/her interest and, at the discretion of the Council, may be excluded from the meeting while that matter is under consideration.

7.6 Adjournments and Breaks

- i. The Convener may adjourn a meeting at any time for any reason, and will determine the length of the adjournment.
- ii. Subject to the Convener's effective management of the meeting, there will be a 30-minute break after approximately two hours of sitting (this applies to all meetings, whether they are held in person, or are conducted through the Council's hybrid/digital meeting facility).

8 INTRODUCING REPORTS AND QUESTIONS TO OFFICERS

- i. Reports to the Council and committees will be introduced, without interruption, by the officer who has responsibility for the report.
- ii. Unless the Convener agrees otherwise, an officer will take no more than five minutes to present a report and will highlight the salient points to Councillors.
- iii. In accordance with the Scheme of Administration, the Convener will then give Councillors the opportunity to ask questions and request explanations or more information from that officer or from any other officer at the meeting who holds information that is relevant to the matter under consideration. To promote the effective management of

the meeting, Councillors should seek clarification on any points from officers in advance of the meeting. On that basis, the Convener may limit the number and extent of questions raised by individual Councillors at the meeting.

- iv. Once the report has been introduced and when, in the opinion of the Convener, Councillors have had a reasonable opportunity to ask questions and request explanations or more information, the Convener will move to the debate.

9 DISCUSSION AND DEBATING RULES

9.1 Reports to Council and Committee

Motions for approval of a report's recommendations will be considered as the original motion. Any motion proposing to alter the recommendation(s) of the report will be dealt with as an amendment.

9.2 Written Motions

- i. Motions submitted in accordance with Standing Order 5.3 must be set out in writing before they can be debated or put to a vote.
- ii. Motions must be moved and seconded before they are debated or put to a vote.
- iii. Individuals present at a meeting who do not have voting rights may not move or second a motion.

9.3 Amendments

- i. Amendments must relate to the report or motion under discussion. Written amendments must be emailed directly to the Clerk by the Councillor submitting the amendment, and 'countersigned' by at least one other Councillor by way of an email to the Clerk.
- ii. Other than in exceptional circumstances (see (x) below), and in relation to the terms set out in (xi) below, amendments must be submitted to the Clerk by noon on the day prior to the meeting, in order that copies can be circulated to Members prior to or at the meeting. Competent written amendments submitted prior to the meeting will be published on the website alongside the relevant item of business in advance of the meeting.
- iii. Only in exceptional circumstances will the Convener accept amendments submitted out with the timescale set out in (ii) above. In such circumstances, the Convener will explain his/her reasons for accepting the late amendment.

- iv. Every amendment shall be given in writing to the Clerk.
- v. The Convener has the power to rule out of order any amendment he/she considers irrelevant or substantially similar to the motion or to any previous amendment.
- vi. Amendments must be moved and seconded before they can be debated or put to a vote.
- vii. Individuals present at a meeting who do not have voting rights may not move or second an amendment.
- viii. Amendments submitted in accordance with the timescales set out in (ii) above will be introduced following the presentation of the report by the officer/the moving and seconding of a motion by Councillors. Where more than one amendment has been submitted, the Convener will determine the order in which they are taken.
- ix. Once all amendments have been moved and seconded, the Convener will move to the debate.
- x. Exceptional circumstances shall include a written amendment submitted outwith the timescale set out in (iii) above or a verbal amendment made in response to matters raised during the debate. Such amendments should be proposed and seconded and put to the Council or committee in accordance with Standing Order 10.1(iii). Where requested, the proposer of a verbal amendment may be required to provide the clerk with the amendment in writing.
- xi. For the purpose of the budget-setting process, specific arrangements, as determined by the Council, will be made as regards the timescales for and submission of amendments.

9.4 Order of Debate

- i. Any Councillor wishing to ask questions relating to the matter under consideration may do so at any time before the formal debate begins. (This Standing Order should be read in conjunction with Standing Orders 8(iii) and 8(iv).)
- ii. Councillors may speak only once during the debate on any item of business. The exceptions are:
 - to exercise a right of reply, in which case the proposer of the original motion will be limited to five minutes and that the reply will be limited to answering matters raised in the debate; or
 - by making a point of order that the Convener has agreed to take.
- iii. A Councillor moving a motion or an amendment may speak for no more than ten minutes.

- iv. Other Councillors taking part in the discussion, including those who second motions or amendments, will speak for no more than five minutes. A councillor who seconds a motion or amendment may do so formally, reserving his/her entitlement to speak on the matter to a later stage in the debate.
- v. The Convener may invite officers to clarify matters or provide further information on the matter under consideration, as required, during the debate.

9.5 Withdrawing a Motion or Amendment

A motion or amendment can only be withdrawn by the mover (the person who put forward the motion) and the seconder (the person who supported it).

9.6 Putting a Motion to Council

The Convener will put the motion to the Council after the mover of a motion (or motion as amended) has exercised their right of reply. There will be no further debate on the motion.

10 VOTING AT COUNCIL AND COMMITTEE MEETINGS

10.1 General Information

- i. Unless required by law or Standing Orders, every motion coming to or arising at a Council meeting will be decided either by a show of hands or via the electronic voting facility of a simple majority of the Councillors who are present and eligible to vote.
- ii. After the Convener has announced that any matter is to be put to the vote, the Clerk will (if required) clarify the matter. The Convener will then take the vote. No Councillor will interrupt the proceedings until the result of the vote is announced.
- iii. Where an amendment has been proposed and seconded, it will be voted on before the vote on the motion. Where the amendment is carried, the original motion will fall. Where more than one competing amendment has been proposed and seconded, the Convener will determine the order in which they are put to the vote. A vote will be taken on the motion against the first amendment. A vote will then be taken on the surviving position against the second amendment. This process will continue for any further amendments. All councillors are entitled to vote at all stages.
- iv. If a Councillor immediately challenges the accuracy of the count, the Convener will rule on whether the vote should be repeated and a recount taken. The Convener will then announce the result of the vote.

- v. Unless the law says otherwise (or in relation to Standing Order 10.3(iii)), the Convener will have a 'casting vote'. He/she may use this where there are an equal number of votes for or against any motion or amendment.

10.2 Roll Call Vote

- i. Any Councillor (whether or not eligible to vote) can ask for a roll call vote on any question coming to or arising at a meeting.
- ii. If a vote is taken by roll call, the names of those Councillors voting for or against the motion or amendment will be included as part of the minutes for the meeting.
- iii. For meetings where the Council's digital meeting facility is in use, all votes will be taken by roll call.

10.3 Entitlement to Vote

- i. Councillors who have withdrawn from the meeting following a declaration of interest may not vote on the item concerned.
- ii. Councillors attending committees of which they are not members will not be entitled to vote (see also Standing Order 6.3(ii)).
- iii. The Convener will not have a casting vote in relation to filling of posts held by Councillors or other representatives and in the appointment of employees.

10.4 Recording Votes in the Minutes

- i. The minutes of the meeting will record the vote, including any abstentions.
- ii. A Councillor may ask that the minutes of the meeting record a note of his/her disagreement with a decision of the meeting.

11 PROCEDURAL MOTIONS

The following procedural motions may be moved during the discussion of an item of business. If the motions have been moved and seconded, they will be put to the vote without being discussed beforehand. The outcome of the vote will be recorded in the minutes of the meeting:

- i. Moving to the next item of business
- ii. Putting the matter to the vote
- iii. Postponing the debate
- iv. Continuing an item of business

12 RESCINDING DECISIONS

Any motion that would directly rescind a previous Council decision within a period of six months from the date of the original decision can only be approved if two-thirds of Councillors present and entitled to vote agree to do so. This Standing Order does not apply to decisions taken under powers delegated to officers.

13 SUSPENDING AND AMENDING STANDING ORDERS

13.1 Suspending Standing Orders

Standing Orders may be suspended at any meeting of the Council. This can only take effect where at least two-thirds of the Councillors present and entitled to vote approve such a motion. Any such suspension of Standing Orders cannot override a legal duty or requirement of the Council.

13.2 Amending and Removing Standing Orders

- i. Any proposal to add, alter or remove any Standing Order can only be approved where at least two-thirds of the Councillors present and entitled to vote agree to do so. A motion to this effect can only be considered at a meeting of the Council and not at any committee or sub-committee.
- ii. Any proposal to add, alter or remove Appendices 1 and 2 to the Standing Orders will require a simple majority voting in favour of the proposal. The exception to this is the removal of any committee or sub-committee from the Scheme of Administration, which will require the approval of two-thirds of Councillors present and entitled to vote.

14 MINUTES OF COUNCIL AND COMMITTEE MEETINGS

14.1 Approval of Minutes

- i. The reporting arrangements for committees, sub-committees and associated committees will be as contained in the Council's Scheme of Administration (Appendix 1).
- ii. Minutes shall be approved by a simple majority of those present and entitled to vote. If a meeting agrees that minutes submitted for approval are a correct record, the appropriate Convener will sign the principal copy of the minutes.
- iii. Where the meeting agrees to amend any part of a minute submitted for approval, the Convener will sign the corrected principal copy of the minutes.

14.2 Publication of Minutes

Subject to the provisions of Schedule 7A and of Sections 50A of the 1973 Act (concerning exempt and confidential information), once approved, minutes will be published on the Council's website.

15 DELEGATION

15.1 Delegation Arrangements

The Council will make a Scheme of Delegation to committees and officers to carry out certain functions. The Scheme of Delegation will form an appendix to these Standing Orders (see Appendix 2).

15.2 Delegation of Business to Councillors and Officers

In addition to the delegations specified in the Scheme of Delegation, business may be delegated to a specific chief officer to act in consultation with any two of the Provost, Depute Provost, Leader, Depute Leader (if appointed) or Convener, or to a specific chief officer acting alone. The outcome of the deliberation under such delegation will be subject to a report to the Members' Library Service.

15.3 Emergencies – Delegation of Business to Councillors and Officers

Power is delegated to the Chief Executive and all chief officers to take any action with regard to any emergency involving serious danger to life, property, or public welfare, or in accordance with the Council's Business Continuity Plan. Any action taken under this Standing Order will be reported to the Provost or Leader and the appropriate committee Convener as soon as possible and thereafter to the Council.

15.4 Additional Delegations in Conjunction with Councillors

Power is delegated to the Chief Executive and statutory officers, in conjunction with cross-party Councillor representation, to take immediate or urgent action with regard to matters not covered by Standing Order 15.3.

15.5 Delegation of Business to Committees

- i. The Council will make a Scheme of Administration setting out the functions and remit of any committee and sub-committee. The proper decisions of committees will be regarded as decisions of the Council.
- ii. Decisions of a committee on functions delegated to them will be reported to the Council for information only unless the committee resolves that a particular item of business should be referred to the Council for decision or requires amendments to the Council's approved budget.

15.6 Recess Business Arrangements

Between the last scheduled meeting of the Council prior to the summer/election recess and the first meeting following the summer/election recess, a minimum of two of the Provost, Depute Provost, Leader, Depute Leader (if appointed), together with the Convener/Depute Convener of the appropriate committee, will deal in their discretion with the urgent business of the Council presented to them for consideration by the Chief Executive, or officers authorised by him/her to act on his/her behalf.

For the avoidance of doubt, matters that require approval of two-thirds of Councillors cannot be dealt with under this Standing Order.

Standing Orders Glossary

| | |
|------------------------------|---|
| Chief Finance Officer | Also known as the Section 95 Officer, the Chief Finance Officer has responsibility for the Council's financial affairs. The Head of Council Resources is currently the Council's Chief Finance Officer. |
| Chief Officer | The Chief Executive, Depute Chief Executives, Director of the East Lothian Health & Social Care Partnership and Heads of Service are designated as Chief Officers. |
| Chief Social Work Officer | This person is responsible for making sure the Council is providing all social work services properly. The Chief Operating Officer – Children's Services is currently the Council's Chief Social Work Officer. |
| Convener | Unless the context provides otherwise, this includes the Provost, Depute Provost, Depute Convener or any other Councillor when chairing any meeting of the Council or a committee. |
| Councillors' Code of Conduct | The Councillors' Code of Conduct is the framework by which all Councillors are expected to abide. |
| Delegation | When the Council delegates duties or responsibilities it is giving someone else the authority to act on its behalf. The Council can arrange to delegate functions to a committee, sub-committee or Council officer(s). |
| Development Plan | A plan made up of the Strategic Development Plan and the Local Development Plan. The Strategic Development Plan sets out the Council's policy and general proposals for how land in East Lothian can be used. The Local Development Plan sets out in more detail the Council's proposals for developing and using land in East Lothian. |
| Elected Member | Councillor |
| Financial Regulations | The Council's set of rules to make sure it protects the public money it handles and spends it correctly and responsibly. The Regulations also help and protect staff dealing with financial business. |
| Head of Paid Service | The most senior Council officer is the Chief Executive, who is also the Head of Paid Service. |

| | |
|------------------------------------|---|
| | <p>This person is the senior adviser responsible for the smooth running and co-ordination of Council services.</p> |
| Monitoring Officer | <p>Every council has to appoint a Monitoring Officer who will investigate any proposal, decision or failure to act where Council, a committee or an officer may have broken an Act of Parliament, a law or any code of practice. The Monitoring Officer may have to prepare a report to Council. The Depute Chief Executive (Partnership and Community Services) is currently the Council's Monitoring Officer.</p> |
| Portfolio | <p>The area of responsibility allocated by the Council to a Councillor; portfolio holder will be interpreted accordingly.</p> |
| Procurement Procedures | <p>The Council's set of rules for procuring services and goods, and paying for building work, building maintenance and engineering work.</p> |
| Procuring (procurement) | <p>The process of buying goods and services, and paying for building work, building maintenance and engineering work. The main steps in procurement include planning, locating, purchasing, ordering, managing suppliers, and using and disposing of the product, service or asset.</p> |
| Proper Officers | <p>Employees appointed to deal with formal functions the Council must perform by law.</p> |
| Ratification | <p>A way of approving, at a higher level, a decision taken earlier if there is some doubt over the authority of the original decision maker.</p> |
| Returning Officer | <p>The officer responsible for conducting elections. The Chief Executive is the Council's Returning Officer.</p> |
| Scheme of Administration | <p>The remit, powers, membership and reporting arrangements in relation to the Council, its committees, sub-committees and associated committees.</p> |
| Scheme of Delegation | <p>The duties and responsibilities delegated to the Chief Executive and Chief Officers.</p> |
| Scottish Public Services Ombudsman | <p>The Scottish Public Services Ombudsman (SPSO) provides an open, accountable and accessible complaint system. The organisation offers free, independent advice for members of the public making complaints about public services. You can phone them on 0870 377</p> |

7330 or submit feedback through the SPSO website: <https://www.spsso.org.uk>.

Standing Orders

The Council's set of rules to make sure that Council and committee meetings are conducted properly and that decisions are made in an open and accountable way (that is, in a way that the Council can justify).

Ward

Part of the local authority area for the purpose of electing councillors. East Lothian Council is divided into six electoral wards. There are four wards with four councillors and two wards with three councillors (22 councillors in total).

EAST LoTHIAN COUNCIL SCHEME OF ADMINISTRATION

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COUNCIL AND COMMITTEES

EAST LOTHIAN COUNCIL

A Remit and Powers

Business shall be delegated to Committees, as specified in the Scheme of Administration. However, the Council alone shall have power to decide upon the following items of business, which are excluded from delegation to any Committee:

1. The setting of a budget and determination of any local tax or rate
2. The setting of rent levels for property held on the Housing Revenue Account
3. Agreeing the Local Outcome Improvement Plan
4. Agreeing East Lothian Council's Council Plan
5. Expenditure, either capital or revenue, not included in the current revenue estimates, except in cases of urgency or emergency under Standing Order 15.3 – Emergencies: Delegation to Councillors and Chief Officials
6. Standing Orders of the Council or other procedural matters regarding the organisation and discharge of the Council's business
7. Licensing, registrations and so on under various statutory terms which are not the responsibility of any committee
8. The functions of the Council under the Representation of the People Acts
9. The committee structure of the Council
10. Consideration, amendment and approval of the Local Development Plan and Strategic Development Plan, as specified under the Town and Country Planning (Scotland) Act 1997
11. The appointment of all Statutory Officers
12. The approval and monitoring of Police and Fire & Rescue Service Plans, in accordance with the Police and Fire Reform (Scotland) Act 2012.

B Membership and Attendance

1. The membership of the Council shall include a Convener and a Depute Convener. The Council shall determine the membership of the Council.
2. All Councillors will have the right to attend meetings of the Council and to participate fully in any matter under consideration.

C Quorum

1. Six (one quarter of the whole number of members of the Council, as set by the Local Government (Scotland) Act 1973. Note: the Act makes provision for the quorum where there are vacancies).

D Substitutes

1. There shall be no substitutes.

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.

F Reporting Arrangements

1. The clerk shall be responsible for taking minutes of the meetings of the Council.
2. Minutes shall be presented to the Council for approval.

G Miscellaneous

1. As set out in Standing Order 3 – Committees, Sub-Committees and Associated Committees, the Council may:
 - (a) appoint other Committees, Sub-Committees or Associated Committees and amend the structure of Committees
 - (b) appoint special member groups to report and advise on matters specified by remit
 - (c) subject to the provisions of the Acts of 1973, 1989 and 1994, and any other relevant Acts, appoint persons who are not Members of the Council to Committees, other than Committees regulating and controlling the finances of the Council, provided that at least two-thirds of the Members of each Committee are Members of the Council
 - (d) subject to the provisions of the Acts of 1973, 1989 and 1994, and any other relevant Acts, appoint Advisory Committees on any matter relating to the discharge of their functions, of such persons (whether Members of the Council or not) and for such term as the Council determines.

AUDIT & GOVERNANCE COMMITTEE

A Remit and Powers

The following business and functions are delegated by the Council to the Audit & Governance Committee:

1. *Risk and Internal Controls*

- (a) promote Council policy on risk management by reviewing the delivery of the Risk Management Strategy, reviewing the business and strategic risk assessment arrangements and procedures and the Corporate Risk Register;
- (b) promote, review and monitor internal controls, financial and otherwise, within the Council in order to provide reasonable assurance of the effectiveness and efficiency of operations and compliance with relevant statutes, directions, guidelines and policies;
- (c) develop an anti-fraud culture within the Council to ensure the highest standards of probity and public accountability;
- (d) approve the annual Internal Audit assurance report and the statement of internal controls for inclusion in the annual accounts;
- (e) approve Internal Audit's Terms of Reference.

2. *Review of Audit Functions*

- (a) determine the scope of the annual audit plan and ensure it is directed in accordance with the approved business risk assessment;
- (b) examine and review the External Audit Planning Memorandum and review the overall performance with regard to quality, productivity and the fees charged;
- (c) review the activities of the Internal Audit function and monitor overall performance in terms of quality, productivity and effectiveness;
- (d) ensure that the Internal Audit function is sufficiently resourced to provide a systematic review of internal controls and a full assessment of significant investigations;
- (e) examine Internal and External Audit reports, and ensure weaknesses identified are adequately addressed by management and recommendations are actioned;
- (f) ensure that there are effective relationships between Internal and External Audit and inspection agencies, and that the value of the audit process is actively promoted.

3. *Financial Matters*

- (a) review the Council's financial performance as contained in the annual statement of accounts;
- (b) approve the Council's financial accounts for signing;

- (c) review the audit certificate/wording of any matters reported;
 - (d) review the Annual Report to Members from the External Auditor;
 - (e) review the implementation of audit recommendations;
 - (f) ensure that issues raised in previous financial years have been addressed;
and
 - (g) review and monitor treasury management arrangements.
4. *All matters relating to the performance of services and the Council as a whole, including, but not limited to:*

Community

- Strategic vision and direction setting by Councillors
- Integration of strategic vision, direction and community planning priorities and actions into internal planning mechanisms
- Public performance reporting and public accountability
- Transparency of decision-making processes
- Consultation and communication with communities

Service Delivery Arrangements

- Corporate planning approach and performance against corporate actions and targets, including financial position and performance and asset management
- Performance management system and corporate performance information monitoring
- External scrutiny/assessment recommendations and resulting action planning
- Management of joint working
- Best Value reviews and option appraisal
- Contracting issues

Structures and Processes

- Monitoring of decision-making structures and mechanisms
- Monitoring of policy development and implementation
- Clarity of key roles and responsibilities

Governance

- Corporate Governance
- Annual Governance Statement

B Membership and Attendance

1. The membership of the Audit & Governance Committee shall include a Convener and a Depute Convener. The Council shall determine the membership of the Audit & Governance Committee. Councillor membership of the Committee should be drawn only from non-Cabinet Members of the Council. In appointing Councillor members to the Committee, the Council shall seek to achieve political balance. In the event that this cannot be achieved, the Council may adjust the membership of the Committee by way of reducing the number of places on the Committee, or by appointing Members of any political group/independent councillors to the vacant places. Regardless of the political composition of the Committee, it should act with political neutrality. In addition to the Councillor

membership, and with the approval of Council, the Committee may co-opt up to two independent members to provide appropriate technical expertise.

2. In the absence of the Convener and Depute Convener at a meeting the other Members of the Committee shall appoint an alternative Chairperson for the duration of that meeting.
3. Councillors who are not members of the Audit & Governance Committee will have the right to attend meetings of the Committee and to question officers on any matter under consideration.

C Quorum

1. Half + 1 of the places filled.

D Substitutes

1. There shall be no substitutes.

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.

F Reporting Arrangements

1. The clerk shall be responsible for taking minutes of the meetings of the Audit & Governance Committee.
2. Minutes shall be presented to the Audit & Governance Committee for approval.

G Miscellaneous

1. Decisions of the Committee on functions delegated to them shall be reported to the Council for information only unless the Committee resolved that a particular item of business should be referred to the council for decision.
2. The External Auditor will have the right to request that items of business are presented to the Committee.

CABINET

A Remit and Powers

The following business and functions are delegated by the Council to the Cabinet (without prejudice to the Scheme of Delegation):

1. The development, determination and review of Council policy and strategy
2. Financial reporting
3. Partnership working
4. Initiating, confirming and making of statutory orders
5. Funding to external organisations
6. Introducing new charges for Council services

B Membership and Attendance

1. The membership of the Cabinet shall include a Convener and, if desired, a Depute Convener. The Council shall determine the membership of the Cabinet.
2. Councillors who are not members of the Cabinet will have the right to attend meetings of the Committee and to question officers on any matter under consideration.

C Quorum

1. Half the membership + 1

D Substitutes

1. There shall be no substitutes.

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.

F Reporting Arrangements

1. The clerk shall be responsible for taking minutes of the meetings of the Cabinet.
2. Minutes shall be presented to the Cabinet for approval.

G Miscellaneous

1. Decisions of the Committee on functions delegated to them shall be reported to the Council for information only unless the Committee resolves that a particular item of business should be referred to the Council for decision.
2. In accordance with Standing Order 5.4, a minimum of four Councillors is required to request in writing that items of business may be called in from Cabinet and referred to Council for consideration. As set out in that Standing Order, this rule

does not apply to items of business which require a decision to be taken before the date of the next ordinary Council meeting.

CHIEF OFFICER AND HEAD TEACHER APPOINTMENTS SUB-COMMITTEE

A Remit and Powers

1. The Chief Officer and Head Teacher Appointments Sub-Committee shall have the authority to appoint to the positions of Chief Executive, Executive Director, Head of Service, Jointly Accountable Officer and Head Teacher.

B Membership and Attendance

1. An Appointments Sub-Committee will be drawn from a cross-section of Councillors for all permanent Chief Officer appointments and Head Teacher appointments. Only those Councillors (or their nominated substitutes) selected to participate in the appointments process will have the right to attend and participate in the meeting.
2. As regards the appointment of the Chief Executive, the Appointments Sub-Committee will consist of the Council Leader, Provost and three cross-party Councillor members (at least one of which should be from the largest Minority Group). The Sub-Committee may be advised by an Independent HR Adviser and the Service Manager, People and Council Support.
Note: only Councillors who have undertaken the Council's Recruitment and Selection training will be eligible to participate in the appointment of the Chief Executive.
3. As regards the permanent appointment of Executive Directors and Heads of Service, the Appointments Sub-Committee will consist of three Councillors, normally two Councillors from the Administration and one Councillor from the largest Minority Group. The Sub-Committee may be advised by the Chief Executive, an Independent HR Adviser and the Service Manager, People and Council Support. In the case of a Head of Service appointment, the Panel may also be advised by the Executive Director of the Service in which the vacancy exists.
Note: only Councillors who have undertaken the Council's Recruitment and Selection training will be eligible to participate in the appointment of Executive Directors and Heads of Service.
4. As regards the appointment of a Jointly Accountable Chief Officer, the Appointments Sub-Committee will consist of the Council members and partner members of the Integration Joint Board (IJB) and the Chief Executives of East Lothian Council and NHS Lothian (or their representatives). The Sub-Committee will be advised by the Service Manager – People and Council Support and, where appropriate, an independent external adviser.
Note: only Councillors who have undertaken the Council's Recruitment and Selection training will be eligible to participate in the appointment of Jointly Accountable Officers.
5. As regards the appointment of Head Teachers, the Appointments Sub-Committee will consist of at least one Councillor (preferably the Convener or Depute Convener of the Education and Children's Services Committee, or a ward Councillor, who will chair the panel; however, where possible, two Councillors will be sought, at least one from the Ward in which the vacancy arises), one or two Parent Council members from the school to which the appointment is being made* and two officers nominated by the Executive Director for Education and Children's Services. Where the appointment relates to a Roman Catholic school, a representative of the Roman Catholic Church (who sits on the Education and

Children's Services Committee) will be appointed to the panel in addition to those groups listed above. Where there is a Roman Catholic Church representative vacancy on the Education and Children's Services Committee, the appointment process will proceed in the absence of such a representative. All Councillors who have undertaken the Council's Recruitment and Selection training will be eligible to take part in the appointment of Head Teachers.

For Depute Head Teacher appointments, one Councillor will be sought to participate in the recruitment process, but the Councillor will not form part of the quorum and the panel may go ahead without their involvement.

* Where only one Councillor is participating there will only be one Parent Council member participating. Should there be no Parent Council member(s) interested in participating in the process, the Parent Council may nominate a representative to participate on their behalf from outwith the Parent Council, but their nominee must have undertaken the Council's Recruitment and Selection Training for Head Teacher Appointments. Should the Parent Council decline the offer to participate, the recruitment process will continue in their absence.

In the event of a shared Headship, one Parent Council member from each school will be eligible to participate.

C Quorum

1. The quorum for the appointment of Chief Officers is set out in B1-4.
2. The quorum for the appointment of Head Teachers shall be four for non-denominational schools and five for Roman Catholic schools, one of whom must be a Councillor.

D Substitutes

1. As regards the appointment of Chief Officers, there shall be no substitutes.
2. As regards the appointment of Head Teachers, substitutes shall be permitted, on a like-for-like basis.

E Meetings

1. Meetings shall be called by Notice issued by the Chief Executive. The Notice shall specify the agenda for the meeting and shall be accompanied by the relative documentation to be discussed at the meeting.
2. The agenda shall, whenever possible, be issued seven days prior to the meeting.
3. Meetings of the Chief Officer and Head Teacher Appointments Sub-Committee will be held in private.

F Reporting Arrangements

1. Minutes of the meetings in relation to the appointment of Chief Officers shall be presented to the Council for noting.
2. Minutes of the meetings in relation to the appointment Head Teachers shall be presented to the Education and Children's Services Committee for noting.

G Miscellaneous

1. All permanent vacancies will be advertised publicly and in accordance with the Council's Recruitment and Selection Policy and Procedures applicable at that time, unless arising as a result of an internal restructure.

COMMON GOOD COMMITTEES

A Remit and Powers

1. Common Good Funds are the assets and income of some former Burghs of East Lothian. They represent a substantial portfolio of land, property and investments and by law continue to exist for the Common Good of the inhabitants of the former Burghs to which they relate.
2. East Lothian Council has a wide discretion over the use of its Common Good Funds so long as they are applied for the benefit of the community using reasonable judgement and having regard to the interests of the inhabitants of the former Burgh.
3. Council will approve an annual budget for each of the Common Good Funds that will include provision for the maintenance of assets and any committed items of expenditure.
4. The Common Good Committee for each area will administer its own Common Good Funds with support from officers.
5. Each Common Good Committee has authority to:
 - Award a grant of up to £10,000
 - Approve revenues expenditure of up to £10,000 for the maintenance of the assets of the fund provided that can be met within the approved budget.
6. Each application for a grant will be considered on its own merits. The Committee must consider whether or not it is a reasonable judgement for them to consider making a disbursement of funds from the Common Good Fund for the benefit of the Community. This can, for example, include expenditure on:
 - The expense of civic ceremonies and of the provision of suitable hospitality on appropriate occasions and for appropriate persons and guests
 - Applications from individuals and groups where the grant of the application would benefit the community as a whole
 - Firework displays, where appropriate

Note – this list is representative only and does not preclude other awards that are thought appropriate.

7. The Common Good Committees may make recommendations to the Head of Finance in relation to expenditure over £10,000. The Head of Finance will prepare a report for Council referencing any such recommendations received but making their own recommendation, taking into account budgetary considerations. Council will make the decision on any matter involving expenditure of more than £10,000.
8. No officer of the Council has delegated power to commit Common Good Funds.

B Membership and Attendance

1. Each Common Good Committee will consist of all the Councillors for those areas, namely:

Musselburgh – all 4 Musselburgh Councillors
Haddington – all 4 Haddington and Lammermuir Councillors
North Berwick – all 3 North Berwick Coastal Councillors
Dunbar – all 3 Dunbar and East Linton Councillors

2. Meetings of Common Good Committees may be attended only by Councillors who are members of that Committee.

C Quorum

1. For the Musselburgh and Haddington Common Good Committees the quorum is 3.
3. For the North Berwick and Dunbar Common Good Committees the quorum is 2.

D Substitutes

1. There shall be no substitutes.

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.

F Reporting Arrangements

1. A six-monthly report detailing all discretionary grant awards for each fund will be prepared by the Head of Finance and will be lodged in the Members' Library and made available electronically to all Members of the appropriate Common Good Committee.

G Miscellaneous

1. The Chair will be appointed by a vote at the start of the first meeting following the local government election and will hold that post until the next local government election.
2. Decisions of the Committee will be taken by a simple majority of those present following a show of hands. In the event of a tie, the Chair will have a casting vote.

EDUCATION APPEALS COMMITTEE

A Remit and Powers

1. The Education (Scotland) Act 1980 set a duty on local authorities to set up and maintain Education Appeals Committees to consider:
 - (i) appeals from parents who have had their placing requests for a specific school for their children refused; and
 - (ii) appeals from parents whose child has been excluded from school.

B Membership and Attendance

1. The membership of the Education Appeals Committee shall comprise one Councillor from among the membership of the Council (but usually the Cabinet Spokesperson for Education and Children's Services), one person from a list comprising parents with pupils of school age nominated by the Parent Councils, and one person selected from a list comprising persons with experience in education or who are acquainted with educational conditions in East Lothian, nominated by the Executive Director for Education and Children's Services.
2. Only the Councillor (or their nominated substitute) selected to participate in the appeals process will have the right to attend and participate in the meeting.

C Quorum

1. 3 Members

D Substitutes

1. Members of the Education Appeals Committee shall be entitled to nominate substitute members provided that they are eligible in terms of (B) above, and in accordance with Standing Order 6.4.

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.
2. Meetings of the Education Appeals Committee shall be held in private, due to the confidential nature of the business.

F Reporting Arrangements

1. The Clerk shall be responsible for taking minutes of the meetings of the Education Appeals Committee.
2. Minutes shall be presented to the Education and Children's Services Committee for noting.

G Miscellaneous

EDUCATION AND CHILDREN'S SERVICES COMMITTEE

A Remit and Powers

1. The development, determination and review of policy and associated matters relating to children, including: education, children's social work and broader services for children and young people
2. The promotion of children's and young people's development and wellbeing as outlined in the Children and Young People's (Scotland) Act 2014
3. Matters relating to Children's Rights as determined by the United Nations Convention on the Rights of the Child
4. Meeting statutory requirements for strategic planning and reporting for education and children's services planning in accordance with the Education (Scotland) Act 2016 and Children and Young People's (Scotland) Act 2014
5. Matters relating to the statutory responsibilities of the Chief Education Officer and Chief Social Work Officer with regard to education and the care and protection of children and young people
6. Determining the annual review of the Scheme of Devolved School Management
7. Determining catchment areas for primary and secondary schools
8. Determining school roll numbers for primary and secondary schools

B Membership and Attendance

1. The membership of the Education and Children's Services Committee shall include a Convener and, if desired, a Depute Convener. It shall also include religious representatives and a trades union representative, who are non-voting members. The Council shall determine the membership of the Education and Children's Services Committee. In appointing Councillors to the Committee, the Council shall seek to achieve political balance. In the event that this cannot be achieved, the Council may adjust the membership of the Committee by way of reducing the number of places on the Committee or by appointing members of any political group/independent councillors to the vacant places. Regardless of the political composition of the Committee, it should act with political neutrality.
2. Councillors who are not members of the Education and Children's Services Committee will have the right to attend meetings of the Committee and to question officers on any matter under consideration.
3. The non-voting religious and trades union representatives will have the right to question officers on any matter under consideration and take part in the debate.

C Quorum

1. Half + 1 of the places filled.

D Substitutes

1. There shall be no substitutes.

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.

F Reporting Arrangements

1. The clerk shall be responsible for taking minutes of the meetings of the Education and Children's Services Committee.
2. Minutes shall be presented to the Education and Children's Services Committee for approval.

G Miscellaneous

1. Decisions of the Committee on functions delegated to them shall be reported to the Council for information only unless the Committee resolves that a particular item of business should be referred to the Council for decision.

EMPLOYEE APPEALS SUB-COMMITTEE

A Remit and Powers

1. The Employee Appeals Sub-Committee shall consider:
 - i. Stage 3 Disciplinary and Grievance cases and shall determine accordingly, in accordance with the Council's Discipline and Grievance Policies; and
 - ii. Appeals against dismissal of employees not related to discipline/grievance appeals.

B Membership and Attendance

1. The membership of the Employee Appeals Sub-Committee shall consist of five councillors – the Leader of the Council (Chair), the Provost (Vice-Chair), the Depute Provost, the Leader of the Opposition, and a Cabinet member.
2. Only those Councillors (or their nominated substitutes) selected to participate in the appeals process will have the right to attend and participate in the meeting.

C Quorum

1. 3 Members

D Substitutes

1. Members of the Employee Appeals Sub-Committee shall be entitled to nominate substitute members to attend any meeting of the Employees Appeals Sub-Committee (in accordance with Standing Order 6.4).

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.
2. Meetings of the Employee Appeals Sub-Committee shall be held in private, due to the confidential nature of the business.

F Reporting Arrangements

1. The Clerk shall be responsible for taking minutes of the meetings of the Employee Appeals Sub-Committee.
2. Minutes shall be presented to the Employee Appeals Sub-Committee for approval.

G Miscellaneous

HOMELESSNESS APPEALS SUB-COMMITTEE

A Remit and Powers

1. The Homelessness Appeals Sub-Committee shall deal with the determination of appeals against decisions of the Council relating to homelessness.

B Membership and Attendance

1. The membership of the Homelessness Appeals Sub-Committee shall include a Convener and, if desired, a Depute Convener. The Council shall determine the membership of the Homelessness Appeals Sub-Committee. In appointing Councillors to the Sub-Committee, the Council shall seek to achieve political balance. In the event that this cannot be achieved, the Council may adjust the membership of the Sub-Committee by way of reducing the number of places on the Sub-Committee or by appointing members of any political group/independent councillors to the vacant places. Regardless of the political composition of the Sub-Committee, it should act with political neutrality.
2. Only those Councillors (or their nominated substitutes) selected to participate in the appeals process will have the right to attend and participate in the meeting.

C Quorum

1. 3 Members

D Substitutes

1. Members of the Homelessness Appeals Sub-Committee shall be entitled to nominate substitute members to attend any meeting of the Homelessness Appeals Sub-Committee (in accordance with Standing Order 6.4).

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.
2. Meetings shall be called by Notice issued by the Chief Executive. The Notice shall specify the agenda for the meeting and shall be accompanied by the relative reports to be discussed at the meeting. No additional business shall be discussed.
3. The agenda shall, whenever possible, be issued seven days prior to the meeting.
4. Meetings of the Homelessness Appeals Sub-Committee shall be held in private, due to the confidential nature of the business.

F Reporting Arrangements

1. The Clerk shall be responsible for taking minutes of the meetings of the Homelessness Appeals Sub-Committee.
2. Minutes shall be presented to the Homelessness Appeals Sub-Committee for approval.

G Miscellaneous

LICENSING SUB-COMMITTEE

A Remit and Powers

1. The Licensing Sub-Committee shall consider all matters in relation to Civic Government Licensing, and Licensing of matters other than where covered by the Licensing (Scotland) Act 2005 and the Gambling Act 2005.

B Membership and Attendance

1. The membership of the Licensing Sub-Committee shall include a Convener and, if desired, a Depute Convener. The Council shall determine the membership of the Licensing Sub-Committee. In appointing councillors to the Sub-Committee, the Council shall seek to achieve political balance. In the event that this cannot be achieved, the Council may adjust the membership of the Sub-Committee by way of reducing the number of places on the Sub-Committee or by appointing members of any political group/independent councillors to the vacant places. Regardless of the political composition of the Sub-Committee, it should act with political neutrality.
2. Councillors who are not members of the Licensing Sub-Committee will have the right to attend meetings of the Sub-Committee and to question officers on any matter under consideration. Local ward Councillors who are not members of the Sub-Committee will also have the right to make a statement on applications for licences within their ward.

C Quorum

1. 3 Members

D Substitutes

1. Members of the Licensing Sub-Committee shall be entitled to nominate substitute members to attend any meeting of the Licensing Sub-Committee (in accordance with Standing Order 6.4).

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.

F Reporting Arrangements

1. The Clerk shall be responsible for taking minutes of the meetings of the Licensing Sub-Committee.
2. Minutes shall be presented to the Licensing Sub-Committee for approval.

G Miscellaneous

1. The Licensing Sub-Committee shall be entitled to adopt a scheme of delegation to officers in respect of licensing matters within its remit.

LOCAL REVIEW BODY (PLANNING)

A Remit and Powers

1. *The following business and functions are delegated by the Council to the Local Review Body:*

To conduct reviews in accordance with Section 43A(8) of the Town and Country Planning (Scotland) Act 1997, where the Service Manager - Planning as the appointed person for the purpose of determining applications for 'Local Developments' as defined under the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008:

- (a) Has refused an application for planning permission or for consent, agreement or approval,
- (b) Has granted it subject to conditions, or
- (c) Has not determined it within such period as may be prescribed by regulations or a development order

The Local Review Body shall at all times conduct its affairs in accordance with the provisions of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

B Membership and Attendance

1. The membership of the Local Review Body shall comprise up to five members of the Council drawn from the Planning Committee who have not expressed a prior view on the application. Local Councillors shall be permitted to sit on a Local Review Body that is considering an application affecting land in their ward.
2. Where a Local Review Body considers an application on more than one occasion, the same members must make up the Local Review Body each time the application is considered.
3. All Councillors will have the right to attend meetings of the Local Review Body, but only those selected to take part in the review process will have the right to participate in the meeting.

C Quorum

1. 3 Members

D. Substitutes

1. Substitutes (from among the members of the Planning Committee) shall be permitted.

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.
2. A Planning Adviser and a Legal Adviser shall attend all meetings of the Local Review Body to provide planning and legal advice relevant to the business before the Local Review Body. The Planning and Legal Advisers should not have had direct prior involvement with the application that is subject to review.

3. The Local Review Body may appoint an 'assessor' to sit with it at any meeting in order to advise it on any specialist matters arising.
4. The Local Review Body may, other than where they consider that the review documents provide sufficient information to enable them to determine the review without further procedure, determine the review by:
 - a. means of written submissions,
 - b. holding one or more hearing sessions
 - c. means of a site inspection, or
 - d. a combination of these procedures
5. The purpose of the review by the Local Review Body is to reassess the decision on the application taken by the 'Appointed Person'. Normally reviews will be undertaken and completed by means of considering only the material available and considered by the appointed officer who determined the application and the statement submitted by the Appellant setting out reasons for requesting the review. New material will only be allowed at the discretion of the Local Review Body and then only in exceptional circumstances.
6. The Local Review Body may decide to hold a Hearing if this is required, but in such event this will only be to consider those matters upon which the Local Review Body requires further information.
7. Other than at a hearing, there shall be no automatic right for the Appellant or interested parties to address the Local Review Body.

F Reporting Arrangements

1. The clerk shall be responsible for taking minutes of the meetings of the Local Review Body.
2. Minutes shall be presented to the Planning Committee for noting.

G Miscellaneous

1. *Site Visits*
 - (a) Site visits will be held as standard for all applications and will take place prior to the Local Review Body considering the application.
 - (b) The purpose of site visits is to provide Members with an opportunity to make themselves aware of the land and/or buildings subject of the application or which might be affected by the application – there will be no presentation by the parties or discussion of the merits of the application.
 - (c) All members of the Local Review Body must attend the site visit. A minute will not be taken.
 - (d) Appellants and interested parties who have submitted individual written representations may be invited to attend the site visit, where appropriate, on the understanding they do so solely to point out to Members relevant features of the application site or the land/buildings which might be affected by the application.
 - (e) Where a petition has been submitted the organiser of the petition will be advised of the site visit – individual signatories will not be advised.

PETITIONS AND COMMUNITY EMPOWERMENT REVIEW COMMITTEE

A Remit and Powers

Petitions

1. The remit of the Committee in respect of petitions shall be to consider petitions raised by local residents or organisations, which relate to either:
 - (i) Council services or activities; or
 - (ii) the general well-being of the East Lothian community
2. Petitions shall be referred to the Committee if the issue has not been resolved by any other means. The Committee shall consider the merits of each petition received. Where the Committee considers that action should be taken in respect of a petition, it shall refer the matter to the appropriate committee or Chief Officer for further consideration and possible implementation. In such cases the outcome of the matter shall be reported back to the next meeting of the Petitions and Community Empowerment Review Committee.

Community Asset Transfer Reviews

3. The remit of the Committee in respect of community asset transfer reviews shall be to consider requests for reviews of asset transfer decisions submitted by community transfer bodies where:
 - (i) the Council has refused the request;
 - (ii) the request has been agreed, but the terms and conditions in the decision notice are significantly different from those in the request; or
 - (iii) no decision notice has been issued by the Council within the required period.

B Membership and Attendance

1. The membership of the Petitions and Community Empowerment Review Committee shall consist of the Provost (Convener) and the leaders of all political groups.
2. Councillors who are not members of the Petitions and Community Empowerment Review Committee will have the right to attend meetings of the Committee, but only the members of the Committee (or their substitutes) will have the right to participate in the meeting.

C Quorum

1. Half the membership + 1

D Substitutes

1. Members of the Petitions and Community Empowerment Review Committee shall be entitled to nominate substitute members from within their own political group to attend any meeting of the Petitions Committee (in accordance with Standing Order 6.4).

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.
2. Where a petition is to be considered by the Committee, the organiser of the petition will be invited to attend and be offered the opportunity to address the Committee – individual signatories will not be invited. Invitations will be sent no later than the date the agenda is issued.
3. Anyone wishing to address the Committee should advise the Clerk no later than three working days before the meeting so that seating, timetable and other arrangements can be made.
4. Petitioners will be allowed five minutes to address the Committee – this period may be extended at the discretion of the Convener.
5. Where a petition is continued until a future meeting of the Committee the same rights to attend and speak at the meeting shall apply.
6. Where a community asset transfer review is to be carried out by the Committee, further information may be sought from interested parties in advance of the meeting; this information will be published on the Council's website. The Committee may invite interested parties to the meeting, if required. Invitations will be sent no later than the date the agenda is issued.

F Reporting Arrangements

1. The clerk shall be responsible for taking minutes of the meetings of the Petitions and Community Empowerment Review Committee.
2. Minutes shall be presented to the Petitions and Community Empowerment Review Committee for approval.
3. Where a petition has been accepted, the outcome shall be reported to the organiser of the petition on approval of the minutes.
4. The terms of the decision notice for a community asset transfer review shall be determined by the Committee and reported to the community asset transfer body. It shall also be published on the Council's website.

G Miscellaneous

1. Decisions of the Committee on functions delegated to them shall be reported to the Council for information only unless the Committee resolves that a particular item of business should be referred to the Council or another committee for decision.
2. As regards community asset transfers, appeals can be submitted to Scottish Ministers by community asset transfer bodies where:
 - (i) they are unhappy with the outcome of the Council's review; or
 - (ii) following agreement to an asset transfer request, the Council has not concluded the contract within the agreed time period, as set out in Appendix 3 of the East Lothian Council Community Asset Transfer Policy and Guidance. Requests for appeals must be made in writing to Scottish Ministers within 20 working days from the date of the decision notice of

the review. The procedures for appeals are set out in Section 20 of the Asset Transfer Guidance for Community Transfer Bodies.

PLANNING COMMITTEE

A Remit and Powers

The following business and functions are delegated by the Council to the Planning Committee.

The development, determination and implementation of policy and associated matters relating to:

1. *Planning Applications*
 - (a) determination of planning applications and related consents and the taking of any actions required for the enforcement of planning control as provided for under the Town and Country Planning Acts and related legislation;
 - (b) hearing of appeals against a refusal to grant a Relaxation under the Building (Scotland) Acts;
 - (c) confirmation of orders under Section 10 and 13 of the Building (Scotland) Acts.
2. *Pre-determination Hearings*
 - (a) The holding of Pre-Determination Hearings where required in terms of S38A of the Town and Country Planning (Scotland) Act 1997 and associated regulations.
3. *Pre-application Discussions of Major Applications*
 - (a) The holding of formal pre-application discussions of major and national applications, in accordance with Scottish Government/CoSLA guidance and the Council's procedures for these.
4. *Tree Preservation*
 - (a) determination of confirmation of Tree Preservation Orders where there are outstanding objections.
5. *Consultation responses on applications made under Section 36 of the Electricity Act 1989*
 - (a) deciding on consultation responses referred to the Planning Committee under Section 19.5 of the Scheme of Delegation.

B Membership and Attendance

1. The membership of the Planning Committee shall include a Convener and, if desired, a Depute Convener. The Council shall determine the membership of the Planning Committee. In appointing councillors to the Committee, the Council shall seek to achieve political balance. In the event that this cannot be achieved, the Council may adjust the membership of the Committee by way of reducing the number of places on the Committee, or by appointing members of any political group/independent councillors to the vacant places. Regardless of the political composition of the Committee, it should act with political neutrality.

2. Councillors who are not members of the Planning Committee will have the right to attend meetings of the Committee and to question officers on any matter under consideration. Local ward Councillors who are not members of the Committee will also have the right to make a statement on applications for development within their ward.
3. For the purposes of carrying out Pre-Determination Hearings, the Planning Committee shall comprise all Members of the Council.

C Quorum

1. Half + 1 of the places filled.

D Substitutes

1. There shall be no substitutes.

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.
2. All letters of representation will be made available to all Councillors in advance of an application being submitted to Committee.
3. Where an application has been referred to Committee, applicants/agents and third parties who have submitted individual written representations will be advised that they are welcome to attend the Committee meeting, but restrictions on addressing the Committee will apply, as set out below:
 - There will be a maximum of three representatives speaking in favour of an application, including the applicant/agent (who will get priority)
 - There will be a maximum of three representatives speaking in opposition to an application. A 'first come, first served' approach will be adopted, with all those who have submitted representations being advised that they will need to call the Clerk at a certain time on a certain day to register their intention to address the committee. The first three requests received will be granted, and any subsequent requests will be refused.
 - In addition to the representations outlined above, Community Councils will be given the opportunity to address the Committee, whether or not they have submitted a written representation on the planning application under consideration.
4. Those applicants/agents and third parties who have been invited to address the Committee will be allowed five minutes to address the Committee – this period may be extended at the discretion of the Convener.
5. Where several parties share a view on an application they will be invited to elect a single representative to speak on their behalf.
6. Applicants will be invited to make a single presentation rather than calling a sequence of professional advisers.
7. Where an application is continued until a future meeting of the Committee the same rights to attend and speak at the meeting shall apply.

8. Pre-determination hearings, which consider major developments, will continue to include representations from applicants, agents and individuals as this is a statutory part of that particular process.
9. Pre-application discussions of major applications will include representation from applicants. Site visits will be held as part of the normal site visit schedule. Councillors will discuss proposals in accordance with the terms of the Councillors' Code of Conduct.

F Reporting Arrangements

1. The clerk shall be responsible for taking minutes of the meetings of the Planning Committee.
2. Minutes shall be presented to the Planning Committee for approval.

G Miscellaneous

1. Decisions of the Committee on functions delegated to them shall be reported to the Council for information only unless the Committee resolves that a particular item of business should be referred to the Council for decision.
2. *Site Visits*
 - (a) Site visits will be held in advance of the meeting of the Planning Committee.
 - (b) The purpose of site visits is to provide Members with an opportunity to make themselves aware of the land and/or buildings subject of the application or which might be affected by the application – there will be no presentation by the Appointed Officer or staff or discussion of the merits of the application.
 - (c) Site visits will not form part of the formal business of the Committee, i.e. there will be no requirement for a quorum nor will a minute be taken.
 - (d) Applicants/agents will be invited to attend the site visit, but only for the purpose of answering questions from Members.
 - (e) Third parties who have submitted individual written representations will be advised that site visit will be taking place for the purpose of Members familiarising themselves with the site, but those individuals/groups will not be invited to attend the site visit.
 - (f) It will be assumed that Members who do not attend the site visit will be familiar with the site or will take other steps to ensure they have sufficient knowledge to make an informed decision.

POLICE, FIRE AND COMMUNITY SAFETY SCRUTINY COMMITTEE

A Remit and Powers

The following business and functions are delegated by the Council to the Police, Fire and Community Safety Scrutiny Committee:

1. To carry out scrutiny of the performance of the Police and Fire & Rescue Services in East Lothian, with specific reference to each organisation's Local Plan
2. To receive and comment on local quarterly performance reports from Police Scotland and the Scottish Fire & Rescue Service
3. To engage in the development of Police Scotland and the Scottish Fire & Rescue Service Local Plans and joint working with the Police and Fire & Rescue Services
4. To consider and respond to national and local level strategies and policies of Police Scotland and the Scottish Fire & Rescue Service
5. To scrutinise and monitor the Service Level Agreement between the Council and Police Scotland
6. To receive and comment on reports on the performance of any other services performing a community safety function in East Lothian.

B Membership and Attendance

1. The membership of the Police, Fire and Community Services Scrutiny Committee shall include a Convener and a Depute Convener. The Council shall determine the membership of the Police, Fire and Community Services Scrutiny Committee. In appointing councillors to the Committee, the Council shall seek to achieve political balance. In the event that this cannot be achieved, the Council may adjust the membership of the Committee by way of reducing the number of places on the Committee, or by appointing members of any political group/independent councillors to the vacant places.
2. In the absence of the Convener and Depute Convener at a meeting the other Members of the Committee shall appoint an alternative Chairperson for the duration of that meeting.
3. Councillors who are not members of the Police, Fire and Community Safety Scrutiny Committee will have the right to attend meetings of the Committee and to question officers on any matter under consideration.

C Quorum

1. Half + 1 of the places filled.

D Substitutes

1. There shall be no substitutes.

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.

F Reporting Arrangements

1. The clerk shall be responsible for taking minutes of the meetings of the Police, Fire and Community Services Scrutiny Committee.
2. Minutes shall be presented to the Police, Fire and Community Services Scrutiny Committee for approval.
3. The Committee can refer any item of business to the Council, in which case a report shall be placed on the agenda of the next appropriate meeting.

G Miscellaneous

1. The Police, Fire and Community Services Scrutiny Committee will be entitled to appoint ad hoc (short-life) sub-committees. The Committee or its sub-committees will be entitled to undertake reviews of policies and/or performance relating to Community Safety matters, to call upon the Council and Council officials for reports, and to require the attendance for the purpose of questioning, of any Cabinet Spokespersons and/or officials of the Council on any matter relevant to the issue under consideration by them.
2. The Committee will be entitled to invite representatives of other public agencies, local communities, the private and voluntary sectors, trade unions and academic institutions to assist with reviews of policies and/or performance. Also, it will be entitled to call appropriate expert witnesses, commission appropriate research and hold evidence gathering meetings.
3. The Committee will have the power to comment on, and make recommendations on matters insofar as relevant to its authorised remit, where appropriate, to the Council.

POLICY & PERFORMANCE REVIEW COMMITTEE

A Remit and Powers

The following business and functions are delegated by the Council to the Policy & Performance Review Committee:

1. All matters relating to the performance of all the Council's services including, but not limited to:
 - Vision and direction setting by Members
 - Integration of vision, direction and community planning priorities and actions into internal mechanisms (including service plans)
 - Mechanisms and initiatives for improvement (e.g. benchmarking)
 - Public performance reporting and public accountability
 - Consultation and communication with communities
 - Planning and performance against actions and targets including financial position and performance, priority/risk based resource management and asset management
 - Mainstreaming of equality issues and sustainable development
 - External scrutiny/assessment recommendations and resulting action planning
 - Management of joint working
 - Best Value reviews and option appraisal
 - Contracting issues
 - Scrutiny of policies identified through an annual work plan or other aspect of its work

B Membership and Attendance

1. The membership of the Policy & Performance Review Committee shall include a Convener and a Depute Convener. The Council shall determine the membership of the Policy & Performance Review Committee. Membership of the Committee should be drawn only from non-Cabinet Members of the Council. In appointing Members to the Committee, the Council shall seek to achieve political balance. In the event that this cannot be achieved, the Council may adjust the membership of the Committee by way of reducing the number of places on the Committee, or by appointing members of any political group/independent councillors to the vacant places. Regardless of the political composition of the Committee, it should act with political neutrality.
2. In the absence of the Convener and Depute Convener at a meeting the other Members of the Committee shall appoint an alternative Chairperson for the duration of that meeting.
3. Councillors who are not members of the Policy & Performance Review Committee will have the right to attend meetings of the Committee and to question officers on any matter under consideration.

C Quorum

1. Half + 1 of the places filled.

D Substitutes

1. There shall be no substitutes.

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.

F Reporting Arrangements

1. The clerk shall be responsible for taking minutes of the meetings of the Policy & Performance Review Committee.
2. Minutes shall be presented to the Policy & Performance Review Committee for approval.
3. The Committee can refer any item of business to the Council, Cabinet or the relevant Committee, in which case a report shall be prepared by the relevant officer and placed on the agenda of the next appropriate meeting.

G Miscellaneous

1. The Policy & Performance Review Committee will be entitled to debate the terms of reports insofar as relevant to its authorised remit. No formal votes will be taken and the Committee will attempt to reach a consensus, or failing that, a majority view.
2. The Committee will be entitled to appoint ad hoc (short life) sub-committees. The Committee or its sub-committees will be entitled to undertake reviews of policies and/or performance, to call upon the Council and Council officials for reports, and to require the attendance for the purpose of questioning, of Committee Conveners and/or Depute Conveners and/or Cabinet Spokespersons and/or officials of the Council on any matter relevant to the issue under consideration by them.
3. The Committee will be entitled to invite representatives of other public agencies, local communities, the private and voluntary sectors, trade unions and academic institutions to assist with reviews of policies and/or performance. Also, it will be entitled to call appropriate expert witnesses, commission appropriate research and hold evidence gathering meetings.
4. The Committee will have the power to comment on, and make recommendations on, matters insofar as relevant to its authorised remit to the relevant Committee, the Cabinet or, where appropriate, to the Council.
5. The Convener or other nominated representative of the Committee will be entitled to speak to reports of the Committee submitted to the relevant Committee, the Cabinet or, as appropriate, the Council.

ASSOCIATED COMMITTEES

JOINT CONSULTATIVE COMMITTEE

A Remit and Powers

The functions of the Joint Consultative Committee (JCC) shall be:

1. to provide a means of regular consultation between the Council and employees, providing a forum for the discussion of matters of mutual interest provided that no question of an individual's pay, wage, grading, discipline, promotion or efficiency shall be within the scope of the JCC;
2. to consider and offer observations on any proposals made by the Council involving substantial administration re-organisation on the extent to which it affects the pay and conditions of employment of the employees of the Council;
3. to consider reports on any matter, which may be referred to the JCC by the Council or by any employee organisation. The Committee shall have the right to invite the attendance of any officer of the Council, or any other person or persons to act in an advisory capacity to any meeting of the Committee. It shall be within the discretion of either side to refer to the appropriate National Joint Council or other negotiating body for advice and guidance on any matter brought before the Committee;
4. to act as a consultative forum on matters pertaining to equal opportunities in employment insofar as they concern the Council's HR Policies and Procedures and its statutory duties, taking advice and guidance from the appropriate statutory bodies as required.

B Membership and Attendance

1. The Joint Consultative Committee shall appoint from amongst its members a Convener and Depute Convener who will alternate their duties on an annual basis. If the Convener appointed is one of the Council's representatives, the Depute Convener shall be one of the employee representatives and vice versa. The Convener and, in his/her absence, the Depute Convener shall preside at the meetings of the JCC. In the absence of both, the members present shall elect one of the members to preside. The Convener of the meeting shall not have a casting vote.
2. The membership of the JCC shall be 8 representatives appointed by the Council and 14 representatives (who shall be employees of the Council) of the Trades Unions recognised by the Council as follows: Unison – 7; Unite – 2; GMB – 1; EIS – 3; NASUWT/SSTA – 1.
3. The Council shall determine the Councillor membership of the JCC. In appointing Councillors to the Committee, the Council shall seek to achieve political balance. In the event that this cannot be achieved, the Council may adjust the membership of the Committee by way of appointing members of any political group/independent councillors to the vacant places.
4. The members representing the staff shall be appointed amongst the employees of the Council in accordance with the rules of the participating Trades Unions for

the making of such appointments. All staff representative members of the JCC shall cease to hold office on leaving the employment of the Council.

5. Any vacancy on the JCC shall be filled by the appointing organisation.
6. The employee representatives shall appoint an Employee Side Secretary to the JCC from amongst their members.
7. Only those Councillors appointed to the Joint Consultative Committee, or their substitutes, will have the right to attend and participate in meetings.

C Quorum

1. 3 members from the Council side
3 members from the Union side from not less than 2 Unions

D Substitutes

1. Members of the JCC shall be entitled to nominate substitute members to attend any meeting of the JCC. Substitute members representing the Council must be members of the Cabinet. Substitute members representing the Staff Side must be from the relevant Trades Union and be a Council employee. Substitute members shall be identified at the beginning of any meeting they attend.

E Meetings

1. Meetings shall take place in accordance with Standing Order 4.
2. An Agenda Sub-Committee, at Officer/Trades Union level, shall be established to facilitate the work of the JCC.
3. The JCC may establish sub-committees to facilitate consideration of specific matters.
4. Meetings of the Joint Consultative Committee shall be held in private, due to the confidential nature of the business.

F Reporting Arrangements

1. The Clerk shall be responsible for taking minutes of the meetings of the Joint Consultative Committee.
2. Minutes shall be presented to the JCC for approval.

G Miscellaneous

1. Matters relating to Local and National agreements/procedures which are specific to a group or groups of employees must, at the request of the Trades Union(s) concerned, be considered by a sub-committee of the JCC, with the Trades Union side consisting only of the Trades Union(s) recognised and represented on the relevant National Joint Council. Agreements made at such sub-committees shall be a matter only of reporting to the JCC prior to reporting to the Council or relevant Committee.
2. Employee members of East Lothian JCC will be granted paid leave for meetings of the JCC and for pre-meetings of the Staff Side. Where required, cover will be in addition to the 'Policy for Time-Off for Trades Unions Duties and Activities'.

The Council shall provide the necessary accommodation for meetings of the JCC, JCC sub-committees and Staff Side pre-meetings of the JCC.

3. The Council shall provide the necessary accommodation for meetings of the JCC and also facilities for requests for time off work from employee representatives of the JCC.

**EAST LoTHIAN COUNCIL
SCHEME OF DELEGATION**

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1. Introduction

Under Section 56 of the Local Government (Scotland) Act 1973, the Council is entitled to delegate certain duties and responsibilities to committees, sub-committees or Council officers.

The Scheme of Administration sets out the duties and responsibilities delegated to the Council's committees and sub-committees. The Scheme of Delegation details the functions, both statutory and non-statutory, which the Council has agreed to delegate to officers. It should be read in conjunction with the Council's Standing Orders, Scheme of Administration, Financial Regulations, and the Role Descriptions for Statutory Officers and Chief Officers.

The Scheme of Delegation does not allow the following matters to be delegated to officers:

- Matters that must be considered by Council or a committee or sub-committee
- Matters not covered by the Scheme of Delegation
- Matters which, by law, cannot be delegated to an officer

Notwithstanding the duties and responsibilities delegated to officers as set out within this Scheme of Delegation, councillors retain the right to request a report to Council, committee or sub-committee on any issue deemed to be of significant interest to councillors and/or the wider public, prior to any delegated decision being taken.

2. General Duties and Responsibilities Delegated to Officers (including Jointly Appointed Officers)

- 2.1 The authority delegated to officers through the Scheme of Delegation must be used not only in accordance with the terms of the Council's Standing Orders, Scheme of Administration and Financial Regulations, but also in accordance with all relevant Council policies, procedures and guidelines, and the current approved budget.
- 2.2 Officers shall have delegated authority to incur expenditure on behalf of the Council, including the signing of contracts and agreements, in accordance with Council policy, procurement procedures and other relevant financial procedures, as approved within the Council's Financial Regulations. All such expenditure must be within the authorised estimates of the expenditure of the Council as a whole.
- 2.3 Officers exercising delegated powers in terms of this Scheme must consult the Chief Executive, the appropriate Executive Director, Director of the East Lothian Health and Social Care Partnership, and other Heads of Service (as appropriate) as regards all sensitive or complex matters, or if they require advice or guidance. In particular, officers must get technical, construction, legal, financial, procurement, HR and risk management advice.
- 2.4 Officers exercising delegated powers in terms of this Scheme will be expected to consult local ward councillors if it appears that a proposed decision or action could directly affect a particular ward. This does not apply if the decision or action has a general effect on all wards.
- 2.5 Where a matter falls within the remit of more than one Head of Service and there is dispute as to how the matter should be handled, the Chief Executive will have the final decision, and a formal record of the decision will be retained.
- 2.6 The Council authorises any officer with specific delegated powers, duties or responsibilities set out in this Scheme to further delegate any of those powers, duties or responsibilities to other appropriate officers. Any officer using delegated powers will be fully accountable to the Council for their actions. However, if an officer delegates their powers to another officer, this will not relieve the delegating officer of their responsibility for the duties they have delegated.
- 2.7 Proper officers appointed to statutory roles cannot delegate their duties to other officers. However, if they cannot carry out their delegated duties because they are unavailable, designated officers may carry out those duties on their behalf (as set out in Sections 3–6 (C) of this Scheme of Delegation).

- 2.8 The Chief Executive or Executive Directors/Director of Health and Social Care are authorised to act in the absence of any Head of Service.
- 2.9 As set out in Standing Order 15.3, power is delegated to the Chief Executive and all Chief Officers to take any action with regard to any emergency involving serious danger to life, property or public welfare, or in accordance with the Council's Business Continuity Plan. Any action taken under Standing Order 15.3 will be reported to the Provost or Leader and the appropriate committee convener as soon as possible and thereafter to the Council.
- 2.10 As set out in Standing Order 15.4, power is delegated to the Chief Executive and statutory officers, in conjunction with cross-party councillor representation, to take immediate or urgent action with regard to matters not covered by Standing Order 15.3.

3. Specific Duties and Responsibilities Delegated to the Chief Executive (Head of Paid Service)

A. General

3.1 The Chief Executive has overall authority over all other officers, and is authorised to carry out all functions and responsibilities in accordance with all relevant legislation and regulations, and within policy and budget, for the following:

- Organisational structures and workforce
- Strategic management
- Emergency planning

3.2 The Chief Executive is also appointed as the Returning Officer for the East Lothian Council area, and has the authority to exercise all functions relevant to that role, in accordance with all relevant legislation and regulations.

B. Specific Delegated Functions

3.3 Acting as Head of Paid Service

3.4 Authorising the implementation of national and local agreements relating to pay and conditions of service, in consultation with the Head of Corporate Support

3.5 Reviewing the chief officer organisational structure, and recommending any changes to the Council

3.6 Reviewing the Council's administration and management arrangements and systems, and, where appropriate, making any changes necessary to improve how services are provided

3.7 Making changes to the Council's Scheme of Delegation arising as a result of changes to the Council's structures or role titles/responsibilities

3.8 Appointing, after consultation with the Council Leader and relevant Cabinet Spokesperson, an Acting Executive Director or Head of Service when the post holder is likely to be absent for more than two months, or the post is vacant

3.9 Appointing, after consultation with the Chief Executive of NHS Lothian, the Council Leader, Provost and Convener of the East Lothian Integration Joint Board, an Acting Chief Officer (Director) for the East Lothian Health and Social Care Partnership, when the post holder is likely to be absent for more than two months, or the post is vacant

- 3.10 Approving grades for all Executive Directors, Director of the East Lothian Health and Social Care Partnership, and Heads of Service, in consultation with the Leader of the Council
- 3.11 Agreeing, in conjunction with the Chief Finance Officer, severance terms with any Chief Officer whereby the Chief Officer in question agrees to terminate their contract of employment with the Council
- 3.12 Approving special leave without pay for Executive Directors/Director of the East Lothian Health and Social Care Partnership, in accordance with the relevant terms and conditions of service
- 3.13 Taking disciplinary action against Chief Officers, up to dismissal
- 3.14 Suspending any Executive Director or Head of Service (after consultation with the appropriate Executive Director) from duty on full pay, subject to relevant statutory provisions and to reporting the suspension to Cabinet
- 3.15 Suspending the Director of the East Lothian Health and Social Care Partnership, in consultation with the Chief Executive of NHS Lothian, from duty on full pay, subject to relevant statutory provisions and to reporting the suspension to the East Lothian Integration Joint Board
- 3.16 Maintaining a Council Plan, and ensuring that all services adhere to its requirements
- 3.17 Authorising any appropriate measures and expenditure which may be required in the event of an emergency situation or major incident, in accordance with the Council's Business Continuity arrangements and Standing Order 15.3
- 3.18 Receiving councillors' declarations that they accept their role (declaration of acceptance of office)
- 3.19 Receiving councillors' resignations
- 3.20 Receiving requests for special meetings and issuing summonses to special meetings
- 3.21 In consultation with the Head of Corporate Support, preventing reports containing sensitive information from being available to the public, deciding which documents are not open to inspection, and for providing documents to the press, in accordance with legislative requirements.
- 3.22 Facilitating internal audit of Council services

- 3.23 Authorising officer-directed surveillance, and officer covert human intelligence sources
- 3.24 Receiving all election-related documents after an election.

C. Proper Officer Delegation

- 3.25 In the absence of the Chief Executive (Head of Paid Service), Executive Directors are authorised to carry out the duties of the Chief Executive.
- 3.26 In the absence of the Returning Officer, the Depute Returning Officer, appointed by the Returning Officer, is authorised to carry out the duties of the Returning Officer.

4. Specific Duties and Responsibilities Delegated to the Section 95 (Chief Finance) Officer

A. General

- 4.1 The Chief Finance Officer is designated by the Council as the proper officer responsible for the administration of the Council's financial affairs in accordance with Section 95 of the Local Government (Scotland) Act 1973.
- 4.2 The Chief Finance Officer is authorised to carry out all functions and responsibilities in accordance with relevant legislation and regulations, and within the Council's policies and approved budget in relation to corporate finance and financial services.
- 4.3 The Chief Finance Officer is authorised to enter into agreements as regards borrowing and lending to meet the Council's needs, to manage the Council's loans fund, and to manage financial and lease agreements.

B. Specific Delegated Functions

- 4.4 Discharging Section 95 duties (as set out in the Local Government (Scotland) Acts)
- 4.5 Making amendments to the Council's Financial Regulations to take account of new or amended legislation, Council policies or procedures, or Council decisions
- 4.6 Developing and managing the Council's capital financial planning processes in accordance with the Council's Financial and Capital Strategies
- 4.7 Producing the Council's annual accounts in accordance with the Local Government (Scotland) Acts and relevant codes of practice
- 4.8 Taking or authorising decisions in relation to the Council's investments or borrowing, in accordance with the Council's Treasury Management Strategy, including in relation to borrowing in advance of need in certain situations (e.g. where doing so would be economically beneficial for the Council)
- 4.9 Accepting and reclaiming grants from the Scottish Government and other parties, in consultation with the relevant Executive Director/Head of Service
- 4.10 Approving the terms of purchasing works, goods and services in accordance with the Council's Procurement Procedures

- 4.11 Authorising required financial checks on proposed suppliers, contractors and customers of the Council
- 4.12 Making arrangements for receiving and holding tenders, in line with the Council's Procurement Procedures
- 4.13 Authorising emergency financial aid to employees of up to £200
- 4.14 In accordance with relevant approved Council policies, determining appropriate interim responsibility payments of up to 10% of current salary to reflect significant additional responsibilities undertaken in respect of major developments and initiatives
- 4.15 Writing off individual debts which are not recoverable up to a maximum of £50,000 (individual debt write-offs of over £50,000 shall require Cabinet approval)
- 4.16 Determining and actioning debt recovery procedures, including in relation to Council Tax and National Non-domestic Rates, in accordance with relevant legislation
- 4.17 Managing public trusts

C. Proper Officer Delegation

- 4.18 The Executive Director for Council Resources will act as the Chief Finance Officer. In their absence, an appropriately qualified and experienced officer is authorised to carry out the duties of the Chief Finance Officer.

5. Specific Duties and Responsibilities Delegated to the Monitoring Officer

A. General

- 5.1 The Monitoring Officer is designated by the Council as the proper officer responsible for carrying out certain duties and functions in accordance with Section 5 and 5A of the Local Government and Housing Act 1989.

B. Specific Delegated Functions

- 5.2 Taking responsibility for matters relating to the conduct of councillors and officers
- 5.3 Setting up and maintaining the Register of Interests for all councillors and making these available to the public
- 5.4 Reporting on matters that they believe are, or are likely to be, illegal or amount to maladministration
- 5.5 Reporting on any maladministration or injustice following an investigation by the Standards Commission for Scotland
- 5.6 Maintaining a list of politically restricted posts within the Council
- 5.7 Deciding whether an application made by a councillor or Council employee for a Council service should be referred to Council or an appropriate committee/sub-committee for determination.

C. Proper Officer Delegation

- 5.8 The Head of Corporate Support will act as the Monitoring Officer. In their absence, the Service Manager – Governance is authorised to carry out the duties of the Monitoring Officer. The Team Manager – Democratic and Licensing is also authorised to carry out duties relating to the Councillors' Code of Conduct.

6. Specific Duties and Responsibilities Delegated to the Chief Social Work Officer

A. General

6.1 The Chief Social Work Officer is designated by the Council as the proper officer responsible for carrying out all duties and functions in accordance with the principles, requirements and guidance set out in Section 5(1) of the Social Work (Scotland) Act 1968.

B. Specific Delegated Functions

6.2 Carrying out all functions of Chief Social Work Officer, in accordance with relevant legislation

6.3 Maintaining a Child Protection Register of children in need of protection from abuse

6.4 Providing services to children at risk of becoming accommodated

6.5 Determining and authorising all secure accommodation placements for children

6.6 Transferring children subject to a Supervision Order in cases of urgent necessity

6.7 Providing continuing care to formerly looked after children

6.8 Meeting the Council's duties as an adoption agency, including determining recommendations made by the Adoption Panel

6.9 Making arrangements to ensure that kinship care assistance is available

6.10 Approving guardianship applications

6.11 Acting as guardian to adults with incapacity where the guardianship functions relate to the personal welfare of the adults and no other suitable individuals have consented to be appointed

6.12 Providing services and after-care services for people with a mental disorder

6.13 Ensuring oversight and management of registered sex offenders

6.14 Taking decisions in relation to the management of drug treatment and testing orders

6.15 Carrying out, or authorising the carrying out of, functions as the appropriate authority in relation to a breach of a supervised release order, or appointing someone to carry out these functions

C. Proper Officer Delegation

6.16 The Head of Children's Services will act as the Chief Social Work Officer. In their absence, an officer identified from a pool of appropriately qualified and appropriately experienced officers is authorised to carry out the duties of the Chief Social Work Officer.

7. Specific Duties and Responsibilities Delegated to the Chief Planning Officer

A. General

- 7.1 The Chief Planning Officer is designated by the Council as the proper officer responsible for carrying out certain duties and functions in accordance with the Town and Country Planning (Scotland) Act 1997 (as amended), and other related planning legislation.

B. Specific Delegated Functions

- 7.2 Taking decisions on planning applications and enforcing planning laws, subject to the protocol set out in Section 19 of this Scheme of Delegation
- 7.3 Monitoring planning permission and other permissions, and taking enforcement action under Part V1 and V11 of the 1997 Act, including serving notices, taking direct action and prosecuting people for not keeping to such notices
- 7.4 Determining requests to undertake work to trees that are either protected by a Tree Preservation Order or are within a Conservation Area; and determining applications for Tree Preservation Orders where there are no outstanding objections
- 7.5 Providing the Council's view as planning authority on planning applications and other consultations from neighbouring planning authorities and the Scottish Government. The only exception to this is consultation responses on applications made under Section 36 of the Electricity Act 1989 (see Section 19.5)

C. Proper Officer Delegation

- 7.6 The Service Manager for Planning will act as the Chief Planning Officer. In their absence, suitably qualified and experienced officers within the Planning Service are authorised to carry out the duties of the Chief Planning Officer.

8. General Duties and Responsibilities Delegated to Executive Directors and the Director of East Lothian Health and Social Care Partnership

A. Delegated Functions

- 8.1 Amending the organisational structure of their services, including the number and designation of posts, in accordance with Council policies and procedures
- 8.2 Managing their services, and reviewing the performance of their services
- 8.3 Delegating duties in accordance with Standing Orders relating to contracts entered into and issuing orders for providing goods and services in accordance with Council policy, procurement procedures and other relevant financial procedures, as set out in the Council's Financial Regulations, and within the Council's approved budget
- 8.4 Transferring amounts between budgets within their control
- 8.5 Delegating duties as set out in the Council's Financial Regulations, for normal working practices
- 8.6 Authorising the payment of bills for goods and services received in accordance with Section 8.3 (above)
- 8.7 Advising the Chief Finance Officer about any unusual financial obligations that will affect the Council
- 8.8 Ensuring that services comply with statutory legal requirements
- 8.9 Ensuring safe working procedures and processes, and maintaining proper security for staff, buildings, stocks, stores, furniture and equipment, in accordance with statutory legal requirements and Council policies and procedures
- 8.10 Responding to consultation documents within the set time limit, where appropriate
- 8.11 Ensuring that Council policies and procedures are consistent and are followed
- 8.12 Carrying out duties imposed by statute pertaining to their areas of responsibility or the subject of specific delegations of authority by the Council

B. Proper Officer Delegation

- 8.13 In the absence of an Executive Director or the Director of the East Lothian Health and Social Care Partnership, the relevant Head(s) of Service are authorised to carry out their duties.

9. General Duties and Responsibilities Delegated to Heads of Service

A. General

- 9.1 Authority delegated to Executive Directors/Director of the East Lothian Health and Social Care Partnership may then be delegated on to Heads of Service
- 9.2 In exercising delegated authority, Heads of Service must ensure that they comply with:
- relevant laws, guidance and codes of practice
 - the procedural rules of their service
 - the Council's Procurement Procedures and Financial Regulations
 - the Council's insurance, risk management and business continuity arrangements
 - the Council's Standing Orders
 - the Council's HR policies and procedures
 - all relevant plans and policies adopted by the Council
 - the approved budget
 - approved service plan(s)
 - the rules on access to information, data protection and freedom of information
- 9.3 When carrying out duties delegated to them, Heads of Service must consult with other relevant officers if their actions will affect the responsibilities of another Head of Service. Where it is not clear which Head of Service has responsibility for a particular action or decision, the Chief Executive will determine the matter.

B. Delegated Functions

- 9.4 Contributing to the development of corporate policies and procedures through the Council Management Team
- 9.5 Setting and maintaining service standards to meet the Council's priorities
- 9.6 Putting in place service plans, and managing services within the Council's policies
- 9.7 Generally taking all operational decisions relating to the services being provided
- 9.8 Taking decisions on formal complaints about matters within their service areas
- 9.9 Managing and developing the workforce within their service areas

- 9.10 Suspending any employee in consultation with the Head of Corporate Support
- 9.11 Spending the approved budget appropriate to the services being provided
- 9.12 Setting and reviewing existing charges for Council services to ensure the needs of the budget are met (with the introduction of new charges being the responsibility of the Cabinet)
- 9.13 Applying for and accepting grants or a challenge fund, as long as these do not give rise to future financial commitments that the Council has to meet, or do not need the Council to provide equal funding that cannot be met from existing budgets
- 9.14 Procuring supplies and services in accordance with the provisions set out in Section 8.3
- 9.15 Entering into contracts in accordance with the provisions set out in Section 8.3
- 9.16 Accepting the lowest or best value tender where the value or estimated value of the contract is in accordance with the Council's Procurement Procedures
- 9.17 Promoting, marketing or presenting events
- 9.18 Authorising the production of publications relating to the services being provided
- 9.19 Serving statutory notices relating to the services being provided
- 9.20 Taking enforcement action when required relating to the services being provided
- 9.21 Reviewing the Council's actions and decisions, and dealing with requests for information under the Freedom of Information (Scotland) Act 2002 and ensuring compliance with all Data Protection legislation.
- 9.22 Carrying out the duties of the Council imposed by statute pertaining to their areas of responsibility or the subject of the specific delegations of authority by the Council.

C. Proper Officer Delegation

- 9.23 Where a Head of Service has been given delegated authority, they may authorise any member of their staff to act on their behalf. Any Head of Service using delegated authority will be fully responsible to the Council for their actions and those of any officer they delegate the duties to.

10. Specific Duties and Responsibilities Delegated to the Head of Children's Services

A. General

10.1 The Head of Children's Services is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Aftercare
- Child Protection
- Children's Disability
- Fostering
- Intake and Assessment
- Long-term Care and Support
- Residential
- Young People and Justice

B. Specific Delegated Functions (see also functions delegated to the Chief Social Work Officer at Section 6)

10.2 Setting fees for curators ad litem, foster and kin carers, and community carers

10.3 Approving grants to voluntary organisations

10.4 Leading the Council's multi-agency duty in the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism.

11. Specific Duties and Responsibilities Delegated to the Head of Communities

A. General

11.1 The Head of Communities is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Connected Communities
- Customer Services
- Policy, Improvement and Partnerships
- Protective Services

B. Specific Delegated Functions

11.2 Approving grants to individuals and organisations within the community, up to a maximum decided by the Council

11.3 Making suitable arrangements for the Council's insurance matters, and settling individual insurance claims up to a maximum of £100,000

12. Specific Duties and Responsibilities Delegated to the Head of Corporate Support

A. General

12.1 The Head of Corporate Support is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Communications
- Customer Feedback
- Democratic Services
- Executive Support, including to Lord Lieutenant
- Human Resources and Payroll
- Information Governance
- IT Services
- Legal Services
- Licensing
- Registration Services
- Unified Business Support

B. Specific Delegated Functions

12.2 Appointing and re-appointing curators ad litem and reporting officers

12.3 Appointing members to the East Lothian Local Licensing Forum

12.4 Determining the following licensing matters (in accordance with relevant legislation, as set out in the scheme of delegation adopted by the Licensing Sub-Committee):

- a. to grant a licence, on advice from the Chief Constable that there are no objections
- b. to renew a licence, if there are no new objections or adverse information received since or before the Licensing Sub-Committee's last consideration of the matter and the licence sought is the same as the licence previously granted
- c. to grant a licence in terms of any other primary or secondary legislation which regulate licensing regimes falling within the ambit of the Licensing Sub-Committee, if there are no new objections or adverse information received since or before the Licensing Sub-Committee's last consideration of the matter and the licence sought is the same as the licence previously granted
- d. to determine whether exceptional circumstances exist which would justify the return of application fees in cases where the application is not progressed

- e. to suspend a licence with immediate effect in terms of paragraph 12 of Schedule 1 of the Civic Government (Scotland) Act 1982
- f. to determine whether 'good cause' has been shown by an applicant where the application for renewal of a licence is received late, in terms of paragraph 8(5A) of Schedule 1 of the Civic Government (Scotland) Act 1982
- g. to provide that if, for any reason, the delegated officer considers it inappropriate to determine an application under delegated powers, the application will be referred to the Licensing Sub-Committee for determination

13. Specific Duties and Responsibilities Delegated to the Head of Development

A. General

13.1 The Head of Development is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Business Development
- Economic Development
- Growth
- Heritage and Monuments
- Street Naming and Numbering
- Tourism
- Regeneration
- Note: the Head of Development shall have line management and budgetary responsibilities for the Planning Service, but operational matters will be the responsibility of the Chief Planning Officer

B. Specific Delegated Functions

13.2 Taking decisions in relation to grants for economic development, business development, tourism, and regeneration activities, to both the private and third sectors

13.2 Determining applications for grant assistance under a Conservation Area Regeneration Scheme

14. Specific Duties and Responsibilities Delegated to the Head of Education

A. General

14.1 The Head of Education is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Additional Support for Learning
- Early Learning and Childcare Provision
- East Lothian Works and associated Employability Services
- Educational Psychological Services
- Inclusion and Equality
- Learning Estate
- Primary Education
- Quality Improvement of Schools
- Secondary Education
- Strategy and Operations

B. Specific Delegated Functions

14.2 Managing, assessing and awarding higher school bursaries

15. Specific Duties and Responsibilities Delegated to the Head of Finance

A. General

15.1 The Head of Finance is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Benefits and Financial Assessments
- Budget Development
- Corporate Accounting
- Council Tax
- Financial Inclusion
- Planning Obligations
- Procurement
- Rent Income
- Revenues
- Service Accounting
- Treasury and Banking
- Welfare Rights

B. Specific Delegated Functions

16. Specific Duties and Responsibilities Delegated to the Head of Housing

A. General

16.1 The Head of Housing is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Community Housing
- Homelessness
- Housing Strategy and Development
- Property Maintenance
- Service Development and Support
- Sheltered Housing

B. Specific Delegated Functions

16.2 Authorising expenses, under the Housing Act 1994, to people who are old, disabled or in poor health

16.3 In conjunction with the Head of Operations (ELHSCP), providing support services for vulnerable homeless people to standards set by the Care Commission

17. Specific Duties and Responsibilities Delegated to the Head of Infrastructure

A. General

17.1 The Head of Infrastructure is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Engineering Services and Building Standards
- Estates
- Facilities Management
- Roads Services
- Sport, Countryside and Leisure
- Strategic Asset and Capital Plan Management
- Transport Services
- Waste Services

B. Specific Delegated Functions

17.2 In consultation with, and with the agreement and approval of the Section 95 Officer, the Service Manager – Legal, and other officers as required, undertake:

- a. Disposals of land and/or buildings (if the highest offer is not to be accepted or the property is to be sold without having to be advertised, the matter is referred to Cabinet)
- b. Acquisitions of land and/or buildings as agreed within the capital programme
- c. Agreeing terms for the disposal of small areas of open space ground on the Housing Revenue Account or managed by Sport, Countryside and Leisure, where such areas are not advertised for sale
- d. Agreeing terms for leases/tenancies of land or buildings, and all matters arising from the lease of a property, including lease transfer and variation, sub-letting, change of use, alterations, and recovering overdue rent and other charges
- e. Agreeing terms for granting wayleaves, rights of way and servitudes
- f. Agreeing terms for an excambion of land required for any of the Council's functions where this action is within the approved capital programme
- g. Settling claims for professional fees and costs in connection with buying and selling land, and compensation claims of up to £25,000

17.3 Letting Common Good properties, following consultation (as required in terms of the Community Empowerment (Scotland) Act 2015) and consideration of representations made during such consultation.

18. Specific Duties and Responsibilities Delegated to the Head of Operations (East Lothian Health and Social Care Partnership)

A. General

18.1 The Head of Operations (East Lothian Health and Social Care Partnership) is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Access and Prevention
- Adult Community Services
- Adult Statutory Services
- Hospitals and Care Homes
- Primary Care

B. Specific Delegated Functions

18.2 Taking decisions, in consultation with the Council's Chief Finance Officer, on applications for changing maintenance rates for private or voluntary homes not covered by the National Health Service and Community Care Act 1990

19. Scheme of Delegation for Planning Applications

19.1 Decisions in relation to planning applications

- a. Delegated Decisions – ‘Local Developments’ as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008 shall be determined by the Chief Planning Officer without reference to Members, subject to 19.1(b) below. Such determination shall include, where appropriate, authority for the Council to enter into any legal agreement in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 or otherwise and authority for the Council to take enforcement action in instances where retrospective planning permission is refused for unauthorised development.
- b. Scheme of Delegation List – A list of reports on applications to be decided under delegated authority in terms of 19.1(a) above which raise important planning issues and/or are subject to any amount of public objection shall be circulated each week to Members, who then shall have seven days in which to request referral to the Planning Committee, otherwise the officer decision shall be issued by the Chief Planning Officer in terms of 19.1(a) above. The Member who has requested referral to the Planning Committee shall prepare the Statement of Reasons for issue by the Planning Authority giving the reasons why the Planning Committee and not the Chief Planning Officer should determine the application.

19.2 Appeal to Scottish Ministers against the failure to take a decision on a planning application

In cases where an applicant has appealed to Scottish Ministers against the failure to take a decision on a planning application, the Chief Planning Officer shall have authority for submitting the Council’s submission on the appeal, as a Council Officer statement.

19.3 Decisions in relation to enforcement of planning control

- a. Authority for service of Planning Contravention Notices and Breach of Condition Notices will be delegated to the Chief Planning Officer and will be reported for Members’ information to the Members’ Library.
- b. Committee Expedited List – reports recommending service of Enforcement Notices, Stop Notices and Notices under Section 179 (‘Land Adversely Affecting Amenity of Neighbourhood’) of the Town and Country Planning (Scotland) Act 1997 shall be circulated each week to Members, who then shall have seven days in which to request referral to the Planning Committee, otherwise the officer recommendation is deemed to be accepted and the Chief Planning Officer shall be authorised to proceed on that basis.

19.4 **Decisions in relation to the variation, modification or discharging of planning obligations**

- a. The Chief Planning Officer shall have authority to determine applications to vary, modify or discharge planning obligations, in terms of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010
- b. The Chief Planning Officer shall have authority to determine applications to vary modify or discharge Good Neighbour Agreements, in terms of the Town and Country Planning (Modification and Discharge of Good Neighbour Agreements) (Scotland) Regulations 2010.
- c. The Chief Planning Officer shall have authority to modify or discharge planning obligations through written agreement with all parties providing that there is no reduction in the scale or level of obligation or financial contribution to the Council or any non-applicant.

19.5 **Consultation requests under Section 36 of the Electricity Act 1989**

Consultation responses on applications made under Section 36 of the Electricity Act 1989 shall be circulated on the Committee Expedited List to Members, who shall have seven days to request referral to the Planning Committee, otherwise the officer consultation response is deemed to be accepted and the Chief Planning Officer shall be authorised to proceed on that basis.

20. Statutory Appointment of Officers

- 20.1 Under various laws, the Council must appoint officers for a variety of purposes. Officers appointed to perform these roles are authorised to take the actions that are an essential part of their roles. The 'statutory appointments' that the Council has made are set out in this section.

| Relevant Law | Role | Proper Officer |
|---|---|---|
| Civic Government (Scotland) Act 1982 | | |
| Section 113 | Proper officer for keeping evidence of management rules | Head of Corporate Support |
| Community Empowerment (Scotland) Act 2015 | | |
| Section 22 | Proper officer for receiving participation requests | Head of Communities |
| Section 79 | Proper officer for receiving asset transfer requests | Head of Communities |
| Data Protection Act 2018 | | |
| Chapter 4, Sections 69-71 | Proper officer for monitoring compliance; for informing and advising the data controller of their obligations; for co-operating with the supervisory authority in respect of (1) East Lothian Council, and (2) East Lothian Licensing Board | Team Manager – Information Governance |
| Environmental Protection Act 1990 | | |
| Section 149(1) | Proper officer for dealing with stray dogs in the area | Head of Communities |
| Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests Regulations) 2003 | | |
| Section 7(1) | Proper officer for setting up and keeping the register of councillors' business, personal and financial interests, and making these available to the public | Monitoring Officer / Service Manager – Governance / Team Manager – Democratic and Licensing |
| Licensing (Scotland) Act 2005 | | |
| Schedule 1, para. 8(1)(a) | Proper officer to act as the Clerk to the Licensing Board | Service Manager – Governance |
| Section 13 | Proper officer for supervising compliance by licence-holders, mediating, issuing notices and applying for premises licence reviews | Licensing Standards Officer |
| Local Authorities (Contracts) (Scotland) Regulations 1997 | | |
| Regulation 4 | Proper officer for certification purposes (powers to enter into a contract of other matters) | Head of Finance |
| Local Government (Scotland) Act 1973 | | |
| Section 33a | Proper officer for receiving councillors' declarations that they accept their role (declaration of acceptance of office) | Chief Executive |
| Section 33a(3) | Proper officer that the declaration of acceptance of officer can be made to | Chief Executive / Monitoring Officer / |

| | | |
|---|--|--|
| | | Service Manager – Governance / Team Manager – Democratic and Licensing |
| Section 34 | Proper officer for receiving councillors' resignations | Chief Executive |
| Section 40 | Proper officer for receiving general notices from councillors about any financial interest in a matter, and for recording the councillors' interests | Monitoring Officer / Service Manager – Governance / Team Manager – Democratic and Licensing |
| Section 43 and para. 1(4) of Schedule 7 | Proper officer for receiving requests for special Council meetings | Chief Executive |
| Section 43 and para. 2(1) of Schedule 7 | Proper officer for signing summonses to special Council meetings | Chief Executive |
| Section 43 and para. 2(2) of Schedule 7 | Proper officer for receiving a councillor's notice of an alternative address | Head of Corporate Support |
| Section 50b | Proper officer for preventing reports containing sensitive information from being available to the public, and for providing documents to the press | Chief Executive / Executive Director for Council Resources / Head of Corporate Support |
| Section 50c | Proper officer for providing a written summary when the minutes of a meeting cannot be made available to the public | Head of Corporate Support |
| Section 50f | Proper officer for deciding which documents are not open to inspection | Chief Executive / Executive Director for Council Resources / Head of Corporate Support |
| Section 92 | Proper officer for transferring securities | Executive Director for Corporate Resources / Head of Finance |
| Section 95 | Proper officer for managing the Council's financial affairs | Executive Director for Council Resources |
| Section 145 | Proper officer for asking Ordnance Survey for information | Executive Director for Place |
| Section 190 | Proper officer for serving notices on behalf of the Council and starting legal proceedings | Chief Executive / Executive Directors / Head of Corporate Support / Service Manager – Governance |
| Section 191 | Proper officer for signing any claim on behalf of the Council in any sequestration, liquidation, and similar proceedings where the Council is entitled to make a claim | Chief Executive / Executive Director for Council Resources / Head of Corporate Support / |

| | | |
|--|---|--|
| | | Service Manager – Governance (in consultation with Head of Finance) |
| Section 193 | Proper officer for signing notices and orders | Relevant Executive Director or Head of Service responsible for the service relating to the notice/order or the Service Manager – Governance / designated Principal or Senior Solicitor |
| Section 194 | Proper officer for signing deeds and using the Council’s seal | Chief Executive / Head of Corporate Support / Service Manager – Governance / designated Principal or Senior Solicitor |
| Section 197 | Proper officer for arranging for documents to be inspected and filed | Head of Corporate Support |
| Section 202 | Proper officer for confirming that byelaws are valid and for sending copies to other relevant authorities | Service Manager – Governance |
| Section 202B | Proper officer for putting valid byelaws in the register of byelaws | Service Manager – Governance |
| Section 204 | Proper officer for providing certificates as evidence of byelaws | Service Manager – Governance |
| Section 206 | Proper officer for keeping a register of people who are made ‘freemen’ of the area | Head of Corporate Support |
| Section 231 | Proper officer for asking the Sheriff about matters arising from the Local Government (Scotland) Act 1973 | Chief Executive / Executive Directors / Head of Corporate Support (in consultation with the Service Manager – Governance) |
| Local Government and Housing Act 1989 | | |
| Section 2 | Proper officer for keeping lists of posts that are politically restricted | Head of Corporate Support |
| Section 4 | Proper officer to act as the Head of Paid Service | Chief Executive |
| Section 5 | Proper officer to act as the Monitoring Officer | Head of Corporate Support |
| Public Records (Scotland) Act 2011 | | |
| Section 1(2)(a)(i) | Proper officer for the management of the Council’s public records | Head of Corporate Support / Service Manager – Governance |
| Section 1(2)(a)(ii) | Proper officer for ensuring compliance with the Records Management Plan | Team Manager – Information Governance |

| Regulation of Investigatory Powers (Scotland) Act 2002 | | |
|---|---|--|
| Section 6 | Proper officer for authorising directed surveillance | Executive Director for Place / Head of Communities / Service Manager – Protective Services |
| Section 7 | Proper officer for authorising covert human intelligence sources | Executive Director for Place / Head of Communities / Service Manager – Protective Services |
| Representation of the People Act 1983 | | |
| Section 41 | Proper officer to act as the Returning Officer | Chief Executive |
| Scottish Local Government Elections Order 2007 | | |
| Rule 57 | Proper officer for receiving all election-related documents following an election | Chief Executive |
| Social Work (Scotland) Act 1968 | | |
| Section 3 | Proper officer to act as the Chief Social Work Officer | Head of Children's Services |
| Weights and Measures Act 1985 | | |
| Section 72(1)(a) | Chief inspector of weights and measures | Executive Director for Place |

20.2 The proper officers appointed for the roles set out in Section 20.1 cannot delegate their duties to other officers. However, if they cannot carry out their delegated duties because they are not available, the following officers will carry out their duties:

| Proper officer appointed for the roles set out in Section 20.1 | Officer(s) who will carry out duties if the proper officer is not available |
|---|--|
| If the Chief Executive is not available to act as Head of Paid Service | Executive Directors, as agreed |
| If the Returning Officer is not available for election purposes | Depute Returning Officer |
| If the Executive Director for Council Resources is not available to act as Section 95 Officer | A suitably qualified and experienced person from within the Finance Service |
| If the Head of Children's Services is not available to act as Chief Social Work Officer | A suitably qualified and experienced person from within the following services: Children's Services Adult Statutory Services Adult Community Services |
| If the Service Manager – Planning is not available to act as Chief Planning Officer | A suitably qualified and experienced person from within the Planning Service |
| If the Head of Corporate Support is not available to act as Monitoring Officer | Service Manager – Governance Team Manager(s) – Democratic and Licensing (in relation to matters concerning the Councillors' Code of Conduct) |

| | |
|--|---|
| If an Executive Director is not available | Relevant Head of Service |
| If the Service Manager – Governance is not available to act as Clerk to the Licensing Board | A suitably qualified and experienced person from within the Legal Service |
| If the Executive Director for Council Resources is not available to act as the Senior Information Risk Officer | Head of Corporate Support |
| If the Team Manager – Information Governance is not available to act as Data Protection Officer | Head of Corporate Support / Service Manager – Governance / Team Leader – Information Governance |

EAST LOTHIAN COUNCIL STANDING ORDERS SUPPORTING DOCUMENTS

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- A East Lothian Council Financial Regulations
- B East Lothian Council Procurement Procedures
- C Councillors' Code of Conduct
- D Standards Commission for Scotland Advice Note for Councillors on Distinguishing between Their Strategic Role and Any Operation Work
- E Councillor Role Descriptions
- F Statutory Officer and Chief Officer Role Descriptions
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- H Local Government (Scotland) Act 1973, Schedule 7A – Exempt Information



FINANCIAL REGULATIONS

10 February 2011

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1. Introduction

- 1.1 “Every local authority shall make arrangements for the proper administration of their financial affairs and shall secure that the proper officer of the authority has responsibility for the administration of those affairs” (Local Government (Scotland) Act 1973 Section 95)
- 1.2 The Council has adopted Standing Orders to govern its business. Standing Order 50 identifies the Head of Finance as the proper officer with the responsibility for the administration of its financial affairs.
- 1.3 These Financial Regulations have been designed to guide the development of good financial administration throughout the Council and any partnership in which the Council participates.
- 1.4 To conduct its business efficiently, the Council needs to ensure that it has sound financial management processes in place and that they are rigorously followed by everyone. The Council is also committed to innovation provided that risk assessment is undertaken and necessary safeguards are in place.
- 1.5 The financial regulations provide clarity about the financial accountabilities of individuals – Councillors, the Chief Executive, the Head of Law & Licensing, the Head of Finance and other senior officers.
- 1.6 Beyond the scope of this document, the financial regulations link with other internal regulatory documents forming part of the Council’s governance framework. For example procurement policies and procedures, schemes of delegation and codes of conduct, which may include specific issues such as use of the Internet. There are also more detailed Statements of Current Working Method which supplement the Regulations and carry the status and authority of these Regulations.
- 1.7 The financial regulations take effect through financial processes that regularly change. The Head of Finance will maintain and update Statements of Current Working Method for each of the main financial processes. Senior officers are responsible for ensuring that their teams follow current working methods and for proposing amended and alternative methods to the Head of Finance should new opportunities for improved efficiency and effectiveness arise.

2. Status of Financial Regulations

- 2.1** Financial regulations provide the framework for managing the Council's financial affairs. They apply to every elected member and officer of the Council and anyone acting on its behalf. They cover all of the financial activities of the Council including Common Good, Trust and Schools Funds.
- 2.2** The regulations identify the financial responsibilities of the full Council and Cabinet, statutory officers and other senior officers. Senior officers should maintain a record where decision making has been delegated to their staff, including seconded staff. Where decisions have been delegated or devolved to other responsible officers, such as Head Teachers, references to the senior officer in the regulations should be read as referring to them.
- 2.3** All elected members and staff have a general responsibility for taking reasonable action to ensure the security of the assets under their control, and for ensuring that the use of these resources is legal and achieves best value.
- 2.4** The Head of Finance is responsible for reviewing the financial regulations and submitting any additions or changes necessary to the full Council for approval. The Head of Finance is also responsible for reporting significant breaches of the financial regulations to the Council's Audit & Governance Committee.
- 2.5** Senior officers are responsible for ensuring that all relevant staff in their departments are aware of the existence and content of the Council's financial regulations and other internal regulatory documents and that they comply with them. For the purpose of this paragraph "relevant staff" comprise those staff whose work activities are directly governed by the terms of the financial regulations and those other internal regulatory documents and as such require to have knowledge of, and in their work comply with, said financial regulations and documents.
- 2.6** Senior officers include the chief executive, directors, heads of service, business group managers and business unit managers. Also included are any staff that have financial responsibilities delegated to them by a senior officer.
- 2.7** The Head of Finance is responsible for issuing advice and guidance to underpin the financial regulations that elected members, officers and others acting on behalf of the Council are required to follow.

3. Financial Regulations

A: FINANCIAL MANAGEMENT

INTRODUCTION

- A.1** Financial management covers all financial accountabilities in relation to the running of the Council, including the policy framework and budget.

THE FULL COUNCIL

- A.2** The full Council is responsible for adopting the Council's governance framework and elected members' code of conduct and for approving the budget. It is also responsible for approving and monitoring compliance with the Council's overall framework of accountability and control. The framework is set out in the Standing Orders. The full Council is also responsible for monitoring compliance with the agreed policy.
- A.3** The full Council is responsible for approving procedures for recording and reporting decisions taken. This includes those key decisions delegated by and decisions taken by the Council, the Cabinet and other committees. These delegations and details of who has responsibility for which decisions are set out in the Standing Orders.

CABINET AND OTHER COMMITTEES

- A.4** These committees are responsible for approving the policy framework for the responsibilities that are delegated to them by the Council.
- A.5** These committees are also responsible for establishing protocols to ensure that councillors and senior officers consult with relevant councillors and officers before taking a decision within their delegated authority. In making a delegated decision, the individual must take account of legal and financial liabilities and risk management issues that may arise from the decision.

THE STATUTORY OFFICERS

Head of Paid Service

- A.6** The Head of Paid Service is responsible for the corporate and overall strategic management of the Council as a whole, including establishing a framework for management direction, style and standards and for monitoring the performance of the organisation.

- A.7** The Head of Paid Service is responsible for advising the Cabinet or full Council about whether a decision is likely to be considered contrary or not wholly in accordance with the policy framework.
- A.8** The Head of Paid Service is responsible for maintaining an up-to-date governance framework.

Monitoring Officer

- A.9** The Monitoring Officer, together with the Chief Finance Officer is responsible for advising the full Council about whether a decision or the absence of a decision is likely to be considered contrary or not wholly in accordance with the budget. Actions that may be 'contrary to the budget' include:
- initiating a new policy
 - committing expenditure in future years to above the budget level
 - causing the total expenditure financed from council tax, grants and corporately held reserves to increase, or to increase by more than a specified amount.

Chief Social Work Officer

- A.10** The Chief Social Work Officer (CSWO) is responsible for “the provision of effective, professional advice to local authorities – elected members and officers - in the authorities’ provision of social work services” (Section 5(1) of the Social Work Act (Scotland) 1968). The financial management of the Council may have a significant impact on the provision of social work services and the CSWO will be consulted as part of making significant changes to financial arrangements e.g. in budget setting.

Chief Finance Officer

- A.11** The Chief Finance Officer has statutory duties in relation to the financial administration and stewardship of the Council. This statutory responsibility cannot be overridden. The statutory duties arise from:
- Section 95 of the Local Government (Scotland) Act 1973
 - Sections 12-14 of the Local Government in Scotland Act 2003
- A.12** The Chief Finance Officer is responsible for:
- promoting and maintaining high standards of financial conduct.
 - the proper administration of the Council’s financial affairs
 - setting and monitoring compliance with financial management standards
 - advising on the corporate financial position and on the key financial controls necessary to secure sound financial management
 - providing financial information
 - preparing the revenue budget and capital investment plan

- treasury management.

OTHER OFFICERS

A.13 Senior officers are responsible for:

- ensuring that elected members are advised of the financial implications of all proposals and that the financial implications have been agreed with the Head of Finance
- signing contracts on behalf of the Council.

A.14 It is the responsibility of senior officers to consult with the Head of Finance and with the Head of Law and Licensing to seek approval on any matter liable to significantly affect the Council's finances or legal obligations before any commitments are incurred.

OTHER FINANCIAL ACCOUNTABILITIES

Virement

A.15 Senior officers are responsible for notifying the Head of Finance of any in-year virements required.

Treatment of year-end balances

A.16 The Head of Finance is responsible for carrying forward under- and over-spending in accordance with any policies approved by full Council.

Accounting policies

A.17 The Head of Finance is responsible for selecting accounting policies and ensuring that they are applied consistently.

Accounting records and returns

A.18 The Head of Finance is responsible for determining the accounting procedures and records for the Council.

The annual statement of accounts

A.19 The Head of Finance is responsible for ensuring that the annual statement of accounts is prepared in accordance with all accounting standards applicable at that time. The full Council is responsible for approving the annual statement of accounts following external audit.

B: FINANCIAL PLANNING

INTRODUCTION

- B.1** The full Council is responsible for agreeing the Council's policy framework and budget. In terms of financial planning, the key elements are:
- the setting of the Council Tax and the associated budgets on an annual cycle in accordance with legislation
 - the setting of council house rents and the associated budgets on a cycle determined by the Council
 - the capital investment plan
 - treasury management strategy

POLICY FRAMEWORK

- B.2** The full Council is responsible for approving the policy framework and budget. The council policy framework includes the following key plans:
- corporate plan
 - single outcome agreement
 - asset management plan
 - capital investment plan
- B.3** The full Council is also responsible for approving changes to budgets, plans and strategies that form the budget or policy framework.
- B.4** The Cabinet is responsible for taking in-year decisions on resources and priorities in order to deliver the policy framework within the financial limits set by the full Council.

Preparation of the corporate plan and single outcome agreement

- B.5** The Chief Executive is responsible for submitting the corporate plan and single outcome agreement to the full Council for approval.

Preparation of the asset management plan

- B.6** The Executive Director of Community Services is responsible for preparing and submitting the asset management plan (AMP) to the full Council for approval.

Preparation of the capital investment plan

- B.7** The Head of Finance is responsible for ensuring a capital investment plan is prepared for approval by the full Council and that any consequent revenue costs are incorporated into the budget.

BUDGETING

Budget format

- B.8** The format of the budget will be approved by the full Council following receipt of the advice of the Head of Finance.

Budget preparation

- B.9** The Head of Finance is responsible for ensuring that a detailed revenue budget is prepared on an annual basis and a general revenue plan on a three-yearly basis is submitted to the full Council.
- B.10** The Head of Finance is responsible for issuing annual guidance on the content of the budget and the timetable for its preparation.

Budget monitoring and control

- B.11** The Head of Finance is responsible for providing appropriate financial information to enable budgets to be monitored effectively. The Head of Finance must monitor expenditure and income against budget and report on the overall position on a regular basis.
- B.12** It is the responsibility of senior officers to control income and expenditure within their area and to monitor performance, taking account of financial information provided by the Head of Finance. They should act on variances within their own areas, taking any action necessary to avoid exceeding their budget allocation and alert the Head of Finance to any significant problems.

Guidelines

- B.13** Guidelines on budget preparation are issued to elected members and senior officers by the Head of Finance. The guidelines will take account of:
- legal requirements
 - medium-term planning prospects
 - available resources
 - spending pressures
 - relevant government guidelines

- relevant internal policy documents.

MAINTENANCE OF RESERVES

- B.14** It is the responsibility of the Head of Finance to advise the full Council on prudent levels of reserves for the Council.

C: RISK MANAGEMENT AND CONTROL OF RESOURCES

INTRODUCTION

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

RISK MANAGEMENT

- C.2** The full Council is responsible for approving the Council's risk management strategy and the Audit & Governance Committee is responsible for reviewing the effectiveness of risk management.
- C.3** The Head of Governance & Performance Management is responsible for preparing the Council's risk management strategy and policies and for promoting them throughout the Council. The Head of Finance is responsible for advising the Cabinet on proper insurance cover where appropriate.

INTERNAL FINANCIAL CONTROL

- C.4** Internal financial control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the Council's assets and interests are safeguarded.
- C.5** The Head of Finance is responsible for advising on effective systems of internal financial control. These will aim to ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with the statutory and other authorities that govern their use.
- C.6** It is the responsibility of senior officers to establish sound arrangements for planning, appraising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness.

AUDIT REQUIREMENTS

- C.7** The statutory requirement placed upon the Council to ensure proper administration of financial affairs encourages the maintenance of an effective internal audit function.

- C.8** The Accounts Commission is responsible for appointing external auditors to each local authority. The basic duties of the external auditor are governed by the Local Government (Scotland) Act 1973 and the Public Finance and Accountability (Scotland) Act 2000.
- C.9** The Council may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenues & Customs, which have statutory rights of access.

PREVENTING FRAUD AND CORRUPTION

- C.10** The Head of Governance & Performance Management is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.
- C.11** Senior officers are responsible for promptly dealing with any financial irregularities, through normal disciplinary processes where employees are involved or through contractual processes where suppliers are involved. In cases of exceptional complexity, Internal Audit may be able to assist in the investigation. A financial irregularity is something a council officer or supplier has done in their work that either leads to a financial loss for the Council that should have been avoided and/or a gain for the employee or supplier that they should not have taken.

ASSETS

- C.12** Senior officers should ensure that records and assets are properly maintained and securely held. They should also ensure that contingency plans for the security of assets and continuity of service in the event of disaster or system failure are in place.

TREASURY MANAGEMENT

- C.13** The Council has adopted CIPFA's *Treasury Management in the Public Services: Code of Practice 2009*.
- C.14** The full Council is responsible for approving the treasury management policy statement setting out the matters detailed in the *Treasury Management in the Public Services: Code of Practice 2009*.
- C.15** All decisions on borrowing, investment or financing shall be delegated to the Head of Finance, who is required to act in accordance with CIPFA's *Treasury Management in the Public Services: Code of Practice 2009* and the *The Local Government Investments (Scotland) Regulations 2010*.

Staffing

- C.16** The Chief Executive is responsible for determining how officer support within the Council will be organised.

C.17 The Chief Executive is responsible for overall framework for the management of staff. The Chief Executive is also responsible for ensuring that there is proper use of the evaluation or other agreed systems for determining the remuneration of a job.

C.18 Senior officers are responsible for controlling total staff numbers by:

- adjusting the staffing to a level that can be funded and sustained within approved budget provision, varying the level as necessary within that constraint in order to meet changing operational needs
- the proper use of appointment procedures.

D: SYSTEMS & PROCESSES

INTRODUCTION

- D.1** Well designed and functional systems and processes are essential to an effective framework of financial accountability and control.

GENERAL

- D.2** The Head of Finance is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any significant changes made by senior officers to the existing financial systems or the establishment of new systems must be approved by the Head of Finance. However, senior officers are responsible for the proper operation of financial systems and processes in their own departments.
- D.3** Any proposals from senior officers for changes to current working methods to meet specific service needs should be agreed with the Head of Finance.
- D.4** Senior officers should ensure that their staff receive relevant financial training.
- D.5** Senior officers must ensure that, where appropriate, computer and other systems are registered in accordance with data protection legislation. Senior officers must ensure that staff are aware of their responsibilities under both the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2003.

INCOME AND EXPENDITURE

- D.6** It is the responsibility of senior officers to ensure that a proper scheme of delegation has been established within their area and is operating effectively. The scheme of delegation should identify staff authorised to act on the senior officer's behalf in respect of payments, income collection and placing orders, together with the limits of their authority.
- D.7.** The Cabinet is responsible for approving procedures for writing off debts.

PAYMENTS TO EMPLOYEES AND ELECTED MEMBERS

- D.8** The Head of Finance is responsible for all payments of salaries and wages to all staff, including payments for overtime, car allowances, subsistence allowances, travelling and incidental expenses, and for payments to elected members.

TAXATION

- D.8** The Head of Finance is responsible for advising senior officers, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the Council.
- D.9** The Head of Finance is responsible for maintaining the Council's tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate.

TRADING ACCOUNTS

- D.10** It is the responsibility of the Head of Finance to advise on the requirement for and operation of trading accounts.

E: EXTERNAL ARRANGEMENTS

INTRODUCTION

- E.1** The Council provides a distinctive leadership role for the communities of East Lothian and brings together the contributions of various stakeholders. It must also act to achieve the promotion or improvement of the economic, social and environmental well-being of the county.

PARTNERSHIPS

- E.2** The full Council is responsible for approving delegations, including frameworks for partnerships. The full Council is responsible for forming partnerships with other public, private, voluntary and community sector organisations to address local needs.
- E.3** The full Council can delegate functions – including those relating to partnerships – to officers. These are set out in the scheme of delegation that forms part of the Council's standing orders.
- E.4** The Chief Executive (or nominee) represents the Council on partnership and external bodies, in accordance with the scheme of delegation.
- E.5** The Head of Finance is responsible for promoting and maintaining the same high standards of conduct with regard to financial administration in partnerships that apply throughout the Council. The Head of Finance must also ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory.
- E.6** Senior officers are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies. They must ensure that the risks have been appraised before agreements are entered into with external bodies.

EXTERNAL FUNDING

- E.7** The Head of Finance is responsible for ensuring that all funding notified by external bodies is received and properly recorded in the Council's accounts.

WORK FOR THIRD PARTIES

- E.8** The Cabinet or other committee (when within the remit of that committee) is responsible for approving the contractual arrangements for any work for third parties or external bodies.



East Lothian Council

Procurement Procedures

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Version Control

| Version | Change |
|--------------|-------------------------|
| V4.1 Jan2023 | Formatting issues fixed |
| | |
| | |

Note: All titles of posts referenced in these standing orders are correct at time of issue and will be updated to reflect any future restructuring without the requirement for further approval of these Standing Orders.

Section 1 – Scope and Context

1.1. Scope

These procedures cover all expenditure by the Council with third parties i.e. the supply of goods, provision of services and delivery of works projects.

1.2. Legal Context

Procurement is governed by many legal sources, principally derived from the EU Treaty principles. The following principles (referred to as the “Fundamental Principles” in this document) apply to all procurement activity regardless of the value:

- Proportionality
- Mutual Recognition
- Non-discrimination
- Equal treatment
- Transparency

All contracts let by or on behalf of the Council must be done so in a proportionate manner that demonstrates compliance with the above principles to all parties having an interest in that procedure.

The **Public Contracts (Scotland) Regulations 2015** dictate rules for procurements\contracts above a threshold, set by the World Trade Association's Agreement on Government Procurement (GPA). These are referred to in these Procedures as GPA Procurements\Contracts. These rules cover many aspects including where to advertise, specifications, selection, timescales and awarding contracts.

The Scottish Government introduced the **Procurement Reform (Scotland) Act** in 2014 and the **Public Contracts (Scotland) Regulations 2016** which provide specific rules for procurements\contracts below the GPA threshold. These are referred to in these Procedures as Regulated Procurements\Contracts.

Table 1 – Procurement Legislation

| Procurement \ Contract tier | Legislation | Advertising | Threshold |
|----------------------------------|---|-------------|---|
| Regulated Procurements\Contracts | Procurement Reform (Scotland) Act 2014 | PCS | Equal to or greater than £50k for goods\services and £2m for works up to the GPA threshold. |
| GPA Procurements\Contracts | The Public Contracts (Scotland) Regulations 2015. | PCS and FTS | GPA threshold |

Other relevant Scottish & UK legislation includes:

- demonstrating Best Value through the Local Government in Scotland Act 2003 s2 (1) a and TUPE Regulations 2006.
- Scottish Procurement Policy Notes (SPPNs) – although these do not have legal status and are for guidance only, these also influence how we do procurement.
- Case law from both UK courts and, prior to EU exit, the European Court of Justice (ECJ) applies. UK courts may still have regard for ECJ rulings in this area.
- Legal action, or less formal challenges for example by unsuccessful bidders, could cost the Council money.

The Council should also have due regard to the statutory guidance produced under the Procurement Reform (Scotland) Act 2014 ('the Act') and the Procurement of Care and Support Services: best practice guidance.

1.3. Principles of Procurement

It is mandatory that all procurements undertaken by the Council shall take account of the following principles which shall be applied in a proportionate manner having due regard to the value, complexity and importance of each contract:

- 1.3.1. All contracts let by or on behalf of the Council, shall be subject to an obligation to seek Best Value for the Council;
- 1.3.2. All contracts let by or on behalf of the Council must be done so in a proportionate manner that demonstrates compliance with the Fundamental Principles to all parties having an interest in that procedure;
- 1.3.3. Any overriding requirements of the Procurement Legislation and any other UK or Scottish Legislation or Statutory Guidance on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts;
- 1.3.4. The remainder of the council's governance scheme, in particular the Scheme of Delegation and the Financial Regulations;
- 1.3.5. The Council's Procurement Working Instructions;
- 1.3.6. All procurements will comply with these Procurement Procedures Standing Orders.

1.4. Value Guidance

To determine the value of a Contract officers shall look at the total value of the requirement (if a one-off). Where there is an ongoing requirement then the 4-year cost should be considered (regardless of the duration of the proposed contract).

- Contract requirements must not be split, nor the estimated value set unjustifiably low, to avoid the provisions of the Public Contracts (Scotland) Regulations 2015. It is not legal to disaggregate a requirement specifically to avoid the intended procurement procedure i.e. you must not break a requirement up into smaller values or shorter duration contracts just to avoid advertising, or undertaking a tender process.
- When estimating the value of a Contract the Procurement Officer must consider the total aggregate value across The Council of all similar requirements for the works/ goods/ supplies/ services. If the aggregate value for all similar requirements over the Contract term equals or exceeds the relevant Regulated or GPA Threshold, then the appropriate Procurement Legislation applies to the award of each Contract;
- Even if the procurement of any such requirement is split among a number of Contracts which, taken individually, are below the Regulated and /or GPA Threshold values, each of these Contracts is subject to the Procurement Legislation in the same way as if the requirement were procured through a single large Contract;
- Breaking down or disaggregating requirements in order to avoid the necessity of exposing them to competition is prohibited as being contrary to Procurement Legislation and must not be carried out under any circumstances.
- If a proposed contract includes one or more optional extensions, the total aggregated value is the highest possible amount that could be paid under the contract should all options to extend be exercised.
- Thresholds for Works contracts only apply to specific activities constituting Works as defined by the Procurement Legislation CPV codes. Please refer to the Procurement Service to check whether a proposed procurement or contract can be defined as Works for the purposes of a procurement exercise.

1.5. Duty of Best Value in Public Services

The Council's procurements shall include the consideration of Best Value characteristics that public service organisations are expected to demonstrate, which may include the following:

- Purchase Demand Management
 - Reduce consumption
 - Consolidate spend
 - Improve specification
- Supply Base Management
 - Restructure relationships
 - Increase competition
 - Restructure supply base
- Total Cost Management
 - Optimise total supply chain costs
 - Reduce total life cycle / ownership costs

- Reduce / eliminate transactions
- Sustainable Procurement
 - Maximise sustainable opportunities
 - The requirements of the of the Climate Change Act where appropriate
 - Consider Fair Work Practices where appropriate

1.6. Climate Emergency

Public procurement in Scotland is expected to contribute to Scotland's climate change targets. The Council has declared a Climate Emergency in 2020 and has its own Climate Change Strategy.

How the Council procures goods, services and works is a key way to achieve net zero carbon emissions and respond to the Climate Emergency.

When developing strategies for procurements Council officers are expected to consider climate change in:

- whether to buy at all
- what to buy
- how to buy
- how much to buy
- end of life/recycle/reuse options

Council procurements are increasingly expected to ask bidders and suppliers to provide low carbon goods, services and works, and deliver circular solutions.

Please refer to further guidance in the Procurement Working Instructions for more information.

The Service Manager Procurement will ensure that the Council's Procurement Strategy and Service reporting align with Scottish Government requirements with regard to Climate Change as well as requirements of the Council's Climate Change Strategy.

Section 2 – Roles & Responsibilities

2.1 Scheme of Delegation

The Council has Standing Orders, including a scheme of delegation, and Financial Regulations. These set out who has authority to do what in the Council and there is specific reference to the initiation of tender processes, the acceptance of tenders and the signing of contracts above and below certain values.

The Council's Scheme of Delegation states that:

Officers shall have delegated authority to incur expenditure on behalf of the Council, including the signing of contracts and agreements to this effect, in accordance with Council policy, procurement procedures and other relevant financial procedures, as approved within the Council's Financial Regulations. All such expenditure must be within the authorised estimates of the expenditure of the Council as a whole. Only members of the Procurement Service have the authority to issue contract award/tender acceptance letters on behalf of the Council.

Officers are required to obtain authority to initiate a procurement process, in accordance with the Council's Scheme of Delegation and up to the following limits:

Table 2 – Scheme of Delegation

| Value of Goods & Services | Value of Works | Authorisation Required to initiate procurement | Form Required |
|---------------------------|----------------|---|-----------------|
| Up to £15k | Up to £15k | Any officer with relevant FAS | Under £15k form |
| £15k to £50k | £15k to £500k | Budget Holder | PID QQ |
| Above £50k | Above £500k | Where there is specific revenue or capital budget approval - Head of Service | PID |
| | | Where there is no specific revenue or capital budget approval – report to Council*. | PID |

**New, higher value requirements, those that are not within the scope of a current budget, and which have a potential duration (excluding options to extend) in excess of the Council's financial planning timeframe (usually 3 years or 5 years) approval will also be required from Council by means of a private paper which must be submitted prior to tender publication.*

Procurement Initiation for Call-Off Contracts

Call-offs from frameworks should have the appropriate PID authorisation for each Call-Off contract awarded unless the specific budget for all anticipated call-offs has been approved in advance in one PID e.g. ELC establish a bathroom adaptations framework which has a

specific budget approved at start for 50 bathrooms, in which case a shorter 'call-off' PID form can be used.

In summary, officers have authority to initiate a procurement process, without recourse to members, so long as the expenditure is below the tender threshold and/or it has been approved in the revenue or capital budget.

Officers must adhere to the Council's **Financial Authorisation Signatory Policy** and the officer authorising a procurement must have the appropriate FAS limit for the proposed spend.

2.2 Award of Contracts subsequent to PID

Once the procurement process is complete, the Service Manager Procurement has authority to enter into a contract, by approving the issue of the contract Award letter by the Procurement Service, without further recourse to members so long as the tender value is generally in line with the original estimate and/or budgeted cost (no more than 10% discretion on the budgeted cost is permitted).

If the tender value is significantly greater than the budgeted cost, outwith the discretionary 10%) then an Award cannot proceed until approval is obtained as follows:

- Where the Service area has available revenue\capital budget:
the budget holder with the appropriate FAS limit may approve the additional budget by submitting a revised PID for the requirement prior to Award of the contract.
- Where there is no revenue\capital budget available:
approval is required by report to Council or the relevant committee prior to the contract being awarded.

In the event that budget approval is not granted the procurement process shall be cancelled.

2.3 Reporting

The Procurement Service will provide a quarterly summary of contracts awarded (below the Regulated thresholds) to the Members Library. Regulated and GPA contracts will be published in the Council's publicly available contract register in accordance with the Procurement Regulations.

2.4 Roles and Responsibilities

The Service Manager Procurement shall be responsible for ensuring that roles and responsibilities for Procurement activity equal to or greater than £15k i.e. quotation and tender processes are documented in the Procurement Working Instructions and that such are regularly reviewed and updated.

2.5 Procurement Competency Levels

The Service Manager Procurement will have due regard for the Scottish Government's Procurement Competency Framework or equivalent for the levels of competency for roles within the Council with responsibility for Procurement activity.

2.6 Authorised Procurement Officers

The Council can create an extended procurement team consisting of officers throughout the Council who have responsibility for significant areas of expenditure and/or conduct procurement activities as laid out in these standing orders. There will still be appropriate support provided by the Procurement Service.

Some of the extended procurement team will also be authorised to conduct procurement activities (Authorised Procurement Officers). An APO will have had training on how to conduct procurement exercises up to a certain value, and can do so competently with minimal support from the Procurement Service.

The Council Management Team will grant authority to procure to APOs nominated by the Service Manager Procurement.

Section 3 - Procurement Process Governance

3.1 Exemptions from Scope of These Procedures

Contracts shall be exempted from the Procurement Procedures Standing Orders, for procurements with a value above the GPA Thresholds, where the relevant Head of Service and the Procurement Service has satisfied the Service Manager Governance that circumstances as set out in Regulations 7 to 18 inclusive of the Public Contracts (Scotland) Regulations 2015, apply to the procurement.

3.2 Procurement Processes (by Value\Threshold)

3.2.1 Table 3 and Table 4 set out the processes that must be followed when undertaking procurements. The process to be followed depends on the aggregate value of the Contract (as per Clause 1.4);

3.2.2 Pre-existing Contracts and Frameworks:

3.2.2.1 It is incumbent on the officer undertaking the procurement to check if there is a suitable pre-existing Contract / framework (these may include East Lothian Council, Scotland Excel, Scottish Government, Crown Commercial Services etc.) that could be used to fulfil the requirement. Where such a Contract / framework exists, it should be used unless advice and guidance from the Procurement Service indicates that an alternative procurement route represents Best Value and is compliant with the Procurement Legislation.

3.2.2.2 Information about existing Contracts / frameworks can be found in the Council's Procurement Intranet pages.

3.2.2.3 When using a pre-existing Contract/ framework the procedures set out for use of the particular Contract / framework must be followed;

3.2.2.4 Any identified or known omissions of Contracts\Frameworks must be notified to the Procurement Service for inclusion where appropriate on the Contract development pipeline or current Contracts Register;

Table 3 - Goods/ Supplies/ Services Thresholds

| Value Threshold ¹ | Process |
|--|---|
| Up to £15,000 (N.B. section 3.4 and refer to Section 4) | Make decision on basis of Best Value if no Contract/ framework exists for same/similar (good practice to obtain three quotations/evidence of firm/ fixed prices). |

1 Consider the potential total value (expenditure) of the contract over the maximum duration of the contract. Where the contract duration is not known, the value for the purposes of applying the thresholds must be based on a 4 year duration for an ongoing requirement. Refer to section 1.4 for further guidance.

| | |
|--|--|
| £15,000 to £49,999 (Refer also to clause 3.4 below) | Below Regulated Procurements Threshold procedure - obtain at least three quotations using PCS Quick Quote portal |
| £50,000 to current GPA Threshold value | Follow the procurement process for a Regulated Procurement |
| Current GPA goods/ supplies/ services threshold value | Follow the procurement process for a GPA Procurement |

3.2.3 See Clause 3.3 for Health & Social Care Thresholds and Processes

Table 4 - Works Thresholds

| Value Threshold ¹ | Process |
|---|---|
| Up to £15,000 | Make decision on basis of Best Value if no Contract/ framework exists for same/ similar (good practice to obtain three quotations/ evidence of firm/ fixed prices). |
| £15,000 to £499,999 | Obtain at least three quotations via PCS Quick Quote. Documentary evidence must be retained by the Procurement Service. |
| £500,000 to £1,999,999 | Advertise on Public Contracts Scotland – Contract Notice (i.e. Open Procedure or Restricted Procedure). See also 3.2.6 below. |
| £2,000,000 to current GPA Works threshold value | Follow the procurement process for a Regulated Procurement |
| Current GPA Works threshold value | Follow the procurement process for a GPA Procurement |

3.2.4 It is mandatory that processes stated in Tables 3 and 4 are followed for the applicable financial thresholds. However stated processes within the applicable financial thresholds may be adjusted to suit individual Service needs if they believe it is proportionate and appropriate to their business needs to have more stringent procedures in place;

3.2.5 Where a requirement is likely to be close to any threshold, advice should be sought from Procurement as to which process it is most appropriate to apply, see also the Procurement Working Instructions and SPPN 8/21 for the rules with regard to inclusion of VAT for the purposes of checking whether the GPA Procurement Threshold will apply;

3.2.6 In exceptional circumstances, a Quick Quote can be published for Works greater than £500k but less than £1M. The relevant exemption form, provided by the Procurement Service, must be completed and submitted to the Service Manager Procurement for approval.

3.2.7 Direct Purchasing (Single Source Application).

The relevant Procurement Service forms shall be completed for requests for direct purchasing (single sourcing) where these are in accordance with the following:

- 3.2.7.1 For requirements below the Regulated Contracts Threshold values direct purchasing above £15,000 without seeking quotations may be acceptable where the Service Manager Procurement is satisfied the Award meets Best Value and:
 - a. the requirement is not readily obtainable from more than one supplier, service provider, or Contractor, and it can be demonstrated that no equivalent is available; or
 - b. there is an immediate need caused by real and demonstrable emergency which creates a real risk to life, property or Council systems; or
 - c. an assessment of risk, the market place and competition has been deemed to be low; or
 - d. the prices of the goods/ supplies, services or works are wholly controlled by trade organisations or government order and it can be demonstrated that no equivalent is available; or that
 - e. the requirements are subject to intellectual property rights and it can be shown that either no suitable alternative is available, or that exposure to competition of an item covered by copyright, patent, or trademark would breach such rights. Note that where an item is described by a reference to a trade name, it must be followed by the phrase “or equivalent”;
- 3.2.7.2 Evidence justifying such direct purchasing must be provided to and agreed by the Service Manager Procurement;
- 3.2.7.3 For requirements above the Regulated Contracts Threshold value for goods/supplies/services or works, direct purchasing may be acceptable where the Procuring Officer has satisfied the Service Manager Procurement that the circumstances as set out in Regulation 6 of The Procurement (Scotland) Regulations 2016, circumstances in which a contract can be awarded without competition, apply to the procurement;
- 3.2.7.4 For requirements above the GPA Contracts Threshold value for goods/supplies/services or works, direct purchasing may be acceptable where the Procuring Officer has satisfied the Service Manager Procurement that the circumstances as set out in Regulation 33 of The Procurement (Scotland) Regulations 2015, circumstances in which a contract can be awarded without competition, apply to the procurement;
- 3.2.8 The Procurement Service may carry out procurement activity for other relevant organisations and for Services which have devolved procurement authority and where this activity occurs, out with business as usual processes for undertaking delegated procurement, the Procurement Service may charge a fee for professional services where appropriate;

3.2.9 If there are any queries or concerns about the processes to be followed then contact the Procurement Service for advice and/ or guidance.

3.3 Health and Social Care Services

3.3.1 This section shall apply to the procurement of Health and Social Care Services.

3.3.2 Contracts for Health and Social Care Services must be procured having due regard to:

- a. The Procurement Legislation;
- b. The statutory “Guidance under the Procurement Reform (Scotland) Act 2014” issued by the Scottish Government;
- c. The statutory “Guidance on the Procurement of Care and Support Services 2016 (Best-Practice)” issued by the Scottish Government.
- d. The different rules which apply to health and social care Contracts at different thresholds.

3.3.3 Where a requirement is likely to be close to a threshold, advice should be sought from Procurement as to which process it is most appropriate to apply;

3.3.4 Any competitive process must be carried out in line with the requirements of these Procurement Procedures Standing Orders and the Procurement Working Instructions.

3.4 Information Communications Technology (ICT) Related Requirements & Requirements Affecting Council Assets and Infrastructure

3.4.1 ICT

3.4.1.1 Where a proposed purchase or Tender of any value involves the use, adoption or purchase of information communication technologies (ICT), such as a digital service, software or hardware, the advice of the Council’s IT service must be sought in addition to that of the Procurement Service;

3.4.1.2 The Council’s ICT Contract(s) should be used for any Council requirements unless it can be demonstrated that it will not provide Best Value;

3.4.1.3 All requirements for ICT goods, services and solutions must follow the Council IT service’s procedures for IT Requirements and Information Governance prior to being procured.

3.4.2 Council Assets and Infrastructure

Where a proposed purchase or Tender of any value involves the installation of goods that may have an impact on Council **buildings /sites** or infrastructure, or have health and safety implications or maintenance obligations, the advice of the relevant team within the Council’s Infrastructure Division must be sought before any such goods are procured, in addition to that of the Procurement Service;

- 3.4.3 Advice, as required by Standing Orders 3.4.1 and 3.4.2, must be obtained where the expenditure of third-party funds will result in the purchase of IT equipment, alterations to Council land or buildings or require equipment to be fixed to Council land or buildings, have health or safety implications or maintenance obligations.

3.5 Consultancy Requirements

- 3.5.1 Any requirements for Consultancy with the potential to exceed £15,000 in value should be directed to the Procurement Service;
- 3.5.2 When the procurement of Consultancy is undertaken the Scottish Government's Guidance for the public sector on Use of Consultants shall be followed by the officer initiating the procurement and the Procurement Service.

3.6 Grants

- 3.6.1 Where the procurement is made using monies received in the form of a grant to the Council not only must the procurement comply with these Procurement Procedures Standing Orders but also any additional requirements imposed by the body awarding the grant;
- 3.6.2 Any request not to comply with this Standing Order must follow the process stated at Standing Order 3.3.7 (Direct Purchasing).

3.7 Procurement Working Instructions

- 3.7.1 The Procurement Working Instructions shall be maintained by the Service Manager Procurement in consultation with the Head of Finance and Head of Corporate Support;
- 3.7.2 The Procurement Working Instructions shall provide all officers with instructions and guidance on best practice for conducting procurement exercises, including appropriate templates;
- 3.7.3 The Procurement Working Instructions shall be deemed to form part of these Procurement Procedures Standing Orders for the purpose of determining whether any action is a breach of these Procurement Procedures Standing Orders.

3.8 Tender Documents

- 3.8.1 Only the latest version of templates issued by the Procurement Service should be employed. Any other template should only be used if agreed by the Service Manager Procurement;
- 3.8.2 Terms and Conditions of Contract
- 3.8.2.1 All Contracts/ frameworks entered into by the Council should be on the basis of the appropriate East Lothian Council Terms and Conditions. No amendment to Council conditions should be adopted without the agreement of the Head of

Finance and Head of Corporate Support. Where the Service Manager Governance considers that the Council's standard terms and conditions are not appropriate for a particular Contract, due to the significance or complexity, alternative terms and conditions can be used subject to the approval of the Service Manager Governance;

3.8.2.2 For works Contracts recognised industry terms and conditions of Contract e.g. I.C.E, J.C.T, NEC3 and SBCC may be used.

3.8.2.3 For call-off contracts from third party frameworks the relevant framework terms and conditions, subject to checks and approval by the Procurement Service, may be used.

3.9 Late Tenders

Tenders and quotations received after the closing date and time stipulated for return of Tenders, or Tenders which are incomplete or in an incorrect format must not be opened or considered except with the express approval of both the Service Manager Procurement and Service Manager Governance (for the avoidance of doubt two approvals are required therefore in the case of a Service Manager not being available, approval should be sought from the Head of Finance or Head of Corporate Support instead).

3.10 Evaluation of Tenders and Quotations

3.10.1 Tenders and quotations for procurements with values above the Regulated and GPA Procurements Thresholds shall be evaluated on the basis of Most Economically Advantageous Tender (MEAT);

3.10.2 Lowest cost will only be permitted for Contracts below Regulated Contracts Thresholds and Contracts placed under frameworks where the Procurement Officer can demonstrate that Best Value has already been established and the Procurement Working Instructions allow for lowest cost;

3.10.3 The evaluation process must be fully and appropriately documented, and a record retained in all cases.

3.11 Form, Acceptance, Award and Termination of Contracts

3.11.1 Except in circumstances where the Head of Corporate Support and the Head of Finance agree otherwise, every Contract shall be:

- a. In the name of East Lothian Council; and
- b. Awarded by Procurement Officer (or APO); and
- c. Entered on the Council Contracts Register
- d. Subject to the law of Scotland and the exclusive jurisdiction of the Scottish Courts. In the case of a call-off contract, from a Framework which is not subject Scots Law and does not permit a change in the applicable law or legal jurisdiction then such call-off contract shall be subject to the law of England and the exclusive jurisdiction of the English Courts.

- 3.11.2 The Procurement Officer shall retain a copy of the Contract, keep proper records of all Contracts and Tenders and record where they are stored, and ensure the Council's Contracts Register is updated;
- 3.11.3 The Service Manager Procurement in consultation with Service Manager Governance may terminate or suspend a Contract, in accordance with the express or implied terms of the Contract, and may also take such further action with regard to any Contract as the Council is legally entitled to take. For Regulated or GPA Contracts, approval shall be sought from the relevant Head of Service.

3.12 Contract Variation/Extension

- 3.12.1 The relevant Head of Service may authorise an extension to a Contract, or any other variation, including a consequent change in price, provided such extension or variation has been provided for in the initial Procurement Documents including the PID and contract documentation, and is not contrary to the Procurement Legislation;
- 3.12.2 A Contract shall not be extended, modified or amended if such extension or variation is not expressly permitted by the Contract, without seeking advice from the Service Manager Procurement or Service Manager Governance;
- 3.12.3 Where a Contract, subject to the Procurement Legislation, does not include provision for an extension or variation then the relevant Procurement Extension or Variation Form (or equivalent) shall be completed by the Procurement Service and the officer initiating the procurement, and agreed by the relevant Head of Service and the Service Manager Procurement.

3.13 Contract Novation and Assignment

- 3.13.1 In every Contract, there shall be included a provision whereby the Contractor shall be prohibited from transferring, novating or assigning to any person or persons whatever, any portion of the Contract without the prior written consent of the Council;
- 3.13.2 The Service Manager Procurement and/or Service Manager Governance shall have the power to consent on behalf of the Council to the assignment of a Contract;
- 3.13.3 The assignment, novation or sub-contracting of any part of a Contract except to the extent permitted in writing by the Service Manager Procurement or Service Manager Governance, shall be prohibited.

3.14 Contracts Register

The Service Manager Procurement shall maintain a register of all Contracts awarded by East Lothian Council as required by the Procurement Reform (Scotland) Act 2014.

3.15 Strategic Review of Service Provision

Where a Service plans to undertake a strategic review of their service provision, the Service Manager Procurement should be contacted at the outset of any such review to ensure that any relevant procurement issues are identified and addressed.

3.16 Community Benefits Requirement

The Procurement Service and the officer initiating the procurement shall include of Community Benefits requirements within the procurement process for all procurements over £50k in total value except where the Service Manager Procurement agrees that such requirements would not be proportionate or otherwise practical to include within the procurement process.

3.17 Procurement Strategy and Annual Report

The Service Manager Procurement shall prepare a Procurement Strategy, in consultation with Council management and relevant stakeholders, in accordance with the current Scottish Government guidance and ensure that data is captured by the Procurement Service to facilitate reporting to the Scottish Government.

3.18 Compliance with Procurement Strategy

The appropriate Executive Director shall carry out all Regulated and GPA Procurements, so far as reasonably practicable, in accordance with the Procurement Strategy applicable to the financial year during which the procurement exercise commenced.

Section 4 – Delegated Quotation Process for Low Value (And Low Risk) Purchases

4.1 Conducting Low Value\Low Risk Quotation Process (Under £15k form)

Officers may have delegated authority to conduct their own procurement activity for purchases below £15k where the Under £15k form is completed and the following criteria are met:

- The officer completes the Under £15k form prior to any purchase being made or order being placed with a supplier.
- The officer can make a decision on basis of Best Value. If no Contract\Framework exists for the same\similar goods it is good practice to obtain three quotations with evidence of firm\fixed prices.
 - Before proceeding, the officer should check SupplierFinder on ELNET and\or contact the Procurement Service to check if there is an existing contract that could be used for the requirement.
- The officer retains evidence of how the purchase\supplier decision was made along with the completed Under £15k form for audit purposes.
- The form is authorised by an officer with the correct level of financial authorisation in accordance with the Council Standing Orders.
- The officer follows the guidance included within the Under £15k form.
- Where the selected supplier is not already on the Council's finance system, the officer completes the New Supplier Request Form process **prior to raising any purchases or orders.**

The officer does not proceed with any purchases or orders if:

- Market analysis indicates that the price is likely to be greater than £15k
- Completing the Under £15k form Confirmation and Screening sections indicates that there are additional risk factors in the purchase – in which case the officer must contact the Procurement Service in the first instance.
- Purchases are to be made via a Framework Agreement that the Council is permitted to utilise.

Where a requirement is likely to be close to the low value\low risk procurement threshold or a recurring requirement, advice should be sought from Procurement.

Officers must refer to the Financial Authorisation Signatory Policy (available on ELNET) which stipulates that at least 2 people must be involved in all financial transactions, i.e., one to prepare (requisitioner) and one to authorise (approver) – please refer to the Finance section on ELNET for further guidance on ordering procedures.

Appendix A – Glossary

| Term | Definition |
|---|---|
| Authorised Procurement Officer (APO) | A member of the extended Council procurement team trained and authorised to conduct procurement activities. |
| Award | A decision to accept a tenderer's offer to supply / provide specified goods/services/works according to agree terms & conditions thereby creating a legally binding contract |
| Best Value | The duty under the Local Government Act in Scotland 2003 to secure continuous improvement in the economy, efficiency and effectiveness with which they exercise their functions. |
| Call-off contracts | Agreements, sometimes called framework contracts, without full commitment. The undertaking is that all requirements of the specified nature which are required during the duration of the agreement, will order from these contracts / agreements. Also known as preferred supplier list. |
| Community Benefits | Requirements which deliver wider benefits in addition to the core purpose of a contract. These can relate to jobs, training and other social-economic and/or environmental benefits |
| Contract | An agreement concluded between the council and the supplier that is legally binding, containing terms of the agreement, any schedules and appendices, the Tender Specification and any other specifications, drawings, official purchase order(s) and other documents which are relevant to the Contract |
| Contract Notice | Advert to invite applicants to express interest & apply to tender, or to be pre-qualified. |
| Contractor\Supplier | An entity who supplies goods or provides services or execution of works. |
| CPV | Common Procurement Vocabulary. A set of standard definitions of services, suppliers or works for notices (adverts) in the FTS or PCS. |
| Framework agreements | Arrangements (sometimes referred to as standing offers) in which terms & conditions are agreed, and the client may or may not subsequently place orders (no commitment). Also a consortium can agree terms & conditions and the members may subsequently place orders. |
| Find a Tender Service (FTS) | UK e-notification system called Find a Tender Service (FTS) |
| Fundamental Principles | <ul style="list-style-type: none"> • Transparency - contract procedures must be transparent and contract opportunities should generally be publicised; • Equal treatment and non-discrimination - potential suppliers must be treated equally; • Proportionality - procurement procedures and decisions must be proportionate; |

| | |
|--|--|
| | <ul style="list-style-type: none"> • Mutual recognition – giving equal validity to qualifications and standards from other States where appropriate. |
| GPA | Agreement on Government Procurement |
| GPA Thresholds | The Threshold amounts are reviewed every two years. The GPA Thresholds in accordance with Regulations 5 and 5A of The Public Contracts (Scotland) Regulations 2015 are published by the Scottish Government. |
| MEAT | Most economically advantageous tender. Common phrase used to indicate that the tender will not be only based on lowest price. |
| Net Zero | The term net zero means achieving a balance between the carbon emitted into the atmosphere, and the carbon removed from it. This balance – or net zero – will happen when the amount of carbon we add to the atmosphere is no more than the amount removed. |
| Notice | Advert |
| Open Procedure | A procedure whereby anyone can tender. A one-step process |
| Public Contracts Scotland (PCS) | The advertising portal provided by the Scottish Government for the advertising of public contract opportunities using a Contract Notice, and for the award of contracts via a Contract Award Notice. |
| Procurement Legislation | The Procurement (Scotland) Regulations 2016, The Public Contracts (Scotland) Regulations 2015 and the Procurement Reform (Scotland) Act 2014 (“The Act”). |
| Procurement Service | The Council’s Corporate Procurement Team |
| Procurement Strategy | A document required as part of Scottish Procurement Regulations that sets out how the council intends to carry out its regulated procurements i.e. procurements with an estimated value equal to or greater than £50,000 (excluding VAT) for supplies for supplies & services (or £2,000,000 excluding VAT for a public works contract). |
| PID | Procurement Initiation Document |
| Quick Quote (QQ) | Quick Quote is a part of Public Contracts Scotland which allows Buyers to obtain competitive quotes for low value or low risk procurements. QQs are created through the Notice creation wizard and distributed to a select list of suppliers. Buyers can filter and select the suppliers to invite to quote. QQs are only distributed to the suppliers the Buyer selects and are not made public on the portal. The selected suppliers can provide the requested details and submit a quotation using the electronic postbox feature on PCS. |
| Restricted procedure | A procurement procedure whereby there are 2 steps: selection of suitable candidates, and then evaluation of tenders from the short-listed tenderers. |
| Specification | The part of the invitation to quote or invitation to tender which details the nature and quality of the goods, services or works |

| | |
|--------------------------------|---|
| Sustainable procurement | A process whereby organisations meet their needs for supplies, services, works and utilities in a way that achieves value for money on a whole life basis and generates benefits, not only for the organisation but also to society, the economy and the environment. |
| Tender | An offer, or bid, by a tenderer in response to an invitation to tender (ITT) or a mini-tender in a framework agreement |
| Variation [to contract] | The contract terms should allow for the client or contractor to request a variation, post -award. This could be a variation to the specification, core list, price etc. It is good practice to have a "Variation to Contract Form" which is the only means by which the contract can be varied. |
| Works | The term used in the Procurement Legislation for a building or civil engineering project or piece of work and as defined by CPV codes in Schedule 1 of The Public Contracts (Scotland) Regulations 2015 |

Code of Conduct for Councillors

December 2021

CODE OF CONDUCT FOR COUNCILLORS

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SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

1.1 This Code has been issued by the Scottish Ministers, with the approval of the Scottish Parliament, as required by the Ethical Standards in Public Life etc.(Scotland) Act 2000 (the “Act”).

1.2 The purpose of the Code is to set out the conduct expected of every elected member of a local authority in Scotland.

1.3 The Code is also directed at co-opted members of committees and sub-committees who are not elected councillors, including religious representatives on Education Committees.

1.4 The Code has been developed in line with the nine key principles of public life in Scotland. The principles are listed in Section 2 and set out how the provisions of the Code should be interpreted and applied in practice.

My Responsibilities

1.5 I understand that the public has a high expectation of councillors and the way in which they should conduct themselves in undertaking their duties. I will always seek to meet those expectations by ensuring that I conduct myself in accordance with the Code.

1.6 I will comply with the substantive provisions of this Code, being sections 3 to 7 inclusive and Annex A, in all situations and at all times where I am acting as a councillor, have referred to myself as a councillor or could objectively be considered to be acting as a councillor.

1.7 I will comply with the substantive provisions of this Code, being sections 3 to 7 inclusive and Annex A, in all my dealings with the public, employees and fellow councillors, whether formal or informal.

1.8 I understand that it is my personal responsibility to be familiar with the provisions of the Code and that I must also comply with the law and my council’s rules, standing orders and regulations. I will also ensure that I am familiar with any guidance or advice notes issued by the Standards Commission for Scotland (“Standards Commission”) and my council, and endeavour to take part in any training offered on the Code.

1.9 I will not, at any time, advocate or encourage any action contrary to the Code.

1.10 I understand that no written information, whether in the Code itself or the associated Guidance or Advice Notes issued by the Standards Commission, can provide for all circumstances. If I am uncertain about how the Code applies, I will seek advice from my council’s Monitoring Officer or other senior council employees. I note that I may also choose to seek external legal advice on how to interpret the provisions of the Code.

Enforcement

1.11 Part 2 of the Act sets out the provisions for dealing with alleged breaches of the Code, including the sanctions that can be applied if the Standards Commission finds that there has been a breach of the Code. More information on how complaints are dealt with and the sanctions available can be found at Annex C.

SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT

2.1 The Code has been based on the following key principles of public life. I will behave in accordance with these principles and understand that they should be used for guidance and interpreting the provisions in the Code.

2.2 I note that a breach of one or more of the key principles does not in itself amount to a breach of the Code. I note that, for a breach of the Code to be found, there must also be a contravention of one or more of the provisions in sections 3 to 7 inclusive and Annex A of the Code.

The key principles are:

Duty

I have a duty to uphold the law and act in accordance with the law and the public trust placed in me. I have a duty to act in the interests of my council as a whole and all the communities served by it and a duty to be accessible to all the people of the area for which I have been elected to serve, and to represent their interests conscientiously.

Selflessness

I have a duty to take decisions solely in terms of the public interest. I must not act in order to gain financial or other material benefit for myself, family or friends.

Integrity

I must not place myself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence me in the performance of my duties.

Objectivity

I must make decisions solely on merit when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

Accountability and Stewardship

I am accountable to the public for my decisions and actions. I have a duty to consider issues on their merits, taking account of the views of others, and I must ensure that my council uses its resources prudently and in accordance with the law.

Openness

I have a duty to be as open as possible about my decisions and actions, giving reasons for my decisions and restricting information only when the wider public interest clearly demands.

Honesty

I have a duty to act honestly. I must declare any private interests relating to my public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

I have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of my council and its councillors in conducting public business.

Respect

I must respect all other councillors and all council employees and the role they play, treating them with courtesy at all times. Similarly, I must respect members of the public when performing my duties as a councillor.

SECTION 3: GENERAL CONDUCT

Respect and Courtesy

3.1 I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.

3.2 I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; I will advance equality of opportunity and seek to foster good relations between different people.

3.3 I will not engage in any conduct that could amount to bullying or harassment (which includes sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.

3.4 I accept that disrespect, bullying and harassment can be:

- a) a one-off incident,
- b) part of a cumulative course of conduct; or
- c) a pattern of behaviour.

3.5 I understand that how, and in what context, I exhibit certain behaviours can be as important as what I communicate, given that disrespect, bullying and harassment can be physical, verbal and non-verbal conduct.

3.6 I accept that it is my responsibility to understand what constitutes bullying and harassment and I will utilise resources, including the Standards Commission's guidance and advice notes, council policies and training material (where appropriate) to ensure that my knowledge and understanding is up to date.

3.7 I will not become involved in operational management of my council's services as I acknowledge and understand that is the responsibility of its employees.

3.8 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public.

3.9 I will not take, or seek to take, unfair advantage of my position in my dealings with employees or bring any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.

3.10 I will follow the Protocol for Relations between Councillors and Employees at [Annex A](#) and note that a breach of the Protocol will be

considered a breach of this Code. I will also comply with any internal protocol the Council has on councillor / employee relations.

3.11 I will respect and comply with rulings from the chair or convener during meetings of:

- a) the Council, its committees or sub-committees; and
- b) any outside organisations that I have been appointed or nominated to by the Council or that I represent my council on.

Remuneration, Allowances and Expenses

3.12 I will comply with the rules, and my council's policies, on the payment of remuneration, allowances and expenses.

Gifts and Hospitality

3.13 I understand that I may be offered gifts (including money raised via crowdfunding or sponsorship), hospitality, material benefits or services ("gift or hospitality") that may be reasonably regarded by a member of the public with knowledge of the relevant facts as placing me under an improper obligation or being capable of influencing my judgement.

3.14 I will never **ask for** or **seek** any gift or hospitality.

3.15 I will refuse any gift or hospitality, unless it is:

- a) a minor item or token of modest intrinsic value offered on an infrequent basis;
- b) a civic gift being offered to the Council;
- c) hospitality which would reasonably be associated with my duties as a councillor or as a member of an arm's length external organisation to which I have been appointed or nominated by my council ("ALEO"); or
- d) hospitality which has been approved in advance by my council or the ALEO.

3.16 I will consider whether there could be a reasonable perception that any gift or hospitality received by a person or body connected to me could or would influence my judgement.

3.17 I will not allow the promise of money or other financial advantage to induce me to act improperly in my role as a councillor. I accept that the money or advantage (including any gift or hospitality) does not have to be given to me directly. The offer of monies or advantages to others, including community groups, may amount to bribery, if the intention is to induce me to improperly perform a function.

3.18 I will never accept any gift or hospitality from any individual or applicant who is awaiting a decision from, or seeking to do business with, my council.

3.19 If I consider that declining an offer of a gift would cause offence, I will accept it and hand it over to the Council at the earliest possible opportunity and ask for it to be registered.

3.20 I will promptly advise my council's Monitoring Officer if I am offered (but refuse) any gift or hospitality of any significant value and / or if I am offered any gift or hospitality from the same source on a repeated basis, so that my council can monitor this.

Confidentiality

3.21 I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or private nature, without the express consent of a person or body authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain such express consent, I will assume it is not given.

3.22 I accept that confidential information can include discussions, documents, information which is not yet public or never intended to be public, and information deemed confidential by statute.

3.23 I will only use confidential information to undertake my duties as a councillor. I will not use it in any way for personal or party-political advantage or to discredit my council (even if my personal view is that the information should be publicly available).

Use of Council Resources

3.24 I will only use council resources, including employee assistance, facilities, stationery and IT equipment, for carrying out council duties in accordance with all my council's relevant policies.

3.25 I will not use, or in any way enable others to use, council resources:

- a) imprudently (without thinking about the implications or consequences);
- b) unlawfully;
- c) for any party political or campaigning activities or matters relating to these;
or
- d) improperly.

Dealings with my council and Preferential Treatment

3.26 I will not use, or attempt to use, my position or influence as a councillor to:

- a) improperly confer on or secure for myself, or others, an advantage;
- b) avoid a disadvantage for myself, or create a disadvantage for others; or
- c) improperly seek preferential treatment or access for myself or others.

3.27 I will avoid any action which could lead members of the public to believe that preferential treatment or access is being sought.

3.28 I will advise employees of any connection, as defined at Section 5, I may have to a matter, when seeking information or advice or responding to a request for information or advice from them.

3.29 I will not participate in certain decisions concerning Council Tax if I am in arrears of two months or more in respect of the payment of Council Tax.

Appointments to Outside Organisations

3.30 If I am appointed or nominated by the Council as a member of another body or organisation, I will abide by the rules of conduct and will act in the best interests of that body or organisation while acting as a member of it. I will also continue to observe the rules of this Code when carrying out the duties of that body or organisation.

3.31 I accept that if I am a director or trustee (or equivalent) of a company or a charity, as a nominee of my Council, I will be responsible for identifying, and taking advice on, any conflicts of interest that may arise between the company or charity and my council.

SECTION 4: REGISTRATION OF INTERESTS

4.1 The following paragraphs set out what I have to register, when I am elected and whenever my circumstances change. The register will cover the period commencing from 12 months prior to, and including, my current term of office.

4.2 I understand that regulations made by the Scottish Ministers describe the detail and timescale for registering interests, including a requirement that a councillor must register their registrable interests within one month of becoming a councillor, and register any changes to those interests within one month of those changes having occurred.

4.3 The interests which I am required to register are those set out in the following paragraphs. Other than as required by paragraph 4.23, I understand it is not necessary to register the interests of my spouse or cohabitee.

Category One: Remuneration

4.4 I will register any work for which I receive, or expect to receive, payment or reward. I have a registrable interest where I receive remuneration by virtue of being:

- a) employed;
- b) self-employed;
- c) the holder of an office;
- d) a director of an undertaking;
- e) a partner in a firm;
- f) appointed or nominated by my council to another body; or
- g) engaged in a trade, profession or vocation, or any other work.

4.5 I do not have to register any sums I receive in expenses, allowances or remuneration from my council for work I undertake in my capacity as a councillor.

4.6 I understand that if a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under Category Two "Other Roles".

4.7 I must register any allowances I receive in relation to membership of any organisation under Category One.

4.8 When registering employment as an employee, I must give the full name of my employer, the nature of its business and the nature of the post I hold in the organisation.

4.9 When registering remuneration from the categories listed in paragraph 4.4 (b) to (g) above, I must provide the full name and give details of the nature of the business, organisation, undertaking, partnership or other body, as appropriate.

4.10 Where I otherwise undertake a trade, profession or vocation, or any other work, I must include information about the nature of the work and how often it is undertaken.

4.11 When registering a directorship, I must provide the registered name and registered number of the undertaking in which the directorship is held and provide information about the nature of its business.

4.12 I understand that registration of a pension is not required as this falls outside the scope of the category.

Category Two: Other Roles

4.13 I will register any unremunerated directorships where the body in question is a subsidiary or parent company of an undertaking in which I hold a remunerated directorship.

4.14 I will register the registered name and registered number of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which I am a director and for which I receive remuneration.

Category Three: Contracts

4.15 I have a registrable interest where I (or a firm in which I am a partner, or an undertaking in which I am a director or in which I have shares of a value as described in paragraph [4.20](#) below) have made a contract with my council:

- a) under which goods or services are to be provided, or works are to be executed; and
- b) which has not been fully discharged.

4.16 I will register a description of the contract, including its duration, but excluding the value.

Category Four: Election Expenses

4.17 I will register any single donation of more than £50, or any donations from the same source that together amount to more than £50, towards election expenses received by me, or on my behalf within the period commencing from 12 months prior to, and including, my current term of office.

Category Five: Houses, Land and Buildings

4.18 I have a registrable interest where I own or have any other right or interest in houses, land and buildings in Scotland, such as being an owner or a tenant, including a council tenant.

4.19 I understand I am only required to provide details of the council ward in which the property is located for the publicly available Register of Interests. I will, however,

provide the full address of the property to my council's Monitoring Officer (or their nominee), but understand this will be kept confidential.

Category Six: Interest in Shares and Securities

4.20 I have a registrable interest where:

- a) I own or have an interest in more than 1% of the issued share capital of the company or body; or
- b) Where, at the relevant date, the market value of any shares and securities (in any one specific company or body) that I own or have an interest in is greater than £25,000.

Category Seven: Gifts and Hospitality

4.21 I understand the requirements of paragraphs 3.13 to 3.20 regarding gifts and hospitality. As I will not accept any gifts or hospitality, other than under the limited circumstances allowed, I understand there is no longer the need to register any.

Category Eight: Non-Financial Interests

4.22 I may also have other interests and I understand it is equally important that relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, I understand non-financial interests are those which members of the public with knowledge of the relevant facts might reasonably think could influence my actions, speeches, votes or decision-making in my council (this includes its Committees and memberships of other organisations to which I have been appointed or nominated by my council).

Category Nine: Close Family Members

4.23 I will register the interests of any close family member who has transactions with my Council or is likely to have transactions or do business with it.

SECTION 5: DECLARATION OF INTERESTS

Stage 1: Connection

5.1 For each particular matter I am involved in as a councillor, I will first consider whether I have a connection to that matter.

5.2 I understand that a connection is any link between the matter being considered and me, or a person or body I am associated with. This could be a family relationship or a social or professional contact.

5.3 A connection includes anything that I have registered as an interest.

5.4 A connection does not include:

- a) being a Council Tax or rate payer or a council house tenant or in general when services delivered to members of the public are being considered, including the setting of budgets, taxes and rates and fixing of council house rents;
- b) being a councillor when councillors' remuneration, allowances, expenses, support services or pensions are being considered; or
- c) being a member of an outside body to which I have been appointed or nominated by my council as a councillor representative unless:
 - (1) the matter being considered by my council is quasi-judicial or regulatory; or
 - (2) I have a personal conflict by reason of my actions, my connections or my legal obligations.

Stage 2: Interest

5.5 I understand my connection is an interest that requires to be declared where the objective test is met – that is where a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to influence the discussion or decision-making.

Stage 3: Participation

5.6 I will declare my interest as early as possible in meetings. I will not remain in the meeting nor participate in any way in those parts of meetings where I have declared an interest.

5.7 I will consider whether it is appropriate for transparency reasons to state publicly where I have a connection, which I do not consider amounts to an interest.

5.8 I note that I can apply to the Standards Commission and ask it to grant a dispensation to allow me to take part in the discussion and decision-making on a matter where I would otherwise have to declare an interest and withdraw (as a result of having a connection to the matter that would fall within the objective test). I note that such an application must be made in advance of any meetings where the

dispensation is sought and that I cannot take part in any discussion or decision-making on the matter in question unless, and until, the application is granted.

SECTION 6: LOBBYING AND ACCESS

6.1 I understand that a wide range of people will seek access to me as a councillor and will try to lobby me, including individuals, organisations, companies and developers. I must distinguish between:

- a) my representative role in dealing with constituent enquiries;
- b) any community engagement where I am working with individuals and organisations to encourage their participation and involvement; and
- c) lobbying, which is where I am approached by any individual or organisation who is seeking to influence me for financial gain or advantage, particularly those who are seeking to do business with my council (for example contracts/procurement) or who are applying for a consent from my council.

Constituent enquiries

6.2 I will comply with data protection legislation, which includes keeping the personal information of any constituent secure and only, in general, using it for the purpose of assisting with the enquiry. I will seek the constituent's consent in advance if I am in a multi-member ward and feel it is more appropriate for another councillor to handle the enquiry. I note that there may be circumstances in which it is best not to respond to a constituent, and that I am not obliged by the Code to respond to every contact.

Community engagement

6.3 I will undertake such work in an open and transparent manner. I will not express an opinion on a quasi-judicial or regulatory application that I might later be asked to determine. I accept that if I do express such an opinion, I will have to declare an interest and will not be able to take part in the decision-making.

Lobbying

6.4 In deciding whether, and if so how, to respond to such lobbying, I will always have regard to the objective test, which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard my conduct as being likely to influence my, or my council's, decisions.

Lobbying in Quasi-judicial or Regulatory Matters

6.5 If I am approached directly by an individual or organisation who is seeking to do business with my council or who is involved in a quasi-judicial or regulatory matter (such as an applicant or an objector),

I WILL:

- a) have regard to Section 7 of this Code;
- b) advise that individual or organisation that I cannot formulate an opinion or support their position if I am going to take part in the decision-making on the matter; and
- c) direct any representations I receive to the appropriate council employee or department.

I WILL NOT:

- d) lobby or otherwise exert pressure or influence on employees, other councillors, or members of a quasi-judicial or regulatory committee, to recommend or make a specific decision in respect of a quasi-judicial or regulatory matter. I understand that I am entitled to seek information from employees but that I must not lobby them, to either make or recommend a particular decision.
- e) use political group meetings to decide how I and other councillors should vote on such matters or on individual staffing issues, such as the appointment or discipline of an employee.
- f) comply with political group decisions on such matters if these differ from my own views.

Introduction

7.1 I need to be especially vigilant when I am making a decision on a quasi-judicial or regulatory application. For these applications, I need to ensure there is a proper and fair hearing of the application and I must avoid any impression of bias in the whole decision-making process.

7.2 I will deal with many types of quasi-judicial or regulatory applications. Depending on the type of application that is made, there will be often be a formal, statutory decision-making process for its consideration and outcome. There may also be formal legal routes to challenge decisions made on these applications and for this reason I must be aware that my own personal responsibility to ensure a proper and fair hearing has wider consequences for my council's reputation and financial liabilities in the event of any challenge.

7.3 Quasi-judicial or regulatory decisions typically involve:

- a) Planning or other applications in terms of planning legislation;
- b) Applications for alcohol licensing matters;
- c) Applications for betting and gaming premises;
- d) Applications for taxi licences and all other forms of civic licensing;
- e) Actions where my council is involved in any form of statutory enforcement procedure;
- f) Any actions where my council is an employer and is involved in any disciplinary issues that I may have a remit to deal with;
- g) Any procedures for statutory approval or consent involving my council and where I have a remit to deal with the matter;
- h) Any appeal procedure where my council has a role and where I am expected to adjudicate on applications, for example an Education Appeals Committee for school placements or school exclusions.

The above list is provided to me only for guidance and is not exhaustive. If I have any doubt as to whether or not my involvement involves a quasi-judicial or regulatory matter I will seek the advice of my council's Monitoring Officer.

Quasi-Judicial and Regulatory Matters

7.4 In dealing with these applications,

I WILL:

- a) throughout my involvement with the entire application process act fairly and be seen to act fairly;
- b) declare interests where required in terms of Section 5 of this Code and leave the meeting until the matter has been determined;
- c) deal fairly and impartially with all parties involved in the application;

- d) tell those who may be seeking to influence me out with the proper decision-making process that I will not formulate an opinion on any particular application until all information is available to all decision-makers and has been duly considered at the relevant meeting;
- e) take into account professional advice given to me by council employees; and
- f) seek advice from the relevant council employee if I am in doubt as to any material or relevant considerations.

7.5 In dealing with such applications,

I WILL NOT:

- a) pre-judge or demonstrate bias or be seen to pre-judge or demonstrate bias;
- b) indicate or imply support for or opposition to an application nor indicate my voting intention prior to the appropriate meeting where the application will be considered;
- c) in advance of the decision-making meeting, attempt to influence employees to adopt a particular position as that would imply that I am prejudiced in my decision-making;
- d) lobby other councillors who may be dealing with the application;
- e) express any view on the application before the appropriate meeting where the application will be considered. If I do so I will not participate in any aspect of the decision-making nor vote on the application;
- f) formulate my conclusions on an application until all available information is to hand and has been duly considered by me at the meeting where the application will be considered;
- g) express any indicative or provisional views in the course of my involvement in any aspect of the application; or
- h) otherwise act improperly or do anything which could reasonably create a perception that I have acted improperly.

Policy and Strategy

7.6 My role in policy and strategic issues may have a very wide relevance to my council area. For example, I have a key role in establishing policies for the benefit of my council's area and I am fully entitled to express my genuinely held views or to advocate proposals for the adoption of key guidance. It is entirely appropriate that I can express my views on matters of such general importance to my council area.

7.7 When I am being asked to develop a policy and set a strategy that forms the framework under which individual applications may subsequently be decided, I understand that I can discuss or debate these items of policy or strategy. However, I will only take into account material considerations affecting the policy or strategic issue and will have regard to the requirement for the adoption of the policy or strategy to be based on facts and evidence.

7.8 For policy and strategic issues under which individual applications may subsequently be decided,

I WILL:

- a) be able to express my views;
- b) be able to advocate proposals that I consider to be of benefit to my council area;
- c) have regard to the evidence-base behind the formulation of the policy or strategy in question.

I WILL NOT:

- d) do anything or be motivated to do anything that is connected or linked in any way with my personal involvement in a policy or strategic issue;
- e) express any view that suggests I have a closed mind on the policy or strategic issue regardless of any material considerations affecting that issue.

Representation

7.9 If I intend to be involved in the decision-making for any quasi-judicial or regulatory application,

I WILL NOT:

- a) organise support for or opposition to the application in any way;
- b) represent or appear to represent individuals or groups who are seeking to make representations for or against an application; or
- c) compromise myself or my Council by creating a perception of a conflict of interest.

7.10 In circumstances where I am a member of a Committee as a decision-maker but have been involved in organising support for or opposition to an application,

I WILL:

- a) declare an interest in the matter, and
- b) withdraw from the meeting without participating in the consideration of the matter.

7.11 In circumstances where I am a member of a Committee as a decision-maker but wish to represent individuals or groups who are seeking to make representations for or against an application,

I WILL:

- a) follow procedures agreed by my council which afford equal opportunity to any parties wishing to make representations to do so;

- b) declare an interest in the matter; and
- c) only remain in the meeting, while that item is being discussed, for the purposes of acting as the representative of the individual or group throughout the duration of their participation.

I WILL NOT:

- d) participate or attempt to participate as a decision-maker in that application;
- e) attempt to influence employees to adopt any particular position relative to the matter; or
- f) lobby other councillors who may be involved in the decision-making process.

7.12 In circumstances where I am **not** a member of any Committee which is making a decision on an application, but wish to represent individuals or groups who are seeking to make representations for or against it,

I WILL:

- a) follow procedures agreed by my council which afford equal opportunity to any parties wishing to make representations to do so; and
- b) only remain in the meeting for that item for the purposes of acting as the representative of the individual or group throughout the duration of their participation.

I WILL NOT:

- c) participate or attempt to participate as a decision-maker in that application;
- d) attempt to influence employees to adopt any particular position relative to the matter; or
- e) lobby other councillors who may be involved in the decision-making process.

Site Visits

7.13 In respect of any site visits that have been decided upon or agreed by the Committee as a stage in the consideration of the application,

I WILL:

- a) follow my council's procedures for such visits as set out by my council and that with regard to any legislative requirements or notes of guidance or practice;
- b) remember that such site visits are part of the decision-making process and as such are formal in nature and may have procedures as set out by my council.

Enforcement

7.14 In my role, I may become aware whether by complaint or by direct knowledge of the need for council intervention by way of appropriate enforcement action. In this event, I will refer the matter for investigation to the appropriate service of my council.

I WILL ALSO:

- a) advise all subsequent enquirers to deal directly with the relevant employee of the Council department;
- b) be able to request factual information about the progress of the matter from the relevant employee.

I WILL NOT:

- c) lobby for a particular outcome;
- d) get involved in the operational detail of any enforcement actions which are subsequently taken by my council.

ANNEX A

PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES

Definitions

The reference to 'employees' below covers all employees and officers of councils and all officers and employees of any other body or organisation to which a councillor is appointed or nominated by the Council.

The reference to 'Convener' below covers all committee chairs and portfolio leads.

The reference to 'chief officers' covers all Chief Executives, Directors and Heads of Service.

The reference to 'committee' also covers all forms of executive and scrutiny operating models.

Principles

1. This protocol outlines the way in which councillors and employees should behave towards one another. It should be noted that while some scenarios are included, these are not exhaustive. The protocol should be treated, therefore, as applying in all situations where there is interaction between councillors and employees.
2. Councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position or influence.

Roles

3. Councillors are required to provide strategic leadership and oversight. This involves setting strategy and policy, scrutinising and making major, complex decisions that concern the Council as a whole. Councillors are not, however, responsible for operational management (being the planning, organising and execution involved in day to day activities) as this is the role of employees. Chief Executives and senior employees have ultimate responsibility to ensure that the Council meets its responsibilities.
4. Legally, employees are employed by the Council / other body and are accountable to it as an entity. Employees are responsible for serving the Council / other body as a whole, and not any particular political group, combination of groups or individual councillor. It is nevertheless appropriate for employees to be called upon to assist any political group in its deliberations or to help individual councillors fulfil their different roles (see the section on political groups below).

Office bearers

5. For the Council to perform effectively, it is important that there is a close professional working relationship between a committee convener and the director

and other senior employees of any service reporting to that committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question an employee's ability to deal with other councillors impartially, or the ability of a convener to deal with other employees impartially.

6. Conveners will have many dealings with employees. While employees should always seek to assist committee chairs, they are ultimately responsible to the relevant chief officer and not to any convener.
7. Conveners will often be consulted on the preparation of agendas and reports. Employees will always be fully responsible, however, for the contents of any report submitted in their name and will always have the right to submit reports to councillors on their areas of professional competence. The Convener does not have a right to veto this course of action.
8. Conveners are recognised as the legitimate elected spokesperson on their committee's area of responsibility. Where authority is delegated to employees, they may choose to consult the relevant convener about any action they propose to take. The employee nevertheless retains responsibility for the final decision (as long as the delegated authority remains in place).

Political groups

9. Most councils operate through a system of groups of councillors, many of them based on political affiliation. All employees must treat all political groups and individual councillors in a fair and even-handed manner and must maintain political neutrality at all times.
10. Employees can provide political groups with support (such as discussing matters with the convener and vice-convener before a committee meeting or presenting information to a group meeting). While, in practice, such support is likely to be most in demand from whichever political group is in control of the Council, it nevertheless should be available to all political groups. The advice given by employees to different party or political groups should be consistent.
11. Councillors and employees must act in accordance with the council's rules about the access and support to be provided to political groups (for example, that all requests must be approved by the Chief Executive).
12. Employee support for political groups must not extend beyond providing information and advice in relation to matters of council business. Employees should not be asked, or be expected, to be present at meetings or parts of meetings when matters concerning party business are being discussed. It is the responsibility of the convener of the political group meeting to ensure that all attending are clear on the status of the meeting and the basis on which any employees are present.
13. Councillors and employees must note that while political group meetings may form part of the preliminaries to council decision-making, political groups are not

empowered to make decisions on behalf of the Council. Conclusions reached at such meetings are not council decisions and it is essential that they are not interpreted or treated as such.

14. Employees can provide information and advice in relation to matters of council business to political groups. Employees are nevertheless responsible for ensuring that all necessary information and advice is still provided to the relevant committee or sub-committee when the matter in question is considered.
15. Political groups must recognise that information and advice given by employees should be used to enhance discussion and debate at council and committee meetings. Such information or advice should not be used for political advantage (for example by issuing media briefings before a decision is made), as doing so could devalue the decision-making process and can place employees in a difficult position.
16. Employees should take special care when providing information and advice to a meeting of a political group where other individuals who are not elected members of the Council are in attendance, as such individuals will not be bound by the Councillors' Code (and, in particular, the provisions concerning the declaration of interests and confidentiality).
17. Employees must treat any discussions with a political group or individual councillor as being strictly confidential.
18. Any difficulties or uncertainty about the extent of advice and information that can be provided to political groups should be raised with the Chief Executive (who should then discuss the matter with the group leader).

Councillors as local representatives

19. Councillors should ensure they act in accordance with the provisions of the Councillors' Code and this protocol when performing such a role. Elected members must recognise that, when performing their local representative role, they are representing the Council. Employees must treat all councillors fairly and openly in their role as local representatives.

Communications

20. Employees should not normally copy any communications they have with an individual councillor to any other councillor, unless they have been clear in advance that they intend to do so (or this has been agreed).

Human resource issues

21. Where councillors are involved in the appointments of employees they must act fairly and openly, and make decisions solely on merit.

22. Councillors should not become involved in issues relating to any individual employee's pay or terms and conditions of appointment, except while serving on a committee tasked with dealing with such matters.

Social relationships

23. The relationship between councillors and employees depends upon trust, which will be enhanced by the development of positive and professional relationships. While councillors and employees may often find themselves in the same social situations, they should take care to avoid close personal familiarity as this can damage the relationship of mutual respect and the belief that employees can undertake their role in an impartial and objective manner. Councillors and employees should, therefore, be cautious in developing close personal friendships while they have an official relationship.

Public comment

24. Councillors and employees both have a responsibility to project a positive image of the Council and should avoid making any public comments that could bring it into disrepute.
25. Councillors should not raise any adverse matters relating to the performance, conduct or capability of employees in public. Employees must ensure they treat councillors with similar respect and courtesy.

Employees supporting councillors

26. Where councils arrange for employees to provide direct administrative or practical support for individual councillors to help them undertake their duties, particular considerations will apply. While councillors may ask employees to provide such support in a particular way, they must nevertheless remember that the employee is accountable to their line manager. Any issues about conflicting priorities, conduct or performance must be referred to the line manager.

ANNEX B

DEFINITIONS

“**ALEO**” means an arm's-length external organisation (ALEO), that is formally separate from the Council but is subject to the Council’s control or influence. ALEOs can take many forms including companies, community enterprises, charitable organisations and trusts.

“**Bullying**” is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted.

“**Chair**” includes Committee Conveners or any other individual discharging a similar function to that of a Chair or Convener under alternative decision-making structures.

“**Cohabitee**” includes any person who is living with you in a relationship similar to that of a partner, civil partner, or spouse.

“**Committee**” includes all forms of executive and scrutiny operating models.

“**Confidential Information**” includes:

- any information passed on to the Council by a Government department (even if it is not clearly marked as confidential) which does not allow the disclosure of that information to the public;
- information of which the law prohibits disclosure (under statute or by the order of a Court);
- any legal advice provided to the Council; or
- any other information which would reasonably be considered a breach of confidence should it be made public.

“**Election expenses**” means expenses incurred, whether before, during or after the election, on account of, or in respect of, the conduct or management of the election.

“**Employee**” includes individuals employed:

- directly by the Council;
- by any of the Council’s arms’ length external organisations;
- as contractors by the Council, any of the Council’s arms’ length external organisations; or
- by a contractor to work on any of the Council’s premises.

“**Gifts**” a gift can include any item or service received free of charge, or which may be offered or promised at a discounted rate or on terms not available to the general public. Gifts include benefits such as relief from indebtedness, loan concessions, or provision of property, services or facilities at a cost below that generally charged to members of the public. It can also include gifts received

directly or gifts received by any company in which the recipient holds a controlling interest in, or by a partnership of which the recipient is a partner.

“Harassment” is any unwelcome behaviour or conduct which makes someone feel offended, humiliated, intimidated, frightened and / or uncomfortable. Harassment can be experienced directly or indirectly and can occur as an isolated incident or as a course of persistent behaviour.

“Hospitality” includes the offer or promise of food, drink, accommodation, entertainment or the opportunity to attend any cultural or sporting event on terms not available to the general public.

“Relevant Date” Where a councillor had an interest in shares at the date on which they were elected, the relevant date is – (a) that date; and (b) the 5th April immediately following that date and in each succeeding year, where the interest is retained on that 5th April.

“Remuneration” includes any salary, wage, share of profits, fee, other monetary benefit or benefit in kind.

“Securities” a security is a certificate or other financial instrument that has monetary value and can be traded. Securities includes equity and debt securities, such as stocks bonds and debentures.

“Undertaking” means:

- a body corporate or partnership; or
- an unincorporated association carrying on a trade or business, with or without a view to a profit.

ANNEX C

BREACHES OF THE CODE

Introduction

1. The Ethical Standards in Public Life etc. (Scotland) Act 2000 (“the Act”) provided for a framework to encourage, and where necessary enforce, high ethical standards in public life.
2. The Act provided for the introduction of new codes of conduct for local authority councillors and members of relevant public bodies, imposing on councils and relevant public bodies a duty to help their members comply with the relevant code.
3. The Act and the subsequent Scottish Parliamentary Commissions and Commissioners etc. Act 2010 established the Standards Commission for Scotland (“Standards Commission”) and the post of Commissioner for Ethical Standards in Public Life in Scotland (“ESC”).
4. The Standards Commission and ESC are separate and independent, each with distinct functions. Complaints of breaches of the Councillors’ Code of Conduct are investigated by the ESC and adjudicated upon by the Standards Commission.
5. The first Councillors’ Code of Conduct came into force in 2003. The Code has since been reviewed, and re-issued in 2010 to reflect legislative changes. The 2021 Code has been issued by the Scottish Ministers following consultation, and with the approval of the Scottish Parliament, as required by the Act.

Investigation of Complaints

6. The ESC is responsible for investigating complaints about councillors. It is not, however, mandatory to report a complaint about a potential breach of the Code to the ESC. It may be more appropriate in some circumstances for attempts to be made to resolve the matter informally at a local level.
7. On conclusion of the investigation, the ESC will send a report to the Standards Commission.

Hearings

8. On receipt of a report from the ESC, the Standards Commission can choose to:
 - Do nothing;
 - Direct the ESC to carry out further investigations; or
 - Hold a Hearing.

9. Hearings are held (usually in public) to determine whether the councillor concerned has breached the Councillors' Code of Conduct. The Hearing Panel comprises of three members of the Standards Commission. The ESC will present evidence and/or make submissions at the Hearing about the investigation and any conclusions as to whether the councillor has contravened the Code. The councillor is entitled to attend or be represented at the Hearing and can also present evidence and make submissions. Both parties can call witnesses. Once it has heard all the evidence and submissions, the Hearing Panel will make a determination about whether or not it is satisfied, on the balance of probabilities, that there has been a contravention of the Code by the councillor. If the Hearing Panel decides that a councillor has breached the Councillors' Code of Conduct, it is obliged to impose a sanction.

Sanctions

10. The sanctions that can be imposed following a finding of a breach of the Councillors' Code of Conduct are as follows:
- **Censure:** A censure is a formal record of the Standards Commission's severe and public disapproval of the councillor concerned.
 - **Suspension:** This can be a full or partial suspension (for up to one year). A full suspension means that the councillor is suspended from attending all meetings of the Council. Partial suspension means that the councillor is suspended from attending some of the meetings of the Council.
 - **Disqualification:** Disqualification means that the councillor is disqualified for the period determined (of up to 5 years) from being a councillor (which has the effect of removing them from office. Where a councillor is also a member of a devolved public body (as defined in the Act), other than as a representative or nominee of the Council, the Commission may also remove or disqualify that person in respect of that membership. Full details of the sanctions are set out in Section 19 of the Act.

Interim Suspensions

11. Section 21 of the Act provides the Standards Commission with the power to impose an interim suspension on a councillor on receipt of an interim report from the ESC about an ongoing investigation. In making a decision about whether or not to impose an interim suspension, a Panel comprising of three Members of the Standards Commission will review the interim report and any representations received from the councillor and will consider whether it is satisfied:
- That the further conduct of the ESC's investigation is likely to be prejudiced if such an action is not taken (for example if there are concerns that the councillor may try to interfere with evidence or witnesses); or
 - That it is otherwise in the public interest to take such a measure. A policy outlining how the Standards Commission makes any decision under Section 21 and the procedures it will follow in doing so, should any such a report be received from the ESC can be found on the Standards Commission's website.

12. The decision to impose an interim suspension is not, and should not be seen as, a finding on the merits of any complaint or the validity of any allegations against a councillor, nor should it be viewed as a disciplinary measure.



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W W W . g o v . s c o t



INTEGRITY IN PUBLIC LIFE

ADVICE NOTE FOR COUNCILLORS ON DISTINGUISHING BETWEEN THEIR STRATEGIC ROLE AND ANY OPERATIONAL WORK

1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to provide assistance to councillors to help them in distinguishing between strategic and operational management.
- 1.2 The Advice Note suggests issues councillors should consider to ensure they undertake their scrutiny role effectively, while still complying with the provisions regarding relationships with employees and decision-making in the Councillors' Code of Conduct (Code).
- 1.3 Councillors have a personal responsibility to observe and comply with the rules in the Code. This Advice Note is intended to assist them in interpreting the provisions in the Code in order to do so. The Advice Note should, therefore, be read in conjunction with the Code and the Standards Commission's Guidance.
- 1.4 Audit Scotland's *How Councils Work* series and, in particular, its Report '[Roles and working relationships in councils - Are you still getting it right?](#)' make suggestions to help councillors drive improvement of governance arrangements and to manage productive relationships with officers. Councillors are encouraged to refer to Audit Scotland's publications in this regard.
- 1.5 Councillors are required to provide strategic leadership and oversight. This involves setting strategy and policy, scrutinising overall performance against strategic aims, and making major, complex decisions that concern the Council as a whole. Councillors are not, however, responsible for operational management, which is the planning, organising and execution involved in day to day activities and service delivery. This is the role of officers (employees).
- 1.6 This Advice Note aims to help councillors distinguish between strategic and operational management so that they do not become inappropriately involved in operational matters that are solely the responsibility of officers.
- 1.7 It is recognised, however, that councillors are also required to be involved in certain operational matters when:
- undertaking advocacy work (lobbying or campaigning);
 - assisting local groups in community engagement and capacity building;
 - representing constituents (case work); and
 - taking decisions on quasi-judicial or regulatory applications (in their capacity as members of any regulatory, licensing, appeals and appointment committees).

This Advice Note also aims, therefore, to provide advice about how to balance these more operational aspects of councillors' work with their strategic role. It also provides advice about how to avoid conflicts when undertaking the decision-making role on any regulatory, appeals and appointment committees.

2. Relevant Provisions in the Code

2.1 The Code contains provisions relating to the differences between the responsibilities of councillors and Council officers. Specific applicable paragraphs in the Code include:

- 3.7 I will not become involved in operational management of my Council's services as I acknowledge and understand that is the responsibility of its employees.
- 3.8 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public.
- 3.9 I will not take, or seek to take, unfair advantage of my position in my dealings with employees or bring any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.
- 3.10 I will follow the Protocol for Relations between Councillors and Employees at [Annex A](#) and note that a breach of the Protocol will be considered a breach of this Code. I will also comply with any internal protocol my Council has on councillor / employee relations.

Annex A

Definitions

The reference to 'employees' below covers all employees and officers of councils and all officers and employees of any other body or organisation to which a councillor is appointed or nominated by the Council.

2. Councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position or influence.
9. Most Councils operate through a system of groups of councillors, many of them based on political affiliation. All employees must treat all political groups and individual councillors in a fair and even-handed manner and must maintain political neutrality at all times.
19. Councillors should ensure they act in accordance with the provisions of the Code and this protocol when performing such a role. Elected members must recognise that, when performing their local representative role, they are representing the Council. Employees must treat all councillors fairly and openly in their role as local representatives.

3. Strategic and Operational Management

3.1 The work of a Council is a team effort, in which the role and work of councillors is balanced with, and complemented by, the role and work of officers. As a councillor, your role is to determine policy and to participate in decisions on matters placed before you. It is not to engage in direct operational management of the Council's services. Your role is to:

- provide strategic leadership; to ensure financial stewardship is achieved through the efficient, economic and effective use of resources; and

- hold the Chief Executive and senior management team to account by scrutinising the implementation of policies, procedure and expenditure.

Your scrutiny role should be undertaken with a view to making recommendations for improvement and should not be used to direct or instruct officers to change specific operational decisions. You may also be involved in determining the steps needed to deal with changes which are likely to impact on the strategic aims and objectives of the Council. Your duty is also to help ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control.

- 3.2 [Section 56 of the Local Government \(Scotland\) Act 1973](#) provides that the main ways in which Councils take decisions are either by the full Council meeting together; by committee or sub-committee; or by officers taking decisions. Legally, neither an individual councillor, nor a political group, can *instruct* an officer to do anything. Some decisions are, by law, required to be taken by a specific officer. A list of statutory officers can be found in the first of Audit Scotland's 'How Councils Work' series at www.audit-scotland.gov.uk/our-work/how-councils-work.
- 3.3 The powers and remits of the Council and its committees are usually set out in a governance document known as a Scheme of Administration, or List of Committee Powers. Officers' decision-making powers will normally be outlined in a document known as a Scheme of Delegation, or List of Officer Powers. You should ensure you are aware of what decisions are to be taken by officers and the level at which they are made. You should note that there will also be many operational decisions, routinely and appropriately taken by officers, that will not necessarily be listed exhaustively in such a scheme. In general, if a duty is delegated to an employee, then it is likely to be operational in nature.
- 3.4 If a decision involves purely operational or administrative issues, with any expenditure being within existing budgets, it will usually be made by an officer without reference to elected members. It should be noted that some decisions may have both operational and strategic elements and, as such, decisions may be taken by officers following consultation with certain Members (such as the Leader or Deputy Leader, Committee Chairs, Vice Chairs or Ward Members) in order to have appropriate engagement with, and to obtain steer from, elected members. Determining and issuing a response on behalf of the Council to a press enquiry will usually also be a matter for officers, although again certain Members will be consulted if, for example, a quote is required.
- 3.5 You may be obliged as a councillor, however, to make decisions on some individual planning, licensing and other regulatory matters. You may also make decisions on matters of an operational nature, being individual applications, if you sit on other committees such as appeals and appointment committees (see section 4 below). Before you accept such a role you should make sure you are clear as to what it will involve and that you understand how to identify, and appropriately manage, any conflicts of interest.
- 3.6 You should note, however, that most enforcement matters in respect of any quasi-judicial or regulatory matter are delegated to employees. If you are advised or become aware that the Council may need to take enforcement action in respect of any quasi-judicial or regulatory matter, you cannot get involved and cannot organise support for opposition to such action. You can only refer the matter to the appropriate Council team, or advise anyone making an enquiry about how to do so. Similarly, you cannot lobby other councillors (whether they are on the relevant committee or not), or put pressure on planning officers to either take, or not take, investigative or enforcement action.
- 3.7 You also have a role in representing the electorate at a ward level. In doing so, you may be expected to undertake some case work on behalf of individual constituents and also to campaign on local issues (see section 4 below).

3.8 These concurrent obligations can sometimes make it difficult for elected members to distinguish between operational and strategic matters and to understand the extent to which they should get involved in certain issues and decisions, which can lead to difficulties as outlined below.

4. Matters to consider

4.1 You are expected to undertake some case work on behalf of individual constituents and also to campaign on local issues. This can result, however, in you having a conflict of interest when it comes to decision-making, particularly in regulatory or quasi-judicial situations. If you choose to be an advocate for or against a particular cause you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions regarding that cause.

4.2 Becoming inappropriately involved in operational management and / or operational decision-making will be a breach of the Code. It can also damage your relationship with officers and have a detrimental effect on how they perform their duties. Some illustrations of how a councillor might become inappropriately involved in an operational matter can be found at Annex B of this document.

4.3 Some real examples where the Standards Commission has found a councillor to have breached the Code by failing to appropriately distinguish between strategic and operational matters are provided at Annex A of this document. These include cases where a councillor became too involved in a complex social care case; where a councillor failed to declare his involvement with a lobbying group when making a planning decision; and where a councillor failed to distinguish between his role as potential objector to a planning application and his role as a councillor. Other illustrations can be found in the Standards Commission's Guidance on the Councillors' Code of Conduct, which can be found at <https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>.

4.4 You should remember that you have, or may be perceived as having, a position of power over officers, particularly if they are junior members of staff. This means that they may feel pressured into taking a particular action or decision or to focus on the matter you are concerned with over other work, even if they have tasks that should be completed as a higher priority. You may wish to represent the views of your constituents on individual matters, such as a housing issue, but you should be aware that employees may feel pressured by a councillor challenging their actions or appearing critical of some aspect of their work. This is especially the case with junior employees, who may not be used to dealing directly with councillors. Any concerns about performance should be raised in private with the employee's line manager.

4.5 You should consider whether any matter you are seeking to become involved in or have asked to be involved in is strategic or operational in nature. You should bear in mind that you have a duty to act in the public interest and undertake a scrutiny role to ensure your Council uses its resources prudently and in accordance with law. Robust challenge and involvement from elected members in driving improvement of Council performance at a corporate level, linked to the Council's priorities, is a key element of a commitment to delivering Best Value, as set out in the [Local Government in Scotland Act 2003](#). This statutory duty applies to every elected councillor as well as to officers. In undertaking your scrutiny role, you are obliged to make sure service user and community views are taken into account and that the Council responds to these.

4.6 You should bear in mind, however, that you are a member of the Council. You have a duty to act in the interests of the Council as a whole and to remember that you are representing it at all times, regardless of whether you are in the administration or not. At the same time, you also need to be aware of any separate responsibilities you may have as a member of an external organisation such as any charity, Arms' Length External Organisation, Health and Social Care Integration Joint Board or Regional Transport Partnership to which you have been nominated or appointed by your Council. Section 5 below provides more guidance on this topic. It is understood that Councils operate in an

often highly politicised environment, which can lead to tensions. However, you should be conscious of considering the overall interests of the Council even when advocating a particular political point or agenda.

- 4.7 You have a right to receive good quality information from officers on which to base your decisions and undertake your scrutiny role. This information should be proportionate, balanced, comprehensive and understandable. If you do not consider you are receiving the information you require to assure yourself that you are in a position to make informed decisions, you should raise the issue with an appropriate senior officer (such as the relevant Head of Service). The Improvement Service's Elected Member Induction Notebook on Standards, Ethics and Information Handling contains guidance on the type of information you are entitled to receive. Information on where to find the Notebook is provided at Section 5 of this Advice Note.
- 4.8 In dealing with officers and members of the public you should always consider both what you are expressing and the way you are expressing it. You should also consider how your conduct could be perceived. You should be able to undertake a scrutiny role, represent the public and any constituents, or make a political point in a constructive, respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and / or unduly disruptive.
- 4.9 You should bear in mind that any issues relating to behaviour, performance or conduct of an officer should be raised privately with the appropriate senior manager. You should not become involved in any issues relating to individual officers' pay or terms and conditions of employment (except to the extent you are permitted to do so while serving on a committee delegated to deal with such a task) even if the officer is a constituent. Similarly, the recruitment of staff is an operational matter and should be left to officers, unless you are carrying out a role assigned to you on a committee that deals with the appointment of senior officers.
- 4.10 You must consider:
- whether you are acting in accordance with the provisions in the Code;
 - whether you are asking an officer to do something which could compromise them or prevent them from undertaking their duties properly and appropriately, including being unable to complete other tasks;
 - whether you are asking an officer to act against instructions of management;
 - whether you are bringing any undue influence to bear on an officer to take a certain action, particularly if it is contrary to the law or the Council's policies and procedures (bearing in mind that you may well be perceived by officers as being in a position of power);
 - the nature of an officer's role and their seniority;
 - whether your actions could impact on the mutual bond of trust between councillor / members and officers;
 - whether you are asking an officer to do something which compromises them or could compromise them (including exposing them to disciplinary measures);
 - whether your actions result in an officer feeling pressured or threatened or adversely impact on their health; and
 - that while you are entitled to freedom of expression under Article 10 of the European Convention on Human Rights, the right is not absolute. It does not provide any protection if you are simply engaging in gratuitous, offensive or abusive personal attacks on officers, or are harassing, bullying or threatening officers in the course of their employment. The Standards Commission has produced a separate Advice Note for Councillors on the Application of Article 10 of the ECHR, which can be found at:
<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

- 4.11 You should note that even if your conduct may not amount to a breach of the Code other consequences could arise from it, such as exposing the Council to judicial review or to a grievance from an officer.
- 4.12 If you sit on any regulatory, appeal or appointment committee you should make sure you are familiar with the committee's standing orders / procedures and the extent of its powers and remit. You should also familiarise yourself with your Council's call-in processes, if such procedures are in place.
- 4.13 If you are asked to become involved in an operational matter, you need to be clear about whether you are simply being asked to assist a constituent or constituents in how to access the appropriate service or officer or whether you are advocating for or against a cause.

Assisting constituents

- 4.14 If, at a ward level, you are asked to provide a constituent with assistance, you should ensure you manage their expectations in terms of the extent to which you can help. For example, you should advise a constituent who has sought help with a case that while you can seek information on their behalf, you cannot overturn a decision and that they will need to follow the appropriate procedures for doing so. You should also advise the constituent that you cannot seek legal advice from the Council on their behalf or pass on any legal advice provided to the Council or by a Council officer.
- 4.15 You should not pursue any casework that is likely to come before you at a quasi-judicial or regulatory committee, as doing so could preclude you from taking part in the discussion and voting. Again, you should explain why you cannot do so to any constituent who has asked for assistance. If you choose to pursue such casework, you should follow the guidance at below on advocating for or against a cause.
- 4.16 In order to avoid becoming inappropriately involved in operational matters and to prevent any conflicts arising, you should consider exactly what you are being asked or are offering to do on behalf of a constituent. There should be no difficulty if you have managed your constituent's expectations appropriately and are simply:
- advising officers of any representations received;
 - helping constituents make their views known to the relevant and appropriate officer;
 - assisting a group of constituents in a community engagement or capacity building exercise;
 - seeking factual information on progress on behalf of a constituent; and / or
 - advising a constituent about whom they should contact and the correct procedure to follow.
- 4.17 Where appropriate, you should use your Council's case management system (or any equivalent agreed internal procedure), to record details of enquiries you make on behalf of constituents and also to keep track of any response and progress made towards resolving their query or concern. This will ensure that such an enquiry is dealt with by the appropriate officer. You should record or keep a note of any advice you give to a constituent. Some Councils have agreed procedures or protocols for the communication between councillors and officers, as well as release of personal data relating to individual constituents. You should ensure that if such protocols exist, you are familiar with their contents.
- 4.18 If you are unable or it is not appropriate to use the case management system (or any equivalent agreed internal procedure), you should ensure any enquiry is directed towards an appropriate officer. This will normally be an officer at a senior level who can then delegate the work as appropriate. You should bear in mind that officers are accountable to their own line managers and, even if you think you have identified an officer who you think is best placed to answer your query, you will not have knowledge of their workload and / or whether they have been asked to prioritise any other tasks.

- 4.19 If you have been asked by a constituent to help with concerns they have about a Council service or decision and / or you have identified a mistake or problem, you can ask officers to review what has happened, and what is being done to resolve the issue and / or what is being done to prevent it happening again. You should ensure the constituent is aware, however, that councillor enquiries are not a substitute for any formal complaint process. If appropriate, you should recommend the constituent make use of the Council's formal complaints procedure, as this enables common patterns of complaint to be identified, and enables a complainer to escalate their complaint to the [Scottish Public Services Ombudsman](#), if they wish to do so. You should also make your constituents aware that if decisions have been made in accordance with Council policy, it may not be appropriate for them to be reviewed.
- 4.20 You should decline to get involved if you are approached by any officer, who is also a constituent, in respect of any matters relating to their employment with the Council. You should advise the officer concerned to contact their line manager, trade union or follow the appropriate internal procedures for raising any such issues.
- 4.21 While you may have some experience in a particular field, you should never assume or should be wary of assuming that you have more knowledge than officers who receive specific training and who should have a good, and up to date, awareness of the Council's policies and procedures relating to the tasks they are performing, as well as the current legal framework they are operating in. Officers may also have access to more relevant and material information that has influenced the way they approach the issue.
- 4.22 If you consider an officer is not providing you with information to which you have a right to access or is not recognising that you have a legitimate advocacy role on behalf of constituents, you should raise your concerns with the appropriate senior manager.
- 4.23 If you are concerned that a constituent is making or has made a fraudulent claim, you may be obliged to report the matter. You should, therefore, ensure that your constituents are aware that not all information they provide to you can be kept confidential. More information and guidance on confidential information and data protection can be found in the Improvement Service's Elected Member Induction Notebook on Standards, Ethics and Information Handling, which can be found at: <https://www.improvementservice.org.uk/products-and-services/skills-and-development/elected-members-development/elected-member-induction-materials>.

Advocating for or against a cause / taking decisions on quasi-judicial or regulatory applications

- 4.24 If you are approached, you can listen to views expressed but you must make it clear that you cannot lend support for or make a decision on a regulatory or quasi-judicial matter until the appropriate meeting, and only when you have then heard all the evidence. If you decide to advocate for or against a particular cause, you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions regarding that cause.
- 4.25 Where you wish to make representations on behalf of constituents or other parties, you may do so (in accordance with paragraph 7.9 of the Code, as reproduced below), providing you do so in terms of the Council's procedures; you declare your interest in the matter; and, having made any representations, you retire fully from the meeting room (it is not sufficient to retire to a public gallery situated within the meeting room, except in the very limited circumstances described in paragraphs 7.11 and 7.12 of the Code).

7.9 If I intend to be involved in the decision-making for any quasi-judicial or regulatory application I WILL NOT:

- a) organise support for or opposition to the application in any way;

- b) represent or appear to represent individuals or groups who are seeking to make representations for or against an application; or
- c) compromise myself or my Council by creating a perception of a conflict of interest.

7.10 In circumstances where I am a member of a Committee as a decision-maker but have been involved in organising support for or opposition to an application, I WILL:

- a) declare an interest in the matter, and
- b) withdraw from the meeting without participating in the consideration of the matter.

7.11 In circumstances where I am a member of a Committee as a decision-maker but wish to represent individuals or groups who are seeking to make representations for or against an application, I WILL:

- a) follow procedures agreed by my Council which afford equal opportunity to any parties wishing to make representations to do so;
- b) declare an interest in the matter; and
- c) only remain in the meeting, while that item is being discussed, for the purposes of acting as the representative of the individual or group throughout the duration of their participation.

I WILL NOT:

- d) participate or attempt to participate as a decision-maker in that application;
- e) attempt to influence employees to adopt any particular position relative to the matter; or
- f) lobby other councillors who may be involved in the decision-making process.

7.12 In circumstances where I am not a member of any Committee which is making a decision on an application, but wish to represent individuals or groups who are seeking to make representations for or against it, I WILL:

- a) follow procedures agreed by my Council which afford equal opportunity to any parties wishing to make representations to do so; and
- b) only remain in the meeting for that item for the purposes of acting as the representative of the individual or group throughout the duration of their participation.

I WILL NOT:

- c) participate or attempt to participate as a decision-maker in that application;
- d) attempt to influence employees to adopt any particular position relative to the matter; or
- e) lobby other councillors who may be involved in the decision-making process.

4.26 If you are making representations and, for example, you wish to support your constituents' views regarding a planning application, you should make this position clear as soon as possible to the chair of the committee and officers. Your declaration of interest should be recorded in the minutes of the meeting.

5. Further Sources of Information

5.1 The Standards Commission has published guidance and advice notes on how to interpret, and act in accordance with, the provisions in the Code, including those relating to relationships with employees. This guidance can be found on the Standards Commission's website at: www.standardscommissionscotland.org.uk/guidance/guidance-notes. The Standards Commission has also published guidance for councillors on arms' length external organisations, which seeks to assist councillors in recognising and dealing with potential conflicts of interest to minimise risks to governance and accountability arrangements. This advice can be found at: <http://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

- 5.2 The Standards Commission also publishes written decisions of Hearings held on its website. These can be found at: www.standardscommissionscotland.org.uk/cases/case-list.
- 5.3 The Improvement Service’s Induction material includes guidance on Standards, Ethics and Information Handling; Corporate Governance; The Roles and Responsibilities of the Elected Member at Council Level; and The Roles and Responsibilities of the Elected Member at Ward Level. These can be found at: <https://www.improvementservice.org.uk/products-and-services/skills-and-development/elected-members-development/elected-member-induction-materials>.
- 5.4 The Accounts Commission’s ‘Report on Roles and working relationships - are you getting it right?’ and their Report ‘Roles and working relationships in councils - Are you still getting it right?’ highlight the complex and demanding role that councillors have in representing their constituents, providing strategic direction for the Council, and scrutinising policy decisions and service performance. The reports make recommendations that are aimed at supporting councillors in their role, in order to help the drive for improvement in respect of governance arrangements. These reports can be found at: www.audit-scotland.gov.uk/our-work/how-councils-work.
- 5.5 If you have any queries or concerns about how to interpret or act in accordance with the provisions in the Code, you should seek assistance from your Council’s Monitoring Officer or their deposes. Further information can also be obtained from the Standards Commission via email: enquiries@standardscommission.org.uk.



ANNEX A: HEARING EXAMPLES

A councillor became involved in a social care case on behalf of a constituent. This involved making suggestions and judgements about matters such as where his constituent should be housed, contact between the constituent and her children, and the rehabilitation of one child.

The Hearing Panel found that the councillor was not simply articulating his constituent's concerns but was instead inappropriately trying to use his role to engage in, and exert influence over, direct operational management.

While the Hearing Panel acknowledged the councillor had a responsibility to represent his constituent, it considered in so doing, he had lost sight of his other responsibilities as a councillor and his obligation under the Code to respect the different roles of councillors and officers. The councillor pursued the interests of his constituent without any objective consideration of the children's interests or the paramount duty the Council had to ensure their safety and welfare, and despite not being qualified to make decisions to judgements in this regard.

The Hearing Panel found that the councillor had an expectation that actions should be taken in response to his engagement. The Hearing Panel considered that while his involvement may not have had any effect on the outcome of decisions, this had clearly been his intention.

The Hearing Panel noted that the councillor failed to accept that he had an inherent influence in his role as an elected member. The Hearing Panel considered it was disingenuous to suggest it was open to officers to simply ignore his enquiries and requirements. The Hearing Panel further considered that the inappropriate level of involvement, enquiries and correspondence from the Respondent could have had an adverse impact on resources, given that officers had felt obliged to respond.

The Hearing Panel concluded that the councillor's involvement in direct operational management and questioning of the professional judgement of officers amounted to a contravention of the Code. The councillor was suspended from all meetings of the Council for six months.

Before being elected, a councillor had been a spokesperson for a lobbying group who were opposed to a refurbishment of a school on its existing site. The councillor stood down from the position after the election, but had continued to receive and send emails to members of the group, which included two of his close relatives. The councillor had, however, failed to declare his involvement as a non-financial interest and had failed to declare the non-financial interests of the close relatives, at meetings where a planning application in respect of the school was considered.

The Hearing Panel noted that the councillor's pre-election position as spokesperson for the group; his post-election public support for a new build site and his opposition to the refurbishment of the existing school; and the fact that he had continued to exchange emails about the matter meant that his involvement with the group had continued after his election as a councillor. The Hearing Panel concluded that, essentially, the councillor could be perceived as advocating for a cause. He should have declared his involvement and that of his relatives as non-financial interests, refrained from taking part in the planning decision and withdrawn from the room. The Hearing Panel found that the councillor had breached the Code. The councillor was suspended from a planning committee of the Council for two months.

A councillor became involved in a dispute with his neighbour over the erection of a garden structure, which the councillor felt overshadowed his own garden. The councillor contacted key senior officers involved with planning and requested information or actions that would not be available to an ordinary member of the public. On one occasion, the councillor attempted to call-in his neighbour's planning application.

The Hearing Panel found that the councillor had used his position as a councillor to seek information not normally available to members of the public from senior officers of the Council, and attempted to exert influence in asking that the matter be dealt with urgently.

The Hearing Panel noted that although there was no evidence that the councillor attempted to put pressure on officers to reach a particular outcome in respect of the planning application, nor that his actions had any bearing on the decision that was ultimately made, officers may have felt under pressure to comply with such a request.

The Hearing Panel determined that the councillor's actions in requesting information not normally available to members of the public, in asking officers to deal with the matter urgently, and in failing to distinguish between himself as a potential objector and his role as a councillor when attempting to call-in the application, amounted to attempts to seek preferential treatment, and constituted a breach the Code. The councillor was censured.

ANNEX B: EXAMPLES OF WHEN A COUNCILLOR BECOMES INAPPROPRIATELY INVOLVED IN AN OPERATIONAL MATTER

There are many examples of areas where councillors may inappropriately seek to get involved in operational matters, including where a councillor:

- demands that the contents of a report or its recommendations are changed when being consulted on it as Chair;
- insists that Council policy is varied to benefit an individual constituent;
- demands to sign off a press release on behalf of the Council, as opposed to accepting that they are simply being consulted on it;
- tries to direct or alter the evaluation of a tender, grant application, or any other evaluation (for example, the scoring for which school is first on the list for replacement);
- becomes involved in an individual staffing matter (except when serving on a Committee tasked to deal with such matters, such as a Personnel Appeals Committee);
- insists on attending an operational meeting with an outside body, or an internal officer working group where elected members are not normally present.
- seeks access to confidential internal audit reports, including doing so in advance of related disciplinary proceedings;
- seeks to negotiate directly with trade unions and, in doing so, undermines agreed collective bargaining and the officers involved;
- seeks to alter and approve an operational plan;
- seeks to become involved in, support or oppose an enforcement action in respect of any quasi-judicial or regulatory matter;
- tries to become involved in setting or monitoring individual key performance indicators under a contract.

COUNCILLORS' ROLE DESCRIPTIONS

Nature and Requirements of the Role

Councillors in Scotland are elected in groups of 3 or 4 to represent the interests of around 15,000 people living within their ward. While it is common for those councillors to be elected as a member of a political party, their focus should be on working together in the interests of all their residents and in the interests of the Council as a whole.

Councils and councillors are responsible for delivery of a wide range of local services that are affected by community requirements including education, social work, planning, housing, roads, licensing and community services like libraries, sports, pools, playgrounds, and recreation.

As well as the prime duty of ensuring a fair, efficient and equitable distribution of council services among their residents and the secondary duty of providing an objective route for complaint when this is perceived not to be the case, councillors also have a duty to lead and to give guidance to the people's voice in forming a vision for their future and seeking optimal methods to achieve it. This involves acting as an 'honest broker' between people's ambitions and the practical problems of funding, formulating and achieving such ambitions. Patience, intuition and an ability to adopt causes not your own will go a long way to discharging the objective duty inherent in the job as all decision made are accountable to the public.

The more pragmatic specific legal requirements of being a councillor are to sign a declaration of office, attend at least one meeting of the Council or any of its committees or sub-committees or carry out some other approved duty in a six month period and to make appropriate entries in the Register of Members' Interests. More than that, Councillors have a duty to uphold the law at all times while acting in accordance with the public trust placed in them.

Whenever engaged on Council business, councillors are obliged to comply fully with the Council's Standing Orders, including those regarding the conduct of meetings and to meet all requirements of the Councillors' Code of Conduct. It is the responsibility of all councillors to maintain the highest standards of conduct and through their actions promote the core values of the Council, provide an example to others and maintain and strengthen the public's confidence in the integrity of the Council and its councillors.

ALL COUNCILLORS

Key purpose/ roles

- To represent the views and interests of your Ward and its individual constituents and deal with enquiries and representations fairly and without prejudice
- To contribute actively to the formulation and scrutiny of the Council's policies, budgets, strategies and service delivery
- To champion the best interests of the Council and the community as they relate to the improvement of the quality of life, social, economic and environmental well-being of the community and its citizens
- To work in partnership with others in the Council, partnership organisations at council and community level to help to achieve the above

Key tasks/ accountabilities

- To represent and act as an advocate for the interests of your Ward, liaising and working with local organisations and representative groups to further the interests of the Ward and its individual constituents
- To be available to represent and deal effectively with constituents' enquiries and representation on individual and community interests
- To contribute effectively to the debates and decision making activities of the Council prior to setting policies, budgets, strategies and service delivery targets
- To participate effectively as a member of any committee or panel to which you are appointed,
- To participate in the scrutiny or performance review of the services of the Council including the scrutiny of policies and budgets and their effectiveness in achieving the Council's objectives
- To support and strive to develop an inclusive and constructive working environment and effective working relationships with other elected members and officers of the Council
- To participate in the activities of any outside body or partnership forum to which you are appointed by the Council, providing two way communications between the Council and the body. Also to develop and maintain a working knowledge of the Council's policies and practices in relation to that body and of the community's needs and aspirations in relation to that body's role and functions
- To liaise on behalf of the Council and represent and promote the Council's interests with other public bodies to promote better understanding and partnership working
- To act in accordance with the statutory and locally determined codes of conduct and standards for elected members and maintain the highest standards of conduct at all times

SENIOR COUNCILLORS

In addition to the roles, tasks and accountabilities expected of all councillors the following are expected of councillors with significant additional responsibilities (Cabinet members and Leader of the Opposition):

Key purpose/ roles

- To provide leadership in relation to policy formulation, implementation and monitoring of the Council's policies, budgets, strategies and service delivery in relation to your specific area of responsibility, and to contribute to the effective governance of the Council
- To contribute to the effective governance of the Council
- To ensure that your area of responsibility contributes to promoting the best interests of the Council and the community and improve the quality of life, social, economic and environmental well-being of the community and its citizens

Key tasks/ accountabilities

For your area of responsibility:

- To facilitate policy development via appropriate mechanisms – Cabinet, committees, working with officers and working in partnership with partner organisations
- To give political direction to senior officers of the Council and members of your political Group in your area of responsibility
- To chair effectively relevant committees, sub-committees and
- To take responsibility for decisions taken within these committees or other forums
- To support and encourage participation and debate by all councillors in relevant forums including committees and sub-committees and respond to scrutiny of decisions and service delivery/ performance
- To ensure that effective working relationships with all councillors, officers and relevant partner organisations are developed and maintained
- To represent and communicate the views and best interests of the Council in relevant forums including the community, the media, partnership organisations and national bodies
- To monitor, review and comment on performance and budget, to ensure that Council policies are implemented; and where necessary initiate relevant action
- To be fully aware of relevant legislative and national and local policy frameworks
- To work with others to ensure the effective governance of the authority
- To contribute to policy formation on corporate strategy, policies and overall budget matters and participate constructively in relevant forums

- To represent the Council at appropriate civic and/ or other engagements including as a substitute for the Council Leader or Provost

COUNCIL LEADER

In addition to the roles/ tasks and accountabilities expected of all councillors the following are expected of the Council Leader.

Key purpose/ roles

- To lead the political administration of the Council
- To provide leadership in relation to policy formulation, implementation and monitoring of the Council's policies, budgets, strategies and service delivery and to contribute to the effective governance of the Council
- To provide strategic leadership and clear political direction and guidance to promote the best interests of the Council and the community and improve the quality of life, social, economic and environmental well-being of the community and its citizens
- To ensure that effective working relations are developed throughout the Council and between the Council and external partners in order to promote the best interests of all its communities

Key tasks/ accountabilities

- To provide strategic, political and cultural leadership for the Council in partnership with the Chief Executive
- To give direction to the Chief Executive on political matters and participate in the performance review and development of the Chief Executive
- To have an overview and facilitate corporate and cross cutting policy formulation, strategy development and financial planning
- To promote partnership working with partner organisations and other service providers, including Community Planning partners
- To act as the principal Council representative in discussions and negotiations with national bodies
- To ensure that the political decision making structures of the Council operate effectively
- To take responsibility for, and promote the Council's policy and political decisions
- To be the political figurehead and provide an external focus for the Council including handling media and press enquiries
- To develop and maintain effective working relationships with councillors and senior officials

PROVOST

The title 'Provost' is the title given by the Council to the role of Convener of the Council elected as required under section 4 of the Local Government etc (Scotland) Act 1994. The statutory requirement of this role is to chair meetings of the full Council.

By tradition, the Provost also fulfils a unique and important function as the civic head in representing the Council and the wider East Lothian community at ceremonial and other formal events and occasions both within and outside East Lothian. The Provost is the formal representative of the Council when meeting with visiting dignitaries.

The Provost is required to ensure that the interests of all councillors are represented fairly and that they are given a fair hearing in Council meetings.

The responsibilities of all members of East Lothian Council to maintain the highest standards of conduct apply particularly to the Provost who is in a position, through personal conduct, to promote the values of the Council, to provide an example to others and to enhance the reputation of the Council and East Lothian.

In addition to the roles/ tasks and accountabilities expected of all councillors the following are expected of the Provost.

Key tasks/ accountabilities

The Provost is expected to:

- Act as civic head hosting Council events and attending other events as civic leader and representative of the Council and the East Lothian communities
- Promote East Lothian's profile to the wider community through public appearances at social, community, cultural and business events and through the media
- Foster networks with other organisations in both the business and public sectors to support and enhance the development of East Lothian and its communities
- Chair the meetings of the full Council and ensure the proper conduct of business in terms of the Council's Standing Orders and the Council's values and commitment to honesty, openness and accountability and effective scrutiny of policies and decisions
- Liaise closely with the Leader of the Council in terms of the civic roles and functions on behalf of the Council
- Promote the core values of the Council in fulfilling their remit

OTHER RELEVANT INFORMATION

It is a responsibility of all members of East Lothian Council, both through their personal conduct and through their work including contact with the people in the area they represent, the media and other agencies, to observe the highest standards of conduct and to uphold and enhance the role and reputation of the Council and the public perception of its status.

Councillors should always be able to justify their actions to the public and must at all times avoid any circumstance which could lead to the suspicion, or give the appearance of, improper conduct. They should carry out their roles and duties in a dignified manner and should never act in such a manner that they bring the Council into disrepute. The required standards of behaviour are described in the Councillors' Code of Conduct approved by the Scottish Parliament and enforced through the Standards Commission and any local arrangements applicable within East Lothian, including the Council's Standing Orders.

Provided that Councillors' fulfil the statutory requirement as to attendance at meetings, or carrying out any other approved duty, and do not incur any of the statutory disqualifications for membership or commit some offence which results in forfeiture of membership, they remain a member until the next ordinary elections when they are accountable to the electorate if they stand for election again. In a day to day context, individual Councillor's standards of conduct and performance can be regulated and monitored through, for example:

Councillors approved duties referred to above are approved by the Council for the purpose of reimbursing Councillors for travel and subsistence expenses in accordance with The Local Governance (Scotland) Act 2004 (Allowances and Expenses) Regulations 2007.

Councillors are able to represent their individual and group constituents' interests within the council through various means including:

- Asking questions of the Provost, the Council Leader or a Cabinet Spokesperson at meetings of the full Council
- Pursuing matters of concern to constituents with the appropriate officials of the Council
- Putting down a motion for debate at meetings of the Council

Chairs of any Council Committee are required to act at all times in a manner to enhance the reputation of the Council in terms of fair representation, open government and accountability and as representatives of both the Council and the community, to maintain the highest standards of integrity and behaviour in accordance with the Council's Standing Orders and the Councillors' Code of Conduct approved by the Scottish Parliament and enforced by the Standards Commission and any local arrangements applicable in East Lothian.

In terms of the Council's Standing Orders, Chairs are responsible for the conduct of the meetings of their bodies including:

- Keeping order in respect of both members of their body and any members of the public present

- Ensuring that members have a fair hearing
- Regulating the participation by officers
- Ruling on all matters of procedure, competency and relevancy
- Adjourning meetings.

Chairs are required to ensure that their bodies fulfil their remits set out by the Council or in Standing Orders.

ROLE DESCRIPTIONS FOR STATUTORY OFFICERS AND CHIEF OFFICERS

Statutory Posts

Head of Paid Service

Chief Finance Officer

Chief Social Work Officer

Monitoring Officer

Chief Officer Posts

Chief Executive

Depute Chief Executive

Director of Health & Social Care Partnership

Head of Service

EAST LoTHIAN COUNCIL

HEAD OF PAID SERVICE Role Description

Statutory Context

The Head of Paid Service is a statutory appointment by virtue of Section 4 of the Local Government and Housing Act 1989 [the 1989 Act], as shown in the Appendix. The Council has resolved that the Head of Paid Service is the Chief Executive.

Although a statutory appointment, the law does not require the Head of Paid Service to hold any specific qualifications. However, the post holder is expected to have appropriate leadership, communication and interpersonal skills and qualities of integrity and impartiality in order to deliver the statutory objectives of the post.

By virtue of section 2(1)(a) of the 1989 Act, the post of Head of Paid Service is designated as a politically restricted post, and accordingly is included in the list of such posts required to be maintained by the Council.

Overall Objectives of the Post

The overall objectives of the Council's Head of Paid Service are :

- (a) to ensure the effective co-ordination of the discharge by the authority of its different functions;
- (b) to assess the number and grades of staff required by the authority for the discharge of its functions;
- (c) to ensure the effective organisation of the authority's staff;
- (d) to ensure that proper arrangements are in place for the appointment and proper management of the authority's staff; and
- (e) to make a statutory report to the full Council where considered appropriate to do so in respect of the matters in (a) to (d) above.

Corporate Responsibilities

In delivering the objectives of the post, the Head of Paid Service has the following corporate responsibilities:-

- to report to the Council annually on the council's compliance with its Code of Corporate Governance;
- to submit, in conjunction with the Leader of the Council, an Annual Governance Statement as part of the audit of the Council's annual accounts;
- to report to the Council, from time to time, on the corporate approach of the Council in the delivery of its services and any necessary or desirable changes following consultation, in particular, with the proper officer for the Council's financial arrangements (Chief Finance Officer) and Monitoring Officer;
- to report to the Council as necessary on the staff, accommodation and resources required to discharge the Council's statutory functions;
- to ensure elected members receive good quality information and support to inform them in their decision-making and scrutiny roles;
- to remain impartial and accessible to all councillors in carrying out his/her role as the most senior officer of the Council;
- to develop an effective working relationship with elected members, including the Leader of the Council, Senior Councillors and Conveners of Committees of the Council with a view to ensuring the effective and efficient discharge of Council business;
- to develop an effective working relationship with the Council's community planning and other partners as appropriate;
- to develop an effective working relationship with the Council's external auditor;
- to ensure the Chief Finance Officer and the Monitoring Officer are kept up-to-date with relevant information regarding the manner in which the Council discharges its various functions, the corporate approach of the Council, the staffing needs of the Council, the organisation of the staff and the appointment and proper management of the staff;
- to meet regularly with the Chief Finance Officer, Monitoring Officer and Chief Social Work Officer to promote and enforce good governance, to facilitate the Council's compliance with legislation and to consider and recommend to the Council improvements in the corporate governance of the Council where necessary; and
- to ensure that the Chief Finance Officer, Monitoring Officer and Chief Social Work Officer have appropriate access to elected members and senior and other officers to enable them to carry out their statutory roles effectively.

APPENDIX

Local Government and Housing Act 1989, section 4

4. Designation and reports of head of paid service -

- (1) It shall be the duty of every relevant authority-
 - (a) to designate one of their officers as the head of their paid service; and
 - (b) to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow his duties under this section to be performed.

- (2) It shall be the duty of the head of a relevant authority's paid service, where he considers it appropriate to do so in respect of any proposals of his with respect to any of the matters specified in subsection (3) below, to prepare a report to the authority setting out his proposals.

- (3) Those matters are—
 - (a) the manner in which the discharge by the authority of their different functions is co-ordinated;
 - (b) the number and grades of staff required by the authority for the discharge of their functions;
 - (c) the organisation of the authority's staff; and
 - (d) the appointment and proper management of the authority's staff.

- (4) It shall be the duty of the head of a relevant authority's paid service, as soon as practicable after he has prepared a report under this section, to arrange for a copy of it to be sent to each member of the authority.

- (5) It shall be the duty of a relevant authority to consider any report under this section by the head of their paid service at a meeting held not more than three months after copies of the report are first sent to members of the authority; and nothing..... in section 56 of, or Schedule 10 or 20 to, the Local Government (Scotland) Act 1973 (delegation) shall apply to the duty imposed by virtue of this subsection.

- (6) In this section "relevant authority"—.....
 - (b) in relation to Scotland, means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

EAST LoTHIAN COUNCIL

CHIEF FINANCE OFFICER

Role Description

Statutory Context

The Proper Officer for Finance Arrangements is a statutory appointment by virtue of section 95 of the Local Government (Scotland) Act 1973 which requires local authorities to make arrangements for the proper administration of their financial affairs and appoint a Chief Finance Officer (CFO) to have responsibility for those arrangements. The Council has resolved that the proper officer is the Head of Council Resources.

By virtue of section 2(1)(b) and (6)(d) of the Local Government and Housing Act 1989, the post of CFO is designated as a politically restricted post, and accordingly is included in the list of such posts required to be maintained by the Council.

In Scotland, there is no statutory requirement for the CFO to be a member of a specified accountancy body.

Overall Objectives of the Post

The overall objectives of the CFO post are:

- to lead the promotion and delivery by the whole authority of good financial management so that public money is safeguarded at all times and used appropriately, economically, efficiently and effectively,
- to lead and direct a finance function that is resourced and fit for purpose.
- to manage the Council's financial resources to ensure the delivery of strategic objectives,
- to be actively involved in, and able to bring influence to bear on, all material business decisions to ensure immediate and longer term implications, opportunities and risks are fully considered, so that there is alignment with the authority's overall financial strategy.

Corporate Responsibilities

The CFO has the following corporate responsibilities which require direct access to the Council's Chief Executive and elected members, and the provision of forthright and independent advice to them:-

- Corporate Accounting Arrangements – ensuring adequate systems of accounting control are maintained throughout the Council and that services conform with Council policy, legislation & codes of practice

- Financial Regulations – maintaining a continuous review and submitting any changes, other than of a minor nature, to the Council’s Cabinet for approval
- General Service Capital Budget & General Fund Revenue Budget – preparing and monitoring in accordance with Financial Regulations
- Administration of the Sundry Debtors System
- Internal Audit - examination of the accounting, financial and other operations of the Council
- Banking & Insurance Arrangements
- Signing Operating & Finance Leases
- Treasury Management - ensure that the Council’s annual Treasury Management Plan complies with the Treasury Management Code, The CIPFA Prudential Code for Capital Finance in Local Authorities (the Prudential Code) and the Local Government Investments (Scotland) Regulations 2010
- Payment Processing & Supplier Invoice Administration – In accordance with the Late Payments & Commercial Debts Act 1998

EAST LoTHIAN COUNCIL

CHIEF SOCIAL WORK OFFICER Role Description

Statutory context

The requirement for every local authority to appoint a professionally qualified Chief Social Work Officer (CSWO) is contained within section 3 of the Social Work (Scotland) Act 1968. The particular qualifications are set down in regulations, this is one of a number of statutory requirements in relation to posts, roles or duties with which local authorities must comply. East Lothian Council has resolved that the Head of Adult Wellbeing is the Chief Social Work Officer.

The Chief Social Work Officer appointed for the purposes of the Council's functions under the 1968 Act and other those other enactments listed in section 5 (1B) of that Act. In broad terms, these functions cover all social work and social care services whether providing directly by the council in partnership with other agencies or procured by the council and provided by others on its behalf. Those functions are referred to in this document "social work services".

Competencies, Scope and Responsibilities of the Chief Social Work Officer

Competencies

The qualifications of the CSWO are set down in regulations (1996 No 515) (S.49) the qualifications of the CSWO (Scotland) Regulations 1996. The post holder must be a qualified social worker registered with the Scottish Social Services Council. East Lothian Council will ensure that the CSWO can demonstrate extensive experience at a senior level of both operational and strategic management of social work and social care services.

Role and Function

The CSWO is required to ensure the provision of appropriate professional advice in the discharge of local authority statutory social work duties. The CSWO is a "proper officer" in relation to the social work function i.e. an officer given particular responsibility on behalf of East Lothian Council where the law requires the function to be discharged by specific post holder.

Overall Objectives of the Post

The CSWO should:

- a) promote values and standards of professional practice, including relevant National Standards, and provide a clear statement of expectation of social services workers and employers (consistent with the SSSC Codes of Practice) to be agreed with the Chief Executive and elected members;

- (b) ensure that these values and standards are communicated on a regular basis, adhered to and reviewed periodically;
- (c) work with Human Resources (or equivalent support function) to ensure that all social service workers meet the requirements of the SSSC's Code of Practice and that all registered workers meet the requirements of their regulatory body;
- (d) support and advise managers in maintaining and developing high standards of practice and supervision;
- (e) ensure that only registered social workers undertake those functions reserved in legislation or are accountable for those functions described in guidance;
- (f) ensure that there are effective governance arrangements for the management of the complex balance of need, risk and civil liberties, in accordance with professional standards. Where the council's corporate policy on risk does not reflect this balance, the CSWO is required to bring this to the attention of the Chief Executive and to contribute to the development of appropriate governance arrangements;
- (g) ensure appropriate advice is provided on corporate workforce planning and quality assurance, including safe recruitment practice, probation/mentoring arrangements, managing poor performance and promoting continuous learning and development for staff;
- (h) actively promote continuous improvement, raising standards and evidence-informed good practice, including the development of person-centred services that are focussed on the needs of the service user;
- (i) oversee the quality of practice learning experiences for social work students and effective workplace assessment arrangements, in accordance with the SSSC Code of Practice for Employers of Social Service Workers;
- (j) ensure that appropriate systems are in place both to promote good practice and to identify and address weak and poor practice. The CSWO should work with managers to ensure these systems are effective and, where this is not the case, the CSWO has the responsibility for bringing this to the attention of the Chief Executive and contributing to the development or improvement of such systems;
- (k) ensure that significant case reviews are undertaken into all critical incidents either resulting in - or which may have resulted in - death or serious harm;
- (l) take final decisions on behalf of the local authority in relation to a range of social work matters, including adoption, secure accommodation, guardianship and other statutory decisions required from time to time;

- (m) contribute to reports to the Chief Executive and elected members - providing independent comment where necessary - on the findings of relevant performance reports, setting out:
 - i. implications for the local authority, for services, for service users and carers, for individual teams/members of staff/partners as appropriate;
 - ii. implications for delivery of national and local outcomes;
 - iii. proposals for remedial action;
 - iv. means for sharing good practice and learning;
 - v. monitoring and reporting arrangements for identified improvement activity;
- (n) report to the local authority on any other social work related issues;
- (o) prepare an annual report to the local authority on all of the statutory, governance and leadership functions of the role;

12.4 Access

To discharge these responsibilities effectively, the CSWO needs:

- (a) **access** to people and information across the local authority, including the Chief Executive, elected members, managers and frontline practitioners, partner services and agencies. These arrangements will vary according to individual councils, but should be clearly articulated;
- (b) to be able to bring matters to the attention of the Chief Executive to ensure that professional standards and values are maintained;
- (c) to **be visible and available** to any social services worker and ensure the availability of professional advice and guidance;
- (d) to provide professional advice as required to senior managers across the authority in support of corporate agendas.

EAST LoTHIAN COUNCIL

MONITORING OFFICER Role Description

Statutory Context

The Monitoring Officer is a statutory appointment by the Council by virtue of section 5 of the Local Government and Housing Act 1989 [the 1989 Act]. The Monitoring Officer is appointed for the purposes set out in section 5 of the 1989 Act, as shown in the Appendix. The Council has resolved that the Monitoring Officer is the Executive Director (Services for Communities).

By virtue of section 5(7) of the 1989 Act, the duties of the Monitoring Officer must be carried out personally by them or, where they are unable to act owing to absence or illness, personally by such member of their staff nominated by them as their deputy.

By virtue of section 2(1)(e) of the 1989 Act, the post of Monitoring Officer is designated as a politically restricted post, and accordingly is included in the list of such posts required to be maintained by the Council.

Although a statutory appointment, the law does not require the Monitoring Officer to hold any specific qualification, and in particular, they do not require to be a solicitor or advocate. However, the recommendation of Audit Scotland is that the post holder should be in a position of sufficient seniority within the Council to enable them to carry out their statutory responsibilities effectively. This means that, irrespective of the substantive post which the Monitoring Officer holds in the Council, they will either be a member of the Council Management Team, or have direct access to the Council's Chief Executive, Executive Directors, Heads of Service and Corporate Legal Advisers as they see fit.

Overall Objectives of the Post

The overall objectives of the post are –

- to ensure that the Council complies with the requirements of the law and any statutory Codes of Practice relevant to the carrying out of the Council's duties and the delivery of the Council's services;
- to ensure that, where any contravention of the law, Code of Practice or corporate governance system has arisen, or is likely to, appropriate advice is given to the Chief Executive and relevant senior officers of the Council regarding the mitigation, rectification or prevention of such contraventions; and
- to make a statutory report to the full Council regarding any breach or potential breach of the law or statutory code of practice by the Council where it proves impossible to rectify or prevent such breach.

Corporate Responsibilities

The Monitoring Officer has the following corporate responsibilities which are separate from the responsibilities of the substantive post which they hold in the Council. These corporate responsibilities require direct access to the Council's Chief Executive and elected members, and the provision of forthright and independent advice to them –

- to submit a report to the full Council under section 5(2) of the 1989 Act where it appears to the Monitoring Officer that any proposal, decision or omission by the Council, its committees or any officer or joint committee on which the council is represented, has given rise to, or is likely to give rise to, a contravention of any legislation or rule of law or of any code of practice made or approved under any legislation;
- to consult the Chief Executive as the Council's Head of Paid Service and the Chief Finance Officer as the Council's proper officer for the Council's financial affairs before submitting any report under section 5(2) of the 1989 Act, as required by section 5(3)(a) of that Act.
- to submit to the Council, as required by the Council's Code of Corporate Governance, an annual statement as to breaches of the law by the Council which have, or will have, a material or significant impact on the operations or finances of the council;
- to maintain awareness of the operation of the Council's services across all Heads of Service so as to be able to provide appropriate advice proactively to them regarding potential breaches of the law or codes of practice;
- to maintain effective channels of communication with the Chief Executive and Corporate Legal Advisers to facilitate such awareness;
- to attend, at their discretion, any meeting of the Council, its committees, or Working Groups to give advice appropriate to the role of the Monitoring Officer;
- to appoint the Corporate Legal Advisers as deputies to act in their absence as Monitoring Officer;
- to act as the Council's point of contact by the Public Standards Commissioner for Scotland and the Standards Commission for Scotland regarding complaints concerning alleged breaches of the Councillors' Code of Conduct;
- to develop good liaison and working relations with outside bodies relevant to the role of the Monitoring Officer, including the Public Standards Commissioner for Scotland, the Standards Commission for Scotland, the Council's external auditor, the Accounts Commission and the Scottish Public Services Ombudsman.
- to carry out such investigations as the Chief Executive may determine as relevant to the Monitoring Officer's role;

- to obtain, at their discretion, Counsel's opinion on any matter relevant to the Monitoring Officer's role;
- to provide appropriate advice to elected members and Council officers regarding the promotion of high standards of conduct, and ensure that suitable training is given regarding compliance with the codes of conduct for councillors and officers;
- to carry out such other duties compatible with the role of the Monitoring Officer as the Council may delegate, or as the Chief Executive may request, such as the investigation of a complaint to the Council alleging breach of the Councillors' Code of Conduct.

Corporate Rights

The Monitoring Officer has the following rights in respect of the carrying out of their statutory role –

- to have unqualified access to any information held by the Council and to any officer of the Council who can assist in the discharge of their statutory role; and
- to have access to all reports to the Council, its committees, joint boards, joint committees and Working Groups, as they see fit.

APPENDIX

Local Government and Housing Act, section 5

(as applying to Scotland, and, in relation to the words in italics, as read with the Scottish Public Services Ombudsman Act 2002)

Designation and Reports of Monitoring Officer

5(1) It shall be the duty of every relevant authority –

- (a) to designate one of their officers (to be known as “the monitoring officer”) as the officer responsible for performing the duties imposed by this section.....; and
- (b) to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow those duties to be performed;

and the officer so designated may be the head of the authority’s paid service.....but shall not be their chief finance officer.

5(2) “It shall be the duty of a relevant authority’s monitoring officer, if it at any time appears to him that any proposal, decision or omission by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to –

- (a) a contravention by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any such joint committee of any enactment or rule of law or of any code of practice made or approved by or under any enactment; or
- (b) any such maladministration or injustice [*or service failure*] as is mentioned in.....[*the Scottish Public Services Ombudsman Act 2002*]

to prepare a report to the authority with respect to that proposal, decision or omission.

5(3) It shall be the duty of a relevant authority’s monitoring officer –

- (a) in preparing a report under this section to consult so far as practicable with the person who is for the time being designated as the head of the authority’s paid serviceand with their chief finance officer; and
- (b) as soon as practicable after such a report has been prepared by him or his deputy, to arrange for a copy of it to be sent to each member of the authority.

5(4) [*applies to England and Wales only*]

5(5) It shall be the duty of a relevant authority..... –

- (a) to consider any report under this section by a monitoring officer or his deputy at a meeting held not more than twenty-one days after copies of the report are first sent to members of the authority or committee; and
- (b) to ensure that no step is taken for giving effect to any proposal or decision to which such a report relates at any time while the implementation of the proposal or decision is suspended in consequence of the report;

and nothing in section 56 of the Local Government (Scotland) Act 1973 (delegation) shall apply to the duty imposed by virtue of paragraph (a) above.

5(6) For the purposes of paragraph (b) of subsection (5) above the implementation of a proposal or decision to which a report under this section relates shall be suspended in consequence of the report until the end of the first business day after the day on which consideration of that report under paragraph (a) of that subsection is concluded.

5(7) The duties of a relevant authority's monitoring officer under this section shall be performed by him personally or, where he is unable to act owing to absence or illness, personally by such member of his staff as he has for the time being nominated as his deputy for the purposes of this section.

5(8) In this section –

“business day”, in relation to a relevant authority, means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of Great Britain where the area of the authority is situated.

“chief finance officer”, in relation to a relevant authority, means the officer having responsibility,..... for the purposes of section 95 of the Local Government (Scotland) Act 1973, for the administration of the authority's financial affairs;

“relevant authority” –(b) in relation to Scotland, means a local authority.

JOB OUTLINE

POST TITLE: Chief Executive

RESPONSIBLE TO: The Council through the Leader/Depute Leader
The Provost on Civic Matters

1. PURPOSE OF JOB

- 1.1 Provide overall strategic leadership for all of the Council's functions
- 1.2 Lead the delivery of the Council's Single Outcome Agreement, corporate plans, priorities and objectives by ensuring effective people and resource management and sound corporate governance across all Directorates
- 1.3 Be responsible for the achievement of the Council's Improvement Plan, local plans and targets and secure improvements in the performance of the Council's services
- 1.4 Provide leadership, direction, motivation and management of the Council's staff to deliver services which meet the Council's statutory duties, published plans and priorities and improve the economic, social and environmental well being of the local community
- 1.5 As the principal policy adviser support the Elected Members in determining the Council's overall strategic objectives and priorities and be responsible for the development of collaborative working arrangements with key partners

2. KEY RESULT AREAS

2.1 To maintain focus on strategic and long-term issues

- 2.1.1 ensure the Council is responsive to nationally and locally changing circumstances of a political, legal, economic, environmental and technical nature
- 2.1.2 ensure the regular appraisal of service user needs and operational delivery to support the preparation of policy reviews and proposals
- 2.1.3 provide clear strategic direction to the Corporate Management Team and across the organisation in line with the priorities, objectives and values of the Council, ensure the delivery of services and plans
- 2.1.4 ensure the development and application of appropriate policies and plans to support Community Planning, Best Value and economic regeneration
- 2.1.5 ensure effective business planning, financial planning and performance management frameworks and processes are operated

2.2 To work within the political dimension

- 2.2.1 Work with Elected members within the Council's Cabinet and committee structure to ensure effective governance,
- (i) advise and work with Elected Members to develop and implement effective strategies which meet the statutory obligations of the Council
 - (ii) ensure the provision of clear and objective advice to the Council on any matters and actions required to maintain compliance with all statutory obligations
 - (iii) ensure that Elected Members and all other appropriate bodies are informed of any relevant changes, issues (internal and external) affecting the work of the Council, and progress achieved

2.3 To work corporately:

- 2.3.1 lead the Board of Directors to support Elected Members in their roles and in the development and delivery of the Council's Corporate Plan
- 2.3.2 lead the development and achievement of corporate working across the Council
- 2.3.3 lead the Council's strategic/corporate planning and budgetary process for both capital and revenue and ensure effective arrangements for the preparation and approval of the annual budget and accounts and the efficient collection and disbursement of Council finances
- 2.3.4 promote a culture of continuous improvement in all aspects of the Council's work to support achievement of best value, performance management and best practice in the delivery of the Council's strategic aims, statutory duties and service plans and targets
- 2.3.5 promote and lead adherence to the principles of Best Value and Following the Public Pound in the usage of all resources
- 2.3.6 support and encourage innovation, continuous improvement and the creative use of resources to improve the efficiency and quality of services
- 2.3.7 ensure the delivery of corporate themes and associated strategic projects both internal to the Council and within the wider community working with partners

3. FUNCTIONAL RESPONSIBILITY

- 3.1 lead, manage and direct the Chief Executive's office
- 3.2 keep the organisational structure under review and propose to Council any appropriate changes which would deliver increased cost or operational efficiency or are required to meet the needs of changing service provision

- 3.3 ensure that service development and delivery is customer focussed and meets the Council's obligations for equality and social inclusion
- 3.4 ensure the communications strategy is appropriate to the needs of stakeholders, is effective in providing information which is accurate, clear and unambiguous and ensure the Council is informed of the views of the public of their needs and the effectiveness of Council services in meeting those needs
- 3.5 ensure the development, implementation and maintenance of effective performance monitoring and review mechanisms to ensure the achievement of outcomes and performance against agreed budgets and timescales
- 3.6 maintain knowledge of emerging issues which may impede service delivery or the Council's compliance with its statutory duties and ensure active intervention and support by senior managers
- 3.7 lead, support, supervise, manage and develop the capacity of Executive Directors and Heads of Service to deliver their remits, responsibilities and agreed objectives within set budgets and timescales
- 3.8 ensure service development and delivery meets the statutory obligations of the Council and complies with the requirements of the regulatory and inspection frameworks; that any inspection recommendations are fully considered and addressed as appropriate
- 3.9 ensure appropriate and tested emergency plans are in place and that the Council is ready to work effectively with other agencies when necessary
- 3.10 act as Returning Officer for Elections
- 3.11 Chair the
 - Emergency Co-ordinating Group
 - Community Planning Board
 - Council Efficiency Board

4. OTHER DUTIES

- 4.1 develop and sustain effective external relationships, appropriate partnerships and strategic alliances in pursuit of the Council's interests, particularly with the Community Planning Partners, higher and further education establishments, other local authorities, government departments, other public agencies, community bodies, voluntary sector bodies, the media, the private sector and the public.
- 4.2 promote and represent the interests and views of the Council to all external bodies
- 4.3 participate on behalf of the Council where appropriate ; in particular COSLA, Scottish Government, national organisations, further and higher education establishments, Audit Scotland and other inspection and regulatory bodies

- 4.4 lead the promotion of the Council's vision and values and the development and promotion of a corporate culture which is positive, customer focussed and supports employee engagement to the highest standards.
- 4.5 in all matters and at all times act according to the Nolan Principles for public life and personally demonstrate agreed corporate qualities and behaviours
- 4.6 ensure the promotion and application of equality and diversity in employment and in access to services

ROLE DESCRIPTIONS FOR DEPUTE CHIEF EXECUTIVE POSTS TO FOLLOW

EAST LoTHIAN COUNCIL

DIRECTOR OF EAST LoTHIAN HEALTH AND SOCIAL CARE PARTNERSHIP

Role Description

The Director of the Health and Social Care Partnership will work collaboratively with the Senior Management Teams of the Council and NHS to provide overall strategic leadership to ensure effective delivery of the Health and Social Care Partnership Agreement in pursuit of best outcomes for people within East Lothian.

Overall Objectives of Post

The overall objectives of the post are to:

- work closely with the East Lothian Health and Social Care Partnership Board to ensure the delivery of the Health and Social Care Partnership Agreement
- provide a single senior point of joint integrated management down through the delivery mechanisms of each partner organisation
- lead, operate and manage the aligned budgets for adult health and social care service provision by driving change to better utilise limited resources to meet increased demands in social care provision improving outcomes as a result
- strengthen partnership arrangements, merging two very different cultures and effectively managing organisational change

Key Result Areas

- Develop and secure constructive relationships with a diverse range of stakeholders across Health, Council, Voluntary Sector and other partner agencies, promoting public awareness and involvement.
- Design and implement, in partnership, organisational arrangements which are fit for purpose, take into account professional responsibilities and accountabilities and deliver Council, NHS and Social Care Partnership objectives on time and within budget and ensure that the necessary systems and working arrangements are in place to deliver all service requirements, including statutory and legislative requirements.
- Lead initiatives to ensure that the Council and NHS meet policy and service targets, including the development of a capacity plan for older people's services, joint plans for other client groups and the delivery of the health inequalities agenda.
- Develop and secure effective partnership working with a range of key stakeholders, including voluntary and private sector providers, trades unions and employees to achieve optimum development of services and in accordance with statute and Best Value arrangements.

- Lead and develop Community Planning Partnership arrangements including the relationship between the Health and Social Care Partnership and Community Planning, as agreed and in accordance with the CPP Single Outcome Agreement.
- Ensure that all statutory clinical and non-clinical governance and professional standards are adhered to and arrangements are established to ensure systems are in place to meet professional and clinical standards.
- Develop and set standards for the joint delivery of adult health and social care services ensuring a robust performance management framework is in place to measure service delivery, and ensure continuous improvement.

Strategic Responsibilities

- Work closely with both Chief Executives together with their senior officers, Elected Members of the Council, Non-Executive Members of the NHS and external partners to formulate service development strategies.
- Ensure that the services provided are aligned to the strategic aims and objectives of the Council and the NHS through the provision of effective leadership.
- Support Elected Members, Chief Executives, Non-Executive Members of the NHS and external partners through the provision of professional advice, guidance and information on the services provided and on any other matters as appropriate.
- Create opportunities for team working across the Council and NHS service boundaries, continually looking for benefits that can be achieved cross-organisations, nationally and in collaboration with external partners.
- Develop the integrated planning of Health and Social Care Services, ensuring the management, planning and commissioning of services meets Council and Board policy objectives and statutory requirements as defined in the Joint Strategic Commissioning Plan, by providing strategic direction.
- Lead the alignment of Council and NHS services to ensure integrated service planning and performance management arrangements are in place. This includes the co-ordination, preparation and application of key strategic documents including Service Plans and Joint Capacity Plans.
- Lead change with key stakeholders to promote further joint working and to strengthen service alignment and governance arrangements between the Council and the NHS.

Corporate Responsibilities

- Represent the Council and the NHS at local and national level in relation to the integration of adult health and social care in Scotland, influencing policy initiatives being developed by the Scottish Government through the consultation process, ensuring the Council and NHS are fully aware of developments and have the information, professional advice and assistance necessary to make policy decisions.
- Propose, allocate and manage budgets for the service that provide sufficient resources to meet the objectives as agreed by the Council and the NHS, within

Council and NHS constraints.

- Prioritise and manage effective recording of delivery to ensure the financial targets are achieved within the resources available.
- Review and develop Council and NHS policies ensuring that they deliver high quality services, are consistent with the statutory objectives of both organisations and are within the resources available to the people of East Lothian.
- Ensure arrangements are in place to support the continuing development of employees and the application of our responsibilities under equalities legislation.
- Ensure appropriate responses to service specific scrutiny or inspection, internal or external, with action planning and reporting accordingly.

JOB OUTLINE

Post Title: **Head of Service**

Responsible to: **Depute Chief Executive**

PURPOSE OF JOB

To develop and lead on integration of service provision, service planning and performance management, ensuring their effective delivery.

To lead and manage an efficient and effective group of services at all times promoting a culture of continuous improvement.

As a member of the Corporate Management Team contribute to the development of the organisation in order to deliver the Council's agreed objectives, plans and targets.

Assist the Executive Director and support colleagues to deliver work across the Directorate and to contribute to the overall delivery of the Council's corporate plans, priorities and objectives.

KEY RESULT AREAS

- 1.1** Promote continuous improvement through best value, performance management and best practice to achieve the Council's aims.
- 1.2** Ensure effective systems to develop, manage, monitor, evaluate and review performance at service levels and deliver agreed actions, service standards and budgets.
- 1.3** Ensure collection and retention of accurate management information necessary for corporate and statutory reporting.
- 1.4** Contribute to the setting of the budget for the service and maintain effective budgetary control to ensure the most cost effective delivery of services within the statutory duties and policies of the Council.

- 1.5** Maintain awareness of developments in national policy, best practices and new techniques and to be conversant with all relevant legislation in order to ensure that the Council's policies and practices conform to statutory provisions.
- 1.6** In accordance with the Council's Human Resource policies and procedures, direct and control recruitment, selection, training, development, management and motivation of all employees to ensure the highest possible level of performance.
- 1.7** Ensure the effective procurement of contracted services, in accordance with Council policies and procedures, and delivery of services to the agreed specification, targets and costs.
- 1.8** Maintain effective systems to ensure the health, safety and welfare of all Council employees and any member of the public who may be affected by Council activities.
- 1.9** Promote effective management of assets and embed risk management within all services.
- 1.10** Where necessary initiate discussions on service issues as they affect the Council and represent the Council on external working parties to improve service delivery. Where appropriate represent the Executive Director by chairing working parties.
- 1.11** Maintain and develop arrangements for consultation with senior staff, trades unions and other stakeholders in accordance with Council policy, in order to develop the services and resolve issues in accordance with approved policies.

PRINCIPAL RESPONSIBILITIES:

- 2.1** Provide Services appropriate to the corporate priorities and business needs of the Council; manage the delivery of Services to agreed service standards and within budgets.
- 2.2** Ensure the Executive Director is appraised of performance and of emerging issues and seek direction or support as and when appropriate.
- 2.3** Act as a role model to promote collaborative working demonstrating the 'One Council' approach to service management and delivery.

- 2.4** Lead the development and delivery of Services, policies and strategies that contribute to social inclusion and ensure equality of access.
- 2.5** Ensure that Services comply with the Council's statutory and regulatory obligations and lead the assessment and management of critical areas of risk.
- 2.6** Lead the strategic development and delivery of integrated services.
- 2.7** Lead the consultation and assessment of the needs of each client and develop services which respond to and address identified needs.
- 2.8** Lead the assessment of services needed to meet the current and expected needs of client groups and the development of services to meet these needs.
- 2.9** Lead consultation with representative and user groups to inform and influence policy and practice development.
- 2.10** Advise Elected Members on policies, practices and actions required to ensure compliance with the Council's statutory obligations.
- 2.11** Lead the development and delivery of policies, procedures and services to ensure compliance with the Council's obligations.
- 2.12** Represent the Executive Director or Chief Executive at relevant meetings.

OTHER DUTIES:

- 3.1** To work effectively within the political dimension.
- 3.2** To develop and sustain effective external relationships, appropriate partnerships and strategic alliances in pursuit of the Council's interests, promote good external relations with other local authorities, government departments, public agencies, community bodies, the media, the private sector and the public.
- 3.3** Undertake such other duties and responsibilities that may be required by the exigencies of the service.
- 3.4** To act as the representative of the Council where appropriate.

- 3.5** Promote the Council's vision and values and a corporate culture which is positive, customer focused and supports employee engagement to the highest standards.
- 3.6** In all matters and at all times act according to the Nolan Principles for public life and personally demonstrate agreed corporate qualities and behaviours.
- 3.7** Promote equality and diversity in employment and in access to services.

CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY

INTRODUCTION

Status of the Code

1. This Code is issued by the Secretaries of State for the Environment, Scotland and Wales in pursuance of their powers under section 4(1) of the Local Government Act 1986. The Code was drawn up following the consultations with interested parties in local government required by section 4(4) of the Act. It has been approved by a resolution of each House of Parliament. Local authorities are required by section 4(1) of the Act as amended by section 27 of the Local Government Act 1988 to have regard to the Code in coming to any decision on publicity.

Why have a Code?

2. Local authorities are accountable to their electorate. Local accountability required local understanding. This will be promoted by local authorities explaining their objectives and policies to their electors and ratepayers. In recent years authorities have increasingly used publicity to keep the public informed, and to encourage greater participation. Local authorities also need to tell the public about the services which they provide. Increasingly, local authorities see the task of making the public aware of the services available as an essential part of providing all kinds of services. Good, effective publicity, aimed at improved public awareness of a council's activities, is to be welcomed. This Code is not intended to discourage such publicity.
3. Publicity is, however, a sensitive matter in any political environment, because of the impact which it can have. Expenditure on publicity by some local authorities has been significant. It is essential, therefore, to ensure that local authority decisions on publicity are properly made, in accordance with clear principles of good practice. The purpose of the Code is to set out such principles. It reflects the conventions which should apply to all publicity at public expense, and which traditionally have applied in both central and local government.
4. The principles set out below recognise the political nature of local government. They take account of the fact that some local authority publicity will deal with issues that are controversial because of particular local circumstances, or because of a difference of view between political parties locally or nationally. The principles do not prohibit the publication of information on politically sensitive or controversial issues, nor stifle public debate. They set out the matters a local authority should consider, to safeguard both the proper use of public funds and those members of the public at whom publicity is directed. They apply to all publicity, but some aspects will be especially relevant to publicity which deals with controversial or sensitive issues. The underlying objective of the Code is to ensure the proper use of public funds for publicity.

Scope of the Code

5. The Code is not concerned with the interpretation of section 2 of the Local Government Act 1986. (That section provides that a local authority shall not publish (or assist others to publish) material which, in whole or in part, appears to be designed to affect public support for a political party.) The Code is concerned with all the other publicity which a local authority may public. In particular, it highlights factors which should be borne in mind in decisions on publicity which deals with matters or issues which are, politically or otherwise, controversial, but which are not prohibited by section 2.
6. Section 6 of the 1986 Act defines publicity as “any communication, in whatever form, addressed to the public at large or to a section of the public”. The Code will therefore be relevant across the whole range of local authorities’ work. It covers all decisions by a local authority on publicity and most public relations activities, such as paid advertising and leaflet campaigns, and local authority sponsorship of exhibitions and conferences, as well as assistance to others to issue publicity.
7. The Code has no relevance to the methods which a local authority may use to make its views known where these do not involve publicity in the sense of the 1986 Act.
8. The Code does not affect the ability of local authorities to assist charities and voluntary organisations which need to issue publicity as part of their work, but it requires local authorities, in giving such assistance, to consider the principles on which the Code is based, and to apply them accordingly.
9. By virtue of section 6(6) of the 1986 Act, nothing in the Code is to be construed as applying to any decision by a local authority in the discharge of their duties under the Local Government (Access to Information) Act 1985.

CODE OF RECOMMENDED PRACTICE

Subject matter

1. Local authorities have a variety of statutory powers which enable them to produce publicity and circulate it widely, or to assist others to do so. Those commonly used include the powers in sections 111, 142, 144 and 145 of the Local Government Act 1972, sections 69, 88 and 90 of the Local Government (Scotland) Act 1973 and sections 15 and 16 of the Local Government and Planning (Scotland) Act 1982; but there are several others.
2. Some of these powers relate directly to the publishing authority's functions. Others give a more general discretion to publicise matters which go beyond an authority's primary responsibilities. For example, sections 142(1A) of the 1972 Act and 88(1) of the 1973 Act authorise local authorities to arrange for the publication within their area of information as to the services available in the area provided by them *or* by other local authorities; and Section 54 of the Public Health (Control of Disease) Act 1984 empowers local authorities to arrange for the publication within their area of information on questions relating to health or disease.
3. This discretion provides an important degree of flexibility, but also heightens the need for a responsible approach to expenditure decisions.
4. In considering the subject areas in which publicity is to be issued, the following matters will be important:
 - (i) the publicity should be relevant to the functions of the authority.
 - (ii) it should not duplicate unnecessarily publicity produced by central government, another local authority or another public authority.
 - (iii) in areas where central government, another tier of local government, or another public authority have the primary service or policy responsibility, local authorities should issue publicity only on matters that are directly relevant to their own functions.

Costs

5. Local authorities are accountable to the public for the efficiency and effectiveness of their expenditure, in the first instance through the audit arrangements.
6. For publicity, as for all other expenditure, the aim should therefore be to achieve the greatest possible cost-effectiveness.
7. To achieve this, there may well be cases where the benefit of higher expenditure to gain better presentation or improve other aspects of publicity will justify the extra cost.
8. Local authorities should therefore always have in mind the extent to which expert advice is needed for publicity.
9. In some cases publicity may justify its cost by virtue of savings which it achieves. More commonly it will be necessary to take a view of the importance of the unquantifiable benefits as compared with other uses to which the resources could be put.

10. In deciding whether the nature and scale of proposed publicity, and consequently its cost, are justified, the following matters will be relevant:
 - (i) whether the publicity is statutorily required or is discretionary.
 - (ii) where it is statutorily required, the purpose to be served by the publicity.
 - (iii) whether the expenditure envisaged is in keeping with the purpose and expected effect of the publicity.

Content and style

11. Local authorities produce a variety of publicity material. It ranges from factual information about the services provided by the authority, designed to inform clients or attract new ones, to material necessary to the administration of the authority, such as staff recruitment advertising. There will also be publicity to explain or justify the council's policies either in general, as in the annual report, or on specific topics, for example as background to consultation on the line chosen for a new road.
12. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on facts or explanation or both.
13. Where publicity is used to comment on, or respond to, the policies and proposals of central government, other local authorities or other public authorities, the comment or response should be objective, balanced, informative, and accurate. It should aim to set out the reasons for the council's views, and should not be prejudiced, unreasoning or political attack on the policies or proposals in question or on those putting them forward. Slogans alone will not be an adequate means of justifying or explaining the authority's views or their policy decisions.
14. Publicity relating to the provision of a service should concentrate on providing factual information about the service.
15. In some cases promotional publicity may be appropriate – for example about the local authority's sports and leisure facilities or about tourist attractions.
16. Publicity touching on issues that are controversial, or on which there are arguments for and against the view or policies of the council, should be handled with particular care. It should not over-simplify facts, issues or arguments. Again, it is unlikely that slogans alone will achieve the necessary degree of balance, or capture the complexities of opposing political arguments.
17. Publicity should not attack, nor appear to undermine, generally accepted moral standards.
18. Publicity campaigns by local authorities are appropriate in some circumstances: for example, to promote the effective and efficient use of local services and facilities, or to attract tourists or investment. Publicity campaigns may also be an appropriate means of influencing public behaviour or attitudes on such matters as health, safety, crime prevention or race relations.
19. Legitimate concern is, however, caused by the use of public resources for some forms of campaigns which are designed to have a persuasive effect. Publicity campaigns can provide an appropriate means of ensuring that the local community is properly informed about a matter relating to a function of the local

authority and about the authority's policies in relation to that function and the reasons for them. But local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.

Dissemination

20. The main purposes of local authority are to increase public awareness of the services provided by the authority and the function it performs; to explain to electors and ratepayers the reasons for particular policies and priorities; and in general to improve local accountability.
21. Information and publicity produced by the council should be made available to all those who want or need it. Local authorities should not discriminate in favour of, or against, persons or groups in the compilation and distribution of material for reasons not connected with the efficiency and effectiveness of issuing the publicity.
22. Where material is distributed on matters closely affecting vulnerable sections of the community – for example, the elderly – particular care should be taken to ensure that it is unambiguous, readily intelligible, and unlikely to cause needless concern to those reading, seeing or listening to it.
23. Local authority newspapers, leaflets, and other publicity distributed unsolicited from house to house are inevitably more intrusive than publicity available on application to the council.
24. Publicity that reaches the public unsolicited should be targeted as far as practicable on those whose interests are clearly and directly affected by its content.
25. Material touching on politically controversial issues should be distributed unsolicited only where there is a strong case for letting a particular group of people have information of direct concern to them and no other equally efficient and effective means can be found.
26. Local authority newspapers or information bulletins are a special case. They are often a cost-effective means of disseminating information, but they may touch on controversial issues. If they do, they should treat such issues in an objective and informative way, bearing in mind the principles set out in paragraphs 11-19 of the Code.
27. Where it is important for information to reach a particular target audience, consideration should be given to using the communications networks of other bodies, for example those of voluntary organisations.

Advertising

28. Advertising, especially on billboards or on television and radio, is a highly intrusive medium. It can also be expensive. It may however provide a cost-effective, efficient means of conveying public information to the widest possible audience. Advertising on local radio networks has, for example, been used as a relatively inexpensive means of telling potential clients about local authority services. Advertising can also be the most cost-effective means of publicising a

local authority's activities on tourism, and in the area of economic development generally.

29. The primary criterion for decisions on whether to use advertising should be cost-effectiveness.
30. Advertisements are not normally likely to be appropriate as a means of explaining policy or commenting on proposals, since an advertisement by its nature summarises information, compresses issues and arguments, and markets views and opinions.
31. Advertising in media which cover an area significantly wider than that of the authority is not likely to be an appropriate means of conveying information about a local authority's policies as opposed to attracting people to the authority's area or to use its facilities.
32. The attribution of advertising material leaflets and other forms of publicity that reach the public unsolicited should be clearly set out.
33. It is not acceptable, in terms of public accountability, to use the purchase of advertising space as a disguised means of subsidy to a voluntary, industrial or commercial organisation. Such support should be given openly through the normal grant arrangements. However, the conditions attached to a grant may require the provision of publicity, including publicity for the work of the authority.
34. Any decision to take advertising space in a publication produced by a voluntary, industrial or commercial organisation should be made only on the grounds that it provides an effective and efficient means of securing the desired publicity.
35. Local authorities should never use advertising as a means of giving financial support to any publication associated with a political party.

Recruitment advertising

36. Local authorities have respected in their staff employment policies the tradition of a politically impartial public service. Their recruitment publicity should reflect this tradition, and the fact that local authority staff are expected to serve the authority as a whole, whatever its composition from time to time.
37. The content of recruitment publicity and the media chosen for advertising job vacancies should be in keeping with the objective of maintaining the politically independent status of local authority staff.
38. Advertisements for staff should not be placed in party political publications.

Publicity about individual members of an authority

39. The functions of a local authority are discharged by the council corporately. It is therefore inappropriate for public resources to be used to publicise individual councillors.
40. In the interests of public accountability, however, it may be appropriate to give publicity to the views or activities of individual members when they are representing the council as a whole: for example, when the chairman of a council speaks or acts as the first citizen of the whole community, or when a

chairman of a committee opens a new scheme or launches a policy approved by the council or by his committee on the council's behalf.

41. For the same reason a local authority may justifiably in certain circumstances issue press releases reporting statements made by individual members. Examples of cases where such press releases may be appropriate are as reports of the discussion at the meetings of the council or committees, or quotations of comments made by leading members of the council in response to particular events which call for a particularly speedy reaction from the council.
42. This does not prevent a member of staff of a local authority from responding to questions about individual members, since that is not publicity as defined in the 1986 Act.

Timing of publicity

43. Particular care should be taken when publicity is issued immediately prior to an election or by-election affecting the authority's area to ensure that this could not be perceived as seeking to influence public opinion, or to promote the public image of a particular candidate, or group of candidates. Between the time of publication of a notice of an election and polling day, publicity should not be issued which deals with controversial issues, or which reports views or policies in a way that identifies them with individual members or groups of members.

Assistance to others for publicity

44. The principles set out above apply to decisions on publicity issued by local authorities. They should also be taken into account by local authorities in decisions on assistance to others to issue publicity. In all decisions local authorities should, to the extent appropriate:
 - (a) incorporate the relevant principles of the Code in published guidance for applicants for grants;
 - (b) make the observance of that guidance a condition of the grant or other assistance;
 - (c) undertake monitoring to ensure that the guidance is observed.
45. It can be appropriate for local authorities to help charities and voluntary organisations by arranging for pamphlets or other material produced and paid for by the organisation to be available for collection by the public in public libraries and other suitable locations. Such material should not offend against any legal provision, but (subject to this) any such facility should be made available on a fair and equal basis.

DESCRIPTION OF EXEMPT INFORMATION

Local Government (Scotland) Act 1973 – Schedule 7A, Parts 1 and 2 (as amended by the Local Government (Access to Information) Act 1985)

This note sets out the types of information which the Council is entitled, at its discretion, to consider in private at a meeting of the Council or any of its Committees, Sub-Committees or Policy & Performance Review Panels. Where the legislation qualifies or restricts this right to discuss information confidentially, such restrictions are detailed after each relevant paragraph.

1. Information relating to a particular employee, former employee or applicant to be become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the Authority.
2. Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the Authority.
3. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the Authority.
4. Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the Authority.
5. Information relating to the adoption, care, fostering of any particular child or relating to the supervision or residence of any particular child in accordance with a supervision requirement made in respect of that child under the Social Work (Scotland) Act 1968.
6. Information relating to the financial or business affairs of any particular person other than the Authority.

Information falling within paragraph 6 above is not exempt information by virtue of that paragraph if it is required to be registered under:

- (a) the Companies Act 1985;
- (b) the Friendly Societies Act 1974;
- (c) the Industrial and Provident Societies Act 1965 to 1978; or
- (d) the Building Societies Act 1962.

7. Information relating to anything done or to be done in respect of any particular person for the purposes of any of the matters referred to in section 27(1) of the Social Work (Scotland) Act 1968 (providing reports on and supervision of certain persons).
8. The amount of any expenditure proposed or to be incurred by the Authority under any particular contract for the acquisition of property or the supply of goods or services.

Information falling within paragraph 8 above is exempt information if and so long as disclosure to the public of the amount there referred to would be likely to give an advantage to a person entering into, or seeking to enter into, a contract with the Authority in respect of the property, goods or services, whether the advantage would arise as against the authority or as against such other persons.

9. Any terms proposed or to be proposed by or to the Authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.

Information falling within paragraph 9 above is exempt information if and so long as disclosure to the public of the terms would prejudice the Authority in those or any other negotiations concerning the property, goods or services.

10. The identity of the Authority (as well as of any other person, by virtue of paragraph 6 above) as the person offering any particular tender for a contract for the supply of goods and services.

11. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the Authority or a Minister of the Crown and employees of, or office-holders under, the Authority.

Information falling within paragraph 11 above is exempt information if and so long as disclosure to the public of the information would prejudice the Authority in those or any other consultations or negotiations in connection with a labour relations matter arising as mentioned in that paragraph.

12. Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:

- (a) any legal proceedings by or against the Authority; or
- (b) the determination of any matter affecting the authority,

(whether, in either case, proceedings have been commenced or are in contemplation).

13. Information which, if disclosed to the public, would reveal that the Authority proposes:

- (a) to give under any enactment a notice under or by virtue of which requirements are imposed on person; or
- (b) to make an order or direction under any enactment.

Information falling within paragraph 13 above is exempt information if and so long as disclosure to the public might afford an opportunity to a person affected by the notice, order or direction to defeat the purpose or one of the purposes for which the notice, order or direction is to be given or made.

14. Any action to be taken in connection with the prevention, investigation or prosecution of crime.

15. The identity of a protected informant.